CHAPTER 1

CHINA

TRANSPARENCY, UNIFORM ADMINISTRATION AND JUDICIAL REVIEW

[COMMITMENTS UPON ACCESSION]

China now has obligations under the provisions of Article X of 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 Agreements 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. 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.

However, the National Security Law enacted in 2015 stipulates that in addition to the integrity of sovereignty and territory and the protection of the welfare of the people that are usually assumed, the first goal is the maintenance of the government, and that the maintenance of economic development is also the subject of national security to ensure that China is not exposed to internal and external threats (Article 2 of the Law). Based on this overall view of national security, it prescribes that economic and political security should be ensured (Article 3 of the Law). In some cases, there may be tension between this overall view of national security and the rules of the WTO Agreements.

[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Previously, many laws and regulations had been unpublished and even those that were published, particularly regulations at the local level, were difficult to obtain.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 Notification 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. Examples include Order No. 551 and the list of “安可” (secure and controllable) products and services in relation to government procurement (see the Government Procurement section for details).

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. The Ordinance was revised on April 3, 2019. 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. 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.).

The Data Security Law, which went into effect on September 1, 2021, stipulates that state agencies must release administrative information in a timely and accurate manner and should establish an open platform for administrative information. This Law defines the subject of public disclosure as "state organs," expanding the scope of the subject of public disclosure beyond the administrative organs covered by the Government Information Disclosure Ordinance (for details on the Data Security Law, see the Trade in Services section).

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 said notification, published in April 2021, set forth the policy of (i) improving the quality of public disclosure application work, (ii) establishing examination standards for administrative appeal cases of government information disclosure, and (iii) strengthening the establishment of related systems. With regard to (ii), the "Guiding Opinion on Some Issues Concerning Government Information Disclosure Appeal Cases" went into effect in January 2022 and the scope of acceptance of government information disclosure cases was stipulated. Regarding (iii), the "Measures for Establishment of Rules on Information Disclosure by Public Enterprises and Business Units" went into effect in January 2021, and it was announced that information disclosure by public enterprises and business units would be promoted intensively. The said notification, published in April

2022, sets forth the policy of (i) promoting stable and sound economic development through public disclosure, (ii) maintaining social harmony and stability through public disclosure, (iii) improving the quality of policy disclosure, (iv) laying the foundation for disclosure, and (v) strengthening operational guidance and supervision.

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. On October 28, 2022, the General Office of the State Council published "Guidelines for the Establishment of a National Integrated Government Big Data System" and set a goal for the establishment of the same by 2025.

As for the 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 been disclosed through websites, as of October, 2023, such as "China Judgments Online (which has disclosed approximately 142.99 million juridical documents)", "China Trials Online (which has disclosed approximately 22.46 million live court trial videos)", "China Judicial Process Information Online (which has disclosed approximately 4.76 million records of public notices of holding of a trial)", "China Enforcement Information Online (which has disclosed information regarding approximately 7.98 million judgment defaulters)", and "National Enterprise Bankruptcy Information Disclosure Platform (which has disclosed approximately 418,000 cases of public notices of bankruptcy and compulsory liquidation)".

<PROBLEMS UNDER INTERNATIONAL RULES>

Although a certain level of progress has been observed since the revision in 2019, transparency can be considered insufficient, considering that the progress seen in public disclosure (including implementation details) since the above Government Information Disclosure Ordinance went into effect has been inadequate, due to the absence of an administrative system for the dissemination of administrative instructions, information in which the public is greatly interested is not often disclosed, and claims by some local city governments that the information requested either qualifies as state secrets or is not available. Furthermore, even if public comments are solicited, most of the public hearing periods are set to be approximately 30 days. The relative shortness of these periods is pointed out. If these issues relate to matters falling under the jurisdiction of the WTO Agreements, it is possible that they are inconsistent with the provisions of Article X of GATT and Article VI of GATS, which provide for securing objectivity and impartiality of the measure, and Article 2 of the Accession Protocol, which provides for ensuring transparency, and Article 10 (Transparency) of the Agreement among Japan, Korea and China for the Promotion, Facilitation and Protection of Investment.

(2) UNIFORM ADMINISTRATION

<STATUS OF IMPLEMENTATION>

Considering the business of the foreign companies, China needs to develop laws and orders that are consistent between the Ministries, Committees and Governments of central, provincial, and local levels. Even under consistent laws and orders, foreign-owned companies may find barriers against inter-regional business development due to discretion in the application of laws and orders or inconsistency in their interpretation.

In recent years, China has instituted "vertical management" reforms in important sectors like customs, tax services, and finance, as well as sectors where the interests of the central and local governments tend to be at odds with one another. The country has also improved the inefficiency of administration caused by the lack of administrative consistency at each level to a certain extent. And the central government and some local governments have undertaken to simplify/merge government institutions.

However, the vertical management has made little progress in relations between the central and local governments. Indeed, the vertical control system for foods and medicines, for instance, has been abolished below the ministerial level in line with the wishes expressed by the central government to give local governments greater responsibility for the oversight of foods and medicines. In addition, there are still cases of non-uniform administration within the central government.

In connection with the "Administrative Punishments Law," which came into effect July 2021, the General Office of the State Council published an "Opinion on the Establishment and Further Normalization of Administrative Discretion Standards" in August 2022. Furthermore, following the publishment of said Opinion, in October 2022, the State Administration for Market Regulation published the "Leading Opinion on the Normalization of Discretionary Authority for Administrative Punishment in Market Supervision." The Leading Opinion adds the principle of impartiality and fairness as a basic principle for the exercise of discretionary authority in administrative punishment, and includes content that contributes to the prevention of abuse of administrative discretion, such as avoiding abuse of discretion by undergoing a strict evaluation if there is a standard for discretionary authority in administrative punishment. On the other hand, it also allows for the adjustment of the applicable standard through a certain procedure if the application of the discretionary authority standard in individual cases is extremely impartial. It is thus necessary to continue to pay attention to the operational situation based on the Leading Opinion in the future.

<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 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. See (4) of "PROTECTION OF INTELLECTUAL PROPERTY" in this Chapter.

Export and Import 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 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.

In the "2015 Catalog of Goods Subject to Export License Administration," the number of items subject to export licenses has increased to 591.

China thus continued to enforce quantitative restrictions on exports of raw materials and intermediate goods even after its accession to the WTO. Article XX (g) of GATT 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 China's export restriction measures for raw materials and intermediate products gives preferential treatment to Chinese domestic industry, then, the measures do not meet the criteria of "relating to the conservation of exhaustible natural resources." Article XX (g) of GATT also requires these restrictions be accompanied by "restrictions on domestic production or consumption" but it is not entirely clear whether such domestic restrictions have 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>

Article XX (g) of GATT 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". Article XX (g) of GATT 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 Articles XI and XX (g) of GATT 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 previously had the security export control system which only regulated items related to weapons of on one hand added many civilian goods and technologies related to conventional weapons to the control subjects and on the other hand published 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. 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 Chinese government enacted the Export Control Law in October 2020 and enforced in December of the same year. In addition, a list of the controlled goods under the Export Control Law and the Cryptography Law also entered into force on January 1, 2021. As a result, import and export of cryptography related devices are now subject to application for license (the list enumerating these items were merged into a single list with the list of 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 in December 2020). Furthermore, in April 2022, the Ministry of Commerce published the "Draft Ordinance for Export Control of Dual-Use Items (draft for comments)" as a subordinate legislation of the Export Control Law, and a request for comments was held for a period of one month, but it has not been formally enacted into law. The Draft Ordinance adds dual-use items that can be used for both military and civilian applications as subjects of the export control, and establishes the unified regulations on dual-use items by integrating regulations on dual-use items related to weapons of mass destruction, which have been dispersed in the past, and the regulations on dual-use items related to conventional weapons. On May 31, 2023, the General Office of the State Council announced that it was ready to enact the "Ordinance for Export Control of Dual-Use Items" through the "Legislative Work Plan for FY2023," but there has been no indication of when it will be enacted.

In addition, in July 2023, the General Office of the State Council issued a public notice announcing that it would implement export controls for related items of gallium and germanium, which went into effect in August of the same year. Furthermore, in October 2023, the Gerenal Office of the State Council issued a public notice on temporary export control measures for graphite-related products, which went into effect in December of the same year. The export control targets were changed from "other artificial graphite" to "artificial graphite materials and products", and natural graphite was also added to the target.

The whole picture of the system is still unclear, and there are provisions which are suspected to be inconsistent with the WTO Agreements as described below. The system may have a major effect on the trade and investment environment between Japan and China depending on how it will be enforced.

<PROBLEMS UNDER INTERNATIONAL RULES>

Although there is no precedent that applied the security exception (Article XXI(b) of GATT) to export control measures, the Export Control Law can include the measures referred to in (a) to (c) below, which are excessive export control measures with little relevance to the security purposes and may be considered to be inconsistent with the requirements of Article XXI of GATT, and thus may violate Article XI of GATT that prohibits import and export restrictions.

(a) Risk of Excessive Expansion of Controlled Items

The Export Control 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) without clearly prescribing specific matters to be considered. However, the "Concept of Comprehensive National Security" (Article 33), which is provided as the purpose of export control enforced by this Law, is China's unique national security concept and includes a wide scope of factors (including security of economy, culture, society, science and technology, resources, etc.)that are not limited to the national security purpose in the narrow sense, but may include industrial or trade protection purposes. In addition, although the "national security and interests" are mentioned as the purpose and one of the factors to consider throughout this Law, "national interests," which were added to the final text besides "national security" that had already been mentioned in the first and second draft, may be understood to intend to take industrial policy considerations into account. Furthermore, the Export Control Law authorizes to implement a wide range of restrictions including ones 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 explanatory material of this Law mentioned "protection of important strategic scarce resources" as one of the factors necessitated its legislation, there is a concern that, for instance, controlled 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 Comprehensive National Security".

In addition, the "Draft Ordinance for Export Control of Dual-Use Items" also prescribes that when establishing the export control list, necessary industrial surveys must be conducted in consideration of the "impact on national security and interests" (Article 13); therefore, attention should be paid to the broadened scope of items subject to control.

(b) Risk of Requests to Disclose Technologies

The Export Control 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 exporter's obligation to submit a certificate regarding the end user and end use (Article 15) and evaluation and investigation by the Chinese authorities (Article 17). There is a concern that these provisions may allow the Chinese regulatory authorities to require overbroad disclosure of important technological information such as source codes in applicability determinations, or to lawfully obtain a direct access to and steal sensitive information of Japanese companies through the process of examining end users and end use. The "Draft Ordinance for Export Control of Dual-Use Items" also provides the obligation to submit technical explanations or inspection reports when applying for an export license (Article 20) and the exporter's obligation to submit a certificate regarding end-users and end-uses (Article 28), which raise the same concern as with the Export Control Law. Since the details of both measures are left to the implementing regulations, we must pay close attention to specific provisions and enforcement practices of submitted documents by subordinate laws and regulations in the future.

(c) Provisions of Retaliatory Measures (Equal Principles)

This Law includes a provision that authorizes the Chinese

govdrnment to take “appropriate measures” against a country that abuses export control measures against China and endangers China’s national security and interests (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. There is a risk that unilateral export control measures whose purpose is not necessarily national security may be taken based on this provision.

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 under which 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, or causing serious damages to the legitimate rights and interests of Chinese companies would be listed as “Unreliable Entities". Thereafter, in September 2020, the Unreliable Entities List rule was enforced.

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 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. The “Draft Ordinance for Export Control of Dual-Use Items” also provides restrictions on re-export (Article 58), but their details are left to the implementing regulations. There is a concern that, depending on the implementing regulations and specific operations, these provisions may lead to excessive extraterritorial application of domestic laws, which is not allowed under the international law. In addition, there is concern that re-export restrictions may be enforced by using the unreliable entity list provision that went into effect in September 2020. (For details on the unreliable entity list provision, see the Unilateral Measures and Others section.)

<RECENT DEVELOPMENTS>

The Japanese industries have submitted written opinions to China to realize a transparent system consistent with international rules and practices (for the background of the submission of such written opinions, see the 2023 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -). 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 the Ministry of Economy, Trade and Industry, pointing out the concerns regarding the Export Control Law, etc. of China and requested to react to these concerns at the government level.

In response to this, 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, consultations between the Ministry of Economy, Trade and Industry and China’s Ministry of Commerce (most recently, Minister Nishimura of the Ministry of Economy, Trade and Industry of Japan and Minister Wang of the Commerce Minister of China met in November 2023) and other meetings to realize a fair and transparent system in accordance with international rules and practices. In addition, in November 2023, Japan and China agreed upon the establishment of the Japan-China Export Control Dialogue, and the two countries held the first Japan-China Export Control Dialogue in January 2024. The Ministry of Economy, Trade and Industry has been asking the Chinese counterpart to improve the transparency of the system and to operate it in a manner consistent with the agreement.

(4) IMPORT RESTRICTIONS ON JAPANESE AQUATIC PRODUCTS

The Chinese government announced that it would suspend the import of all Japanese aquatic products to address food safety concerns, triggered by the discharge of the ALPS treated water into the sea from TEPCO’s Fukushima Daiichi Nuclear Power Station(FDNPS) in Japan, which was carried out in August 2023. In the same month, the Chinese government also made a WTO notification in accordance with Annex B 6 of the SPS Agreement (notification after implementation of measures in case of emergency).

The discharge of the ALPS treated water into the sea from FDNPS is consistent with relevant international safety standards. However, China only states food safety concerns and does not provide any scientific evidence for the specific risk to the safety of Japanese aquatic products by the discharge of ALPS treated water. In addition, it is not clear whether an objective risk assessment was properly conducted. Therefore, there is a concern that the alleged suspension of imports may be unjustified and not based on “scientific principles” stipulated in the SPS Agreement.

In response to China’s WTO notification, in September 2023, Japan submitted its counterargument in writing to the WTO, which was circulated to all members. Japan also made a request for discussion in accordance with Annex B 6 (c) of the SPS Agreement, as well as a request for discussion in accordance with the provisions on emergency measures under the RCEP Agreement. In addition, at the meetings of WTO/Market Access Committee (October 2023 and March 2024), the SPS Committee (November 2023 and March 2024), and the Council for Trade in Goods (December 2023), Japan urged China to immediately repeal its measures on the grounds that there were concerns under the WTO Agreements.

In addition, at the ministerial meeting (between Minister Nishimura of the Ministry of Economy, Trade and Industry of Japan and Minister Wang of the Commerce Minister of China) and the Japan-China summit meeting (between Prime Minister Kishida of Japan and President Xi of China) in November 2023, and various other bilateral meeting opportunities, Japan urged China to immediately repeal its measures as well.

Furthermore, at the Japan-China summit meeting, both sides shared the view that they will seek to find ways to resolve issues through consultations and dialogue in a constructive manner, while recognizing that there are differences in their respective positions.

Japan will continue to sincerely explain its efforts related to the discharge of the ALPS treated water into the sea and the results of monitoring, etc., in a transparent manner and strongly call for the immediate lifting of import restrictions on Japanese food products.

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. See PART II, Chapter 5.1 of the 2020 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA- for definitions of tariffs, tariff rates, bound tariffs, and bound tariff rates.

<OUTLINE OF THE MEASURES>

The Customs Law, the Import and Export Customs Ordinance, the Import and Export Tax Measure and related regulations provide for import duties, export duties and special duties (such as AD duties, countervailing duties and SG duties). MFN or EPA (the Regional Comprehensive Economic Partnership (RCEP)) tariff rates and the like are applied to products imported from Japan. In addition, preferential tax treatments (exemption, reduction and refund of customs duties and value-added taxes) are applied to goods, raw materials and equipment intended for reexport and to products recommended for export by the government.

Although the average bound tariff rate on non-agricultural products in 2022 in China 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 for non-agricultural products in 2022 was 6.4%.

<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 regard to the ITA expansion negotiations concluded in December 2015 to promote greater market access for IT products (see 2. (2) “Information Technology Agreement (ITA) Negotiation” in Chapter 5 of Part II for details), China began eliminating tariffs on 201 subject items in September 2016. For example, high tariff items include television cameras (35%), recorders and players (30%), and television receivers (30%). Tariffs on all the subject items including were eliminated in July 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, 2018, the Chinese Customs Tariff Commission announced that the import duties for the total of 218 items, including automobiles and automotive parts, starting in July 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 in September of the same year, reduction of import duty rate for 1,585 industrial products, etc. starting in November of the same year was announced (Public announcement by the Customs Tariff Commission [2018] #9). With this measure, China’s simple average applied tariff rate on non-agricultural products 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 in December of the same year that the import/export duties for some products are to be adjusted starting in January 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 April 2022, the Customs Tariff Commission of the State Council temporarily waived import duties on coal from May 2022 to March 2023 in order to secure a stable energy supply and promote quality development in accordance with the Customs Law and Article 9 of the Import and Export Customs Ordinance, and further extended such temporary waiver until December 31, 2023 in March 2023. Effective April 1, 2023, the provisional import duties on seven items of coal products were abolished, and effective July 1, 2023, the provisional import duties on one item of information technology products were abolished.

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[1].

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 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

[1] China’s WTO Accession Protocol (WT/L/432)

Economy Status). For details, refer to Part II, Chapter 6 of the Report.

[Individual Measures]

China has initiated 295 (as of December 2023) AD investigations since 1995[2]. Out of them, Japanese domestic products are involved in the 53 cases[3] and for 44 of them, AD measures are imposed[4](as of December 2023 for both numbers). China's AD duties on Japanese 20 products are currently continuing (as of December 2023[5]).

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 investigations 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 keep a close eye on its consistency with the WTO Agreements 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 -.

<Recent Developments>

In April 2022, the Chinese government initiated a sunset review of the AD measures, and the decision to continue the measure was made in April 2023. Japan stated at the AD Committee meeting in October 2023 that it should promptly eliminate and correct the AD measures that are not consistent with the WTO Agreements. Japan will keep a close eye on the measures in cooperation with the industry.

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

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. For details, refer to page 28 of the 2022 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -.

<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 raised the issues at the AD Committee held in April and October 2018. In this way, Japan has been cooperating with the industry and urging the Chinese government to conduct the investigation in a manner consistent with the WTO Agreements. However, in the end, the Chinese government made the final determination in which there are doubts as to the WTO consistency.

In November 2023, the Chinese government initiated a sunset review of the AD measures. Japan will, in cooperation with the industry, continue to keep a close eye on China to ensure that they will promptly terminate/correct AD measures that are inconsistent with the WTO Agreements.

(3) AD Measures on Japanese-Made Orthodichlorobenzene

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. For details, refer to page 28 of the 2022 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -.

<Recent Developments>

In January 2024, the Chinese government initiated a sunset review of the AD measures. Japan will, in cooperation with the industry, keep a close eye on China to ensure that they will promptly terminate/correct AD measures that are inconsistent with the WTO Agreements.

(4) AD Measures on Japanese-Made Stainless Products (DS601)

<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

[2] https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf
[3] https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsRepMemVsExp.pdf
[4] https://www.wto.org/english/tratop_e/adp_e/AD_MeasuresRepMemVsExp.pdf
[5] https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/ADP/N384CHN.pdf&Open=True

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>

In September 2021, the panel was established, and in June 2023, the panel report was issued finding that the China's measures had violated the WTO Agreements. In October of the same year, it was agreed that the reasonable period of time (RPT) to implement the recommendations based on the report would be 9 months and 10 days (RPT end date: May 8, 2024), and the Chinese government began investigations in November of the same year in connection with the implementation. Japan will, in cooperation with the industry, keep a close eye on the situation to ensure that the Chinese government will implement the recommendations on the measures concerned in accordance with the contents of the panel report.

(5) 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 3.4 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 keep a close eye on China to ensure that they will promptly terminate /correct AD measures that are inconsistent with the WTO Agreements.

Subsidies

[Commitments upon Accession]

Upon accession, China made a commitment to abolish all export subsidies and subsidies contingent upon the use of domestic over imported goods stipulated in Article 3.1(a) and (b) of the Agreement on Subsidies and Countervailing Measures (ASCM), as well as to (i) reserve the right to benefit from part of the provisions regarding special treatment of developing countries while confirming it would not seek to invoke the application of other parts of the provisions regarding special treatment of developing countries, (ii) notify the WTO on a biennial basis of the specific subsidies granted by it as stipulated in Articles 25.1 and 25.2 of the ASCM (subsidies are specific if the state-owned enterprises account for the majority of the recipients of the subsidies or if the state-owned enterprises are given disproportionately large subsidies), and (iii) implement only uniform and equitable laws, regulations and measures relating to trade in goods and services, TRIPS or foreign exchange control that are readily accessible to other WTO member countries. In this regard, it has been pointed out by other Members at Subsidies Committee meetings, etc. that China has not made publicly available some of the laws and regulations which are reported in the Subsidy Notification as the legal basis for the notified subsidy programs.

Furthermore, China also made a commitment to set up an enquiry point where Members can request information beyond certain provisions of the WTO Agreements and to respond within 30 days in principle. However, it has also been pointed out at Subsidies Committee meetings, etc. that Members have not received responses from China, which are supposed to be mandatory, even when the Members inquire China about its subsidies. It has also been proposed by the UK that China share its experience in fulfilling its obligations under the Accession Protocol, such as disclosing trade measures and responding to inquiries from other Members, as it is important and beneficial for the promotion of understanding by other Members. 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.

[Cross-Cutting Issues (Including Notification)]

<Outline of the Measures>

In recent years, China has been increasing its subsidies (subsidies in the broad sense defined in the WTO Agreements, including low-interest loans, tax incentives, and debt forgiveness) for key industries, while WTO member countries and others have been pointing out the lack of transparency in such spending. The lack of transparency in subsidy spending is likely to encourage the granting

of subsidies that may distort the market, and China's subsidies are suspected of contributing to the issues of overcapacity in sectors such as steel and aluminum. Furthermore, there are concerns that China is using a variety of tools, such as loans through state-owned banks and state investment funds. Specifically, (i) government influence over companies may be strengthened as a result of government financial support, (ii) government support may encourage a concentration of private capital, resulting in a large flow of funds into specific industries and consequently leading to overcapacity issues, and (iii) government support may be used to finance the acquisition of foreign companies with advanced technologies. Japan and other countries have also pointed out at Subsidies Committee meetings that market-distortive subsidies can also have a negative impact on industrialization in developing countries.

<PROBLEMS UNDER INTERNATIONAL RULES>

There is an obligation under the ASCM to submit a detailed notification on subsidies every second year. Notified subsidies are reviewed at Subsidies Committee meetings. The first notification China submitted after its accession in 2001 was only in April 2006 and for the first time in July 2016, China submitted a notification on local subsidies. However, there is a problem that notifiable subsidies have not been notified.

China's massive government support, including unclear subsidy spending, has caused excess capacity in industries such as steel, aluminum, and others. In particular, the issue of overcapacity in China due to various subsidies to the aluminum industry may be inconsistent with Article 5 of the ASCM as having adverse effects to the interests of other Members. Since 2017, the US has made a request for consultations on China's subsidies (government loans and provision of low-cost inputs (coal, alumina, electricity)) to the aluminum ingot industry concerning inconsistency with the ASCM (DS519), and has also decided to impose antidumping duties and countervailing duties on Chinese aluminum sheet materials finding injuries to the domestic industries in both proceedings. Furthermore, in its report on Section 232 for aluminum (refer to Chapter 3 Unilateral Measures (2)), the US recognized that the worldwide overcapacity of aluminum due to the subsidies of foreign governments such as China had a major negative impact on the production capacity of the primary aluminum industry in the US. (For details, see "2021 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, EPA/FTA and IIA-", Part I, Subsidies, (1) Subsidies for Aluminum.)

<RECENT DEVELOPMENTS>

In recent years, China has positioned new energy automobiles and other industries as national strategic industries and is rapidly expanding government support. There is concern that, in the coming years, overcapacity and other problems will spread to advanced industries that are important for each country's industrial competitiveness. In addition, the methods of support of China seem to be diversifying to include not only subsidies and preferential taxation, but also low-interest loans through government-affiliated financial institutions and large-scale investments by government guidance funds, which are further decreasing transparency. For example, government guidance funds to support the semiconductor industry have been set up by both central and local governments, but China has not notified many of these funds to the WTO, claiming that they do not constitute subsidies, so information publicly available on such support is limited. In the 2021 Trade Policy Review (TPR) of China, many Members have expressed concern about China's opaque industrial support and extensive intervention in the market using state-owned enterprises (see column in the 2022 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -, "Twenty Years of China's WTO Accession and the WTO Trade Policy Review (TPR) Meeting with China").

Japan has requested increased transparency in subsidy policies at bilateral meetings with China, and together with the US, EU, and other Members, has raised the issues of subsidies and overcapacity at the WTO Subsidies Committee meetings and at the 2021 TPR of China. Japan has also called for concerted efforts on addressing overcapacity in key industrial sectors and addressing market-distorting industry subsidies and practices to ensure fair competitive conditions at the G7 and G20 meetings. In cooperation with other WTO member countries, Japan will continue to urge China at the WTO and other international fora and consultations to comply with its commitments made at the time of accession, ensure improved notification and transparency, and operate its subsidy programs in accordance with the ASCM.

[INDIVIDUAL MEASURES]

(1) 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.

Furthermore, on March 17, 2020, it was announced that from March 20 of the same year, the export refund rate for 1,084 items such as porcelain sanitary ware would be raised to 13%, and the export refund rate for 380 items such as plant growth regulators would be raised to 9%. On April 26, 2021, it was announced that the refund of export value-added tax on certain steel products had been cancelled from May 1 of the same year. In addition, on July 28 of the same year, it was announced that the refund of export value-added tax on further steel products would be cancelled from August 1 of the same year.

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 five tax rate adjustments, including the above, were made during the four years of 2018 through 2021. 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.

In addition, in June 2022, since seven industries, such as wholesale, retail, and education, were added to the previous six industries (manufacturing, etc.), a total of thirteen industries can receive a refund of value-added tax beginning from tax returns filed in July 2022.

(2) 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 is being provided to the nation's shipbuilding industry. These measures distort the market and risk obstructing prompt resolution of the issue of overcapacity.

<PROBLEMS UNDER INTERNATIONAL RULES>

Public financial support for China's shipbuilding industry by the government has delayed resolution of the excessive 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 capacity issue in the shipbuilding industry. In addition, at the 138th meeting of the OECD Council Working Party on Shipbuilding in April 2024, discussions were made on shipbuilding policies, including the structure of the Chinese shipbuilding industry, public support, 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 Article III of GATT, 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 Articles III and XI of GATT. 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, in January 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 National People's Congress (NPC) 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.

In August 2023, the State Council issued "Opinions on Further Optimizing the Foreign Investment Environment and Strengthening Activities to Attract Foreign Investment," which set forth policy measures to attract foreign investment, such as guaranteeing national treatment for foreign companies (guaranteeing participation in government procurement under the law, supporting equal participation in standard setting work under the law, and equal access to support policies).

Furthermore, in March 2024, the State Council issued the "Action Plan for Ensuring a High Level of External Openness and Making Greater Efforts to Attract and Utilize Foreign Investment" dated February of the same year. The action plan includes initiatives to attract foreign investment, such as rational reduction of the negative list for foreign investment entry, expansion of the list of industries in which China encourages foreign investment and foreign investment projects, cleanup of actions and policy measures that violate fair competition, support of data flow between foreign companies and headquarters, and improvement of cross-border data flow regulations.

<PROBLEMS>

Although there have been efforts, such as the above-listed amendments, to make domestic laws in China consistent with the WTO Agreements, 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 September 5, 2022 and the Japan-China Economic Partnership Consultation on December 6, 2021, Japan requested China to ensure effective operation of the Foreign Investment Law around the country, including by local governments, and establish a complaint resolution mechanism as provided for in the Foreign Investment Law in a manner consistent with the intent of the system.

(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 10 of the same year) promulgated by the National Development and Reform Commission and the Ministry of Industry and Information Technology on June 2, 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 agreements 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 agreements 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)	★ 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." * 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.
	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)	★ The circular prohibits use of domestic loans of foreign-funded investment companies for reinvestment in China. ★ 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)
	Measures for Handling Complaints of Foreign-invested Enterprises (October 2020)	★ 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. ★ 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).
	Measures for National Security Review of Foreign Investment (January 2021)	★ 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. ★ 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.

(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 December 27, 2021, the “Special Administrative Measures for Foreign Investment Access to Pilot Free Trade Zones (Negative List) 2021” (hereinafter referred to as the “2021 Negative List for Foreign Investment Entry”) was publicized (Order No. 47 of Ministry of Commerce and National Development and Reform Committee, enforced on January 1, 2022). This is the eleventh revision since the first promulgation of the List in 1995. There are 33 restrictive measures included in the 2020 version, but in the “2021 Negative List for Foreign Investment Entry", this has been reduced to 31 items.

Those designated as restricted industries and prohibited industries in the “2021 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 in the construction and management of nuclear power plants shall be controlled by the Chinese side.
4. The equity ratio in domestic water carriers shall be controlled by the Chinese side.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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).
10. 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) Cryptography Law/Regulations for the Administration of Commercial Encryption

<OUTLINE OF THE MEASURES>

The Encryption 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 classifies ciphers into core cryptographs, ordinary cryptographs, and commercial cryptographs, and for each of these cryptographs, stipulates the obligation to conform to the technical requirements of the national regulations, permission for sale and use, or import and export, inspection and certification. With enforcement of the "Encryption Law," a draft amendment to the Regulations for the Administration of Commercial Encryption put in force in 1999 was prepared and opened for public comment in August 2020. This draft positions as a subordinate law of the Encryption Law and stipulates the details of security screening of products and technologies that encrypt information that does not constitute state secrets (commercial encrypting products and technologies), obligations to comply with the technical requirements of national regulations, and import licensing and export restrictions, etc.

<PROBLEMS UNDER INTERNATIONAL RULES>

Regarding the Encryption Law and the Regulations for the Administration of Commercial Encryption, there are many unclear articles regarding the definitions of the terms used in the text, the concrete requirements of the review, details of regulations and conformity assessment procedures, the scope of regulations, etc. Depending on their operation, they could inhibit foreign companies from operating in China and entering the Chinese market, and might be more trade-restrictive than necessary to achieve the purpose of national security claimed by China. As well, the Encryption Law may violate Articles 2.2 and 5.1.2 of the TBT Agreement and Article 6.5 of the GATS. In addition, regarding the provisions for certification and import permission in the Encryption Law and the Regulations for the Administration of Commercial Encryption, if the conditions of competition for foreign products and services are effectively less favorable compared to domestic like products and domestic like services, there may be a violation of the national treatment obligation stipulated by Articles 2.1 and 5.1.1 of the TBT Agreement, Article III of GATT, and Article 17 of GATS. Furthermore, if international standards or guides of international standardization bodies are not used as the basis for technical regulations or conformity assessment procedures in the Encryption Law, it may violate Articles 2.4 and 5.4 of the TBT Agreement. The Regulations for the Administration of Commercial Encryption may also violate Articles 2.2, 2,4, 5.1.2, and 5.4 of the TBT Agreement, as well as the above-mentioned national treatment obligation, depending on the content of concrete regulations and conformity assessment procedures and their operation.

<RECENT DEVELOPMENTS>

Regarding the Encryption 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 US and the EU at the WTO/TBT Committee (hereinafter “TBT Committee”) meetings since June 2017. However, most of the concerns expressed by other countries were not reflected on the Encryption Law enforced on January 1, 2020, except for some improvements, such as the addition of a provision that prohibits requirements for disclosure of source code. Regarding the Regulations for the Administration of Commercial Encryption, the Japanese government submitted its comments during the public comment in September 2020 concerning that the definitions of terms, the concrete requirements of the review, and the scope of regulations still being unclear. In addition, the Japanese government also requested information on the status of consideration and pointed out problems at the TBT Committee meetings after October 2020, and at the WTO Trade Policy Review (TPR) meeting with China in October 2021.

(2) CHINESE CYBERSECURITY LAW

*For issues related to the "Standards and Conformity Assessment Systems" of this Law, see 1) Chinese Cybersecurity Law under “Trade in Services” (5) Chinese Cyber Data Regulations.

(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 the “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 regulations, the Chinese government has also announced sub-regulations to stipulate specific details. Many of them have already been enforced or notified to the TBT Committee. The Supervision and Administration Regulation and its sub-regulations have addressed 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 Hygiene Supervision Regulation, 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” (enforced in 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 were only eight new ingredients registered under the Hygiene Supervision Regulation, the production and export of cosmetics containing new ingredients remained prohibited.

In addition, according to Article 3 II 2 (2) of the above Guidelines on the application and evaluation of new cosmetic ingredients in the Hygiene Supervision Regulation, 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 can be 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 Regulation 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, and there are concerns that confidential corporate information will be disclosed.

However, the Supervision and Administration Regulation does not provide anything as to whether or not safety evaluation by complex materials 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 items that may contain confidential corporate information such as the limited quantity for use of raw materials and quality standards, etc. are publicly released, and that toxicological tests 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 test methods.

In the "Instructions for New Cosmetic Ingredient Registration and Notification Dossiers", which were promulgated in March 2021 and came into effect in May of the same year, some of the Japanese government's requests were reflected to some extent in the final regulations, such as the deletion of some of the items to be publicly released; however, the restrictions on the use of internationally recognized test methods have not been improved.

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. Subsequently, the regulations were promulgated in June 2021 as the "Administrative Measures for Cosmetic Labelling" and came into effect in May 2022.

The regulations stipulate "Cosmetic labels may not be amended or supplemented by means of adhesion or trimming." There is a possibility that labeling on packages by means of adhesion will be prohibited. If labeling by printing becomes required, companies will be required to manufacture packages dedicated to cosmetics for China.

In addition, the said regulations stipulate that the name of the manufacturer/processor must be included on the label in addition to certain descriptions, such as a list of all the ingredients and the sell-by date, etc. While the regulations explain that the objective is to make it easy to hold the manufacturer/processor legally responsible for an illegal product, they do not stipulate that it is necessary to state the name of the actual manufacturer/processor of the product on the label, and it is sufficient to only state the name of the company which accepts legal responsibility for the quality of the product.

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 is 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, it newly provides that "Adhesive Chinese labels shall be consistent with the original labels of the packaging (in the original country)". 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/processor continues to be required to be included in the label.

In addition, China notified 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 applied to the products match the content displayed on the original package and that the names of the manufacturer/processor, in addition to the registrant/filer who is the person in charge of safety (or the person in charge within China in the case of imported products), are also stated.

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 provided that only ingredients of 0.1% or less may be listed in arbitrary order only under the separate heading "Other Minor Components," 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.

Although the provision regarding the indication of "assessed and verified" was removed in the final regulations, the other concerns have not been resolved.

3) Material Control Regulations for the Registration and Notification of Cosmetics and Toothbrushing

The "Specifications for Cosmetics Registration and Filing, " was notified to TBT Committee in November 2020, and was promulgated in January 2021 and was enforced in May of the same year. Concerns of the said Standard for Testing Work are as follows.

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 domestic testing institutions. Due to this, results of tests conducted internally or in foreign testing institutions are not recognized.

In addition, the Supervision and Administration Regulation states that, "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 and be subject to supervision by the general public", and the "Guidelines for Assessing the Promoted Effects of Cosmetics" notified to the TBT Committee in November 2020, promulgated in April 2021, and enforced in May of the same year, 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. Research data and effect testing materials that are the basis for the promoted effect include company secrets, and some contents of the "summary of the scientific basis" may require confidential corporate information to be disclosed.

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.

In addition, the instructions above-mentioned stipulates that promoted effects for special cosmetics should be evaluated for products in accordance with the test methods listed in the Safety and Technical Standards for Cosmetics, and does not treat internationally recognized test methods as equivalent to those stipulated in China's national standards and related regulations. Since the tests will need to be redone when exporting to China, it is necessary to continue to request that international methods also be recognized.

The "Regulation on Supervision and Administration of Toothbrushing" notified to the TBT Committee in November 2020 and promulgated in March 2023 requires that toothbrushing products (toothpaste, etc.), like cosmetics, be tested by testing laboratories in China, and provides that test results conducted by foreign laboratories may not be accepted. Although this regulation was enforced in December 2023, as with cosmetics, it is necessary to request that the results of tests conducted by foreign laboratories be accepted.

4) Other Regulations

The "Interim Measures on the Administration of Overseas Inspections of Cosmetics," for which opinions were solicited in November 2019, apply to inspections of the overseas development and production-related processes of cosmetics already launched or planned to be launched in China and are regulations on inspections conducted by the National Medical Products Administration. Although the regulations state that inspections of R&D departments are subject to the regulations, inspections in China are limited to production departments. In addition, under these regulations, the purpose of the inspections is "to standardize cosmetics production and management activities, strengthen supervision and management, ensure quality and safety, guarantee consumer health, and promote the health development of the cosmetics industry," and the relationship between inspections of R&D departments and these goals is not clear. Since R&D departments (usually) hold confidential corporate technical information, depending on the nature of the inspection, Japan may be forced to provide such confidential information to China.

In addition, China notified the TBT Committee of the draft of the "Provisions for Cosmetics Registration," in August 2020 and the draft of the "Instructions for Cosmetics Registration and Notification Dossiers" in November 2020, and they were promulgated in January and March 2021, respectively, and came into effect in May of the same year. 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 Supervision and Administration Regulation provides 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 Supervision and Administration Regulation and other implementation rules also clearly state that trade secrets and undisclosed information must not be disclosed.

<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, etc.

<Recent Developments>

Japan submitted comments expressing concerns regarding the TBT notifications involving the "Cosmetics Supervision and Administration Regulation" in December 2018, the "Regulation on Cosmetic Inspection in Registration and Filing" in February 2019, the "Regulation on Administration of Registration of Cosmetics for Non-Special Use" in June 2019, the "Regulation on Administration of Cosmetics Registration" and "Provisions for Cosmetics Registration" in August 2020, the "Guidelines for Cosmetic Safety Assessment" in September 2020, the "Administrative Measures for Cosmetic Labelling", "Regulation on Supervision and Administration of Toothbrushing", "Regulation on Administration of Cosmetics Registration", "Specifications for Registration and filing of New Cosmetic Ingredients", and "Guidelines for Assessing the Promoted Effects of Cosmetic" in November 2020, "Instructions for Dentifrice Notification Dossiers" in February 2021, "Essentials of Inspections and Decision Principles in Cosmetic Quality Control Standards" and "Cosmetic Safety Technical Standards, 2022 Revised Edition" in April 2022, and "Regulation on Supervision and Administration of Cosmetics Online Operation" in September 2022. Japan raised its concern regarding their TBT agreement consistency also at the TBT Committee meeting held in June 2023, November 2023 and March 2024, and requested that the measures do not become more trade-restrictive than necessary. The United States, Korea 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.

(4) Recommended National Standard for Office Equipment (Information Security Technology Office Equipment Safety Regulations)

<Outline of the Measures>

In April 2022, the National Technical Committee for Information Security Standardization (TC 260), consisting of members from the Communist Party of China and government agencies, began to discuss a recommended national standard for office equipment (Information Security Technology Office Equipment Safety Regulations) (the "National Standard").

In July 2022, it was reported that the draft of the National Standard included a provision requiring that office equipment such

as multifunction printers and printers procured by government departments and critical information infrastructure sectors, including their parts, be developed and manufactured in China.

In August 2023, public comments procedures were held on the draft of the National Standard, and the draft text was published for the first time at that time. The draft text does not include provisions requiring development and production in China, but rather specifies the security requirements for office equipment such as multifunction printers and printers, as well as the details of testing methods to determine whether the equipment meets such security requirements. According to the draft text, the proposed National Standard will apply not only to office equipment procured by government departments and critical infrastructure sectors, but also to office equipment in general.

Although the proposed National Standard is not formally enforceable, it may be implemented in a de facto enforceable manner.

<Problems under International Rules>

If the provision requiring that office equipment such as multifunction printers and printers procured by government departments and critical information infrastructure sectors, including their parts, be developed and manufactured in China, which was included in the information as of July 2022, is introduced and is enforced in a de facto enforceable manner, the import of finished products of multifunction printers and printers and their parts, as well as the use of imported parts, will not be allowed, and the use of parts made in China will be forced. In such a case, there were concerns that foreign products, including Japanese products, would be treated in a discriminatory manner and trade would unnecessarily be restricted, which could cause a violation of Articles 2.1, 2.2, and 5.1.2 of the TBT Agreement, Article III: 4 of GATT, and Article 2.1 of the TRIMS Agreement. In addition, there was a concern that the actual operation of the provision could, in effect, force the transfer of technology through the National Standard if, for example, the technology had to be provided to China for the purpose of development and production within China, which could cause a violation of Article 7.3 of the Accession Protocol of China.

In the draft text published in August 2023, the provision requiring domestic production was deleted, and the above concerns were eliminated.

<Recent Developments>

Regarding the formulation of the National Standard, the Japanese government has expressed its concerns at various meetings of WTO-related committees, including the WTO TBT Committee (the "TBT Committee") and the WTO Committee on Government Procurement since July 2022, together with the EU, the Philippines and others, and also submitted its opinion at the public comments held in August 2023. We will continue to use meetings of WTO-related committees and other opportunities to urge China not to include national treatment violation or content that could lead to de facto technology transfer requirements into the National Standard, and to correct provisions requiring the provision of information that could lead to the leakage of trade secrets or technology outflows.

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 July 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, February 2016, and March 2022) and the Management Measures for Telecommunications Business Licenses (enforced in September 2017), 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.

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 enacted for a long time. In the Legislative Plan of the State Council for 2023, it is stated that the draft Telecommunications Law will be submitted to the Standing Committee of the NPC, but there is no movement toward enactment of the Law. On the other hand, the communiqué of the Central Economic Work Conference held in December 2023 and the report on government activities to the National People's Congress held in March 2024 included a statement that China will ease entry into the telecommunications and other service industries as part of its open-door policy, and we will need to keep a close eye on actual movements.

<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 Transitional Review Mechanism (TRM) for China, and other forums, and will need to pay attention to the country's regulatory status for telecommunication services. 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 May 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. On January 1, 2022, the "Special Foreign Investment Access Management Measures" (2021 Negative List) came into force; however, the field of value-added telecommunications has not changed since the 2019 version.

(*) REGULATIONS ON BROADCAST AND DISTRIBUTION OF FOREIGN MOVIES, DRAMAS, AND ANIMATIONS

(1) Permission on foreign TV/internet-distributed programs

In accordance with the "Regulations on the Management of Introducing and Broadcasting Foreign Television Programs," which have been in effect since October 2004, foreign TV and Internet-distributed programs must be censored by the National Radio and Television Administration (NRTA).

In addition, based on the "TV Drama Content Management Regulations" enacted in 2010, it is necessary for foreign TV/internet-distributed programs to obtain a "TV Drama Issuance License" issued by the NRTA, and for animations, it is necessary to obtain an "Internet Culture Management License" issued by the Ministry of Culture based on the "Provisional Internet Culture Management Regulations."

(2) QUANTITATIVE REGULATION AND TIME REGULATION OF FOREIGN TELEVISION PROGRAMS

"The Regulations on the Management of Introducing and Broadcasting Foreign Television Programs", stipulates that foreign movies, dramas, and animations shall not exceed 25% of the television dramas, movies, and animations broadcast on a given day

and 15% of the total broadcast time, and that foreign movies, dramas, and animations shall not be broadcast during prime time (from 7 p.m. to 10 p.m.) without permission from the NRTA.

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.

(3) 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. As well, for online distribution of all foreign movies and dramas planned in the coming year, application for permission at the NRTA and other authorities is required.

(4) QUANTITATIVE REGULATION AND TIME REGULATION OF OVERSEAS REMAKES/FORMATTED PROGRAMS In the "Notice on Powerful Promotion of Independent Innovative Work for TV-broadcast programs" publicized by the then SAPPRFT in June 2016, it was provided that no more than two overseas remakes/overseas formatted programs could be broadcast from 7:30 p.m. to 10:30 p.m. on the general channels of satellite broadcasting in one year.

Then, 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 the maximum number of newly introduced overseas remakes/formatted programs each year shall be limited to one, and that overseas remakes/formatted programs shall not be broadcast during prime time (7:00 p.m. to 10:00 p.m.) in the first year of the notice.

(5) REGULATIONS ON BROADCAST PROGRAM IMPORT PROCEDURES

Based on the "Notice on Further Strengthening and Improving Import and Broadcast Management of Foreign Movies and Television Dramas" publicized by the SAPPRFT in February 2012, it is stipulated that applications for import of foreign television programs are accepted twice a year (from the first to the tenth of January and July) and that, in principle, a program to be imported should not exceed 50 episodes.

(6) CONSIDERATION OF REVISION OF THE REGULATIONS ON THE MANAGEMENT OF INTRODUCING AND BROADCASTING FOREIGN TELEVISION PROGRAMS

Regarding foreign TV and Internet-distributed programs, revision is being considered for the "Regulations on the Management of Introducing and Broadcasting Foreign Television Programs", and the following points are being discussed in terms of regulations:

- Add content restrictions (content must not infringe on the legitimate rights and interests of the minor or be harmful to the minor's mental or physical health)
- Prohibit foreign programs during the hours of 7:00 p.m. to 10:00 p.m. on radio and television broadcasting organizations without approval of the radio and television authorities of the State Council
- Regulate foreign movies, TV dramas, animations, documentaries, and other foreign television programs broadcast daily by each channel of radio and television broadcasting organizations to a maximum of 30% of the total broadcast time of the programs in the respective categories for the day
- Regulate online distribution of foreign movies, TV dramas, animations, documentaries, and other foreign TV programs to no more than 30% of the total amount of distributed programs in the respective categories

An invitation for public comment on the proposed revision was held from September 20 to October 19, 2018, and the Japanese government submitted opinions on relaxation/elimination and transparency of regulations in the foreign content area, clarification of the regulations and transparent operation, as well as ensuring consistency with international practices.

(7) CONSIDERATION OF THE ENACTMENT OF A RADIO-TELEVISION LAW

The enactment of a "Radio-Television Law" that consolidates the previous regulations is under consideration, and the following points are being discussed in terms of regulations:

- Stipulate the implementation of program reviews prior to broadcast and reruns, etc., by operators in TV broadcasting and online distribution
- Make it mandatory, in importing radio or TV programs from outside the region, to obtain permission from the radio and television authorities of the State Council or the radio and television authorities of the provinces, autonomous regions, or direct-administered municipalities.

An invitation for public comment on the draft bill was held from March 16 to April 16, 2021, and the Japanese government submitted opinions on relaxation/elimination and transparency of regulations in the foreign content area, clarification of the regulations and transparent operation, as well as ensuring consistency with international practices.

(4) FINANCIAL SERVICES

* 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.

(i) INSURANCE

<OUTLINE OF THE MEASURES>

Article 95 of the Insurance Law allows "other business" related to insurance ratified by the insurance supervisory and management authority of the State Council as the scope of business of insurance companies, but the Ordinance on the Administration of Foreign Insurance Companies (Articles 15-18) does not allow "other business" related to insurance that has been examined and approved by the insurance supervisory and management authority of the State Council, except for personal accident insurance business (including insurance business such as life, sickness, and accident insurance) and property insurance business (including insurance business such as property damage, liability, credit, and guarantee insurance). (Article 95 of the Insurance Law)

<CONCERNS>

Since there is no mention of "other business" in the Ordinance on the Administration of Foreign Insurance Companies (Articles 15-18), the improvement of customer service is hampered by restrictions on the implementation of other business related to insurance that has been examined and approved by the insurance supervisory and management authority of the State Council, other

than personal accident insurance business and property insurance business. For example, foreign non-life insurance companies cannot provide comprehensive support to customers aimed at improving consumer convenience and satisfaction, as they are not allowed to provide companies with risk management services, or to provide adjusting services (examination services) in the event of an accident in China involving an insured person in Japan.

<RECENT DEVELOPMENTS>

While there have been no significant events regarding this matter, Japan will continue to monitor developments and seek improvements to this regulation.

(ii) Banks

< OUTLINE OF THE MEASURES >

Chinese authorities have established foreign debt quota restrictions that limit foreign currency inflows to prevent the inflow of speculative funds (hot money) into real estate and equities.

< CONCERNS >

Borrowings by Chinese companies in foreign currency from financial institutions and companies outside China are called "foreign currency denominated debt (foreign debt)," and foreign banks' financing instruments and maximum amounts are restricted by the foreign debt quota regulations. Limited access to foreign capital by the banks has also constrained corporate financing. While similar regulations apply to local banks, Japanese-affiliated SMEs and companies with small net worth find it difficult to raise funds in China in the first place and tend to use offshore financing. But there is a cap on funding from overseas, which may cause problems in raising funds.

<RECENT DEVELOPMENTS>

In January 2017, the People's Bank of China promulgated the “Notice on Macroprudential Management of Full-Scope Cross-Border Finance” (Yinfa [2017] No. 9), which allows foreign investment companies and foreign financial institutions in China to choose from multiple models in setting their foreign capital issuance limits. (A transition period was initially set for one year, but is being extended).

In March 2020, the People's Bank of China and the State Administration of Foreign Exchange promulgated the "Notice on Adjustment of Macroprudential Policy Factors for the Full-Scope Cross-Border Loans" (Yinfa [2020] No. 64) to prevent the financial deterioration of enterprises against the backdrop of the spread of the novel coronavirus. As a result, for enterprises adopting the macroprudential management model, the foreign debt quota was increased from 2.0 times to 2.5 times the net assets.

In January 2021, in order to ease the pressure of RMB appreciation, the People's Bank of China and the State Administration of Foreign Exchange promulgated the "Notice on Adjustment of Macroprudential Policy Factors for Enterprise Full-Scope Cross-Border Loans" (Yinfa [2021] No. 5), which reduced the foreign debt quota for companies that adopt the macroprudential management model from 2.5 times to 2.0 times net assets.

Thereafter, in October 2022, in order to ease the impact of RMB depreciation, the People's Bank of China and the State Administration of Foreign Exchange once again promulgated the "Notice on Adjustment of Macroprudential Policy Factors for Enterprise Full-Scope Cross-Border Loans" (Yinfa [2022] No. 238), which increased once again the foreign debt quota for companies that adopt the macroprudential management model from 2.0 times to 2.5 times their net assets.

(5) CHINESE CYBER DATA REGULATIONS

< OUTLINE OF THE MEASURES >

In recent years, various laws and regulations have been put into place by the Chinese government in relation to cyber security and data security. Following the enactment of the Cybersecurity Law in June 2017, the Data Security Law came into effect in September 2021 and the Personal Information Protection Law came into effect in November of the same year. With these three laws, it is said that China has established a legal framework for data protection.

Currently, the development of several subordinate regulations related in whole or in part to these three laws is in the process of being accelerated. In particular, industry-specific laws and regulations, such as The Provisions on Management of Automobile Data Security (Trial) (refer to 4), (iv) below) and the Measures for the Administration of Data in the Field of Industry and Information Technology (Trial) (refer to 4), (vi) below), as well as the Cross-Border Data Transfer Security Assessment Measures (refer to 4), (viii) below), which embody the requirements of restrictions on cross-border transfers under the Personal Information Protection Law (see 3) below), have been published successively. Attention should also be paid to laws and regulations to be developed in the future.

1) Cybersecurity Law

The Cybersecurity Law aims to maintain sovereignty and state security in cyberspace and other matters, and applies to the building and operation of networks, supervision of cybersecurity and other matters.

Specifically, for example, the Law (1) requires compliance with mandatory requirements of relevant national standards for core networking products and cyber security dedicated products and requires that these products pass safety certifications or comply with safety inspections before being sold or provided, and (2) stipulates that operators of “critical information infrastructures” (for definitions, refer to 4), (ii) below) must store certain personal information and “critical data” within China, and that cross-border transfers of such information and data are restricted (a cybersecurity review is required for transferring certain data).

The Law applies in certain cases to foreign agencies, organizations, and individuals as well.

In September 2022, a bill to amend the Law with amendments to the penal provisions was made available for public comment.

2) Data Security Law

The Data Security Law applies to all data processing activities (collection, storage, use, processing, transfer, provision, disclosure, etc.) in China and to the data security management and supervision therefor. In addition, the Law may apply in certain cases to data processing activities outside of China, as it stipulates that “it will pursue legal liability in accordance with the law if national security, public interest, or the legitimate rights and interests of the people or organizations" of China are undermined.

The Law stipulates a "classification grade category protection system" in which data is classified and protected according to its importance and the degree of harm in the event of tampering or leakage, etc., and stipulates that data included in a "Critical Data

Protection List" to be formulated in detail in the future will be subject to priority protection. In addition, the Law also requires the State to establish a data security screen to conduct security reviews for data processing activities that affect or may affect the security of the State.

Furthermore, the Law stipulates the obligation of data security protection, as well as imposes heavier obligations on processors of "critical data" in particular, such as specifying data security protection responsibilities and conducting periodic risk assessments.

The Law stipulates that export restrictions will be implemented for data applicable to certain restricted items, so it is possible that restrictions on cross-border data transfers will be strengthened based on this Law.

3) Personal Information Protection Law

This Law, which is China's first comprehensive law concerning personal information protection, applies not only to activities of processing personal information in China, but also to activities of processing personal information which exists within China outside of China, if (i) the purpose is to provide products or services to natural persons in China, (ii) the activities of natural persons in China are analyzed or evaluated, or (iii) other reasons specified by law or administrative regulations are applicable.

The Law stipulates the rights of individuals in personal information processing activities (such as the right to correction and deletion), the duties of personal information processors, etc., as well as a chapter on the provision of personal information abroad, in which "operators of critical information infrastructures" and "personal information processors who process more than the amount of personal information stipulated by the Cyberspace Administration of China" are required to store personal information collected and generated in China domestically, and are required to pass a security evaluation by the Cyberspace Administration of China when there is a definite need to provide personal information outside of the country.

The Law stipulates that if there is a definite need for “personal information processors” to provide personal information outside of China due to business or other needs, they must: (i) pass a security evaluation by the Cyberspace Administration of China, (ii) perform a personal information protection certification by a specialized agency in accordance with the provisions of the Cyberspace Administration of China, (iii) enter into a contract with a recipient outside of China in accordance with a standard contract designated by the Cyberspace Administration of China and have agreed on the rights and obligations of both parties, or (iv) meet any other conditions prescribed by law, administrative regulations, or the Cyberspace Administration of China. As laws and regulations related to each requirement ((i) through (iv) above), the Cross-Border Data Transfer Security Assessment Measures (corresponding to (i) above) came into force in September 2022 (refer to 4), (viii) below), and the “Cybersecurity Standard Practice Guideline -Code of Security Certification for Cross-Border Processing of Personal Information-” (corresponding to (ii) above) was published in December 2022. In addition, the Measures for Standard Contract on Cross Border Transfer of Personal Information which were released for public consultation in June 2022 was promulgated in February 2023 and was enforced in June of the same year (corresponding to (iii) above).

4) Cyber Data Subordinate Regulations

As described above, the Cybersecurity Law, the Data Security Law, and the Personal Information Protection Law have come into force, and the development of the subordinate regulations related to these three laws has accelerated.

(i) Cyber Security Review Measures

The measures, which came into effect on June 1, 2020 (and the revised measures went into effect on February 15, 2022), stipulate that (i) when "critical information infrastructure operators" procure IT equipment and services or when "network platform operators" have or may have an impact on national security through their data processing activities, or when (ii) "network platform operators" which have the personal information of more than one million users wish to list their shares overseas, they must apply for a cyber security review by the Cyber Security Review Office.

(ii) Critical Information Infrastructure Protection Regulations

The regulations, enacted on September 1, 2021, establish a certification system for "critical information infrastructure" (i.e., important network facilities and information systems, etc. of important industries and fields, such as public communication and information services, energy, transportation, water supply, finance, public service, electronic administration, defense science and technology, etc., and others that may seriously threaten national security, national economy, people’s livelihood, and public interest in the case of any destruction, loss of function, or data leakage), as well as impose various obligations on "critical information infrastructure operators" such as taking technical protection measures, etc., in accordance with the mandatory requirements, etc. of relevant laws and national standards.

(iii) Cyber Security Multi-Level Protection Scheme (Draft)

The Draft (an invitation for public comment was held in 2018, but the Draft has not come into effect at the time of this Report) classifies networks into five grades according to their importance, etc., and requires, for example, operators of networks classified as Grade 3 or higher to adopt network products and services adapted to the relevant security classes, and requires the use of encryption technology, etc. approved by the National Cryptography Administration for networks classified as Grade 3 or higher.

As for the status of consideration of the Cyber Security Multi-Level Protection Scheme (Draft) in China, the Japanese government has made a request for the provision of information and the implementation of a transparent system from the TBT Committee.

(iv) The Provisions on Management of Automobile Data Security (Trial)

The provisions, enacted on October 1, 2021, impose restrictions on cross-border transfers of and the domestic storage obligations of "critical data" as defined under the provisions (for example, off-board video and image data including face information, license plate information, and the like, and personal information of more than 100,000 personal information subjects, etc.) on "automotive data processors" (i.e., organizations which conduct automotive data processing activities, including automobile manufacturers, parts and software suppliers, dealers, maintenance providers, and mobility service companies and the like).

Note that although not legally binding, a national standard, "Information Security Technology: Security Requirements for Automotive Data Collection," which opened for public comment in October 2021 (though it has not come into effect at the time of this Report), is stricter than the "The Provisions on Management of Automobile Data Security (Trial)," as it prohibits the cross-border transfer of off-board data, seat data, and location and driving history data.

(v) Measures for the Administration of Data Security in the Field

of Industry and Information Technology (Trial)

The measures, enacted on January 1, 2023, classify "industrial and information technology data" into three grades: general data, critical data, and core data, and impose restrictions according to such grades. For example, the measures impose regulations on the cross-border transfer of "critical data" and "core data" and the obligation to store such data in the country. Security assessments for cross-border transfers of data pursuant to laws and regulations must be conducted if the need to provide "critical data" and "core data" outside of the country is recognized. Detailed lists of "critical data" and "core data" will be prepared by the relevant government agencies in the future, and data processors of industrial and information technology data will be required to prepare detailed lists for their own organizations.

(vi) Discretionary Guidance for Administrative Action on Data Security in the Field of Industry and Information Technology (Trial) (Draft)

This Draft, which was released for public consultation in November 2023, but has not come into effect at the time of this Report, sets forth a guidance to be used by administrative penalty authorities when determining administrative penalties related to the regulation of cross-border transfer of data in the field of industry and information technology under the Data Security Law and other laws. It stipulates that "data shall be deemed to have been illegally provided abroad" when critical data and core data are not stored in China, and that it is illegal to provide data to foreign industrial, telecommunications, and wireless communications enforcement agencies without permission of the Ministry of Industry and Information Technology of China. Furthermore, the Draft has set a provision allowing access by the authorities to source code, etc. held by companies, etc.

(vii) Emergency Response Pre-plan for Data Security Incidents in the Field of Industry and Information Technology (Trial) (Draft)

This Draft, which was released for public consultation in December 2023, but has not come into effect at the time of this Report, provides the relevant policies and systems of the Data Security Law and other laws and regulations and the Measures for the Administration of Data Security in the Field of Industry and Information Technology (Trial), setting forth the obligations of "data processors" in the event of a cybersecurity incident. It stipulates that failure to comply with the obligations set forth in the Draft will be subject to administrative penalties. Specific obligations include 24-hour on-duty response after receiving an alert from the authorities in the event of an incident, annual submission of a report on incidents to the authorities, and other obligations of data processors according to the levels of "particularly important," "important," "relatively important," and "general."

(viii) Cross-Border Data Transfer Security Assessment Measures

The measures, enacted in September 2022, require the reporting of cross-border data transfer security assessments, and stipulate the details of such cross-border data transfer security assessments, when (i) a data processor provides critical data outside of the country; (ii) an operator of critical information infrastructures or a data processor that processes personal information of 1 million people or more provides personal information outside of the country; (iii) a data processor that has provided personal information of 100,000 people or sensitive personal information of 10,000 people outside of the country on a cumulative basis since January 1 of the previous year provides personal information outside of the country; or (iv) there are other grounds that require the reporting of cross-border data transfer security assessments as prescribed by the Cyberspace Administration of China.

(ix) Measures for Standard Contract on Cross Border Transfer of Personal Information

The measures, enforced in June 2023, stipulates that if a data processor provides personal information outside China by entering into a standard contract, it must satisfy all of the following conditions: (i) such person is not an operator of critical information infrastructure, (ii) personal information processed by such person is less than 1 million individuals, (iii) personal information provided outside China by such person since January 1 of the previous year is less than 100,000 individuals in total, and (iv) sensitive personal information provided outside China by such person since January 1 of the previous year is less than 10,000 individuals. Even when personal information is provided outside China through the conclusion of a standard contract, it is still necessary to notify the individual concerned and obtain individual consent, as well as to conduct a personal information protection impact assessment. The measures stipulate the points to be focused on in the personal information protection impact assessment to be conducted when personal information is provided outside China by concluding a standard contract. In addition, the measures stipulate that the standard contract must be concluded strictly in accordance with the form prescribed by the measures, and notification must be made to the provincial Internet Information Department within 10 business days of the effective date of the standard contract.

(x) Provisions on Regulating and Facilitating Cross-Border Data Flows

The provisions, which were promulgated and went into effect on March 22, 2024, stipulate that, in certain cases for "personal information" and "critical data," filing a data cross-border transfer security assessment, entering into a personal information cross-border standard contract, or obtaining a personal information protection certification would not be required. Specifically, these procedures are not required in the following cases:

- If data collected or generated in the course of international trade, cross-border transportation, academic cooperation, or cross-border manufacturing or sales activities that do not contain personal information or critical data is provided outside China;
- If personal information collected and generated outside China is processed in China and then provided outside China, and such information does not contain personal information or critical data in China in the processing process;
- If there is a genuine need to provide personal information outside China for the purpose of concluding and fulfilling a contract to which the individual concerned is a party, such as cross-border purchases, cross-border remittances, airline and hotel reservations, visa procedures, etc.;
- If there is a genuine need to provide personal information outside China for the purpose of personnel management in accordance with employment regulations or collective bargaining agreements;
- If there is a genuine need to provide personal information outside China in order to protect the safety of human life, health or property in an emergency;
- In the case of data processors other than critical information infrastructure operators who have provided personal information (excluding sensitive personal information) of less than 100,000 individuals in total outside China since January 1 of the current year; and
- If data processors in the Pilot Free Trade Zone provide data other than those listed in the Negative List outside China;

In addition, under the provisions, the validity period of the cross-border data transfer security assessment is extended to three years from the date of issuance of the assessment results, from the current

two years.

In the event that the relevant provisions of the “Cross-Border Data Transfer Security Assessment Measures,” “Measures for Standard Contract on Cross Border Transfer of Personal Information,” etc. conflict with the Regulations, the Regulations shall apply.

(xi) Measures for Network Data Security Management (Draft)

The Draft (an invitation for public comment was held in November 2021, but the Draft has not come into effect at the time of this Report) applies to certain cases where data of individuals or organizations in China are processed not only in China, but also outside of China.

In addition, the reporting of network security reviews by "data processors" is required in certain cases, including cases where data processors that process more than one million individuals' personal information become listed outside of the country, for example.

In addition, if data processors provide data outside of China for business or other reasons, some conditions must be met: they must pass an outbound data transfer security assessment by the Cyberspace Administration of China, and both data processors and the data recipients must pass a certification test for personal information protection by a professional organization that the cyberspace administration recognized. Furthermore, when data processors provide data outside of the country, they are under various obligations, such as data provision being limited to specified purposes, scope, methods, and data types and sizes, and retention of relevant records for a period of at least three years. The scope of such cross-border transfer restrictions includes non-personal information.

(xii) Network Products Security Hole Management Regulations

The Regulations, enacted in September 2021, impose the obligation of security hole management for network products on “network product providers.” Specifically, for example, if a provider finds a security hole in a network product provided by it, it is required to notify the government within two days.

In addition, the Regulations prohibit organizations or individuals engaged in discovering and collecting security holes of network products from announcing vulnerability information prior to the provision of security hole patching measures by “network product providers,” and from providing undisclosed network product security hole information to organizations or individuals other than “network product providers.”

<Problems under International Rules>

1) Cybersecurity Law

There are many unclear areas regarding the definitions of the terms used in the Law, specific requirements of the security review, etc., details of the regulation and the conformity assessment procedures, and the scope of regulations, etc. If technical regulations or conformity assessment procedures are not based on international standards or guidance of international standardization bodies, they may violate Articles 2.4 and 5.4 of the TBT Agreement. In addition, in relation to the purpose of preserving cyberspace sovereignty and national security, etc. and the technical regulations, the conformity assessment procedures and other measures, if the Chinese measure is more trade-restrictive than necessary, it may be in violation of Articles 2.2 and 5.1.2 of the TBT Agreement.

As described in 1) above, the Law imposes the obligation to store certain personal information and "critical data" domestically and cross-border transfer regulations on operators of "critical information infrastructures." It is presumed that foreign operators doing business globally use servers or cloud services outside of China in general to centrally manage the data they collect. If they are required to prepare a separate server in China due to the domestic storage requirement, it would possibly create an additional burden and cause a concern when considering market entry and business continuity, and at the same time, may effectively place them at a competitive disadvantage compared to operators who consolidate and manage data within China. In addition, the security risks associated with storing data in China are not eliminated. If data transfers outside of China are restricted by cross-border transfer restrictions, the cost burden will be especially high for foreign operators, etc., that have a great need for constant cross-border data transfers, and smooth business activities through data analysis and utilization may also be impeded. Thus, if foreign operators are effectively treated less favorably than Chinese domestic operators, this may constitute a violation of the national treatment obligation under Article 17 of the GATS and Articles 8.4 and 10.3 of the RCEP Agreement. Otherwise, if the national standards and criteria for evaluation as set forth in related laws and regulations and other matters lack objectivity or transparency or cause a burden more than necessary to secure the quality of services, there is also a possibility that it may constitute a violation of Article 6 of the GATS, which stipulates the securement of objectivity and impartiality of measures.

In addition, the obligation to store certain personal information and “critical data" domestically and the restrictions on cross-border transfers may, depending on their operation, also conflict with Article 12.14 (prohibition of the requirement to install computer-related equipment) and Article 12.15 (principle of free cross-border transfer of information) of the RCEP Agreement.

2) Data Security Law

With regard to the security review under the Law, there are many unclear areas, such as the definitions of the terms and specific requirements of the review. Arbitrary operations that treat foreign operators less favorably may constitute a violation of the national treatment obligation under Article 17 of the GATS and Articles 8.4 and 10.3 of the RCEP Agreement.

In addition, as described in 1) of <Outline of the Measures> above, the Law stipulates that export restrictions will be implemented on data that fall under certain regulated items. If these export restrictions mean the obligation to store data in China and the cross-border transfer regulations, then for the same reason as 1) above, if foreign operators are effectively treated less favorably than Chinese domestic operators, this may constitute a violation of the national treatment obligation under Article 17 of the GATS and Articles 8.4 and 10.3 of the RCEP Agreement, and, depending on its operation, it may also conflict with Article 12.14 (prohibition of the requirement to install computer-related equipment) and Article 12.15 (principle of free cross-border transfer of information) of the RCEP Agreement.

3) Personal Information Protection Law

The definitions of the terms used in the articles of the Personal Information Protection Law are unclear, and there are many unclear areas regarding the scope and standards of the regulations, since the Personal Information Protection Law states that “other laws and regulations shall follow, if any.” As a result, there is concern that foreign operators may be placed on a given less favorable competitive treatment.

As described in 3) of < Outline of the Measures > above, the Law imposes the obligation to store personal information domestically

and the cross-border transfer regulations on "operators of critical information infrastructures" and "personal information processors who process more than the amount of personal information stipulated by the Cyberspace Administration of China." Thus, for the same reason as 1) above, if foreign operators are effectively treated less favorably than Chinese domestic operators, this may constitute a violation of the national treatment obligation under Article 17 of the GATS and Articles 8.4 and 10.3 of the RCEP Agreement and, depending on their operation, it may also constitute a violation of Article 12.14 (prohibition of the requirement to install computer-related equipment) and Article 12.15 (principle of free cross-border transfer of information) of the RCEP Agreement.

4) Cyber Data Subordinate Regulations

As the subordinate regulations of the Cybersecurity Law, the Data Security Law, and the Personal Information Protection Law also provide for domestic storage obligations and cross-border transfer regulations just like 1) to 3) above, for the same reason as 1) to 3) above, if foreign operators are effectively treated less favorably than Chinese domestic operators, this may constitute a violation of the national treatment obligation under Article 17 of the GATS and Articles 8.4 and 10.3 of the RCEP Agreement and, depending on their operation, it may also conflict with Article 12.14 (prohibition of the requirement to install computer-related equipment) and Article 12.15 (principle of free cross-border transfer of information) of the RCEP Agreement.

<Recent Developments>

Regarding the Cybersecurity Law, the Data Security Law, and the Personal Information Protection Law, the Japanese government and related industries have submitted written opinions starting from the drafting stage and expressed concerns. Among concerns about inconsistencies with the international rules, as for concerns in relation to GATS, Japan has registered this matter jointly with the US as a cybersecurity measure on the agenda of the WTO Council for Trade in Services since June 2017, and continues to express such concerns. As for the Cybersecurity Law and the Cyber Security Multi-Level Protection Scheme (Draft), the TBT Committee also expresses concerns and confirms the facts.

Most recently, at the 3rd Regular Consultation between the Ministry of Economy, Trade and Industry of Japan and the Ministry of Industry and Information Technology of China held in December 2023, Japan conveyed to the Chinese side the concerns of the industry regarding cyber data-related regulations, and requested correction , such as clear definition and transparent operation. Japan will continue to closely monitor the revision and operation or the like of the Cybersecurity Law, the Data Security Law, the Personal Information Protection Law, and related subordinate regulations, and, in cooperation with relevant countries, urge China to take corrective measures through the WTO Council for Trade in Services, the TBT Committee, and bilateral meetings.

PROTECTION OF INTELLECTUAL PROPERTY

[COMMITMENTS UPON ACCESSION]

China’s system of protecting intellectual property was one of areas to which WTO member countries (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]

As recent developments in intellectual property protection in China, the Central Committee of the Communist Party of China and the State Council released the "Guidelines for Building a Powerful Intellectual Property Country (2021-2035)" in September 2021 and the "National Standardization Development Outline" in October 2021, which position intellectual property as a strategic resource for national development and international competitiveness, and outline directions such as focusing on the digital transformation of IP and strengthening the influence on international standards. Future developments in new legislation and various policy proposals in line with these announcements will be closely watched. In addition, after establishment of intellectual property courts in Beijing, Shanghai and Guangdong as well as establishing expert courts 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 administrative cases related to patent have been consolidated in the Supreme People's Court. In December 2020, the IP Court of Hainan Free Trade Port, the fourth intellectual property court, was established. Thus, in the judicial field as well, further unification of judgments and strengthening of IP protection by experts are expected.

In April 2019, the Trademark Law was revised and enforced in November of the same year. This revision 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). In addition, in January 2023, a revised draft of the Trademark Law was published. In this revised draft, provisions concerning regulations on the bad faith trademark registrations and the obligation to use trademarks are strengthened or added.

In October 2020, the Patent Law was revised 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 were enforced in June 2021. In addition, with the revision of the Patent Law, the Implementation Regulations for the Patent Law and the Guidelines of Patent Examination were published in December 2023 and were

enacted in January 2024. The revisions included extending the duration of a patent by delayed examination, expanding procedures that can be performed by overseas residents without using an agent, introducing delayed examination in utility models, increasing incentives and fees for employee inventions, relaxing requirements for restoration of priority rights, detailed procedures for the open patent system, and expanding exceptions to lack of novelty.

In December 2021, the Seed Law was revised, and it was enforced in March 2022. This revision stipulates the inclusion of not only propagating material but also harvested material in the scope of protection, as well as stricter punishment and other matters.

Refer to page 43 of the 2019 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 products that infringe intellectual property rights, 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.

Japan and China have been discussing countermeasures against counterfeiting and piracy at the Japan-China Joint IP Working Group, the Japan-China Economic Partnership Consultation, etc., and are working to strengthen protection of intellectual property in general. The following are specific matters that require further correction and improvement.

(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 2019 arose most frequently in China (not including Hong Kong)regarding production, transit points, and sales and offering (FY2020 Survey Report on Losses Caused by Counterfeiting, by the Japan Patent Office in March 2021) and the survey results showing that China accounted for slightly above 70% (75.9%, 20,461 cases) of countries of shipment in 26,942 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 2022 publicized by the Ministry of Finance in March 2023).China still remains the top country in which intellectual property rights infringements occur 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 border control, 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)

The main agency responsible for administrative enforcement is the State Administration for Market Regulation. In the 2022 administrative enforcement, there were more than 58,000 cases of patent infringement (up 16.8% from the previous year, including 4,800 cases of patent imitation) and 31,400 cases of trademark infringement (down 20.5% from the previous year), with a total fine of 529 million yuan. In addition, 1,041 cases of trademark infringement were transferred to the judiciary as suspected criminal cases.

The State Administration for Market Regulation published its "Opinions on Strengthening IPR Enforcement in the New Era" dated August 8, 2023, which listed, as the "top priority matters to be enforced for priority targets," strengthening IPR enforcement in the Internet sector, equally protecting the intellectual property rights of domestic and foreign companies in accordance with the law, and eliminating illegal industrial chains by deeply investigating infringement and fraudulent product sales and production sources. Future developments will be closely watched.

(Border control)

The number of cases found in border control in 2022 was 61,000 in terms of number of lots and 77,399,000 in terms of number of related items.

(Civil Remedies)

Regarding civil remedies, although claiming damages for intellectual property rights infringements is allowed and the trend of a little rising damages is seen, it has been pointed out that civil remedies are not effective enough to eradicate counterfeit product operators because the amount of damages is not always sufficient even when a case is won, and in some cases, the infringer escapes enforcement by transferring their property to another company.

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 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 and the Copyright Law that were entered into force in June 2021 included the provision to enable increase of the

compensation amount up to 5 times 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).

In addition, as requirements for the application of punitive damages, "intentional infringement" and "serious circumstances" are stipulated in the Patent Law (Article 71), "malicious infringement" and "serious circumstances" in the Trademark Law (Article 63), and "intentional infringement" and "serious circumstances" in the Copyright Law (Article 54). The China National Intellectual Property Administration, in its response to the "Inquiry in relation to the criteria for determining Intentional Infringement of Intellectual Property Rights" by the Heilongjiang Intellectual Property Administration, stated that "intentional infringement" is a subjective requirement for applying the punitive damages clause of intellectual property rights, while "aggravating circumstances" is mainly an objective assessment of the means, methods, and consequences of the infringement by the perpetrator. Attention should be paid not to make inappropriate cross or overlapping assessments of the two requirements. In addition, the Supreme People's Court, in its "Interpretation on the Application of Punitive Damages in the Trial of Civil Cases of Infringement of Intellectual Property Rights " (effective March 3, 2021), provides judicial interpretation on "intentional infringement" and "serious circumstances." Article 3 provides the grounds for an initial finding of intentional infringement (e.g., when the defendant continues the infringing act after receiving a notice or warning from the plaintiff or other interested party), and Article 4 provides the grounds for a finding of serious circumstances (e.g., when the defendant has committed the same or similar infringing acts again after receiving an administrative penalty or being held liable by a court decision for infringement of a right). Future developments in legal interpretation, etc., will be closely watched.

(Criminal Punishment)

Patent infringement, trademark infringement, and copyright infringement are subject to criminal penalties, which may include a fixed-term imprisonment or fine, depending on the circumstances. In IP related cases in 2022, the public security organs nationwide permitted 3,641 arrests (in 2,210 cases) and prosecuted 12,589 people (in 5,982 cases).

The Criminal Law enforced on March 2021 has toughened the penalties for crimes of counterfeiting, manufacturing, or selling registered trademarks (Article 213-5) under particularly serious circumstances by increasing the long-term sentence from seven years to ten years. In addition, the Supreme People's Court and the Supreme People's Procuratorate have provided judicial interpretations of the criteria for determining the amount of the fine in their "Interpretation (III) on Several Issues Concerning Specific Application of Law in Handling Criminal Cases of Intellectual Property Infringement" (effective September 14, 2020). According to this, the amount of the fine shall be determined by comprehensively considering the amount of illegal income from the crime, the amount of illegal sales, the amount of damage caused to the right holder, the quantity of infringing goods, the harm to society, etc.; (i) Generally, the amount of the fine shall be between one and five times the amount of illegal income, (ii) if the amount of illegal income cannot be determined, the amount of the fine shall generally be between 50% and 100% of the amount of illegal sales, and (iii) if the amount of neither the illegal income nor the illegal sales can be determined, the fine shall be between 30,000 yuan and 1,000,000 yuan, or between 150,000 yuan and 5,000,000 yuan, depending on whether the offender is sentenced to imprisonment for a definite term of 3 years or more.

In addition, on January 18, 2023, the Supreme People's Court and the Supreme People's Procuratorate issued an invitation for public comment on the “Interpretation on Several Issues of Specific Application of Laws in Handling Criminal Cases Intellectual Property Right Infringement (Draft for Comments).” In the future, whether the penalties for intellectual property right infringement will become more severe will have to be monitored.

(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 of the Trademark Law to strengthen the regulation on filing of trademarks with malicious intent in November 2019, upcoming Trademark Law revisions 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>

In China, the “Trademark Examination and Trial Guide,” based on the practice after the revision of the Trademark Law of 2019, came into effect in January 2022, providing for the interpretation of bad faith applications for trademark registration not intended for use and applicable acts in connection with those applications to clarify examination standards and strengthen regulations. In addition, in December 2022, the “Provisions on the Supervision and Administration of Trademark Agency” came into force, which stipulate acts that are deemed to have disturbed the order of the trademark agency market and stipulate the suspension of agency organizations, etc. The provisions are intended to promote the sound development of the trademark agency industry by promoting such as the standardization of trademark agency activities. Furthermore, a revision draft of the Trademark Law was published by the China National Intellectual Property Administration in January 2023 and a call for public comments on the draft was implemented. This draft includes provisions on further measures against bad faith filings, such as the regulation of bad faith applications for trademark registration and the strengthening of the obligation to use trademarks. In addition, in May 2023, the “Business Plan for Systematically Managing Bad Faith Trademark Registrations and Promoting Quality Development (2023-2025)” was promulgated, setting forth the future policy for bad faith trademark registrations.

In addition, the Regional Comprehensive Economic Partnership (RCEP) Agreement, to which China is a party, came into force in January 2022. While the Agreement stipulates the power of the relevant authorities to refuse or cancel trademark applications filed in bad faith, attention should be paid to ensure the obligations under

the Agreement are implemented steadily.

(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 particular, in the case of utility models and designs, there were situations which could cause disadvantage to the right holder. For example, the examination was limited to a formal examination and a duty to submit a patent evaluation report drawn up by an examiner on the validity of a right was not required at the time of enforcement.

<Recent Developments>

In accordance with the revised Patent Law enforced in June 2021, the Implementing Regulations of the Patent Law and the Patent Examination Guidelines 2023 were published in December 2023 and came into effect in January 2024. The said Implementing Regulations and the Examination Guidelines stipulated that, in the examination of utility models and designs, significant absence of inventive step shall be examined, and also amended the requirement for requesting a patent evaluation report to allow a suspected infringer to make such request. It is necessary to keep a close watch on the operation of the revised Patent Law and to continue 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, 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 such 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 (removed in March 2019) 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) provided 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 could not be found. In addition, Article 355 of the former Contract Law (Article 877 of the Civil Code) provided 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 indicated 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 provided that an improved technology shall automatically belong to the party that has improved the provided technology, irrespective of contractual terms between the parties, was 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 national treatment violation.

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

Article 24 Paragraph 3 of the former TIER (removed in March 2019) provided 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 was 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 seemed 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, provided 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 national treatment violation.

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

In Article 25 of the former 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. The said provision is currently provided in Article 24 of the TIER and remains in effect.

In this way, foreign companies which are often on the side of technology providers 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 are 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 then Minister of Economy, Trade and Industry Seko directly expressing concern to Commerce Minister Zhong Shan that the provisions in the former TIER are national treatment violation 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 2023 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.

(4) ISSUANCE OF AN ANTI-SUIT INJUNCTION IN A LAWSUIT OVER A STANDARD ESSENTIAL PATENT

<Outline of the Measure and Concerns>

An anti-suit injunction ("ASI") is an order by a court which prohibits a litigant from initiating or continuing legal proceedings in a foreign court, when substantially identical disputes are pending before courts in more than one country. In 2020, the Supreme People's Court (the "SPC") of China issued an ASI as a behavioral preservation measure in a case concerning standard essential patent ("SEP") licensing on mobile communications technology, *Huawei vs. Conversant*. In this case, the SPC considered the following five factors before issuing the ASI: (i) the impact that a foreign court enforcing an injunction may have on the ongoing litigation in China, (ii) the necessity of preventing such an enforcement of the injunction by the foreign court, (iii) the balance of interests between the damage to the applicant by not preventing such an enforcement of the injunction and the damage to the respondent by preventing that enforcement, (iv) the public interests, and (v) the international comity. The SPC also established a penalty of one million yuan per day for any violation of the ASI. Following this case, Chinese lower courts have also issued ASIs in several cases involving SEP for mobile communication technology. Some of the ASIs issued by lower courts prohibit not only the continuance of legal proceedings in foreign courts with regard to substantially identical SEPs registered in those foreign countries, but also the initiation of new disputes in those foreign courts.

<RECENT DEVELOPMENTS>

In February 2022, the EU requested consultations with China on the grounds that the Chinese ASIs is not consistent with *inter alia* Articles 1.1, 28.1, 41.1, 44.1, of the TRIPS Agreement (DS611) and requested the establishment of a panel (Japan participates as a third party). Thereafter, the panel was established in January 2023.

Japan continues to closely monitor the use of ASI by China to ensure that they are not used in a manner inconsistent with the WTO agreements, in cooperation with the EU and other Members.

GOVERNMENT PROCUREMENT

[COMMITMENTS UPON ACCESSION]

WTO's Agreement on Government Procurement (the "GPA") 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[6]. 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[7], 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[8], the second one in November 2011[9], the third one in November 2012[10], the fourth one in December 2013[11], the fifth one in December 2014[12], and the sixth one in October 2019[13]. 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]

Chinese laws and regulations on government procurement include the Government Procurement Law, which was enforced in January 2003, and the Implementing Regulations of the Government Procurement Law, as well as the Law of the People's Republic of China on Tendering and Bidding and the Implementation Regulations thereof. If China joins the GPA in the future, it is necessary to closely monitor whether China's relevant legislation, including the Government Procurement Law, is consistent with the rules in the GPA.

<Handling of Foreign Produced Goods in Government Procurement>

Under the Government Procurement Law enforced in January 2003, it is required to procure domestically produced goods in government procurement (for more information, see "Revision of Government Procurement Law" below).

In addition, in August 2021, a British news agency reported that in May of the same year, China's Ministry of Finance and Ministry of Industry and Information Technology issued an undisclosed internal notice (Document No. 551) to local government departments under their jurisdiction, specifying the domestic procurement rate for government procurement of 315 items in 41 categories, and instructed them to give priority to purchasing domestic products. In fact, some Japanese companies have reported that the use of domestic products are required as a condition for bidding, so it is necessary to keep an eye on future developments to ensure that foreign imports are not effectively excluded from government procurement of the above items.

<Handling of Foreign Companies in Government Procurement>

In the Foreign Investment Law enforced in January 2020 and its implementation regulations, the Chinese government stipulated that government procurement would treat products and services produced within China by foreign investment companies with fairness. In addition, China's Ministry of Finance has issued a notice dated October 13, 2021 on "Realization of Equal Treatment of Domestic and Foreign-Invested Enterprises in Government Procurement," announcing that products produced in China whether they were produced by domestic or foreign-invested enterprises would be treated equally.

However, according to the White Paper of the American Chamber of Commerce in China and other sources, a system known as "安可 (安全可控)," meaning secure and controllable, or "信创 (信息化应用创新)," meaning information technology application innovation, has been in place since 2019. Under this system, only those included on the undisclosed "安可/信新创" list, a list of companies and products recommended for government procurement, will be procured for government procurement, so not only foreign-made imports but also products locally produced by foreign companies may be excluded from government procurement. In this regard, some Japanese companies have also voiced their concerns that the conditions and criteria for products to be selected have not been disclosed, thus putting foreign investment companies at a significant disadvantage, and this opaque measure may conflict with the Foreign Investment Law and other related laws and regulations.

Furthermore, in September 2022, the State-owned Assets Supervision and Administration Commission of the Chinese government reportedly notified state-owned enterprises in an undisclosed document known as "Document No. 79" to proceed with the full domestic production of their information systems. According to the press report, the document also required them to report to the Commission on the progress of domestic production every three months starting in January 2023.

In August 2023, the Ministry of Finance and the Ministry of Industry and Information Technology of China formulated new standards for government procurement of four items including computer (desktop computers, portable computers, operating systems, and databases) and solicited opinions on these standards. In December 2023, the Ministry of Finance and the Ministry of Industry and Information Technology of China published the above government procurement standards. The standard requires, as a condition for procurement, that the subject products must conform to the "evaluation results" of the China Information Security Evaluation Center. The "Evaluation Results" separately released at the same time list only the products of Chinese companies, which means that the subject products made by foreign companies cannot be tendered for.

As noted in the section on "TRADE-RELATED INVESTMENT MEASURES," the "Opinions on Further Optimizing the Foreign Investment Environment and Strengthening Activities to Attract Foreign Investment," released in August 2023, set forth the guarantee of participation by foreign companies in government procurement in accordance with the law, and the "Action Plan for Ensuring a High Level of External Openness and Making Greater Efforts to Attract and Utilize Foreign Investment," released in March 2024, stipulated that products produced by domestic and foreign companies that meet the standards shall be considered the same and treated equally in government procurement activities. However, as mentioned above, foreign companies are excluded from government procurement. In addition, the above August 2023 Opinion and the plan announced in March 2024, etc., cover only

[6] 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)
[7] GPA/ACC/CHN/1
[8] GPA/ACC/CHN/16
[9] GPA/ACC/CHN/30
[10] GPA/ACC/CHN/41
[11] GPA/ACC/CHN/44
[12] GPA/ACC/CHN/45
[13] GPA/ACC/CHN/51

foreign companies with business bases in China, and do not appear to cover products manufactured or services provided by foreign companies with business bases outside China.

Although China has applied to join the Government Procurement Agreement and the agreement of high standard, these contradictory movements undermine the predictability of business in China and should be closely monitored in the future.

[Revision of Government Procurement Law]

<Outline of the Measures>

The Government Procurement Law, which was enacted in January 2023, requires that domestically produced goods be procured in government procurement.

As for the said Law, invitations for public comments on the proposed revision were first held from December 2020 to January 2021 and then from July to August 2022.

The outline of the proposed revision is as follows (the specific text below is a provisional translation based on the draft text available for public comments):

(1) Add "other procuring entity" to the definition of "procuring entity" in Article 12. The proposed wording is "Other procurement entities are public interest state-owned enterprises that engage in public works and operate public infrastructure or public service networks to realize public objectives," which covers not only government agencies but also public interest state-owned enterprises.

(2) In Article 23 of the proposed revision, the current wording of Article 10, "Government procurement must procure goods, works, and services in the country of origin unless they cannot be procured in China or obtained on reasonable business terms" is retained, and the wording "If a product produced in China meets the conditions such as the specified value-added ratio, preferential screening must be obtained in government procurement activities" is added.

(3) In Article 24, the provision on "protection of national security" added in the revised bill announced in December 2020 was further expanded. Specifically, "Government procurement must carry out national security requirements and enforce national security provisions of laws and regulations such as product standards, supplier qualification conditions, intellectual property rights, information release, and data management. Procurement projects involving State secrets must employ modalities and procedures other than open competition. The State has established the government procurement security review system and conducts security reviews for government procurement activities that may affect national security."

<Problems under International Rules>

Articles 12 and 23 may conflict with the national treatment obligations under Article III: 4 of GATT or Article 17 of GATS, if they limit products and sources of procurement in China to procurements that do not fall under the category under the "Laws and Regulations or Requirements Governing Procurements by Government Entities" prescribed by Article III: 8 (a) of GATT or "Laws and Requirements Governing Procurement of Services Purchased by Government Entities for Government Use (other than those purchased for the purpose of commercial resale or use in the provision of services for commercial sale)" prescribed by Article 13, Paragraph 1 of GATS. In Paragraph 47 of the Report of the Working Group, which forms part of the WTO Accession Protocol, China states that procurement by state-owned enterprises and state-invested enterprises for commercial or non-government use does not constitute government procurement, and undertakes to be subject to Article III of GATT and Article 17 of GATS. This may not only be suspected of being in conflict with the above obligations, but may also be contrary to the commitments undertaken in the country's Accession Protocol.

Article 23 stipulates obvious preferential treatment for domestic products that products with a higher value-added ratio within China will receive more preferential treatment in government procurement, and there is a risk that it would be inconsistent with paragraphs 1 and 2 of Article 4 (Non-Discriminatory Treatment) of the GPA, to which China is negotiating accession.

With regard to Article 24, the scope of "government procurement activities that may affect national security" under the government procurement security review system is extremely unclear and vague, and the scope of this provision exceeds what is permissible under the WTO Agreements on Exceptions to security, and there is a risk that it may be applied in a very broad and arbitrary manner. In addition, it may conflict with the transparency disciplines under Article 16.4, Paragraph 1 of the RCEP Agreement, to which China is a party.

<Recent Developments>

In response to the invitation for public comments held by the Chinese government in 2022, the Japanese government submitted its opinions. In addition, in the 20th regular vice-minister-level consultations between the Ministry of Economy, Trade and Industry of Japan and the Ministry of Commerce of China held in September 2022, the Japan-China Economic Partnership Consultations held in February 2023, and consultations between the Minister Nishimura of the Ministry of Economy, Trade and Industry of Japan and Minister Wang of the Ministry of Commerce held in November 2023, Japan has been urging the realization of a fair and transparent system in accordance with international rules and practices. In addition, Japan have expressed its concerns at various WTO committees.

Unilateral Measures/Other Matters

(1) Measures to Prevent the Unjustified Extraterritorial Application of Foreign Laws and Measures

<Outline of the Measures>

In January 2021, China's Ministry of Commerce promulgated the Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures, which came into effect immediately. In accordance with China's National Security Law, this rule enables the government to take measures to counteract the impact on China caused by unjustified extra-territorial application of foreign legislation and other measures for the purpose of safeguarding national sovereignty, security and development interests, and protecting the legitimate rights and interests of Chinese citizens, legal persons, and other organizations (Article 1). Specifically, it requires Chinese citizens, legal persons, etc., to report such matters to the Chinese authorities, with penalties for violations, within 30 days if such citizens, legal persons, etc. are prohibited or restricted by foreign legislation and other measures from engaging in normal economic, trade, and related activities with a third State or its citizens, legal persons or other organizations

(Articles 5 and 13). If the Chinese authorities confirm that there exists unjustified extra-territorial application, it may issue a prohibition order to the effect that, the relevant foreign legislation and other measures are not accepted, executed, or observed (Article 7). Furthermore, if the legitimate rights and interests of Chinese citizens, legal persons, etc., are infringed by the foreign legislations and other measures within the scope of the prohibition order, Chinese citizens, legal persons, etc., may file a claim for compensation in a Chinese court against the party that complied with said legislations and other measures, and if the party that received a judgment approving the claim for compensations refuses to comply with the judgment, the citizen, legal person, etc. may apply to the court for enforcement (Article 9). However, Chinese citizens, legal persons, etc., may apply for exemption from compliance with a prohibition order (and as a result of exemption, are immune from liability for damages under Article 9) (Articles 8 and 9). In addition, the Chinese citizens, legal persons, etc. may seek the Chinese authorities' support for significant losses suffered as a result of non-compliance with the foreign legislation and other measures (Article 11). In response to unjustified extra-territorial application of foreign legislation and other measures, the Chinese government may take necessary counter-measures (Article 12).

<PROBLEMS UNDER INTERNATIONAL RULES>

Under this rule, companies, etc., in third countries may be held liable for damages for complying with the foreign legislations or other measures and may be subject to compulsory execution if they do not comply with such compensation judgements. Therefore, they get caught in a double bind where they are forced to choose between the risk of non-compliance with the foreign legislations and other measures and the risk of enforcement of claims for compensation in China.

In this regard, Chinese companies, etc., may obtain exemption from compliance with a prohibition order and be exempted from liability for damages under Articles 8 and 9 of this rule, but third-country companies, etc., are not eligible for such exemption, which may constitute preferential treatment for Chinese businesses, and may constitute a violation of the national treatment obligation under Article 17 of GATS if within the scope of China's commitments under the GATS.

In addition, while in accordance with Article 11 of this rule, Chinese companies, etc., may seek authorities' support for significant losses suffered due to failure to comply with foreign legislations and other measures, no similar support is provided for foreign companies. As to whether or not authorities' support is available for losses due to non-compliance with foreign legislations, only Chinese companies can receive favorable treatment. Therefore, this could still constitute a violation of the national treatment obligation under the GATS (Article 17 of the GATS) if it is within the scope of China's commitments under the GATS. Moreover, for example, when comparing domestic products and imported products using foreign regulated technology, the support (for continuing to sell without complying with foreign legislations) under Article 11 of this rule is available not at least to producers (in foreign countries) of imported products, but it is available to producers (in China) of domestic products, which could constitute a violation of the national treatment obligation under the GATT (Article III: 4 of GATT) as treatment less favorable to imported products.

Besides, specific counter-measures taken by the Chinese government against other governments under Article 12 of this rule are likely to violate the prohibition of unilateral measures that do not involve dispute settlement procedures to determine whether or not benefits have been impaired under the WTO Agreements (Article 23 of the DSU). Furthermore, depending on the details of such counter-measures, they may be inconsistent with the substantive disciplines of the WTO Agreements. For example, if the said measures include a ban or restriction on importation of any product, it is highly likely that they would constitute a violation of the general elimination of quantitative restrictions (Article XI: 1 of GATT), unless there are any legitimate grounds. Whether or not to comply with the foreign legislations and regulations is basically a matter to be left to the judgment of each company and the country in which the company is located. China's attempt to exercise discipline over such judgments beyond its territory may constitute an improper exercise of jurisdiction that is also impermissible under general international law. While criticizing the extra-territorial application of laws and regulations by other countries, China itself tries to impose the same structure of extra-territorial application, which makes it difficult to justify the application of these measures, at least in relation to third countries.

<RECENT DEVELOPMENTS>

At the end of January 2023, there were two published court cases in which claims were made by parties under this rule, but there were no cases in which claims for damages, etc. under this rule were confirmed. In the future, Japan will continue to monitor developments in this matter and seek improvements to these measures in cooperation with other concerned countries.

(2) ANTI-FOREIGN SANCTIONS LAW

<OUTLINE OF THE MEASURES>

In June 2021, the Anti-Foreign Sanctions Law was passed by the National People's Congress and came into effect immediately. Under this law, if a foreign country contains and suppresses China, employs discriminatory restrictive measures against Chinese citizens and organizations, and meddles in China's internal affairs, China shall have the right to adopt corresponding counter-measures (Article 3). Counter-measures extend not only to individuals and organizations on the countermeasure list, but also to their immediate relatives and senior managers in the organizations (Article 5). Counter-measures include: (i) suspension/cancellation of visa issuance, prohibition of border entry, and deportation; (ii) seizure/distraining/freezing of movable property/real estate; (iii) prohibition/restriction of relevant transactions/cooperation, etc., with entities in China; and (iv) other necessary measures (Article 6). The counter-measures included prohibitions and restrictions of related transactions, etc., with entities in China. Chinese organizations and individuals shall enforce counter-measures taken by the State Council and shall be held legally responsible for any violations (Articles 11 and 14). Any organization or individual shall not enforce or cooperate in the enforcement of discriminatory restrictive measures adopted by a foreign country against Chinese citizens or organizations, and if they violate this provision and infringe upon the legitimate rights and interests of Chinese citizens or organizations, the Chinese citizens or organizations concerned may file a lawsuit against the violator and request that they stop the infringement and compensate losses (Article 12).

<PROBLEMS UNDER INTERNATIONAL RULES>

Under Article 12 of this law, companies, etc., in third countries that are subject to the prohibition of enforcement of discriminatory restrictive measures adopted by a foreign country may be held liable for damages for complying with the laws or measures of

other countries and may be subject to compulsory execution if they do not comply with such compensation judgements. Therefore, they get caught in a double bind where they are forced to choose between the non-compliance with the laws and regulations of other countries and the enforcement of claims for compensation in China.

In addition, specific counter-measures taken by the Chinese government against other governments under this law may violate the prohibition of unilateral measures that do not involve dispute settlement procedures to determine whether or not benefits have been impaired under the WTO Agreements (Article 23 of the DSU), insofar as China considers measures taken by other countries to be inconsistent with the WTO Agreements.

Furthermore, depending on the details of China's counter-measures, they may be inconsistent with the substantive disciplines of the WTO Agreements. For example, if the said measures include a ban or restriction on importation of any product, it is highly likely that they would constitute a violation of the general elimination of quantitative restrictions (Article XI: 1 of GATT), unless there are any legitimate grounds.

<Recent Developments>

A series of sanctions under this law were announced through 2021 and 2022. For details, see pages 52 and 53 of the 2023 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -.

In terms of movements since 2023, in April 2023, China's Ministry of Foreign Affairs announced that, in accordance with this law, it had imposed sanctions on U.S. Congressman McCaul who visited Taiwan.

In addition, in September 2023, China announced that it would impose sanctions on Lockheed Martin Space Systems Company St. Louis, Missouri office and Northrop Grumman for providing advanced weapons to Taiwan.

In December 2023, as a counter-measure to the US sanctions against two officials of the Chinese province of Xinjiang and three Chinese companies, China announced sanctions against Kharon, the U.S. intelligence data company, its investigators, and researchers at the former U.S. Advanced National Defense Research Center for allegedly collecting and providing sensitive information on Xinjiang for a long term, including a ban on entry, freezing of assets, and prohibition of transactions with Chinese citizens and organizations in China.

In January 2024, as a counter-measure to the US illegal sanctions against Chinese companies and individuals by selling weapons to Taiwan, China decided to impose sanctions on five US military companies: BAE Systems Land and Armament, Alliant Techsystems Operation, AeroVironment, ViaSat, and Data Link Solutions. The measures include freezing of movable property, real estate and other property located in China, as well as prohibition of transactions and other activities with domestic organizations and individuals.

Japan will continue to monitor developments in this matter and seek improvements to this law in cooperation with other concerned countries.

(3) Unreliable Entity List Provisions

<Outline of the Measures>

In September 2020, China's Ministry of Commerce promulgated the Provisions on the Unreliable Entity List, which came into effect immediately. These provisions are formulated in accordance with the Foreign Trade Law, and the National Security Law, etc., and take measures for the purpose of safeguarding national sovereignty, security and development interests, and protecting the legitimate rights and interests of Chinese enterprises, other organizations and individuals. In other words, the State shall establish the Unreliable Entity List System, and adopt corresponding measures in response to the following actions taken by a foreign entity (including foreign companies, other organizations and individuals) in international economic, trade and other relevant activities: (i) endangering national sovereignty, security or development interests of China; (ii) suspending normal transactions with an enterprise, etc., of China or applying discriminatory measures against an enterprise, etc., of China, which violates normal market transaction principles and causes serious damage to the legitimate rights and interests of the enterprise, etc., of China (Article 2). Foreign entities to be included in the List are to be determined and announced based on the consideration of the following factors; (i) the degree of danger to national sovereignty, security or development interests of China; (ii) the degree of damage to the legitimate rights and interests of enterprises, etc., of China; (iii) whether being in compliance with internationally accepted economic and trade rules; and other factors (Article 7).

The following measures may be taken against foreign entities which is included in the List: (i) restricting or prohibiting the foreign entity from engaging in China-related import or export activities; (ii) restricting or prohibiting the foreign entity from investing in China; (iii) restricting or prohibiting the foreign entity's relevant personnel or means of transportation from entering into China; (iv) restricting or revoking the relevant personnel's work permit, status of stay or residence, etc.; (v) imposing a fine of the corresponding amount; and (vi) other necessary measures, while other units and individuals shall cooperate in the implementation(Article 10).

<Problems under International Rules>

These provisions are ambiguous, and it is not clear how the factors to be taken into consideration for inclusion in the Unreliable Entity List (in particular, whether or not the entity is harmful to the China's "sovereignty" or the "development interests") should be interpreted, or what measures will actually be taken against foreign entities on the List, depending on what considerations are taken. Therefore, there are concerns about whether fairness and transparency can be ensured in identifying foreign entities to be placed on the Unreliable Entity List and in applying the measures to be taken against foreign entities. Also, since the predictability regarding the administration of these provisions is significantly low, these provisions may be inconsistent with GATT 1994 Article X:3(a), etc., which requires the administration of measures in a uniform, impartial and reasonable manner. In addition, depending on the actual measures to be taken against listed entities under Article 10 of these provisions, the measures may be inconsistent with the relevant WTO substantive disciplines (e.g., possible violation of GATT 1994 Article XI:1 if import restrictions are imposed).

Furthermore, according to Article 2 of these provisions, compliance by a third-country company with foreign government regulations prohibiting transactions with Chinese companies (e.g., US re-export controls) could be assessed as "suspending normal transactions with an enterprise, etc., of China or applying discriminatory measures against an enterprise, etc., of China, which violates normal market transaction principles" and therefore "causing serious damage to the legitimate rights and interests of the enterprise, etc., of China." It is pointed out that such a company

could find itself in a bind where they have to either comply with other countries' regulations or are placed on the List and subject to the measures described in Article 10 of these provisions.

<RECENT DEVELOPMENTS>

China's Ministry of Commerce announced in February 2023 that it would place two U.S. companies on a list of untrustworthy entities for undermining China's security, sovereignty, and territorial integrity by repeatedly selling weapons to Taiwan. This is the first listing since these provisions came into effect in September 2020. Japan will continue to monitor developments in this matter and seek improvements to these provisions in cooperation with relevant countries.