

COLUMN: RECENT DEVELOPMENTS FOR SECURING LEVEL PLAYING FIELD (LPF)

1. OVERVIEW OF THE CURRENT STATE

In recent years, concerns about trade-distorting, non-market policies and practices have been growing, as already pointed out in the past columns¹. In particular, policies and measures related to harmful industrial subsidies, state-owned enterprises and forced technology transfers are increasingly drawing attention. For example, as industrial subsidies to strategic industries such as semiconductors, in addition to the traditional major industries such as steel, are rapidly increasing, there are some cases where such measures and practices lack transparency and are strongly suspected to be market-distorting. Moreover, the methods of such measures and practices are becoming diversified. For example, with regards to industrial subsidies, subsidies made through investment funds practically controlled by the government could be suspected to be market-distorting. With regards to forced technology transfers, there are not only cases where laws and regulations specifically stipulate provisions that could lead to a technology transfer requirement, but also cases of *de facto* forced technology transfers, such as (1) a requirement of establishing a joint venture with local capital as a condition for conducting businesses in the country accepting investments (The ratio of domestic and foreign investment is often set at 51:49.), (2) a local production or procurement requirement, and (3) national standards for individual industrial sectors. Furthermore, it can be said that state-owned enterprises are increasingly involved in competition-distorting behaviors including as recipients and providers of subsidies and through using these subsidies as tools to require domestic production or force technology transfers.

These unfair trade practices distort a level playing field for trade and investment and adversely affect industrial development including that in developing countries. Therefore, in order to address these structural issues, it is necessary to work on utilization of existing rules and establishment of new tools. Based on the understanding that it is necessary to share the awareness of the issues with a wide range of countries and to make multinational efforts, this column introduces the status of discussions in international forums such as G7, OECD, WTO and Japan-US-EU trilateral discussions to secure a global level playing field.

2. OVERVIEW OF THE CURRENT STATE

(1) G7

The G7 members have held a series of discussions on ensuring a level playing field at the leaders' summit meetings and trade ministers' meetings. For example, the statement of the Trade Ministers' Meeting held in Neuhausen, Germany, in September 2022 expressed concerns about "unfair practices, such as all forms of forced technology transfer, intellectual property theft, lowering of labour and environmental standards to gain competitive advantage, market-distorting actions of state-owned enterprises, and harmful industrial subsidies, including those that lead to excess capacity" and stated that they will make efforts for achieving a level playing field through "more effective use of existing tools, as well as developing appropriate new tools and stronger international rules and norms on nonmarket policies and practices."

¹ Refer to the following for the past relevant columns.

Subsidies rules: Column "Discussions on strengthening subsidies rules," pages 290-296, a column in the 2020 Annual Report on Unfair Trade
Forced technology transfer: "Discussions on forced technology transfer," pages 414-418, a column in the 2021 Annual Report on Unfair Trade
State-owned Enterprises: "Efforts for strengthening rules on state-owned enterprises," pages 343-347, a column in the 2017 Annual Report on Unfair Trade

Subsequently, the leaders' communique of the G7 summit, which was hosted by Japan and held in Hiroshima in May 2023, reaffirmed their concern about "non-market policies and practices [omission] that distort global competition, trade and investment" and stated that we "will further step up our efforts to secure a level playing field through the more effective use of existing tools, as well as development of appropriate new tools and stronger international rules and norms."

In response to this trend, the G7 Trade Ministers' Meeting held in Osaka/Sakai, on October 28-29, 2023, positioned the level playing field as one of the important pillars to further discuss specific issues, and exchanged opinions about each nation's understanding of the current status concerning non-market policies and practices typified by opaque industrial subsidies, market-distorting practices by state-owned enterprises, and forced technology transfers, as well as issues faced by G7 members and future initiatives. Through these discussions, they confirmed, for example, the current status of policies forcing technology transfers such as the aforementioned requirement for a joint venture with local capital, the requirement for local production and procurement in exchange for market access, and regulations that substantially require disclosure of confidential business information, while ostensibly taking the form of guidelines or standards. They agreed that G7 members shared the views that (1) it is important to utilize existing rules and tools, (2) they support initiation of discussions on "the interface between trade and state intervention in industrial sectors" and (3) it is important to also utilize initiatives outside the WTO, such as the OECD, and adopted a ministerial statement to that effect.

Joint Declaration of the G7 Trade Ministers (Excerpt)

We renew our commitment to ensure a global level-playing field and fair competition by discouraging protectionism and market distorting practices and by addressing systemic challenges presented by these unfair trade practices through effective use of existing means, as well as developing appropriate new tools and stronger international rules and norms, and we will continue to cooperate on these issues.

In February 2024, the first G7 Trade Ministers' Meeting was held via teleconference hosted by Italy, where the ministers discussed issues including G7's priorities in preparation for the 13th WTO Ministerial Conference (MC13). In relation to the area of level playing field, the Minister of Economy, Trade and Industry of Japan, Saito, expressed Japan's support for creating a dedicated space for discussions on "trade and industrial policy," and stated that G7 should enrich discussions on concrete measures regarding this issue after MC13, keeping in mind the future outcomes of the aforementioned space for deliberations..

(2) OECD

With voluntary contributions from Japan, the OECD conducted surveys on (1) government ownership, industrial subsidies, and the level-playing field, and (2) government support and state enterprises in the industrial sector, and issued reports on these surveys in January and April 2023, respectively. The report on (1) is a cross-sectional summary of the characteristics and issues of government support, including subsidies in a broad sense (e.g., payments in kind, tax reduction, investment and financing), using data obtained from past surveys conducted on various industries such as semiconductors, aluminum, and railway vehicles. The report on (2) quantitatively and qualitatively analyzed the impact of the behaviors of state enterprises on trade and competitive issues in relation to private companies, and studied and analyzed the rules of state enterprises included in various regional agreements as to what issues can be addressed and what rules are lacking. Both reports aim to help create a momentum for development of rules, and are designed to share and convey the problems of market-distorting subsidies and the need to address them in a cross-sectional manner, and to share and convey the direction of rule development on state-owned enterprises including commercial considerations and non-discriminatory treatment.

Furthermore, the OECD Working Party on State Ownership and Privatization Practices is currently revising the OECD Guidelines on Corporate Governance of State-Owned Enterprises (2015 edition). In order to better address the impact of state-owned enterprises on the level playing field, they are discussing the ideas that the revised guidelines should add the definition of “commercial consideration” and other terms in its introduction, and add descriptions such as that, as a general rule, state-owned enterprises should not be used to grant subsidies, and that even if they are to play such roles, they should do so in line with the rules and disclose the granting of the subsidies, as well as how important information such as financial information should be publicly disclosed in a transparent manner.

(3) Japan-US-EU trilateral discussions

Japan, the United States and the EU held the first Japan-US-EU Trilateral Trade Ministers’ Meeting (December 2017) during the 11th WTO Ministerial Conference, in order to jointly address market-distorting measures by third countries. Since then, they have held seven meetings by January 2020 and mainly discussed rulemaking in the WTO, such as on industrial subsidies, strengthening of rules on state-owned enterprises, forced technology transfers, market-oriented conditions and e-commerce. In addition, Trilateral Trade Ministers’ Meeting was held online in November 2021, and a joint statement was issued to renew their trilateral partnership to focus on three areas: identification of problems due to non-market practices, utilization of existing enforcement tools and development of new tools, and development of rules, and to agree to advance on all three focus areas in parallel. In September 2022, a brief meeting was held on the margins of the G7 Trade Ministers’ Meeting in Neuherdenberg, Germany, where they confirmed cooperation toward eliminating forced labor and agreed to accelerate working-level discussions on dealing with market-distorting measures.

Summary of the joint statement of the trilateral trade ministers of US, Japan and EU (November 30, 2021)

- Ambassador Katherine Tai, United States Trade Representative, Mr. Hagiuda Koichi, Minister of Economy, Trade and Industry of Japan, and Mr. Valdis Dombrovskis, Executive Vice President of the European Commission agreed to renew their Trilateral partnership to address the global challenges posed by non-market policies and practices of third countries.
- They agreed to focus their work as trilateral partners in the following three areas. The Ministers instructed their staff to advance in parallel on all three focus areas.
 - Identification of problems due to non-market practices
 - Discussing cooperation in utilizing existing tools, as well as identification of gaps in existing enforcement tools, and where further work is needed to develop new tools to address such practices
 - Identification of areas where further work is needed to develop rules to address such practices
- They also reaffirmed their shared commitment to the MC12, to be held in due course.

(4) WTO

WTO’s committees have long been discussing the implementation of individual agreements. For example, the Committee on Subsidies and Countervailing Measures discusses issues relating to the “Agreement on Subsidies and Countervailing Measures,” the Committee on TRIMs discusses issues relating to the “Agreement on Trade-Related Investment Measures (TRIMs),” and the Council for Trade-Related Aspects of

Intellectual Property Rights (TRIPS Council) discusses the “Agreement on Trade-Related Aspects of Intellectual Property Rights,” respectively. On the other hand, while many countries have been taking various industrial policy measures such as industrial subsidies in recent years, rules under existing agreements cannot be applied to some government support in industrial sector. Also, many countries take various policies and measures that are subject to multiple agreements, and each of such measures is interrelated.

In response to this situation, the EU proposed to the WTO in March 2023 to initiate “deliberation” on the interface between trade and state intervention in industrial sectors at the WTO's 13th Ministerial Conference (MC13) based on the awareness that a new forum should be established to appropriately discuss industrial policies and that the impact of overall industrial policies, including industrial subsidies and state-owned enterprises, on the trade should be discussed in a cross-sectional manner. At the same time, the African group proposed to ease the obligations of developing countries under the current agreements such as ASCM and TRIMs, from the perspective of seeking “policy space” for the industrial development of developing countries. Based on these proposals, trade and industrial policies and policy space were discussed at the Senior Officials Meeting (SOM) in late October.

Subsequently, at the WTO's 13th Ministerial Conference (MC13) held in late February 2024, an interactive discussion on was held as the first attempt at the WTO Ministerial Conference on the topic of "Trade and sustainable development, including trade and industrial policy and policy space for industrial development". The EU, Japan, Canada and other members argued that a dedicated space for discussing “trade and industrial policy” should be established as part of the WTO's deliberative functions reform, which was supported by many members including developing countries. Though the establishment of deliberation was not realized due to opposition from some members in the end, the discussions related to this topic continued until the end of MC13..

3. FUTURE DISCUSSIONS

As stated above, various discussions to secure a level playing field are currently being held at G7, OECD, the Japan-EU-US trilateral meetings and other fora in order to address issues such as industrial subsidies, forced technology transfers and state-owned enterprises. Although the launch of the deliberation in the WTO was not achieved at MC13, in order to secure a global level playing field and enhance reliability of the rules-based trading system, it is necessary to verify whether the current international trading rules such as WTO agreements are appropriately functioning and to continue to deepen discussions on various platforms as to how to improve the parts that are not functioning. In order to improve transparency and strengthen the rules, Japan needs to take the lead in these discussions in cooperation with a wide range of interested countries.