CHAPTER 2

UNITED STATES

National Treatment ······ **38**
Export Restriction Measures ······ **38**
Tariffs ······ **40**
Anti-Dumping Measures ······ **41**
Subsidies and Countervailing Measures ······ **46**
Safeguards ······ **48**
Rules of Origin ······ **49**
Standards and Conformity Assessment Systems ······ **49**
Trade in Services ······ **50**
Protection of Intellectual Property ······ **53**
Government Procurement ······ **53**
Unilateral Measures ······ **55**
Other Matters ······ **60**

NATIONAL TREATMENT

(1) HARBOR MAINTENANCE TAX "HMT"

Since 1987, the US has been operating a system that is designed to impose ad valorem taxes of 0.125% (0.04% prior to 1990) on freight (imports and exports and certain domestic freight) belonging to entities (shippers) that use harbors within the territory of the US.

Under this system, imported products are almost invariably subject to the tax because it is collected at the point of importation, where relevant duties are charged. The tax burden on exports and national freight is comparatively low because ship-owners or exporters voluntarily pay the tax in these circumstances on a quarterly basis. With regard to national freight, there are three exceptions: (a) payments under US$10,000 per quarter; (b) traffic in Alaska, Hawaii and dependent territories; and (c) the landing of fish from ships. Yet, similar exceptions are not allowed for imported products.

The US system may violate GATT 1994 in three respects: 1. Article II of GATT (Schedules of Concessions): The system imposes a tax that exceeds that prescribed in the schedules of concessions; 2. Article III of GATT (National Treatment): Compared to domestic products, imported products are accorded less favorable treatment in terms of capture ratio and lack of exceptions, as explained above; and, 3. Article VIII of GATT (Fees and Formalities Connected with Importation and Exportation): The system is designed to (and does, in fact) levy charges that exceed fees for harbor maintenance.

For details, refer to page 111 of the 2016 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-.

(2) MERCHANT SHIPPING ACT OF 1920 (JONES ACT)

<OUTLINE OF THE MEASURES>

The Jones Act specifies that only ships owned by US citizens, built in US shipyards and run by US crews are permitted to engage in domestic passenger and cargo transport within the US and its territories. This restricts exports of foreign-made ships to the US.

On December 23, 2022, an act was enacted to make changes to waivers of the Jones Act. The three main changes include: (1) the prohibition of retroactive investigations into the operating rates of US ships when deciding to waive the Jones Act; (2) granting the President, and not the Department of Homeland Security, the sole authority to determine whether to waive the Jones Act; and (3) requesting for greater transparency and transmissibility of information concerning waivers of the Jones Act.

<PROBLEMS UNDER INTERNATIONAL RULES>

This Act is considered a violation of Article III of GATT (National Treatment on Internal Taxation and Regulation) and Article XI (General Elimination of Quantitative Restrictions). The US, however, claimed that the Act was permitted under the special rule on the provisional application of GATT. During the Uruguay Round negotiation, WTO member countries other than the US asserted that the special rule should not be carried over to GATT, but the US insisted that the rule should be maintained. In the end, an exception clause was placed in Paragraph 3(a) of the 1994 General Agreement on Tariffs and Trade (GATT 1994), and the US continued to maintain this Act. However, in light of the basic principles of the WTO, this Act has problems in terms of national treatment and the general elimination of quantitative restrictions.

EXPORT RESTRICTION MEASURES

(1) EXPORT MANAGEMENT SYSTEM

(1) EAR (EXPORT ADMINISTRATION REGULATIONS)

<OUTLINE OF THE MEASURES>

In the US, the export of arms items is controlled by the Arms Export Control Act of 1976 and the International Traffic in Arms Regulation based thereon. On the other hand, the export of civilian items (so-called dual-use items) that can be used for military purposes is controlled by the Export Administration Regulations (hereinafter referred to as "EAR").

The EAR applies to the export of goods, technology and software from the US as well as the export from outside the US (re-export) and in-country transfer (hereinafter referred to as the "Exports") in certain circumstances. Items subject to re-export and in-country transfer controls are (1) US origin items, (2) foreign-made products that incorporate more than 25% (or 10% for those destined for countries supporting terrorism) of US origin products, (3) foreign-produced direct products of specified US origin software and technology, such as software specifically designed for the design or manufacture of semiconductors, and (4) foreign-produced products that are produced by a complete plant or major component of a plant that itself is a direct product of specified US origin software and technology. Export controls based on the EAR that cover the items described in (3) and (4) above are referred to as the Foreign Direct Product Rule (FDPR).

The EAR consists of (1) list controls, (2) end-use controls and (3) end-user controls. Specifically, permit is required for (1) the export of general-purpose goods and technologies listed on the Commerce Control List (CCL) of the Department of Commerce, (2) the export of general-purpose goods and technologies used for specific purposes such as weapons of mass destruction, and (3) the export to the persons listed on specific lists such as the Entity List (a list of foreign entities that are contrary to the security and foreign policy interests of the US). With respect to general-purpose goods and technologies listed on the CCL that do not fall under (2) or (3), if they fall under the exceptions (permit exceptions), permit is not required.

(2) ECRA (EXPORT CONTROL REFORM ACT)

The EAR was based on the Export Administration Act of 1979 until the expiration of the same Act in August 2001, and after that, the EAR was based on the International Emergency Economic Powers Act. Since the enactment of the Export Control Reform Act (ECRA) in August 2018, the same Act became the basis for the EAR.

In addition, the scope of technologies subject to regulations was expanded under the ECRA. Specifically, the ECRA incorporates emerging and foundational technologies as regulated technologies. Although rules clarifying specific definitions of these technologies are expected to come into force, they have not yet been published. However, 37 emerging and foundational technologies are already subject to the regulation, and public comments have been solicited. In January 2020, the Department of Commerce tentatively introduced its own regulations on software for automating geospatial image analysis (AI-related), one of the 14 areas of emerging technology illustrated by the Department.

<CONCERNS >

With respect to the US export control system, there are concerns about the control of re-exports from the following viewpoints.

(1) PRACTICAL CONCERNS

There is no need to impose other regulations beside the US regulations on the exports from Japan and other countries that are members of various international regimes on export controls, such as the Wassenaar Arrangement, and implement sufficiently effective export controls, as these double regulations will impose an excessive burden on exporters. In addition, US exporters are obligated to include a statement on their invoices for items subject to re-export control in general and to include the Export Control Commodity Number (ECCN) on their invoices for certain items related to integrated circuits and computers. However, importers are unable to obtain sufficient information on commodities exported, and when they re-export to a third country, have difficulties in identifying commodities and determining the applicability of the regulation to their commodities. This might hinder proper processes for export control.

(2) PROBLEMS UNDER INTERNATIONAL RULES

The scope of the US re-export control system is very broad. Whether or not doing business with countries or companies subject to sanctions by the US should be basically matters to be left to the judgment of each business operator and the country in which the business operator is located. The US attempt to exercise regulatory control over such judgments beyond its own territory could constitute an impermissible exercise of jurisdiction under general international law.

With regard to the US re-export control system, it is necessary to carefully incorporate the opinions of industry and academia so as not to unduly impede corporate activities, research activities, etc. In addition, Japan and other allies and partners that are members of international regimes on export controls and implement sufficiently effective export controls should be provided with prior coordination or notification to restrain unfair measures, and even when measures are implemented, predictability as well as a level playing field between the countries concerned should be ensured.

In fact, regarding the extraterritorial application of US and Chinese export controls, in October 2020, a request for a government-level response to the exchange of export control measures by the US and China was submitted to the Ministry of Economy, Trade and Industry in the joint names of ten industry organizations.

<RECENT DEVELOPMENTS>

In recent years, as the battle for technological supremacy between the US and China has intensified, in the US, export controls have been tightened against Chinese companies and others suspected of involvement in China's civil-military integration strategy.

In May 2019, the US Department of Commerce, Bureau of Industry and Security (BIS) added Huawei and its affiliated companies ("Huawei and Related Companies") to the Entity List, and the Exports of goods with a US-origin content of more than 25% that are destined for Huawei and Related Companies are no longer permitted in principle.

In May and August 2020, the Foreign Direct Product Rule (FDPR) was revised to expand the number of destinations and items subject to the regulation. Specifically, the destinations subject to the regulation have been expanded from countries of concern, such as former communist bloc countries and terrorist supporting countries, to all countries and regions, including white countries in terms of trade control, and the items subject to the regulation have been expanded from items regulated for national security reasons to items not subject to the list control[1] (such as semiconductor chips designed and developed by companies in other countries using technology and software of US origin). In addition, according to the amendment of the FDPR in August of the same year, if Huawei and Related Companies listed in the Entity List are involved in the supply chain, that is, if the exporter, etc. has or can have knowledge that Huawei and Related Companies are the purchaser, intermediate consignee, final consignee, or end user, the Exports are no longer permitted in principle. This has effectively banned the export from third countries of semiconductor chips, etc. manufactured directly using US-origin technology and software, as long as Huawei and Related Companies are involved.

In June 2020, BIS tightened military end-use controls on general-purpose goods and technologies used for conventional weapons for China, and in September, informed some business partners of SMIC, a major Chinese semiconductor manufacturer, of the risk of military end-use, requiring export permit for the export to SMIC. In December, the US established the Military End User List (MEUL), which includes 58 Chinese companies in the aerospace, electronics, materials, and other sectors, making them subject to the end-user controls. In January 2021, Skyrizon, a state-owned company, was added to the list. In December 2020, the US added to the Entity List SMIC, a major semiconductor manufacturer, for its involvement in the civil-military integration strategy, and DJI, a major drone manufacturer, for its participation in the suppression of human rights through the use of high-tech surveillance technology. In the same month, the US announced that it would review the status of Hong Kong, which had enjoyed preferential export control treatment, including a wide range of permit exceptions, compared to mainland China, and make Hong Kong identical to mainland China in all aspects.

In October 2022, BIS announced several measures to strengthen export controls for China.

First, BIS added the following products, technologies and software to the CCL as export controls for advanced computing and semiconductor manufacturing.

- With respect to exports to China, (i) certain semiconductor manufacturing equipment, (ii) certain advanced computing chips and computers incorporating such chips, and (iii) related technology and software
- A lower level of computing integrated circuits and computers incorporating such circuits, and related technology and software (as export controls based on anti-terrorism)

Second, BIS newly established the following three types of FDPR.

[1] Refers to the items subject to the EAR regulations, but not specifically described on the CCL.

- As with the expansion of the FDPR for Huawei as a result of the August 2020 amendments, BIS expanded the FDPR to 28 Chinese companies related to advanced computing or supercomputers.

  Advanced computing: if a person recognizes or is able to recognize that (1) direct products manufactured outside the US using certain US-origin technology or software are (2) certain integrated circuits and advanced computing or products associated therewith, and (3) (i) destined for China or incorporated into computers or components for China that do not fall under items not subject to the list control, or (ii) are technologies developed by companies headquartered in China for masks, integrated circuit wafers or dies, the exports of such direct products are subject to approval.
- End-use as supercomputers: if a person recognizes or is able to recognize that (1) direct products manufactured outside the US using certain US-origin technology or software are (2) (i) used for the development, manufacturing or repair of supercomputers destined for China or (ii) incorporated into or used for the development or manufacturing of components of supercomputers destined for China, the Exports of such direct products are subject to approval.

Third, with respect to supercomputers and semiconductor manufacturing equipment, BIS introduced the end-use and end-user controls, including the following, relating to China, and introduced the approval system. Unless an end-user in China headquartered in the US or certain other country falls under iii below, export is presumed to be not approved.

i Development and manufacturing of supercomputers destined for or located in China

ii Integration into or development and manufacturing of components of supercomputers destined for or located in China

iii Development or manufacturing of integrated circuits in semiconductor manufacturing facilities located in China that manufacture integrated circuits meeting the following criteria: (1) logic chip for non-planar transistor architecture of 16 nm or 14 nm or less; (2) DRAM memory chip with a half pitch of 18 nm or less; or (3) NAND flash memory chip with 128 layer or more.

Fourth, BIS added 31 Chinese companies to the Unverified List. BIS also clarified that if the government of a country of destination continuously refuses to cooperate with the BIS investigation, the company in such country of destination may be added to the Entity List, and more specifically, if the verification of those on the Unverified List is hindered by the non-cooperation of the government of the country of destination, those on the Unverified List may be added to the Entity List. The Unverified List is a list of companies for which BIS has been unable to eliminate concerns about end-use and end-user. The Exports of EAR items to those on the Unverified List are not subject to an exception, and even if an export permit is not required, it is necessary to obtain the UVL statement from those on the Unverified List.

In August 2023, BIS announced an amendment to the EAR, requiring export permit to export items designated as NP2 for nuclear nonproliferation to countries of concern regarding weapons of mass destruction as well as China and Macau.

In October 2023, BIS announced an amendment to the EAR and further strengthened export controls of semiconductors on China.

This amendment is divided into two categories: export controls on semiconductor manufacturing equipment (SME IFR) and export controls on advanced computing chips (AC/S IFR). The SME IFR (i) expands the types of semiconductor manufacturing equipment subject to export controls, (ii) refines the regulations for US companies that provide support to advanced semiconductor manufacturing facilities in China, and (iii) requires export permit for the export of semiconductor manufacturing equipment to the designated 24 countries for which arms exports are prohibited. The AC/S IFR (i) adjusts the framework for determining whether advanced semiconductors are subject to export control application and (ii) includes anti-circumvention measures by making export to countries other than China subject to export controls.

Furthermore, in October 2023, BIS added 13 Chinese companies to the Entity List.

(2) Export Restrictions on Logs

<Outline of the Measures>

The US enacted logging restrictions in order to protect spotted owls and other animals. These restrictions reduced the domestic supply of logs, which leading to the introduction of the “Forest Resources Conservation and Shortage Relief Act of 1990,” which restricts log exports. The US currently bans the exportation of logs harvested in federal and state-owned forests west of the 100 west longitude line except Alaska and Hawaii. However, a specific quantity of logs may be exported where they are recognized by the government as surplus materials that are not used by domestic log processors.

<Problems under International Rules>

The US argues that this measure is for the conservation of exhaustible natural resources (Article XX(g) of GATT) and therefore is allowed as an exception to Article XI, which prohibits quantitative restrictions. However, this is a restriction on the export of logs only; there are no restrictions on domestic trade in logs within the US. The measure therefore cannot be justified under Article XX(g) of GATT as a necessary and appropriate means of protecting forest resources. For this reason, it may be in violation of the Article XI of GATT.

<Recent Developments>

Japan will continue to closely monitor these measures and encourage the US to correct these measures through multilateral and bilateral consultations as necessary.

Tariffs

(1) 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. For definitions of tariffs, tariff rates, binding rates and bound tariff rates, see Chapter 5.1.

<Outline of the Measures>

The Tariff Act of 1930, the Customs Modernization Act, and related regulations provide for general tariff rates (NTR rates), special tariff rates (FTA, GSP, and other preferential rates), statutory tariff rates (rates for specific countries), and special duties (countervailing duties and AD duties). MFN or the Japan-US Trade Agreement tariff rates are applied to products imported from Japan.

In addition, preferential duty treatments (tariff refund system and tariff reduction/exemption) are applied to imports of goods and other items intended for re-export.

In 2022, the US simple average bound tariff rate for non-agricultural products is 3.2%. Items with high bound tariffs include footwear (maximum 48%), glassware (maximum 38%), apparel products (maximum 32%), porcelain and ceramics (maximum 32%), woolen goods (maximum 25%), trucks (25%), leather products, etc. (20%), cotton fabrics (16.5%), and titanium (maximum 15%). In particular, imported trucks are placed under a severer competitive disadvantage than domestic trucks; Japan has strong interests in the lowering this tariff rate. Furthermore, the binding coverage on non-agricultural products is 100% and the simple average applied tariff rate for non-agricultural products in 2022 was 3.1%.

<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.

<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), the US began eliminating tariffs on 201 subject items in July 2016. For example, high tariff items including parts such as microphones and others (8.5%), binocular microscopes (7.2%), photoresist (6.5%), etc. Tariffs on all the subject items including these were eliminated by July 2019.As announced in the Japan-US Joint Statement issued at the Summit Meeting in September 2018, negotiations for a Japan-US Trade Agreement began in April 2019 by ministers from both countries and reached the final agreement in September 2019. Specifically, both countries agreed that Japan will make no concessions on taxable industrial products and the US will immediately or gradually eliminate or reduce tariffs on certain industrial products. The agreement was signed in October of 2019, promulgated and announced in December 2019 and came into effect in January 2020.

For measures affected by the spread of the COVID-19, see (1) <Recent Developments> (i) under "Unilateral Measures."

(2) METHOD OF CALCULATING TARIFFS ON CLOCKS AND WRISTWATCHES

<OUTLINE OF THE MEASURES>

The US calculates tariffs on finished clocks and watches as the aggregate of the tariffs on their components. These calculations are complex and the trade procedures are onerous.

For example, the tariff on a wristwatch is calculated by adding up its each component tariffs: (a) movement; (b) case; (c) strap, band or bracelet; and (d) battery. A duty rate has not been set for 8 digit HS codes, which classify wristwatches as completed products.

At the 9 and 10 digits of their HS Code, these components have numbers assigned unilaterally as Statistical Suffix according to the Statistical Notes to the Chapter 91 of the US Tariff Schedule, and exporters are required to abide by them.

Although the rules were established for the purpose of protecting the US watch/clock industry, there is some opinion that the rules should be simplified from the point of view of benefiting of importers and consumers in the US.

<PROBLEMS UNDER INTERNATIONAL RULES>

This calculation method is not a violation of WTO rules because it is in accordance with the US schedule of the tariff concession. However, the complex method of calculating tariffs and assignment of its own HS Code place excessive burdens on traders and is an obstacle to the promotion of the trade facilitation. The US calculation method assumes mechanical clocks/watches, which are currently extremely rare, but it has been also applied to electric clocks/watches. The method does not reflect actual distribution.

The issue was discussed during the Japan-US Deregulation Initiative talks in 2002 and 2003. The Report issued in June 2004 reflected Japanese concerns over clock and watch tariff rate calculation methodology and rules of origin certificates. The report stated that the US would continue to discuss with Japan regarding these issues, taking full account of the position held by Japan concerning a review of the US tariff schedule and labeling requirements as well as discussions underway at the WTO. In fact, no improvement has been made so far.

<RECENT DEVELOPMENTS>

Since 2002, Japan has taken a range of opportunities, including the Japan-US Deregulation Initiative, Japan-US Trade Forum, and WTO Trade Policy Review (TPR) of the US, to ask them for some improvement and/or solution, only to find the problems left unresolved. We assume that the US clock/watch business is faced with the same problems because they outsource production to contractors in Asia. To facilitate international trade, Japan will continue asking the US for improvement.

Japan took part in negotiations for the Trans-Pacific Partnership (TPP) Agreement negotiations, and the participants reached the broad agreement in 2015, which should have paved the way for immediate elimination of US tariffs on wristwatches once the Agreement comes into effect. However, with its announcement of the US withdrawal from the Partnership and wristwatches not being part of the items subject to US tariff elimination under the Japan-US Trade Agreement signed in January 2020, the issue has been left as a challenge to be solved.

ANTI-DUMPING MEASURES

The US is a traditional user of AD measures. The number of AD measures imposed by the US since 1995 is 615 (as of June 30, 2022), and this number is the largest among developed countries that are WTO member countries[2].

The US's system for AD measures is highly transparent, because the US investigation authorities actively disclose related

[2] https://www.wto.org/english/tratop_e/adp_e/AD_MeasuresByRepMem.pdf

information[3]. This has made it easier for interested parties to assess the progress of and issues surrounding investigations and has secured opportunities for interested parties to submit their views and rebuttal arguments in order to protect their interests.

On the other hand, the US still maintains some elements of unilateralism and protectionism in its operation of the AD system. The number of AD-related cases for which consultations were requested through the WTO dispute resolution process after the establishment of the WTO is 142, and of those, 62 cases arose from AD measures of the US[4]. It is important for Japan to continue to monitor the consistency of AD measures of the US with the agreement and to seek correction of measures that are questionable in terms of agreement-consistency.

In the past, Japan has pointed out numerous issues with the US's AD system to the US government, demanding that they be improved. These issues include the Byrd Amendment, improper dumping determination through use of the zeroing methodology, and long-term continuation of AD measures (the administration of "sunset reviews"). Following are major issues.

(1) The Byrd Amendment (Amendment to the Tariff Act of 1930) (DS217/DS234)

The Byrd Amendment is a law that enables tax money that the government collected as AD and countervailing duties on imports to be distributed to US domestic producers who requested and supported applications of AD and countervailing measures. As it enhanced the effect of AD and countervailing measures to promote protectionism and had the effect of increasing applications for AD and countervailing measures, in December 2000, Japan, along with the EU and other countries jointly requested consultations under WTO Dispute Settlement procedures against the US.

In September 2002, a WTO panel issued a report concluding that there were violations of the AD and SCM Agreements . Responding to this report, the US appealed. Then, in January 2003, the WTO Appellate Body also released its report identifying violations of the same Agreements.

However, because the US did not comply with the DSB recommendations within the term stated, which was the end of December 2003, Japan and other countries requested that the DSB approve countermeasures against the US in January 2004. Following the arbitrator's approval on the level of these countermeasures, Japan applied countermeasures in September 2005.

In February 2006, the US passed the Deficit Reduction Act of 2005, which repealed the Byrd Amendment. However, this Act maintained the Amendment until October 1, 2007, and continued the distribution of the imposed amount on goods imported up to this date.

For this reason, Japan has extended the term for the aforementioned countermeasures since 2006 until 2013. However, since the amount of Byrd distribution to Japan was very small, Japan decided to retain the rights of the countermeasure and not to extend the countermeasures in 2014 and thereafter.

However, since it is possible that the Byrd Act distribution of the amount of AD and CVD duties imposed on goods that cleared customs before October 1, 2007 may continue in the future, Japan will continue to consider countermeasures taking into account the amount of distribution by the US, etc. and urge the US to promptly halt the distributions approved by the Byrd Amendment and to completely rectify the violations of the WTO Agreements[5]. For details, refer to pages 70 - 72 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-.

(2) Calculation of the Margin of Dumping via the Zeroing Procedure

<Outline of the Measures>

The US has applied a calculation method under which the price difference is regarded as "zero" in calculating the weighted average of the product when an individual model of, or an individual transaction of, product is exported at a higher price than the normal values in the domestic market (where they are not dumped). With this approach, the dumping margin is artificially inflated (See Figure I-3-1). This way of calculation is called "zeroing."

<Problems under International Rules>

In the case of the AD measure applied by the EU to bed linen from India (DS141), the WTO Appellate Body found in March 2001 that when comparing the weighted average of export prices and that of normal values to calculate a dumping margin (known as W-W comparison), applying the zeroing methodology is inconsistent with the WTO Agreements. However, the US, taking the position that the WTO ruling against zeroing methodology applied only to the specific case ("as applied"), and did not constitute a finding that the "zeroing" methodology "as such" violated the WTO Agreements, continued to use the methodology.

Japan's industries, including the bearing industry, as well as other sectors, have been subject to AD duties at a rate calculated using the zeroing methodology. In November 2004, Japan, claiming that application by the US of the zeroing methodology to 13 cases of AD measures, such as Japan-made heavy steel plates and ball bearing, as well as the zeroing methodology itself, violated the WTO Agreements, requested WTO consultations with the US (DS322) and in February 2005, Japan also requested the establishment of a panel. In January 2007, the Appellate Body fully accepted the claims of Japan, and determined as summarized blow.

(i) Application of the zeroing procedures in original investigations (as such)

The Appellate Body supported the panel's ruling that the application of the zeroing methodology in original investigations violates the AD Agreement because recognition of dumping and dumping margin must be based on the relation to the product investigated as a whole, not individual transactions, and because the comparison of normal values and export prices must be considered in its entirety. The Appellate Body ruled that the US violated Articles 2.1, 2.4, and 2.4.2 of the AD Agreement by applying the zeroing methodology in original investigations to calculate dumping margins based on comparison between individual transactions (known as T-T comparison).

[3] For instance, the US Department of Commerce makes available laws and regulations, manuals, inquiry formats, and other materials concerning AD investigation on its website (http://trade.gov/enforcement/operations/). Similar materials are also made available by the United States International Trade Commission (USITC) on its website (https://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations.htm).
[4] See the WTO website (https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A6#).
[5] https://www.cbp.gov/trade/priority-issues/adcvd/continued-dumping-and-subsidy-offset-act-cdsoa-2000

(ii) Application of the zeroing procedures in periodic reviews (as such)

The Appellate Body dismissed the panel's ruling that the application of the zeroing methodology in periodic reviews and other processes does not violate the AD Agreement, pointing out the same reasons mentioned above in (i), and ruled that application of the zeroing methodology in periodic reviews violated Articles 2.4 and 9.3 of the Agreement as the former requires the members to make a "fair comparison" between export prices and normal values, and the latter stipulates that the total amount of AD duties must not exceed that dumping margin.

(iii) Application of the zeroing procedures in periodic reviews and sunset reviews (as applied)

The Appellate Body ruled that application of the zeroing procedures in periodic and sunset reviews of the AD measures violated the Articles 2.4, 9.3, 11.3 and other articles of the AD Agreement.

<Recent Developments>

To date, as in the above-mentioned case of DS322, etc., panels and the Appellate Body have found that zeroing in all stages of AD procedures, including original investigations and regular administrative reviews violates the AD Agreement. However, "if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison" (referred to as "targeted dumping") "a normal value established on a weighted-average basis may be compared to prices of individual export transactions" pursuant to the second sentence of Article 2.4.2 of the AD Agreement. As this provision appears to assume a comparison of normal value with certain export transactions, some Members claim that the zeroing methodology is allowed under the provision. While, as described above, panels and the Appellate Body have repeatedly determined in past dispute cases that the zeroing methodology was inconsistent with the AD Agreement, none of these cases directly concerned targeted dumping under the second sentence of Article 2.4.2, and they have not explicitly determined that use of the zeroing methodology to calculate dumping margins in such cases violates the Agreement. In this respect, in recent years the US have been finding targeted dumping in many cases and have been expanding and developing the use of the zeroing methodology.

The Republic of Korea in August 2013 and China in December of the same year requested the WTO consultations, claiming that the application of the zeroing methodology in cases where targeted dumping was determined violates the AD Agreement (DS464 and DS471). In 2016, the Appellate Body found in DS464, which was brought by the Republic of Korea, that the zeroing methodology is inconsistent with the AD Agreement, since the second sentence of Article 2.4.2 does not require to select certain export transactions while ignoring others.

The panel in DS471, which was brought by China, also found that the text of the second sentence of Article 2.4.2 does not allow zeroing and that the zeroing methodology is inconsistent with the Article. In this case, the panel's finding regarding zeroing was not appealed. However, the Republic of Korea and China each made claims to the WTO in January and September 2018 respectively that the US is not complying with this judgment and requested the authorization to suspend concessions to the US in the annual amount of US$ 7 billion. However, the US has been using the zeroing methodology through several analytical methods, such as Nails Test, Nails Test II and Differential Pricing Analysis, which it developed while making certain changes to its methodology to determine targeted dumping. Japan will continue to pay attention to the consistency of the targeted dumping determinations and methodologies used for determining dumping margins by the US with the Anti-Dumping Agreement.

	Domestic Price (US$)	Export Price (US$)	Dumping margin of individual product (US$)
Product A	115	95	20
Product B	80	70	10
Product C	100	150	-50 (Under zeroing methodology: 0)
Product D	105	85	20
Total	400	400	

(For each product, domestic sales and exports volumes are all considered to be "1 unit" for ease of calculation.)

(Note)

When the zeroing methodology is not applied, a dumping margin is calculated as shown below:

Dumping margin (%) = (Weighted average of differences between domestic and export prices)

$$\times 100 = \frac{20+10-50+20}{95+70+150+85} \times 100 = 0\%$$

That represents no dumping having occurred. However, under the zeroing methodology,

the dumping margin (%) = $\frac{20+10+0+20}{95+70+150+85} \times 100 = 12.5\%$, showing that the dumping has occurred.

<FIGURE I-3-2> LIST OF MAIN JUDGMENTS OF THE WTO PANEL AND APPELLATE BODY CONCERNING ZEROING DISPUTES

		Original Investigation				Periodic Review	
		W-W Comparison		T-T Comparison			
		As applied	As such	As applied	As such	As applied	As such
EU - AD on Bed Linen from India (DS141)	Appellate Body Report circulated in March 2001	Violation	-	-	-	-	-
US - AD on Softwood Lumber from Canada (DS264)	Appellate Body Report circulated in August 2004	Violation	-	-	-	-	-
US – EU Zeroing (DS294)	Panel Report circulated in October 2005	Violation	Violation	-	-	No Violation	No Violation
	Appellate Body Report circulated in April 2006	-	-	-	-	Violation	-
US - AD on Softwood Lumber from Canada (Compliance) (DS264)	Appellate Body Report circulated in August 2006	-	-	Violation	-	-	-
US – Japan Zeroing (DS322)	Panel Report circulated in September 2006	Violation	Violation	-	No Violation	No Violation	No Violation
	Appellate Body Report circulated in January 2007	-	-	-	Violation	Violation	Violation

(3) ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN (DS184)

<OUTLINE OF THE MEASURES>

In June 1999, the US decided to impose AD duties on certain hot-rolled steel products from Japan. In January 2000, Japan requested consultations with the US and challenged several aspects of the US measures, including the: (a) methodology of calculating the margin of dumping; (b) determination of "critical circumstances" (calling for retroactive imposition of duties); (c) determinations of injury and causal link; and (d) unfair investigation procedures. Japan considered each of these to be violations of the US obligations under GATT and the AD Agreement. The consultations failed to settle the dispute. This led to the establishment of a panel in March 2000. In February 2001, the panel report was circulated to all Members. The panel agreed with some of Japan's claims, but rejected others. Both the US and Japan, therefore, appealed to the Appellate Body in April and May 2001, respectively. The Appellate Body report, which upheld most of Japan's claims, was circulated in July 2001, and was adopted in August 2001. For details of Japan's claims, refer to pages 122 - 123 of the 2016 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-.

<RECENT DEVELOPMENTS>

The reasonable period of time (RPT) for compliance with the Appellate Body Report of this case was set to November 23, 2002, however, the US failed to fulfill its obligations in regard to all recommendations. To implement the remaining recommendations, the US sought to amend the domestic law, but it was unsuccessful, and so requested extension and further extension of RPT. Japan accepted the US requests to extend the deadline three times. However, regarding the 4th request, Japan and the US concluded an agreement in July 2005 that Japan maintained the right to apply countermeasures due to the ineffectiveness of repeated extensions and the loss of confidence in the reliability of the WTO dispute settlement procedures, Later, at the end of 2006, the Recommendation Implementation bill died due to the closure of the Congress without passing the bill. Until 2010, at regular Dispute Settlement Body (DSB) meetings, Japan had continued to demand early implementation by the US, and also took up the issue as an agenda item/question in Japan-US working-level consultations and during the Trade Policy Review (TPR) of the US. In 2011, Japan took up the issue as an agenda item at the Japan-US Economic Harmonization Initiative. In June 2011, complying with the ruling of sunset reviews which was initiated in 2010, the US retroactively terminated, as from May 2010, the AD measure against Japanese-made hot-rolled steel plates, which had been in place since 1999. Although the AD measure itself was terminated as described above, the US AD Act stipulating the calculation method of all others rate has not been revised. Japan also made an inquiry in writing about the prospect for revisions of domestic laws specifying the calculation methods at the TPR of the US in December 2014, and the US government replied that it would take appropriate measures in cooperation with the US Congress. However, full compliance with the WTO recommendations has not yet been achieved. As failure to comply with the DSB recommendations may damage the credibility of the WTO dispute settlement system, Japan needs to urge the US to take measures to revise its legislation in accordance with the recommendations.

(4) UNFAIRLY LONG-TERM CONTINUATION OF AD DUTIES (OPERATION OF SUNSET REVIEWS)

<OUTLINE OF THE MEASURES>

Article 11.3 of the AD Agreement (the Sunset Provision) stipulates that any AD measure shall be terminated (sunsetted) in five years unless the authorities determine that the elimination of the AD duty would be likely to lead to continuation or recurrence of dumping and injury. The US AD law includes the Sunset Provision, and sunset reviews are undertaken in the US. However, many AD measures have actually been enforced for more than five years. As of the end of June 2022, there were 12 AD measures against Japanese products that had lasted for 10 years or more (Figure I-3-3).

<PROBLEMS UNDER INTERNATIONAL RULES>

As described above, Article 11.3 of the AD Agreement stipulates that any definitive AD measure shall be terminated in five years unless the authorities determine in a sunset review that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. However, many of the AD measures imposed by the US have been enforced for more than five years. Japan has shown its concern that the administration of the sunset review system by the US may be inconsistent with the AD Agreement.

In January 2002, Japan requested bilateral consultations with US about the sunset review of AD measures against Japanese corrosion-resistant carbon steel flat product in which the interest of Japanese steel industry was high (DS244). A panel was established in May 2002 and the dispute was adjudicated under the WTO dispute settlement procedure. Brazil, Canada, Chile, the EU, India, the Republic of Korea and Norway participated in the panel proceeding as third parties.

In August 2003, the panel rejected Japan's claims and determined that the US decisions under the sunset review were not inconsistent with the WTO Agreements. Dissatisfied with the decision, Japan appealed in September to the Appellate Body on focused issues. In December, the Appellate Body accepted part of Japan's claims, but concluded that, there was an insufficient factual basis to complete the analysis of Japan's claims that the US did not act consistently with the WTO Agreements.

<RECENT DEVELOPMENTS>

In August 2018, because in part of pressure from Japan, among others, the US decided that AD countermeasures against Japanese-manufactured stainless steel bar, would be terminated, after 22 years of imposition. However, with regard to the current application of sunset reviews by the US, the authorities appear to make a decision on the premise that "once the AD measures are terminated, exports would resume, leading to continuation or recurrence of dumping or injury," without taking into consideration the global supply-demand situation and the perspectives of cost-benefit performances of companies that respond to administrative reviews and sunset reviews. This is one of the causes of long-term continuation of many AD measures.

Since 2013, at AD Committee meetings held in the spring and autumn, Japan has taken actions such as requesting early termination of measures continued for a long time, and it will continue to request the US to strictly apply Article 11.3 of the AD Agreement, which sets out the principle of termination of AD measures within five years in most cases, and to perform appropriate reviews in accordance with the WTO Agreements.

<FIGURE I-3-3> AD MEASURES AGAINST JAPAN CONTINUING OVER 10 YEARS (AS OF JUNE 2022)

Date of measure imposed	Products	Continuance
8 December 1978	Prestressed concrete steel wire strand	44 years
10 February 1987	Carbon steel butt-weld pipe fittings	36 years
12 August 1988	Brass sheet & strip	34 years

10 May 1991	Gray Portland cement & clinker	31 years
2 July 1996	Clad Steel Plate	26 years
15 September 1998	Stainless steel wire	24 years
27 July 1999	Stainless steel plates	23 years
26 June 2000	Large-diameter Carbon Steel Seamless Pipe	22 years
26 June 2000	Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 ½ inches)	22 years
28 August 2000	Certain Tin Mill Products	22 years
6 December 2001	Welded Large Diameter Line Pipe	21 years
2 July 2003	Polyvinyl alcohol	19 years

(5) AD Measures on Thick Plates from Japan

<Outline of the Measures>

In May 2017, the US government made the final decision to impose AD duties on thick plates from Japan. The problem with this decision is that injury to a domestic industry is recognized without considering differences in components, intended uses and price ranges, which is inconsistent with the AD Agreement. Until the final decision is made, the Japanese government has sought improvement by pointing out the problems mentioned above at a public hearing and a meeting of the AD Committee. Nevertheless, the US made the final decision with the above concerns remaining. For details on the original investigation, refer to page 43 of the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-.

<Recent Developments>

In December 2021, the US Government initiated a sunset review of this AD measure and extended the review in January 2023. As noted in (4) "Unfairly Long-Term Continuation of AD Duties (Operation of Sunset Reviews)" above, Japan is calling for the early termination of improperly long AD measures, and will continue to request to conduct the review appropriately of this matter in accordance with the WTO Agreements as well.

Subsidies and Countervailing Measures

(1) The 2018 Farm Bill

<Outline of the Measures>

The US introduced a price support loan program in 1930, and a deficiency payment system, which covers the difference between target prices and market prices subject to participation in production adjustment programs, in 1973. The 1996 Farm Bill (applicable period: from FY1996 to FY2002) eliminated the deficiency payment system, in which the amount of payments changed according to the market prices, along with the production adjustment, and replaced it with the production flexibility contract payment system, in which the amount of payments is fixed regardless of the level of the market prices.

However, the slump in grain prices that began in 1997 resulted in economic damage to farmers that could not be offset with the production flexibility contract payments alone. The US therefore provided emergency farm assistance packages four times between 1998 and 2001 totaling US$27.3 billion.

In consideration of such circumstances, the 2002 Farm Bill (applicable period: six years from FY2002 to FY2007) essentially continued the policies of the 1996 Farm Bill while introducing a counter-cyclical payment system to cover the differences between the target prices and the market prices as done in the abolished deficiency payment system.

The 2008 Farm Bill (applicable period: from FY2008 to FY2012) basically continued the policies of the 2002 Farm Bill while introducing a new Average Crop Revenue Election (ACRE) program to cover decreased income.

Serious discussions about the next Farm Bill began in 2011 as the expiration of the 2008 Farm Bill was nearing. However, discussions stalled because the majority and minority parties could not agree on the amount of farm budget reductions. Disagreement about reductions in the overall budget deficit and the presidential election in November 2012 also had an effect. The 2008 Farm Bill expired in September 2012 without being replaced by a new one. Discussions continued after the extension of the 2008 Farm Bill for a year in January 2013. The 2014 Farm Bill (applicable period: from FY2014 to FY2018) was enacted in February 2014. It abolished the deficiency payments, production flexibility contract payments and ACRE program and introduced agriculture risk coverage, price loss coverage and the supplemental coverage option, etc. In 2018, the 2018 Farm Bill (applicable period: from FY2019 to FY2023) was enacted, but the framework of the 2014 Farm Bill (agriculture risk coverage, price loss coverage, etc.) was continued.

The 2018 Farm Bill expired once in October 2023. However, the US Congress passed an extension of the 2018 Farm Bill until the end of September 2024 in November 2023.

(i) Domestic Support

The 2014 Farm Bill abolished the previously-available deficiency payments, production flexibility contract payments and ACRE program, and introduced agriculture risk coverage, price loss coverage and supplemental coverage option. It also introduced a new insurance policy for cotton because of the ruling of the US-Brazil Cotton Panel. The price support loan program was basically retained, although the loan rates (per-unit loan rates) were changed because of the ruling of the US-Brazil Cotton Panel. The price support loan program was basically retained, although the loan rates (per-unit loan rates) were changed because of the ruling of the US-Brazil Cotton Panel.

Under the 2018 Farm Bill, agriculture coverage, price loss coverage and other programs were maintained or improved with no major changes from the contents of the 2014 Farm Bill. Until now, once the farm's producers elected agriculture coverage or price loss coverage, the decision was irrevocable, however, the 2018 Farm Bill allows producers to make a choice between the two programs on an annual basis.

The agriculture risk coverage (ARC) covers the difference between the revenue of the current year and 86% of the three-year average revenue over the last five years when the revenue of the current year is lower than 86% of the average revenue. The upper limit of the amount paid by ARC is 10% of the average revenue, and choosing between the ARC and price loss coverage (see (ii) below) is an option.

The price loss coverage (PLC) is a program that covers a portion of the difference between the target prices and the market prices (or the loan rates when the market prices are lower than the loan rates) when the market prices are lower than the predetermined target prices. This system makes payments based on the past planting results and is basically the same as the abolished deficiency payments, but the target prices are significantly raised when compared to deficiency payments.

Under the 2018 Farm Bill, the effective reference price triggering PLC payments was revised (85% of the average of the reference price and the market price over the last five years (excluding the highest and lowest prices), whichever is higher; provided that it does not exceed 115% of the reference price).

The price support loan program provides farmers with short-term loans by the Commodity Credit Cooperation (CCC) and allows the farmers to suspend their obligations to guarantee repayments by mortgaging their products when the market prices are lower than the loan rates. The 2014 Farm Bill changed the loan rates for cotton because of the ruling of the US-Brazil Cotton Panel, and the conventional system was basically retained for other products. The 2018 Farm Bill made several improvements, such as increasing loan rates for all applicable crops.

The supplemental coverage option (SCO) is supplemental insurance covering the portion not covered by the agricultural insurance subscribed to by farmers. The difference between the guaranteed revenue/yields of the agricultural insurance subscribed to by farmers and 86% of the standard revenue/yields of the agricultural insurance is covered. The SCO is not allowed to be used concurrently with agricultural risk coverage.

(II) Export Promotion of Agricultural Products

In the 1980s, the EU, faced with a serious glut of agricultural products, increased its subsidized exports. In order to counter this, in the 1985 Farm Bill, the US introduced the export enhancement program (EEP) and dairy export incentive program (DEIP). However, in response to the growing criticism against export subsidies at the WTO, etc., in the 2008 Farm Bill, the US reduced the amount expended, and abolished the EEP and part of the export credit guarantee program. In addition, the DEIP was abolished and the guarantee period of the remaining export credit guarantee program was shortened by the 2014 Farm Bill.

(III) Export credit guarantee program

The export credit guarantee program seeks to promote exports of US agricultural products by having the Commodity Credit Corporation (CCC) provide debt guarantees for loans to finance exports of US agricultural products imported on a commercial basis by developing countries. The 2002 Farm Bill provided: (1) a short-term credit guarantee program (GSM-102) that provided debt guarantees on export credit transactions for 90 days to three years; (2) a medium-term credit guarantee program (GSM-103) that provided debt guarantees on export credit transactions for three to 10 years; (3) a suppliers export credit guarantee program (SCGP) that guaranteed a part of accounts receivable by exporters of US agricultural products from importers; and (4) a facilities financing guarantee program (FGP) that provided debt guarantees on investments for improving facilities related to agriculture in importing countries, with the intention of promoting exports of US agricultural products in an emergent market. Of these, GSM-103 and SCGP were suspended in 2006 in view of the outcome of the 2004 US-Brazil Cotton Panel, etc., and were abolished by the 2008 Farm Bill. The upper limit on GSM-102 fees was abolished by the 2008 Farm Bill, and the upper limit of the debt guarantee period was shortened from three years to two years by the 2014 Farm Bill.

<Problems under International AND Rules Recent Developments >

(I) Domestic Support

The WTO Doha Round negotiations on agriculture have featured debates not only on the rules for reducing the aggregate measure of support (AMS) subject to reduction, but also on the rules requiring reductions in overall trade-distorting support (OTDS), including blue-box policies (direct payments that meet production adjustment requirements) and de minimis (support up to 5% of the value of agricultural production). As a result, in the 2014 Farm Bill, the flexible production payments contract, which are classified in the WTO Agriculture Agreement as a green permitted policy (free from or minimal trade distortions), was abolished while the price decline measures and revenue compensation measures were enhanced. In January 2017, the US made a domestic support notification, and new agriculture coverage, price loss coverage and supplemental coverage options were classified as yellow policies (most market-distorting).

The Market Facilitation Program Payment, which was introduced in 2018 to support farmers against unfair retaliatory measures by foreign countries, increased to US$14.2 billion in 2019 after recording US$5.1 billion in the first year. However, it decreased to US$3.7 billion in 2020, and declined sharply to US$10 million in 2022 and 2023, respectively.

The coronavirus support combining USDA and non-USDA decreased from US$29.3 billion in 2020, the first year of the pandemic, to US$16 billion in the following year, and declined to US$180 million and US$360 million in 2022 and 2023, respectively.

The total direct support including USDA coronavirus support, non-USDA coronavirus support and the Market Facilitation Program Payment amounted to US$22 billion in 2019, US$45.5 billion in 2020 and US$25.9 billion in 2021. This may exceed the level stipulated in Article 6 of the WTO Agreements on Agriculture or the AMS commitment level (US$19.1 billion for the US (since 2000)) set forth in Part IV of the Concession Schedule of each country. However, it decreased to US$15.5 billion and US$12 billion in 2022 and 2023, respectively, and it appears to be within the AMS commitment level.

(ii) Export Promotion of Agricultural Products

Although export subsidies were fully abolished by the 2014 Farm Bill, frequent use of export credits, which is insufficient in making the disciplines of the WTO Agreements on Agriculture effective, gives an advantage to US agricultural products in terms of export competitiveness. Under this system, the CCC takes on the debts when the guaranteed debts go into default, making the system extremely close to circumventing export subsidies.

At the 10th WTO Ministerial Conference in Nairobi, Kenya in December 2015, the Members agreed on matters including the following with regard to agricultural export credits: (i) clearly define “export credits”; (ii) make the maximum repayment term no more than 18 months; and (iii) ensure that export credit programs are self-financed and cover the long-term operating costs and losses. It is necessary to keep a close eye on whether the US export credit system is operating in a manner consistent with these new rules.

(2) Tax Incentives for Electric Vehicles

<Outline of the Measures>

In August 2022, the US passed the Inflation Reduction Act of 2022 (IRA), which includes revisions to the tax credit program for electric vehicles. Under the revised program, a consumer tax credit is granted for the purchase of an electric vehicle with final assembly in North America. Available tax credits are up to US$3,750 for satisfying each of the following conditions (up to US$7,500 per vehicle): (a) the critical minerals used in the vehicle are extracted or processed in the US or a country with which the US has a free trade agreement, and (b) a certain percentage of the value of the battery components is manufactured or assembled in North America. However, electric vehicles containing battery components manufactured or assembled by a foreign entity of concern (FEOC) located in one of the countries of concern[6] will become ineligible for this program starting from 2024, and electric vehicles with batteries that contain any critical minerals extracted, processed or recycled by an FEOC will become ineligible starting from 2025.

<Problems under International Rules>

After 2023, granting tax credits for electric vehicles with final assembly in North America could be regarded as giving some imported vehicles treatment less favorable than that accorded to domestic electric vehicles. Therefore, it may be inconsistent with Article I: 1 of GATT (most-favored nation treatment) and III: 4 (national treatment obligation).

Granting tax credits conditional on the use of battery components manufactured or assembled within North America may violate Article I: 1 of GATT (most-favored nation treatment) and III: 4 (national treatment obligation) because it treats imported batteries less favorably than batteries made in North America. Such tax credits may also constitute a subsidy prohibited by Article 3.1(b) of the ASCM.

Granting tax credits on the condition that the critical minerals of battery components used are extracted or processed within the US or a country the US has a free trade agreement with may violate Article I: 1 of GATT (most-favored nation treatment) and III: 4 (national treatment obligation) because it treats certain imports less favorably than other imports and domestic like products. Furthermore, such tax credits may also violate Article 3.1(b) of the ASCM. It is necessary to keep paying attention to these aspects in the future application of the Act.

In March 2024, China requested WTO consultations with the US on the requirements for EV tax credits and subsidies for renewable energy under the IRA.

<Recent Developments>

With respect to the exclusion of vehicles containing critical minerals extracted by an FEOC and the battery components manufactured by an FEOC, in December 2023, the US Department of Energy and the US Treasury issued draft regulations detailing the definition of an FEOC and draft regulations on related requirements for an FEOC. In addition, the Department of Energy and the Treasury of US announced the vehicles eligible for tax credits from January 1, 2024.

Japan has communicated its position on the tax incentives for electric vehicles to the US government. In cooperation with the industries, it is necessary to continue to closely monitor future developments regarding related laws and regulations and the enforcement of the Act.

Safeguards

Safeguard for Crystalline Silicon Photovoltaic (CSPV) Products and Large Residential Washers

<Outline of the Measures>

The US launched safeguard investigations on import of CSPV cells & modules and large residential washers in May and June 2017, respectively. In November to December of that year, the investigator, the United States International Trade Commission (USITC) submitted recommendations to the President that safeguard measures be imposed on the products. In January 2018, President Trump decided to impose safeguards on them, which were imposed in February of that year.

With these measures, imported CSPV cells and modules have ad valorem duties imposed on them over four years, from February 2018 through February 2022, at a rate of 30%, 25%, 20%, and 15% each year. Only for imported cells, annual tariff quotas of 2.5 gigawatts (duty-free) are granted.

With regard to the safeguard measures for large residential washers, although the initial period was three years (until February 2021), the measures were extended for two years (in January 2021), and ended in February 2023.

<Problems Under International Rules>

The petition filed by US domestic producers, as well as the investigation report produced by the USITC, state that the main purpose of the safeguard measures for CSPV products in this case lies in taking action to rapid increases of low-priced and low-efficient CSPV products manufactured by Chinese companies. Given the principle of safeguard under the Agreement on Safeguards Article 5.1 and Article XIX: 1(a) of GATT, which state safeguard measures should be applied only to the necessary extent,

[6] China, Russia, Iran and North Korea.

exemption of high-priced and high-efficient CSPV products manufactured by Japanese producers should be considered as they are not directly relevant to the purpose of the measures. However, high-efficient products have yet to be exempted.

In its original investigation report, dated November 13, 2017, the USITC failed to examine one of the conditions for imposing safeguard measures, “unforeseen developments” (Article XIX: 1(a) of GATT), and produced a supplemental report, dated December 27 of the same year, only after requested by the United States Trade Representative (USTR) to do so. The supplemental report confirmed the existence of “unforeseen developments” on the grounds that anti-dumping measures and countervailing duties the US had taken against Chinese firms over the past years failed as they moved their production bases overseas to avoid the duties. However, manufacturers’ attempts to evade trade remedies by moving its production bases are not unprecedented. Some may point out that such attempts should not be regarded as “unforeseen developments” that justify any safeguard measures.

<Reasonable Developments>

Regarding this safeguard on CSPV products, Japan, China, the Republic of Korea, Taiwan, the EU, Singapore and many other exporting countries requested consultation for compensation under Articles 8.1 and 12.3 of the Agreement on Safeguards. The US announced exclusions from the measures of 8 types of products in September 2018 and 3 types of products in June 2019, but this was only a part of the exclusion requests that included Japanese products. In addition, in October 2020, President Trump announced removing some exempted products from the list of exemptions, and that the tariff rate in the fourth year of the measures (from February 2021 to February 2022) would be 18% (reducing the initially planned reduction rate), but this was suspended the following November by an injunction from the ITC. An investigation for extension began in August 2021, and in February 2022, President Biden announced that the measures would be extended for four years (through February 2026) (with a tariff rate of 14.75% in the first year) while the tariff quota (duty-free) would be increased to 5 gigawatts.

As for the safeguard measures for CSPV products, the Republic of Korea and China insisted that they were inconsistent with the WTO Agreements, filed a consultation request under the DSU in May and July 2019, respectively, and the panel was established later (Republic of Korea: DS545, China: DS562). Japan participated as a third party in both panel proceedings. The panel report was circulated in September 2021 only for China’s case (DS562). The panel report found the US measures to be consistent with the WTO Agreements. However, it is not yet adopted due to China’s appeal.

The Republic of Korea, insisting that the safeguard measures for large residential washers are inconsistent with the WTO Agreements, filed a consultation request under the DSU in May 2018 and the panel was established in September of that year (DS546; Japan participated as a third party). The panel report issued in February 2022 (DS546) found the US measures to be inconsistent with the WTO Agreements with respect to various requirements, including “unforeseen developments.” The panel report had not been adopted by the DSB for a long time at the joint request of the US and the Republic of Korea. However, the panel report was adopted at the DSB meeting in April 2023 after the measures were removed. In the same month, it was notified that the US and the Republic of Korea reached a mutual agreement based on Article 3.6 of the DSU.

Japan will continue requesting the US government to mitigate possible impact of the measures on Japanese products.

Rules of Origin

Special Marking Requirements of Origin on Watches and Clocks

<Outline of the Measures>

According to the rules of origin marking prescribed in the US Tariff Act of 1930, origin markings on watches and clocks must state the origin of component part (i.e., movements, batteries, cases, bands, etc.). In addition, the ways of marking, such as inscribing, carving, stamping, and embossing, are elaborately provided in the Act. Such rules impose severe burdens on manufacturers of watches/clocks in the context of production control. Therefore, Japan urges the US to simplify such marking requirement.

Although the rules were established for the purpose of protecting the US watch/clock industry, some take the position that the rules should be simplified from the point of view of benefiting importers and consumers in the US.

<Problems under International Rules>

Simplification of these requirements is consistent with Article IX: 2 of GATT, which provides that the difficulties and inconveniences that marks of origin may cause to the commerce and industries of exporting countries should be reduced to a minimum. Such action would comport with the spirit of the Agreement on Rules of Origin.

At the Japan-US Deregulation Initiative talks in 2002 and 2003, Japan made a request to simplify the requirements. The Report issued in 2004 reflected Japanese concerns over clock and watch tariff rate calculation methodology and rules of origin certificates. The report stated that the US would continue to discuss with Japan regarding these issues, taking full account of the position held by Japan concerning a review of the U.S. tariff schedule and labeling requirements as well as discussions underway at the WTO. In fact, however, no improvement has been made so far.

<Recent Developments>

Since 2002, Japan has taken a range of opportunities, including the Japan-US Deregulation Initiative, Japan-US Trade Forum, and WTO Trade Policy Review (TPR) of the US, to ask them for some improvement and/or solution, only to find the problems left unresolved. We assume that the US clock/watch business is faced with the same problems because they outsource production to contractors in Asia. To facilitate international trade, Japan will continue asking the US for improvement.

Standards and Conformity Assessment Systems

(1) American Automobile Labeling Act

<Outline of the Measures>

The American Automobile Labeling Act requires all passenger cars and light trucks to carry labels indicating the US and Canada made percentage (by value).

<PROBLEMS UNDER INTERNATIONAL RULES>

The US claims that the purpose of the system is to provide helpful information for consumers to make better purchasing decisions, but it is, in fact, a type of "Buy American" provision. The system requires an enormous amount of clerical work for record-keeping in order to calculate parts percentages, which is likely to become an unnecessary obstacle to trade, and may violate with Articles 2.1 and 2.2 of the TBT Agreement. Moreover, recently, most of the car models with a high percentage of American and Canadian-made parts are Japanese cars.

(2) REGULATION ON CORPORATE AVERAGE FUEL ECONOMY (CAFE)

<OUTLINE OF THE MEASURE>

The Energy Policy and Conservation Act of 1975, which includes Corporate Average Fuel Economy (CAFE) regulations, obligates automobile manufacturers and importers to achieve certain levels of average fuel economy for the vehicles they handle, and levies fines for violations. CAFE regulations stipulate that domestic and imported vehicles be distinguished and that their average fuel economy be calculated separately.

<PROBLEMS UNDER INTERNATIONAL RULES>

In the past, the GATT dispute settlement procedure initiated by the EU found the regulations to be in violation of national treatment (Article III: 4 of GATT), and a report was issued. However, this report was ultimately not adopted.

<RECENT DEVELOPMENTS>

Under the Obama Administration, to achieve the goal of an average of 54.5 miles per gallon for passenger cars and light-duty trucks by 2025, an improvement target was set for each year in 2012. And then, in March 2017, the Trump administration announced that it would review the regulations for relaxation, and in September 2019 announced that it would revoke California's authority to set its own auto emission standards. Then, in March 2020, the fuel economy target was announced to be 40.4 miles per gallon in 2026. After the Biden administration took office in January 2021, it began reviewing the Trump administration's deregulation. In April 2022, the Biden administration issued a final rule regarding new CAFE regulations for passenger cars and light-duty trucks of the year 2024-2026 models and prescribed that the average fuel economy of the year 2026 model should be 49.1 miles per gallon (an improvement of approximately 10 miles per gallon compared to the year 2021 model). In December 2021, the Biden administration also issued a final rule partially repealing the suspension of states' authorities to set their own auto emission standards, and reauthorizing the right of states, including California, to enact their own standards.

TRADE IN SERVICES

(1) THE FOREIGN INVESTMENT AND NATIONAL SECURITY ACT OF 2007 (FINSA) AND FOREIGN INVESTMENT RISK REVIEW MODERNIZATION ACT (FIRRMA)

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

<OUTLINE OF THE MEASURES>

The Foreign Investment and National Security Act of 2007 authorizes the President to investigate acquisitions, mergers and takeovers of US firms by foreign persons or entities, and to suspend or prohibit transactions that threaten US national security.

This Act, generally known as the "Exon-Florio Amendment," is a revision of Article 721 of the Defense Production Act of 1950, which governs matters concerning foreign investment examinations in terms of national security. Major changes made in this revision include: establishing the Committee on Foreign Investment in the United States (CFIUS) as a statutory institution, instituting reviews of examination criteria (incorporating the impact on critical infrastructure and technology), and strengthening Congressional oversight (requiring notification to Congress of the examination results of individual cases), etc. Furthermore, according to the Foreign Investment Risk Review Modernization Act (FIRRMA) established in August 2018, review scope has been expanded (some small-scale investments, such as investments that may include access to undisclosed technology, are now subject to review), review period has been lengthened, obligation of pre-screening for certain transactions has been enforced, reviewed elements have been added (contribution to nations of concern, influence on cybersecurity, etc.), etc., strengthening CFIUS authority. In November 2018, CFIUS implemented a "Pilot Program," which continued to apply until the final regulations became effective on February 13, 2020. Traditionally, CFIUS exercised jurisdiction over businesses under the control of foreign companies, but going forward, CFIUS will also have jurisdiction over non-controlling investments if certain requirements are met. In particular, when certain requirements are met, CFIUS has jurisdiction to review any investment by a foreign person in US businesses involved in certain critical technologies, critical infrastructure, or the personal data of US nationals that may pose a threat to national security, even if the foreign person will not obtain control of the US business. CFIUS filings are generally voluntary, but mandatory filing is imposed on certain investments involving US critical technology companies, and for investments understood as an acquisition by a foreign government substantially. CFIUS is also authorized to review transactions of real estate that meet certain requirements, such as those situated in and/or around specific airports, maritime ports and military installations.

On May 21, 2020, the US Treasury released proposed amendments to certain provisions of FIRRMA, which came into effect on February 13, 2020. Previously, investments to critical technologies that were subject to mandatory declaration to CFIUS under FIRRMA were limited to certain investments concerning critical technologies in 27 specific industries based on the North American Industry Classification System (NAICS). The proposed amendments would change the requirement based on the NAICS code to a requirement to make an advance declaration in principle if the export of the critical technologies to the investor would require the US government approval (e.g., Export Administration Regulations (EAR)). The definition of "critical technologies" itself remains unchanged. On September 15, 2020, the US Treasury issued a final rule that is generally in line with the above proposed amendments (effective October 15, 2020).

On September 15, 2022, President Biden issued an Executive Order directing CFIUS to consider the following five factors in its review of the declaration requirement: (i) the effect on the resilience of critical US supply chains that may have national security implications; (ii) the effect on US technological leadership in areas affecting US national security, including microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy, and climate adaptation technologies; (iii) industry investment trends that may have an impact on US national security; (iv) cybersecurity risks that threaten to impair US national security; and (v) risks to US persons' sensitive data.

The specific procedure based on FIRRMA includes prior submission for some investments, and upon submission of allegations by the parties concerned or requests from CFIUS members, CFIUS decides whether to conduct an investigation, and, where it does, submits a report to the President. The President decides on suspension or prohibition of the investment on the basis of the report.

In the past, several Japanese firms had to change their original plans because of CFIUS investigations of their acquisitions of US firms. For example, when Toshiba purchased the Westinghouse Electric Co in 2006, before these Acts went into effect, an examination was conducted by CFIUS since, among other products, Westinghouse built nuclear power plants.

<CONCERNS>

Although the WTO Agreements have no general rules on investment, the GATS disciplines service trade activities through investment. Although these Acts themselves do not necessarily violate the WTO Agreements, and like the GATT, the GATS Agreement allows exceptions for national security reasons under certain conditions, it is necessary for the US to operate its investment restriction measures in conformity with the WTO Agreements and the GATS.

<RECENT DEVELOPMENTS>

According to the CFIUS' latest report to Congress, in 2021, there were 164 simplified declarations and 272 notices accompanying CFIUS' detailed review. There were 11 declarations and 26 notices in which Japanese companies were involved and both of which were record highs. It is necessary to keep watch to ensure that these Acts will not unfairly impact investments by Japanese firms in the US beyond security concerns in the future.

On August 9, 2023, President Biden issued an Executive Order directing the Department of the Treasury to issue regulations that prohibit US persons from undertaking particular investment activities involving covered foreign persons or require notification by US persons regarding such activities in order to address US foreign investment that could pose a threat to national security. A country of concern is currently defined as China, Hong Kong and Macau. On the same day, the Department of the Treasury issued a draft regulation on the restriction and solicited comments from industry on the draft regulation until September 26. The draft regulation prohibits US persons (defined as US citizens and entities organized under the laws of the United States) from directly or indirectly investing in, establishing joint ventures with, entering into loan agreements that are convertible to equity with or making greenfield investments in "covered foreign persons" (defined as citizens of a country of concern or entities organized under the laws of a country of concern engaged in semiconductor business, quantum information technology and artificial intelligence system), or requires US persons to make advance notification to the Department of the Treasury regarding such investment activities.

Number of subject transactions, withdrawn cases, and President's decisions (2020 - 2022)

Year	Number of notifications	Number of notifications for investment from Japan	Number of notifications withdrawn during the screening period	Number of investigations	Number of notifications withdrawn during investigations	Number of President's decisions
2020	187	19	1	88	28	1
2021	272	26	2	130	72	0
2022	286	15	1	162	87	0
Total	74	60	4	380	187	1

Number of cases subject to notification in which Japanese companies were involved by form of transaction (2020 - 2022)

Manufacturing Industries	Mining and Public Projects, and Construction	Wholesaling, Retail and Transport	Finance, Information & Communication and Services	Total
27	8	5	20	60

(Prepared by the Ministry of Economy, Trade and Industry based on the "CFIUS ANNUAL REPORT TO CONGRESS (https://home.treasury.gov/system/files/206/CFIUS%20-%20Annual%20Report%20to%20Congress%20CY%202022_0.pdf)")

(2) 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.

<OUTLINE OF THE MEASURES>

The US has diverse regulations related to financial services; they vary from state to state. In some states, foreign banks are prohibited from opening branches or agencies. Of the 50 states, only a limited number of states, such as Massachusetts, Michigan and New York permit all types of establishments (branch, agency, representative office, etc.).

At the federal level, recently introduced and revised regulations require foreign banks with more than certain amount of assets in the US to establish Intermediate Holding Company (IHC) unless their branches or agencies have them.

There are no US federal laws or federal regulatory agencies regulating insurance, except for a federal law regulating the pension operations of insurance companies. Rather, each state has its own insurance laws and insurance regulators.

Furthermore, when it comes to reinsurance, if foreign insurance companies undertake reinsurance from US insurance companies across borders, then in most states foreign insurance companies are required to either leave an amount equivalent to 100% of their liability in a trust account in the US as collateral, or else submit a letter of credit to the affected reinsurance company in the US. For the reinsurance business in the US, this measure unfairly imposes unreasonable costs on foreign insurance companies.

In the WTO commitments in financial services, the US made many reservations and has shown no visible effort to reduce them. In addition, some states still have clauses that discriminate against foreign firms that are not granted exemption in the GATS Agreement, such as a law that obligates foreign insurers to renew their licenses every year while in-state insurers have no-time-limit licenses.

<CONCERNS >

The US is encouraged to urgently repeal discriminatory measures against foreign firms that are not explicitly granted exemption in the GATS Agreement, and to discontinue or improve regulatory measures that make entries of foreign firms difficult from the viewpoint of liberalizing financial services.

<RECENT DEVELOPMENTS>

In some states there have been improvements in regulations that made it difficult for foreign companies to enter the market. In order to revise the disadvantages arising from the fact that the regulations vary from state to state, an insurance bill covering all of the US was proposed in both houses of Congress in 2006 with the objective of introducing an "Optional Federal Charter (OFC)" for the insurance sector and has been under discussion. Additionally, in July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was passed. The Federal Insurance Office was established under the US Treasury based on the aforementioned Act. However, the Federal Insurance Office does not have the authority to direct or regulate, and therefore the system that each state controls financial supervision and control remains the same.

New regulation regarding reinsurance was enacted by the National Association of Insurance Commissioners (NAIC) allows for a removal of the collateral that is required when accepting reinsurance for insurance companies that are qualified in certain conditions under relevant regulations. In order for insurance companies to be covered by collateral removal measures based on this regulation, the locations of insurance companies must be approved by NAIC as Qualified Jurisdictions and Reciprocal Jurisdictions. In December 2019, Japan was reapproved as a Qualified Jurisdiction and approved as a Reciprocal Jurisdiction in January 2020.

(3) TELECOMMUNICATIONS 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.

<OUTLINE OF THE MEASURES>

The US retains foreign ownership restrictions for direct investment in wireless telecommunications services by virtue of Article 310 of the Federal Communications Act (direct investment up to 20%, indirect investment up to 25% (unless the indirect investment is in the public interest)).

In case of investment by a foreign country in radio station licenses, "public interest" determination under the "Foreign Carrier Entry Order" of 1996 requires the degree of market opening in the country of the foreign company to be at the same level as that in the US (equivalency test); investments that exceed the upper limits of the investment ratios may be approved after taking into consideration other public interest factors presented by the Executive Office of the President, including concerns over national security, law enforcement, foreign policies, and trade policies.

In the WTO/GATS Agreement on Basic Telecommunications Services of February 1997, the US retained restrictions only for direct investment (20%) and committed to eliminate restrictions for indirect investment. In consideration of this, with regard to indirect investments, equivalency determination was eliminated for WTO member countries, and the US adopted interpretation to enable free entry in principle that, in the FCC (Federal Communications Commission) regulations (November 1997) on the entry of foreign carriers, the public interest is served even when the investment by WTO member countries does exceed 25%. However, the regulation has not yet been eliminated. In order to ensure a flexible network of foreign telecommunication business, elimination of the regulation is desired. Also, concerning the eligibility criteria of "public interest" for entry of foreign businesses into the US market in relation to Articles 214 and 310(b)(4) of the Federal Communications Act as set forth by the above-mentioned FCC regulations, preliminary reviews based on factors not related to telecommunications policies, such as "trade concerns," "foreign policy," and "significant danger to competition," inhibit the period and predictability for foreign business entries, and thus constitute substantial barriers to foreign company participation in the market. As an example, it took an inordinately long time for a Japanese company's subsidiary to be granted a license.

Furthermore, these public interest examinations were conducted by a body called "Team Telecom," which consisted of authorities concerned but had no legal basis. However, in April 2020, the "Committee for the Assessment of Foreign Participation in the

United States Telecommunications Services Sector" was established by an Executive Order. It is desirable that information on review criteria and procedures be disclosed and clarified in the future in order to ensure opportunities and predictability for foreign business entries.

<CONCERNS >

The above-mentioned measures do not violate the WTO Agreements so long as they do not contravene GATS commitments of indirect investment on radio station license. However, it is desirable that liberalization be made under the spirit of the WTO Agreements.

<RECENT DEVELOPMENTS>

Japan has raised concerns and requested improvement in the above problems on several occasions. The Federal Communications Commission (FCC) decided to refrain from applying the regulations for direct investments under Article 310(b)(3) of the Federal Communications Act in August 2012, and took measures such as clarifying some procedures in relation to regulations on indirect investments under Paragraph (b)(4) of the same Article for radio stations for public communications services and for broadcasting stations in August 2013 and April 2017, respectively (However, these measures are not intended to abolish the regulations.).

PROTECTION OF INTELLECTUAL PROPERTY

(1) TRADEMARKS SYSTEMS (WT/DS176, US OMNIBUS ACT 211)

Section 211 of the Omnibus Act of 1998 prohibits, under certain conditions, US courts from approving and executing ownership on behalf of Cuban nationals of trademarks, etc., but this provision does not apply to US national successors, etc.

The EU requested a WTO consultation in July 1999, alleging violations of Article 3 (national treatment) and Article 4 (most-favored-nation obligations) of the TRIPS Agreement (DS176; Japan participated as a third party). Then, after going through the panel and the Appellate Body procedures, in January 2002, the Appellate Body found the provision in violation of Articles 3 and 4 of the TRIPS Agreement. The Appellate Body and panel reports were adopted in February 2002, and the US informed the panel of its intention to adhere to its WTO obligations, but since then, no revision including abolition of Section 211 of the Omnibus Act has been made to eliminate violations of the TRIPS Agreement.

At present it has not directly affected Japan's interests, but from the point of view of securing the effectiveness of the WTO Agreements, it is necessary to keep watch continuously on the status of deliberations in the Congress to see if a similar bill is introduced.

(2) COPYRIGHT AND RELATED RIGHTS

Section 110(5) of the US Copyright Act allows some exceptions to the public transmission rights of the copyright holders. In subparagraph (B), it grants exceptions for a store with small floor space or in a store using only a small television or speaker.

The EU claimed that such provisions violate Articles 9 and 13 of the TRIPS Agreement and requested a panel to be established (Japan participated as a third party). In June 2000, the panel submitted a report stating that the provision did not constitute legitimate exceptions under the TRIPS Agreement, and thus, the US measures must be brought into conformity.

With regard to the implementation of the recommendation, arbitration was used to determine appropriate compensation and countermeasures. In June 2003, the US and the EU reached a temporary agreement under which the US would compensate the EU a total of US$3.3 million. Although the agreement was in effect until December 21, 2004, the situation had not improved and the law has not yet been modified either. This also raises issues regarding the effectiveness of panel recommendations, and continued scrutiny is needed.

GOVERNMENT PROCUREMENT

US BUY AMERICAN RULES

<OUTLINE OF THE MEASURES>

The US has adopted rules for government procurement which require the federal government and governments of some states to purchase US-made products or use US-made materials.

Buy American schemes are legislated as the Buy American Act and the Buy America Act.

The Buy American Act, having come into effect in 1933, provides that US-made products should be treated favorably in procurement by the federal government. The Buy American Act is implemented according to the Federal Acquisition Regulation (FAR). The FAR provides that, when a domestic offer is higher than a foreign offer, a certain percentage must be added to the foreign offer, which generally ranges from 6 to 12% in the case of goods procurement; 6% in the case of public works; 50% in the case of Department of Defense procurements to treat US-made products and materials favorably.

In some cases, the Buy American Act may not apply. The Trade Agreement Act (TAA) provides exempted products from the Buy American Act when they come from a country the US has signed a trade agreement with. Specifically, procurement of products and services from the signatories of the WTO Agreements on Government Procurement (GPA) and countries the US has signed an FTA with, or "designated countries," is exempted from the Buy American Act to the extent of national treatment the US has committed to with the countries for government procurement. However, any product is regarded as produced in a "designated country" only when the product is wholly manufactured or substantially transformed in the country.

The Buy America Act offers a separate scheme from the Buy American Act. The Act is implemented by the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Railroad Administration (FRA), and Federal Aviation Administration (FAA) under their own procurement rules. The Act requires state governments to procure steel and other materials produced in the US for large-scale transport and infrastructure projects they carry out with subsidies granted by the federal government. For instance, when a project is financed with a federal fund administered by the FTA, steel and other materials used for the project must be US-made. Under criteria the FTA has set, steel and other materials are regarded as manufactured in the US only when they are fully manufactured through the processes based in the US and all their components are also manufactured within the US. However, secondary (subordinate) parts produced in foreign countries are not ruled out here.

<PROBLEMS UNDER INTERNATIONAL RULES>

As described above, the US has in place schemes for treating favorably domestic products or prohibiting procurement of anything other than domestic products. Depending on the manner they are implemented, the schemes may violate the WTO GPA and other international rules.

<RECENT DEVELOPMENTS>

EXECUTIVE ORDER ON GOVERNMENT PROCUREMENT SYSTEM

On January 25, 2021, President Biden signed the Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers to strengthen Buy American rules. The Executive Order established a new bureau under the US Office of Management and Budget (OMB) to be in charge of the government's "Made in America" policy, and rules were set for the Director of the Made in America office to be appointed by the Director of OMB. With respect to government procurement regulations, the Executive Order stipulates that (1) federal agencies shall provide detailed justifications to the Director of the Made in America office when granting exemptions from the Buy American rules in order to close existing loopholes in the calculation of the domestic production ratio, that (2) within 180 days of its promulgation, proposals shall be made to amend the current Federal Acquisition Regulation with respect to the ratio of domestic production requirement, etc., and that a review shall be conducted with respect to materials that cannot be sufficiently procured in the US. In June 2021, OMB issued a letter directing federal departments and agencies to initiate a review of exceptions to the Buy American policy in connection with (1) of this Executive Order. In July of the same year, the Biden Administration issued a proposal to revise the Federal Acquisition Regulation in relation to (2), including a final increase in the standard ratio of domestic procurement requirements to 75%. After public comments procedures, the final regulation was announced in March 2022 and came into effect in October 2022. According to the fact sheet published in March 2022, the ratio of domestic procurement will be raised to 60% in 2022, to 65% in 2024, and to 75% in 2029. Since there is no clear provision in this Executive Order that it will be operated in a manner consistent with the WTO GPA and other international agreements, Japan will closely monitor how this Executive Order will be reflected and implemented in relevant laws and regulations and request the US to ensure that the rules are consistent with international agreements.* With this Executive Order, the Buy-American-related Executive Orders signed by the previous administration (Executive Order 13788, Executive Order 13858, and Executive Order 13975) are null and void.

INFRASTRUCTURE INVESTMENT AND JOBS ACT (BUILD AMERICA, BUY AMERICA ACT)

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act, which includes the Build America, Buy America (BABA Act). The BABA Act requires, with respect to federally funded infrastructure projects, that (1) iron and steel, (2) manufactured products, and (3) construction materials used in the projects are produced in the US.

On August 23, 2023, the Office of Management and Budget (OMB) issued the final guidance for domestic production requirements described above, which came into effect on October 23, 2023. The final guidance includes definitions of key terms and guidance on exemptions from the domestic production requirement. In addition, on October 25, 2023, the OMB issued Memorandum M-24-02 to provide supplemental guidance. The memorandum provides details on the waiver process and additional guidance on some eligible projects.

The final guidance clarifies that the "infrastructure" to which the domestic production requirements apply is broadly defined. In other words, infrastructure is defined to include the "structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle charging." The final guidance explains that these are illustrative and not exhaustive and that federal agencies granting fund should interpret the term "infrastructure" broadly and consider whether a project serves a public function when determining if the project constitutes "infrastructure."

With respect to domestic production requirements, the BABA Act requires that (1) for iron and steel, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the US; (2) for manufactured products, (i) the manufactured product was manufactured in the US, and (ii) the cost of the components of the manufactured product that are mined, produced or manufactured in the US is greater than 55% of the total cost of all components of the manufactured product, and (3) for construction materials, all manufacturing processes for the construction material occurred in the US. The final guidance specifies eight types of construction materials: non-ferrous metals, plastic and polymer-based products, glass, fiber optic cable, optical fiber, lumber, drywall, and engineered wood.

The BABA Act specifies that federal agencies may waive the application of domestic production requirements if (a) the application of domestic production requirements would be inconsistent with the public interest, (b) types of iron, steel, manufactured products or construction materials are not produced in the US in sufficient and reasonably available quantities or of a satisfactory quality, or (c) the inclusion of iron, steel, manufactured products or construction materials produced in the US will increase the cost of the overall project by more than 25%. Waivers are filed by procuring entities with sponsoring federal agencies, and federal agencies are responsible for processing and approving all waivers. Federal agencies are required to the waiver request and explanations publicly available on a website designated by the federal agencies and OMB, and to provide a period of not less than 15 days for public comment on the waiver request. All waiver requests are reviewed by the Made in America Office.

With respect to the relation with international agreements, the BABA Act specifies that the BABA Act "shall be applied in a manner consistent with the obligations of the United Stated under international agreements." As described above, the BABA Act specifies that the application of domestic production requirement may be waived if it is "inconsistent with the public interest."

Memorandum M-24-02 provides that "If a recipient is a State that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement", a federal agency "may propose to waive BABA requirements in the public interest to allow a State to comply with its obligations."

The US reserves some services and building services under the Government Procurement Agreement. However, the range of infrastructure covered by the BABA Act is broad, and many infrastructure projects subject to domestic production requirement will be covered by the Government Procurement Agreement. While the BABA Act provides a waiver, a waiver "may" be applied for and granted, leaving the decision on whether to grant a waiver to the discretion of federal agencies providing funds. In addition, in order to obtain a waiver, procuring entities must apply for a waiver with federal agencies, and it may take a long time to obtain a waiver, which places imports at a disadvantage. It is necessary to continue to monitor the operation of the measure in a manner consistent with the Government Procurement Agreement.

In April 2018, the New York Buy American Act came into effect in New York State. The Act requires state agencies to purchase US-made products when procuring goods or services above a specific amount. The Act was scheduled to expire in April 2020, but in the same month, a bill to make the Act permanent was passed by the New York State Legislature and signed into law by the governor.

In Texas as well, a state law that reinforces the Buy America Act came into effect in September 2017. A major difference from the federal Buy America Act lies in the level of cost increases in a project for which it is exempted from the Buy America Act. Under the federal act, projects are relieved from the obligation to use steel produced in the US when that would result in an increase of cost by 0.1% or 2,500 dollars. The state law exempts a project from the Buy America rules only when its cost would increase by 20%.

Both state laws are mainly intended to narrow the range of exemptions of the Buy American Act and Buy America Act at the state level. With the reservations made by the US to the WTO GPA, as mentioned above, they do not immediately violate the Agreement in terms of trade with Japan. However, it is necessary to watch carefully whether any movements of states for preferential treatment or obligatory procurement of domestic products may violate international rules.

UNILATERAL MEASURES

(1) SECTION 301 OF THE TRADE ACT OF 1974

<OUTLINE OF THE MEASURES>

Section 301 of the Trade Act of 1974 authorizes the USTR to take action in cases such as where US rights under a trade agreement are violated, or where measures, policies, etc. of a foreign country violate or are inconsistent with a trade agreement. For amendments that had been made before to the Section, please see page 145 of the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

The USTR engages in the following investigation procedures: (a) initiates investigations into trade practices based on complaints from interested parties or on its own authority (Section 302); (b) simultaneously requests consultations with the country in question (Section 303); (c) determines whether there is any practice, etc. that necessitates implementing an action or what action the USTR should take, within a set period of time (for investigations under a trade agreement, 30 days from the conclusion of dispute settlement procedures or 18 months from the beginning of investigation, whichever comes sooner; for others, 12 months from the beginning of investigation) (Section 304); and (d) implements the action, in principle, within 30 days of the decision (though the USTR may delay action for a period of up to 180 days) (Section 305).

FOR MANDATORY ACTION (SECTION 301(A))

The USTR shall take action if the act, policy or practice of a foreign government (a) is in violation of GATT or other trade agreements or otherwise denies benefits to the US; or (b) is unjustifiable and burdens or restricts US commerce.

The USTR must take action in cases where a measure, policy, etc. of a foreign country is unreasonable or discriminatory and burdens or restricts US commerce and action by the US is appropriate.

As for the meaning of "unreasonable" measures, etc. taken by a foreign country, the law stipulates that it applies to measures, etc. that are "not necessarily in violation of or inconsistent with US legal rights under international laws," but which are "deemed to be unfair and inequitable" (Section 301(d)(3)(A))

In addition, several measures have been cited as examples of unreasonable measures, etc. taken by a foreign country, such as "violation of opportunities to establish a company," and "denial of appropriate protection of intellectual property rights" (Section 301(d)(3)(B)).

In November 1998, the EU requested WTO consultations with the US because procedures based on Section 304 of the Trade Act of 1974 and other provisions could potentially permit unilateral decisions or measures by the US government without waiting for a WTO panel decision or WTO Dispute Settlement Body (DSB) approval. Because no agreement was reached in the consultations, a panel was established in March 1999. Japan participated as a third party and presented arguments in support of the EU's position. The panel report (WT/DS152/R) was adopted at the DSB meeting in January 2000.

The panel found that the wording of Section 304 of the Trade Act of 1974 and other provisions seemed to contravene DSU Article 23.2, but when read in conjunction with the interpretative guidelines for the Trade Act prepared by the US President (Statement of Administrative Action) and other statements by the US government ("the United States will administer those provisions in a manner that is consistent with its obligations under the WTO Agreements"), Section 304 and other provisions are not WTO violations. The panel decision is based on the assumption that the US will adhere to statements it made during the panel meetings. Therefore, Japan will need to continue to watch for faithful administration of the US statement.

<RECENT DEVELOPMENTS>

(I) SECTION 301 INVESTIGATION OF FORCED TECHNOLOGY TRANSFER BY CHINA

(1) ADDITIONAL TARIFFS BASED ON SECTION 301 INVESTIGATION

In August 2017, the USTR launched, on its own authority, an investigation under Section 301 for technology transfer pressures and other acts by China. In March 2018, the USTR found that the designated targets of the investigation were unreasonable or discriminatory, imposing burdens and/or restrictions on the commercial activities of the US. These targets included forced technology transfer, mandatory inclusion of certain provisions in license contracts, etc., systematic acquisition of US firms and theft of trade secrets.

In response to this, the US released a candidate item list for tariffs on Chinese products in April 2018 and imposed additional tariffs on Chinese products in July 2018. Following this, in April 2018, China requested consultations at the WTO claiming that additional tariff measures taken by the US violate most-favored-nation treatment (Article I: 1 of GATT) and announced that it would impose additional tariffs on US products. In July 2018, China imposed additional tariffs on US products.

After that, while the tariff war continued between the US and China, in January 2020, both countries reached agreement on protection of intellectual property, ban on technology transfer, elimination of trade barriers for agricultural and marine products, opening of financial markets, policy and transparency commitments on currency issues, trade expansion, etc. After the agreement, the US lowered and postponed some of the additional tariffs imposed on China. China brought the US additional tariff measures to the WTO dispute settlement procedures, and a panel report published in September 2020 determined that the US measures violated its most-favored-nation obligations (Article I: 1 of GATT) and tariff concession obligations (Article II of GATT). Due to the appeal by the US, the case is now pending before the Appellate Body (for more details on this case, see Part II, Chapter 15, "2. Major Cases").

(2) Four-Year Review

The measures taken under Section 301 of the Trade Act of 1974 are to be terminated if there is no request for continuation from domestic industries that benefit from the measures within the last 60 days of the expiry of the four-year period. If a request for continuation is submitted, the USTR will conduct a review of the effect and impact of the measures. In September 2022, in response to a request for continuation of additional tariffs on China, the USTR announced the continuation of the measures and the commencement of the review. As of March 2024, the review had not been completed. According to a letter from the USTR to the US House of Representatives Select Committee on the Chinese Communist Party in January 2024, the review is expected to be completed in the next few month (as of March 2024).

(3) Exemption from Additional Tariffs Against China

Exemption from additional tariffs against China is allowed for some products. Since the imposition of the additional tariffs against China, more than 2,200 products in total have been exempted from additional tariffs. Most of them expired by December 2020 while the exemption measure was extended until May 2024 for 352 products after several extensions.

In addition, in December 2020, affected by the spread of the novel coronavirus infection, the USTR announced a measure to exempt 99 medical-related products from the additional tariffs until March 2021. After the period of the measure was extended twice, the USTR announced an additional extension until May 2022, for 81 of the 99 products. Following the announcement of three extensions in May 2022, November 2022 and February 2023, the exemption measure was extended until May 2023. Subsequently, the exemption measure was extended until May 2024 for 77 of the 81 products, after three extensions in May 2023, September 2023 and December 2023.

The USTR invited public comments from January 22 to February 21, 2024, on whether to further extend the current exemption measure for a total of 429 products (including 77 medical-related products affected by the spread of the novel coronavirus infection).

(ii) Section 301 Investigation of France's Digital Services Tax

On July 4 and 11, 2019, the French National Assembly and the French Senate passed the DST bill, respectively. Then, on July 24, 2019, President Macron signed the bill into law. The bill imposes a tax on companies with sales above a certain amount in the EU and in France equal to 3% of their sales in France resulting from the provision of certain types of digital services. In response to these developments, the USTR announced the initiation of 301 investigations into the French DST on July 10, 2019 and released an investigation report that recognized that France's digital services tax discriminated against US companies and also was inconsistent with tax principles on December 2, 2019.

At the US-France Summit Meeting held in January 2020, the two countries agreed that the French government would suspend the imposition of its DST, that the US would postpone the imposition of retaliatory tariff measures on French goods, and that the discussions on taxation rules at the OECD level would be accelerated. In July of the same year, the US decided to implement retaliatory tariff measures from January 6, 2021, but announced another postponement (indefinite) on the said scheduled implementation date. On October 8 of the same year, following an agreement at the OECD on a review of the international taxation system in conjunction with digitization, the USTR announced on October 21 that the retaliatory tariff measures against France would be terminated.

(iii) Section 301 Investigation of Digital Services Taxes of 10 Countries and Regions

On January 5, 2020, the USTR announced the launch of a Section 301 investigation into digital services taxes imposed or under consideration by 10 countries and regions (Austria, Brazil, Czech Republic, the EU, India, Indonesia, Italy, Spain, Turkey, and the UK).

On January 6 and 14, 2021, investigation reports were released on digital services taxes in a total of six countries (Austria, India, Italy, Spain, Turkey, and the UK), finding that the taxes discriminated against US companies and was inconsistent with tax principles, but the measures have not yet been implemented. On the 13th of the same month, the US released status reports on digital services taxes in four other countries and regions (Brazil, Czech Republic, the EU, and Indonesia) and announced the continuation of the investigation in the future. In March of the same year, the USTR announced retaliatory tariff measures against six countries, but the measures remained suspended. On October 8 of the same year, following an agreement at the OECD on a review of the international taxation system in conjunction with digitization, the USTR announced on October 21 that the retaliatory tariff measures against Australia, Italy, Spain, and the UK would be terminated. In addition, the USTR announced the termination of retaliatory tariff measures that could have been triggered against Turkey and India on November 22 and 24 of the same year, respectively, based on the agreements with Turkey and India on digital taxation.

(IV) SECTION 301 INVESTIGATION INTO CURRENCY MANIPULATION AND ILLEGAL TIMBER IN VIETNAM

On October 2, 2020, the USTR announced the launch of a Section 301 investigation into Vietnam's policies related to the value of its currency, claiming that available evidence indicates that Vietnam's currency is undervalued and that the intervention of the State Bank of Vietnam in the foreign exchange market has contributed to this undervaluation. On the same day, it also announced the launch of a Section 301 investigation into Vietnam's importation and use of illegal timber from Vietnam.

The investigation report, released on January 15, 2021, found that Vietnam's policies, etc. related to currency value were unreasonable and imposed burdens or restrictions on the commercial activities of the US. Specifically, while noting that it is a widely accepted norm that policies related to the value of a currency should not result in unfair competitive advantages in international trade, the report also found that excessive intervention in the foreign exchange market, which contributed to the undervaluation of Vietnam's currency, has substantially reduced the prices of Vietnamese goods imported into the US, and on the other hand, has substantially increased the prices of US goods exported to Vietnam, thereby hindering the competitiveness of US companies.

On July 28, 2021, the US Treasury announced that it would not take trade measures for the time being in connection with the Section 301 investigation of the Vietnamese currency as it had reached an agreement with the State Bank of Vietnam to resolve issues related to foreign exchange policy, while monitoring the Bank's implementation of the agreement. In October of the same year, the USTR announced that it would suspend a Section 301 investigation into Vietnam's importation and use of illegal timber for the time being as it had reached an agreement with the Vietnamese Ministry of Agriculture and Rural Development to resolve the issue, while monitoring the Vietnamese government's implementation of the agreement.

For other major investigations launched recently under Section 301 of the Trade Act, please see page 147 of the 2016 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-.

(2) SECTION 232 OF THE TRADE EXPANSION ACT OF 1962

<OUTLINE OF THE MEASURES>

Under Section 232 of the Trade Expansion Act of 1962, the President of the US can take measures to adjust imports of products, etc. when the specific imports threaten national security. Prior to the President's decision to take measures, the Secretary of Commerce investigates whether there is a threat to national security caused by the relevant imported products. Within 270 days after the initiation of the investigation, the Secretary of Commerce must submit an investigation report to the President. In the event the Secretary of Commerce determined there was a threat to US national security in the imported products, the Secretary of Commerce would issue a report to that effect and a recommendation of whether to make import adjustments.

Upon receipt of the report that import of a certain product threatens national security, the President must decide within 90 days whether he concurs with the findings in the report and decide whether he will take any action (embargo, tariff increase, import quantity limit, tariff quota, commence negotiations to limit imports, etc.) to adjust the relevant imports. After the President decides to take action to adjust imports, it will be implemented within 15 days.

<INVESTIGATION PROCEDURE>

Upon request of the head of any department or agency, upon application of an interested party, or upon his/her own motion, the Secretary of Commerce: (i) immediately initiates an appropriate investigation to determine the effects on the national security of imports of the article (Section 232(b)(1)(A)); and (ii) immediately provides notice to the Secretary of Defense of any investigation initiated (Section 232(b)(1)(B)). In the course of the investigation, the Secretary of Commerce: (i) consults with the Secretary of Defense regarding methodological and policy questions raised in the investigation; (ii) seeks information and advice from, and consult with, appropriate officers of the US; and (iii) if it is appropriate and after reasonable notice, holds public hearings or otherwise affords interested parties an opportunity to present information and advice relevant to such investigation (Section 232(b)(2)(A)). Upon the request of the Secretary of Commerce, the Secretary of Defense must provide the Secretary of Commerce an assessment of the defense requirements of any article that is the subject of an investigation conducted (Section 232(b)(2)(B)).

Within 270 days after the launch of the investigation, the Secretary of Commerce must submit an investigation report to the President. When having found the imported product threatens to impair the national security, the Secretary of Commerce must report the findings to the President (Section 232(b)(3)(A)). Any portion of the report which does not contain classified information must be published in the Federal Register (Section 232(b)(3)(B)).

<PROBLEMS UNDER INTERNATIONAL RULES>

Additional tariffs above the rate stated in the list of tariff concessions under Section 232 of the Trade Expansion Act of 1962, may be inconsistent with Article II of GATT (Tariff Concessions). Embargo and quantity restrictions under the same Section may be inconsistent with Article XI of GATT (Quantitative Restrictions). It is also prohibited to seek, take or maintain voluntary export restraints (Article 11 of the Agreement on Safeguards). In this respect, the US invokes Article XXI of GATT (Security Exceptions) with respect to the Section 232 measures on steel and aluminum import, which are described later. The US argues that Article XXI of GATT is a self-judging clause, and that the panel does not have the authority to review matters pursuant to the Article (the WTO panel (in DS512 and DS567, among others) rejected such arguments).

Allowing an excessively broad range of exceptions for national security reasons may lead to abuse of the national security exceptions, which could restrict international trade and disrupt the related global markets, giving a significant negative impact on the entire multilateral trade system.

<RECENT DEVELOPMENTS>

Under the Trump Administration, eight Section 232 investigations were initiated ((i) steel, (ii) aluminum, (iii) automobiles and automotive parts, (iv) uranium, (v) titanium sponge, (vi) transformers, electrical transformers, transformer regulators and the sheet and wound iron cores used therein ("transformers, etc."), (vii) vanadium, and (viii) mobile cranes). Of these, steel, aluminum, and automobiles and automotive parts will be described later. While the Secretary of Commerce determined that uranium imports posed a threat to US security and reported this to the President, the President did not concur with that finding and did not take any specific measures to restrict imports.

With regard to titanium sponge, the President agreed with the Department of Commerce's finding that there was a national security threat from imports of titanium sponge, but decided not to make any import adjustments (such as additional tariffs). However, the President directed the Department of Defense and the Department of Commerce to form a working group to negotiate with Japan, whose titanium sponge imports to US accounted for about 94%, to ensure US access to titanium sponge for national defense and critical industries in an emergency.

With regard to transformers, etc., the Department of Commerce's report (recommendation) was not made public, and only an announcement was made of an agreement on the introduction of a monitoring system between the US and Mexico in November 2020, without any presidential decision being made within the statutory timeframe. Subsequently, in July 2021, the report was published, revealing that the Department of Commerce had identified a national security threat from the imported transformers, etc., but no measures have been taken.

With regard to vanadium imports, the Secretary of Commerce reported to the President that they found no threat to US security, and the President did not take any special measures. The investigation into mobile cranes was terminated after the applicant withdrew its application for investigation.

Under the Biden administration, additional tariffs on steel and aluminum under Section 232 have been kept in place. In addition, the administration initiated a new Section 232 investigation on neodymium magnets, and decided to strengthen domestic production and support international cooperation and research and development on neodymium magnets (for details, please see page 112 of the 2023 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-).

Although imports of titanium sponge and neodymium magnets have been identified as posing a national security threat, Japan is a US ally and thus these imports from Japan pose no threat to US national security. In fact, imports of titanium sponge from Japan are highly reliable with a well-controlled quality and support US national security. The measures to be agreed upon in future discussions should be consistent with the WTO Agreements. Japan is making this position to the US in various opportunities, and will continue to closely monitor developments in Section 232 measures.

(A) Section 232 Measures against Steel/Aluminum

In April 2017, the US initiated a Section 232 investigation on imported steel and aluminum[7]. On March 23, 2018, the US began imposing additional tariffs of 25% on steel and 10% on aluminum. In addition, in February 2020, the US began imposing additional tariffs on steel and aluminum derivative articles (steel nails, aluminum cables, etc.) at the said rates (25% on steel and 10% on aluminum), claiming that, despite the enforcement of Section 232 additional tariffs, imports of steel and aluminum had increased in the form of processed downstream products and that the objective of the Section 232 measures, i.e., 80% production capacity utilization in the US, had not been achieved.

However, with respect to products that cannot be sufficiently produced in the US, and products that have national security concerns, exclusion is determined by the Department of Commerce based on applications by US users (exclusions by product category). Also, some countries are excluded from the measure (country-specific exclusions). Australia is exempt from additional tariffs on both steel and aluminum. Republic of Korea (steel), Brazil (steel), and Argentina (steel and aluminum) were also exempted from tariff measures, but import volume restrictions were introduced in their place.[8] Furthermore, in October 2021, it was announced that the US will introduce tariff rate quotas for steel and aluminum from the EU that partially remove the additional tariffs, and that additional tariffs against derivative products from the EU would be removed. The tariff rate quotas have been in effect since January 2022. Yet, the WTO consistency of the 25% on steel and 10% on aluminum as secondary tariffs remains to be questionable.

At the WTO, China, the EU, Canada, Mexico, Norway, Russia, Turkey, India and Switzerland each brought cases against the US regarding Section 232 measures, and panels were established in November 2018 (in December for India and Switzerland). However, in May 2019, Canada and Mexico ended dispute resolution procedures, stating that they reached a mutually satisfactory resolution with the US.[9] The panel proceeding for the case involving the EU was suspended according to the agreement between the US and the EU in November 2021, and in January 2022, the panel proceeding was closed with the adoption of a separate arbitration procedure for the pending dispute. Of the remaining six cases, panel reports were circulated in December 2022 on four cases involving China, Norway, Switzerland and Turkey, which found that Section 232 measures taken by the US were not justified by the security exceptions. The US appealed four panel reports.

Further, the EU, China, India, Russia, and Turkey, arguing that the measures taken by the US are in effect safeguard measures, have initiated countermeasures under Article 8 of the Agreement of Safeguard (or rebalancing measures. See Part II Chapter 8, 1(2)(i) and (5)(3)).[10] In response to this, the US argues that Section 232 measures are based on national security and that they are not Safeguard measures. The US made requests for consultations on each of these rebalancing measures initiated by certain Members, and panels were established for each case in November 2018. Of these, panel reports were circulated only for the rebalancing measures of China (August 2023) and Turkey (December 2023), both of which found that Section 232 measures were not safeguard measures and that the rebalancing

[7] Regarding the background that led to the investigation, refer to page 55 of the 2018 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

[8] On March 26, it was announced that the US agreed to exempt steel products from the Republic of Korea from steel tariffs permanently, on the condition that the country's steel export becomes subject to a product-specific quota from the US with the amount of 70% of the average annual Korean steel exports to the US from 2015 to 2017. On the other hand, it was announced that "the United States has agreed on a range of measures with Argentina, Australia, and Brazil, including measures that will contribute to increased capacity utilization in the United States, and measures to prevent the transshipment of steel articles and avoid import surges", but details are unknown (Presidential Proclamations dated April 30 and May 31). However, in August 2020, it was announced that the quantitative quota for Brazilian steel products would be lowered.

[9] On August 6, 2020, the US announced the imposition of Section 232 additional tariffs on Canadian aluminum. In the same month, it also issued a statement on strengthening export monitoring of Mexican steel products, saying that it had settled talks with the Mexican government on how to deal with increased imports of steel products.

[10] Canada and Mexico have also imposed additional tariffs on imports of US products. Both countries have stated that such measure is based on NAFTA's rebalancing provisions.

measures of both countries were inconsistent with the WTO Agreements (both reports were appealed by China and Turkey and were not adopted). The panel proceedings for the rebalancing measures of Canada, Mexico and India have all been concluded with the agreement between the parties. In November 2021, the EU has suspended its rebalancing measures based on the above-mentioned US-EU agreement, and the panel proceeding on the EU's rebalancing measures was concluded as the dispute was transferred to an arbitration proceeding.

Japan has repeatedly expressed its concerns to the US, pointing out that imports of steel and aluminum from Japan, a US ally, pose no threat to their national security. At the same time, in order to accelerate and simplify the product exclusion process to avoid adverse effects on the industry as much as possible, Japan has approached the US at a variety of levels. Also, as well as other exporting countries, considering that the nature of the US measures is essentially that of safeguard measures, Japan has notified the WTO of its intent to reserve its rights to take rebalancing measures (May 2018). Japan has a systemic concern and is participating as a third party in the panel proceedings for US Section 232 measures and rebalancing measures against the US.

In November 2021, Japan and the US initiated talks on Section 232 measures on steel and aluminum. In February 2022, the US introduced tariff rate quotas for certain quantities of imported steel from Japan and removed additional tariffs on steel derivative products imported from Japan. The secondary rate of 25% outside of the tariff rate quota for steel is maintained, and an additional 10% tariff is maintained for aluminum. These measures are inconsistent with the WTO Agreements. Japan is continuing to push for the complete removal of Section 232 measures that are questionable in terms of WTO- consistency.

In February 2023, on the one-year anniversary of Russia's invasion of Ukraine, a President Proclamation was issued to increase the ad valorem tariff on aluminum produced in Russia under Section 232 from 10% to 200%. The measure is in view of the continued threat of Russian aluminum to national security and the importance of the aluminum industry in Russia's defense industrial base.

(B) Section 232 Measures against Automobile/Automotive Parts

In May 2018, the US initiated a Section 232 investigation on automobiles and automotive parts. The Secretary of Commerce submitted an investigation report to the President in February 2019. In May 2019, the US found imports of automobiles and automotive parts pose a national security threat, and directed that negotiations with the EU, Japan and other countries should take place to address the threat. Although the negotiation deadline expired in November of the same year, no decision on any measures has been made.

At the Summit Meeting between Japan and the US in September 2018, it was agreed that both countries refrain from taking measures against the spirit of the joint statement during the process of the consultations pursuant to the joint statement, in other words, that no additional duties based on Section 232 would be imposed on Japanese automobiles. In addition, at the Summit Meeting between Japan and the US in September 2019, in connection with the conclusion of the Japan-US Trade Agreement and Japan-US Digital Trade Agreement, both nations agreed that "[w]hile faithfully implementing these agreements, both nations will refrain from taking measures against the spirit of these agreements and this Joint Statement." Both leaders also affirmed that this means that no additional tariffs under Section 232 will be imposed on Japan's automobiles and automotive parts.

In the USMCA side letter, Canada and Mexico each agreed with the US respectively to be excluded from Section 232 measures up to a certain volume and amount of automobiles and automobile parts exported to the US. As mentioned previously, according to the WTO Agreements, taking or seeking to take voluntary export restraints is prohibited (Safeguard Agreement Article 11), and, except for tariff rate quotas, etc. which are explicitly allowed in the WTO Agreements, quantitative restrictions are generally prohibited (Article XI of GATT). Such approaches as agreeing on exclusions of specific volumes or amounts of exports from Section 232 measures raise a question about their consistency with the abovementioned agreements.

Imports of automobiles and automotive parts from Japan, which is a US ally, pose no threat to US national security. Rather, it greatly contributes to US industry and employment. Also, Japan stands in opposition of measures that could lead to managed trade that distorts free and fair trade, and is taking various opportunities to urge the US that any measures in trade should be consistent with the WTO Agreements.

Many Japanese companies, such as automobile manufacturers, have a presence in the US, Mexico and Canada, conducting corporate activities utilizing the USMCA. In light of the impact on these companies, Japan continues to closely monitor the future developments related to the USMCA side letters as well.

(3) Special 301

<Outline of the Measures>

Special 301 sets forth a process introduced as a result of a revision to Section 182 of the Trade Act of 1974 based on Article 1303 of the Omnibus Foreign Trade and Competitiveness Act of 1988. Under this provision, the USTR is to identify (a) countries that "deny adequate and effective protection to the intellectual property rights" and (b) countries that "deny fair and equitable market access to US persons that rely upon intellectual property protection" as "priority foreign countries" in the report to be submitted within 30 days after the submission of the annual National Trade Estimate Report on Foreign Trade Barriers. The USTR must initiate investigations and consultations with the "priority foreign countries" within 30 days after such identification (Section 302(b)(2)(A) and Section 303 of the Trade Act of 1974), and within 30 days from the conclusion of dispute settlement procedures or 6 months from the beginning of investigations determine whether there is any practice, etc. that necessitates implementing a countermeasure and, if so, what action the USTR should take (Section 304(a)(3)).

The USTR has prepared a Priority Watch List and a Watch List to promote the process under Special 301.

<Problems under International Rules>

There is the same concern as for procedures regarding Section 301 of the Trade Act of 1974.

<Recent Developments>

In the "2023 Special 301 Report" released by the USTR in April 2023, 7 countries, namely, China, Indonesia, India, Russia, Argentina, Chile, and Venezuela were placed on the Priority Watch List, and another 22 countries, namely, Thailand, Vietnam, Pakistan, Turkmenistan, Uzbekistan, Algeria, Egypt, Turkey, Barbados, Bolivia, Brazil, Canada, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Paraguay, Peru, Trinidad and Tobago, Belarus, and Bulgaria were placed on the Watch List.

OTHER MATTERS

CONTAINER SIZE REGULATIONS FOR ALCOHOLIC BEVERAGES

<OUTLINE OF THE MEASURES AND CONCERNS >

In the US, distribution of distilled alcoholic beverages and wine is allowed only in containers of specific sizes, such as 1,000 ml, 750 ml, and 375 ml. Neither distilled alcoholic beverages or wine can be exported to the country in bottles of sizes traditional in Japan, for instance 1,800 ml and 720 ml.

With respect to this point, when the Japan-US Trade Agreement was signed (October 2019), both nations exchanged a note promising that the US Treasury will take the final steps on the proposed amendment to federal regulations that ease the restrictions on the quantity of distilled alcoholic beverages and wine (effective on January 1, 2020). In December 2020, federal regulations were amended for distilled alcoholic beverages, and the quantities requested by Japan (700 ml, 720 ml, 900 ml and 1,800 ml) can now be distributed.

<RECENT DEVELOPMENTS>

In May 2022, the US Treasury announced a proposed amendment to federal regulations that ease the restrictions on the quantity of wine and solicited comments from the public (until July 2022). Japan will continue to monitor whether any amendment to federal regulations is implemented