

## **METI Priorities Based on the 2007 Report on Compliance by Major Trading Partners with Trade Agreements (April 16, 2007)**

The 2007 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA, and BIT adopted today by the Subcommittee on Unfair Trade Policies and Measures of the Industrial Structure Council points out deficiencies regarding the trade policies and measures of major countries, regarding which Japan has been requesting improvements that reflect WTO agreements and other international rules.

The following is an overview of the issues that the Ministry of Economy, Trade and Industry deems to be, based on the report, a high priority in trade policies (priority issues) and of its approaches for dealing with these issues.

With regard to priority issues in recent years, several issues have been resolved or major improvements have been observed in nearly all cases, as described in the annex "Status of Recent METI Priorities" (Annex 1). These successes indicate that the basic approach of Japan's trade policies, whereby international economic disputes are sought based on rules, has been widely shared in the world.

The METI Priorities in April 2007 consists of 11 issues of which three have been newly added:

### **Issues over Which Japan Urges Prompt Implementation of the WTO Recommendations**

With regard to the following issues, WTO recommendations fully accepting Japan's arguments have been adopted. Japan will urge prompt implementation of the recommendations.

Japan has actively utilized the WTO dispute settlement mechanism in order to correct the US's anti-dumping system and practices, and obtained a series of rulings that the Anti-dumping Act of 1916, the antidumping measures on hot-rolled steel products, and the Byrd Amendment violated the WTO agreement. In addition, in January 2007, the Appellate Body issued a report on the US's zeroing that fully accepted Japan's arguments.

METI will continue to request that the US fully implement the WTO Dispute Settlement Body (DSB) recommendations concerning these measures at the earliest possible date.

#### ○ US

- Halt of Distribution under the Byrd Amendment
- Prompt Implementation of the WTO Recommendations on Zeroing Methodology
- Prompt Implementation of the WTO Recommendations on Anti-dumping Measures against Hot-Rolled Steel Products from Japan
- Handling of Measures to Invalidate the Damages Recovery Law that was Enacted to Counteract the Anti-dumping Act of 1916 <new item>

### **Issues Already Referred to the WTO Dispute Settlement Mechanism in which Japan Participates as a Third-Party**

The following issues related to China have already been referred to the WTO dispute settlement mechanism by the US and other partners, and Japan has been participating as a

third-party. Japan will request for more transparency and further improvement of the systems through the WTO and bilateral consultation.

○China

- Correction of Tariffs on Automobile Parts
- Operation and Improvement of its Subsidy System in a Transparent Manner and in accordance with WTO Agreements <new item>

**Issues over Which a Variety of Approaches will be Used toward Resolution**

With regard to the following issues related to China, the EU, and Asian countries, a resolution will be sought through a variety of approaches (bilateral consultations and multilateral forums including the WTO).

○China

- Handling of Counterfeit, Pirated and Other Infringing Products
- Improvement with regard to Inappropriate Application of Anti-dumping Measures

○ EU

- Correction of Tariffs on Products Covered by the Information Technology Agreements <new item>
- Ensuring Clarity and Uniformity of Various Regulations relating to Chemical Products and Electrical and Electronic Equipment (REACH, WEEE, RoHS)

○ Asian countries and territories (ASEAN, South Korea, Taiwan, Hong Kong and India)

- Handling of Counterfeit, Pirated and Other Infringing Products

(ANNEX 1) Status of Recent METI Priorities

Country	Priorities	Improvements and Actions Taken
US	Halt of Distribution under the Byrd Amendment	In September 2005, Japan imposed countermeasures against the US. Following these actions, the US repealed the Byrd Amendment in February 2006. However, since distribution will continue for the time being due to the transition clause, Japan has been requesting the US to halt distribution and extended countermeasures in August 2006.
	Prompt Implementation of the WTO Recommendations on Zeroing Methodology	In January 2007, the Appellate Body report was issued and adopted which fully accepted Japan's arguments and ruled that zeroing in all anti-dumping procedures violates the WTO agreement. To establish an implementation period, Japan referred this matter to arbitration in March of 2007.
	Prompt Implementation of the WTO Recommendations on Anti-dumping Measures against Hot-Rolled Steel Products from Japan	A bill for implementing the portion of WTO recommendations not yet implemented was discarded due to the end of the 109 <sup>th</sup> Congress at the end of 2006. In January 2007, the US Government expressed their intention to work on this case with the new Congress.
	Handling of Measures to Invalidate the Damages Recovery Law that was Enacted to Counteract the Anti-dumping Act of 1916 <new item>	In August 2006, Japan submitted an <i>amicus brief</i> to request revocation of the preliminary anti-suit injunction preventing lawsuits under Japan's Damage Recovery Law to the US Federal Court of Appeals.

China	Correction of Tariffs on Automobile Parts	A panel was established in October 2006 based on the requests of the US, the EU and Canada. Japan also participates in the panel proceeding as a third party. The first meeting of the panel is scheduled in May 2007.
	Operation and Improvement of its Subsidy System in a Transparent Manner and in accordance with WTO Agreements <new item>	Japan raised this issue in the WTO Subsidy Committee in October 2006. In February 2007, moreover, the U.S. and Mexico requested consultations on their contention that export subsidies, etc., are included in China's subsidy system. Japan participated as a third party in the consultations among these countries in March 2007.
	Handling of Counterfeit, Pirated and Other Infringing Products	Through actions such as the dispatch of a joint government-private mission concerning the protection of intellectual property in June 2006 and the exchange of opinions with the Study Group for Amendment of China's Patent Law, Japan has been engaged in this issue through requests for improvement and cooperation. Criminal thresholds for units were lowered in April 2007.
	Improvement with regard to Inappropriate Application of Anti-dumping Measures	Japan raised this issue at the annual meeting between METI and the Department of Commerce in April 2006. Japan also submitted government opinions in individual cases which requested China to apply anti-dumping measures in a manner consistent with the WTO agreement.
	Improvement of Import Regulation on toxic chemicals	As a result of a demarche from the Japanese Embassy in Beijing in February 2006 and the annual consultations between METI and the Department of Commerce, concerns about registration expenses were resolved.
	Correction of Tariffs on Photographic Film	As a result of bilateral consultations, China reduced the specific tariff rates on some items comparable levels of tariff concession in January 2006 and January 2007.

EU	Correction of Tariffs on Products Covered by the Information Technology Agreements <new item>	Series of consultations have been held, including those between Akira Amari, Minister of METI, and Peter Mandelson, European Commissioner for Trade, in January 2007.
	Regulations of Registration, Evaluation and Authorization of Chemicals (REACH)	As a result of dialogue between Japan and the EU on regulatory reform etc., draft regulations including the notion of “one substance, one registration” were adopted at the Council of the EU in December 2006. The regulations are scheduled to come into effect in June 2007.
	Directives on Waste Electrical and Electronic Equipment (WEEE) and Directives on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS)	As a result of dialogue between Japan and the EU concerning regulatory reform etc., the European Commission published FAQs and enforcement guidelines for clarification purposes.

Indonesia	Correction of Tariffs on digital cameras	As a result of bilateral consultations, the Indonesian Government agreed to eliminate customs duties gradually by January 2009. Indonesia implemented a tariff reduction in the 2007 revised customs tariff schedule.
Malaysia	Handling of Discriminatory Taxes on Automobiles	Japan requested for improvement at Japan-Malaysia EPA negotiations. As a result, in October 2005, Malaysia announced a reduction in tariffs and excise duties on finished vehicles, thereby eliminating discrimination between “national cars” and “non-national cars.”
Asian countries and territories	Handling of Counterfeit, Pirated and Other Infringing Products	Japan has requested these countries and territories to improve relevant legislation and strengthen enforcement efforts in multilateral and bilateral discussions under the auspices of APEC, WIPO, WTO, etc., and provides support for training the personnel in related organizations.

(ANNEX 2)

## **Overview of Individual Trade Policies and Measures in Recent METI Priorities**

This overview describes trade policies and measures in METI Priorities in 2007 and also provides follow-up information on the ones in METI Priorities in April 2005 and April 2006.

### **<United States>**

#### **Halt of Distribution under the Byrd Amendment**

The so-called Byrd Amendment of the United States (Amendment to the Tariff Act of 1930) provides for the distribution of duty revenues collected through anti-dumping (AD) and countervailing duty (CVD) measures to such companies in the U.S. that have petitioned for the relevant measures.

The panel was established at the request of 11 countries and territories including Japan and the EU. In January 2003, the Appellate Body found that the Byrd Amendment is inconsistent with WTO agreements and recommended that the US bring it into conformity with the agreements. However, the December 2003 deadline for implementation passed without the US having amended or abolished the Byrd Amendment.

In response to the US failure to comply, Japan and seven countries and territories including the EU jointly submitted to the WTO in January 2004 applications to impose countermeasures. In August, a WTO arbitrator decided the level of countermeasures, and the application was approved in November. The EU and Canada implemented the countermeasures in May 2005, Mexico in August, and Japan in September.

On February 8, 2006, President Bush signed the Deficit Reduction Act of 2005, which includes provisions to repeal the Byrd Amendment. Although the Byrd Amendment was nominally repealed, the Deficit Reduction Act permits distribution of duties on entries of goods made and filed before October 1, 2007. Therefore, distribution will continue for a substantial period of time.

The repeal of the Byrd Amendment, which Japan requested, is welcomed as a significant improvement. However, the distribution of duties will continue due to the transitional clause, and therefore the inconsistency with the WTO agreement remains. What is more, there still remain incentives to apply for AD measures, which would continue the unfair advantage for US producers in competition. In light of this situation, with the period of Japan's countermeasures set to expire at the end of August 2006, Japan promulgated a government ordinance in the same month extending the measure by one year.

In November 2006, the amount of duties of FY2006 that were distributed relating to Japanese products under the transitional provision amounted to \$67 million (approximately ¥7.76 billion, a reduction of approximately ¥420 million from last year). The total amount of duties distributed including Japan's share was about \$380 million, the highest on record.

Japan submitted requests that the US Government stop distribution under the transitional clause at the Japan-U.S. Regulatory Reform Initiative of December 2006 and in the bilateral meeting of January 2007 between Minister of Economy, Trade and Industry Akira Amari and U.S. Trade Representative (USTR) Susan Schwab. Japan will continue to cooperate with other Members to strongly urge the US Government to promptly halt the distribution and resolve the inconsistency with the WTO agreements.

### **Prompt Implementation of the WTO Recommendations on Zeroing Methodology**

The US applies an AD procedure known as "zeroing," under which price differences for each transaction or model exported at higher prices than domestic prices are treated as zero and dumping margins for overall products are artificially inflated. As a result, the AD duty rates are raised unreasonably.

The zeroing procedure for calculating dumping margins is unfair since it in actual practice ignores transactions in which dumping is not occurring. For this reason, Japan requested consultations with the US under WTO dispute settlement procedures in November 2004, and the panel was established at the DSB meeting of February 2005. At the panel meetings, Japan argued that not only the actual application of zeroing by the US in individual AD cases, but also the zeroing methodology as such were inconsistent WTO agreements. The US rebutted Japan's arguments, saying that its AD procedures were WTO consistent. The panel report issued in September 2006 concluded that the use of zeroing was inconsistent with WTO agreements only in the context of original investigation, and this report rejected most of Japan's claims. In response, Japan made an appeal to the Appellate Body in October 2006, claiming dissatisfaction with the panel's conclusions.

The Appellate Body Report issued in January 2007 fully accepted Japan's claims, ruling that zeroing was inconsistent with the WTO agreements in all AD procedures and recommended that the US bring the zeroing measure into conformity. This report was adopted at the January DSB meeting and, in February 2007, the U.S. expressed its intention to implement it. Japan presented its request concerning concrete issues to be implemented to the USTR and the Department of Commerce through letters from METI's Vice-Minister and at present is continuing consultations with the US for implementation. In March 2007, Japan referred this matter to arbitration in order to set a

reasonable period of time.

Japan will continue to request that the US promptly and fully implement the recommendations including abolishing the practice of zeroing.

### **Prompt Implementation of the WTO Recommendations on Anti-dumping Measures against Hot-Rolled Steel Products from Japan**

With regard to AD measures that the US imposed on certain hot-rolled steel products from Japan in June 1999, the DSB determined in August 2001 that the methodology of calculating the margin of dumping was inconsistent with WTO agreements and recommended that the US bring the measure into conformity with the covered agreement.

During the originally-designated reasonable period of time (RPT) for implementation (which ended in November 2002), the US failed to fully implement the recommendations and rulings, including the amendment of the US anti-dumping duty statute, and Japan and the US subsequently had extended the period three times. In May 2005, legislation was introduced in the US House of Representatives (H.R.2473) that would implement the DSB's recommendations and rulings, but there was no prospect of adoption by the end of the extended period for implementation in July 2005. On July 7, 2005, recognizing the US's intention to continue efforts to enact this legislation, Japan agreed with the US to reach the understanding that the period of time for compliance shall not be extended further and that Japan would retain its right to suspend concessions at any future date.

However, despite requests from Japan for the full and prompt implementation of the recommendations and rulings at several meetings, including the Japan-US Regulatory Reform and Competition Policy meeting held in December 2006, the 109<sup>th</sup> Congress did not pass the legislation and it was scrapped at the end of 2006. Consequently, in January 2007, Minister of Economy, Trade and Industry Akira Amari again requested USTR Susan Schwab to make further efforts to implement the DSB's recommendations and rulings. At the meeting of the DSB in January, the US Government expressed its intention to support specific legislative amendments and will work with the new Congress. Japan will continue to request the sincere efforts of the US to fully and promptly implement the recommendations and rulings as soon as possible.

### **Handling of Measures to Invalidate the Damages Recovery Law that was Enacted to Counteract the Anti-dumping Act of 1916** <new item>

Article 810 of the 1916 Revenue Act imposes criminal penalties such as imprisonment and fines on entities that engage in import or sale that involves dumping with the intent

to harm U.S. industries and allows triple damages (1916 Anti-Dumping Act, “The 1916 AD Act”).

In 1999, Japan and the EU lodged a complaint against the US with claims that remedy measures against dumping prescribed under the 1916 AD Act are not AD duties permitted by GATT and AD agreements and that the triple damages and other provisions of the law are inconsistent with the WTO agreements. In the September 2000 DSB meeting, reports of the panel and the Appellate Body giving nearly complete approval to the claims of Japan and the EU were adopted, confirming that this law was inconsistent with WTO agreements. Nevertheless, the US passed the period of implementation, which ended in December 2001, without taking any corrective measures such as amending or abolishing this law.

In a lawsuit demanding damage recovery under the 1916 AD Act lodged against the import of large newspaper printing presses and components in May 2004, the US District Court handed down a judgment ordering a Japanese company to pay damages that amounted to about ¥4 billion. In response, Japan introduced the Special Measures Law (Damage Recovery Law), which enables Japanese companies that have incurred damages through lawsuits under the 1916 AD Act to recover these damages, and put the law into effect on December 8, 2004.

Meanwhile, in October 2004, a bill was submitted adding an article repealing the 1916 AD Act to the Omnibus Tariff Bill. Following approval by the House of Representatives and the Senate, the bill was signed into law by the President on December 3, 2004, thereby repealing the 1916 AD Act. However, the repealing law carried a grandfather clause that the effect of the repeal did not extend to court cases pending on the day of the repeal. Thus, the lawsuit regarding the import of large newspaper printing presses and components continued. In June 2006, the Japanese company lost the case and was forced to pay a large amount of damages.

In order to preserve the profits the US company obtained through winning the lawsuit, the US company filed an anti-suit injunction preventing the Japanese company from filing suit under the Special Measures Law in Japan to the US District Court. In response, the District Court issued a preliminary anti-suit injunction prohibiting the Japanese company from filing a suit in Japan to obtain relief under Japan’s Special Measures Law. The Japanese company then submitted an appeal to the US Federal Court of Appeals in complaint of this injunction. In August 2006, the Government of Japan submitted an *amicus brief* to the US Court of Appeals arguing that the preliminary anti-suit injunction should be vacated on the grounds that it invalidated remedy measures provided by Japan relating to damages incurred by private individuals through measures in violation of international law and thus should not be justified from the

viewpoint of international comity.

Japan will continue to seek to vacate the anti-suit injunction in order to ensure that it does not infringe Japan's sovereignty and the legitimate rights of access to courts that the Japanese company has, and will actively participate in the litigation process in the U.S.

## <China>

### **Correction of Tariffs on Automobile Parts**

For the purpose of increasing the capacity of domestic vehicle and auto parts manufacturers and strengthening the collection of tariffs on imported automobile products in China, the Automotive Policy Order (APO), issued in June 2004, adopted a measure providing that, if imported automobile products are certified as having the characters of whole vehicles ((i) knockdown parts, (ii) a combination of assemblies (e.g. vehicle bodies, engines), or (iii) the total price of imported parts accounts for 60% or more of the total value of the finished automobile) they shall be subject to the 25% tariff rate for whole vehicles instead of the 10% tariff rate for auto parts. Since April 1, 2005, the measure for certifying the character of whole vehicle has been partially put into force. Although it was scheduled to be applied to imported parts that exceed criterion (iii) above from July 1, 2006, the Government of China announced in the same month that it would be postponed for two years.

Japan had informal bilateral consultations on the issue in May and June 2006. However, China has only repeated that it considered the measure to be consistent with WTO agreements. In addition, Japan expressed its concern at various opportunities, such as at the Japan-China Economic Partnership meeting (July and December 2006), the WTO Market Access Committee (October 2006), and the WTO Council for Trade in Goods (November 2006). However, there has been no specific reply from China.

On this issue, the U.S., the EU and Canada requested consultation with China pursuant to WTO dispute settlement procedures in March and April 2006. The consultation was held in May 2006 and Japan participated as a third party. The consultation nonetheless failed to bridge the difference of opinions among the parties. Therefore, a panel was established pursuant to requests from the above three countries and region at the meeting of the DSB in October 2006. The first panel meeting is scheduled to be held in May 2007. Japan will participate as a third party in the panel proceedings and continue to request for improvement through bilateral talks, etc.

**Operation and Improvement of its Subsidy System in a Transparent Manner and in accordance with WTO Agreements** <new item>

Upon its accession to the WTO in 2001, China committed to notify the WTO of the subsidies it grants and maintains pursuant to the Agreement on Subsidies and Countervailing Measures (ASCM), and to eliminate “export subsidies” and “subsidies contingent upon the use of domestic over imported goods” provided as prohibited subsidies under Article 3 of the ASCM.

China finally notified the first notification of its subsidies in April 2006. However, Japan is concerned about the fact that the notification included subsidy programs that appear to be “export subsidies” and “subsidies contingent upon the use of domestic over imported goods” that China had committed to eliminate upon its accession to the WTO.

While in general Japan appreciates China’s efforts to notify of its subsidies, there have been some concerns that it appears to maintain measures that are inconsistent with WTO agreements. Therefore, Japan has sought clarification regarding their consistency of the notified subsidy with ASCM, together with the situation surrounding the elimination of prohibited subsidies, at the WTO Committee on Subsidies and at bilateral meetings. However, China has not yet provided satisfactory replies and the subsidy programs are still not transparent.

In this situation, the U.S. and Mexico stated that “export subsidies” and “subsidies contingent upon the use of domestic over imported goods” were included in the subsidy programs of China, and requested bilateral consultations pursuant to the WTO dispute settlement procedure in February 2007. In order to obtain a clearer explanation, as well as information regarding the subsidy programs of China and the situation on their implementation, Japan participated in the WTO consultations that were convened on March 20 as a third party.

Japan will seek further clarification on the subsidy programs of China in partnership with other member states, and continue to make approaches to China at WTO and bilateral meetings to ensure that subsidies inconsistent with the WTO ASCM are not granted and maintained.

**Handling of Counterfeit, Pirated and Other Infringing Products**

Although China implemented a series of legislative amendments concerning measures against counterfeit, pirated and other infringing products when it acceded to the WTO, its legislative systems and enforcement are still inadequate, and examination procedures take a long time. It is essential to implement measures to strengthen the protection of rights holder.

Through various bilateral and multilateral conferences and frameworks including a

joint mission with the government and the International Intellectual Property Protection Forum (IIPPF) in June 2006, the Japan-China Economic partnership conference held in July and December of 2006 and the WTO/TRIPS Council, Japan requested that China improve domestic legislation, enforce legal protection appropriately and effectively and strengthen administrative and judicial enforcement.

In addition, Japan has provided support for training the personnel of relevant organizations such as customs, police, courts and administrative agencies that deal with intellectual property rights. Japan has also provided support for the improvement of legal systems in China's administrative and judicial institutions through exchanges of opinions and symposiums with organizations including the Study Group for Amendment of China's Patent Law in September 2006, with the Supreme People's Court and the Supreme People's Procuratorate Office in November and December of the same year, and with The State Council Legislation Office and The General Administration for Industry and Commerce in December. These efforts are aimed at solving problems associated with both personnel and institutions.

Furthermore, the Office of Intellectual Property Protection, the Government's unified contact established in METI, takes the initiative in supporting various activities, such as responding to the requests of individual enterprises for advice and information and exchanging opinions with the Chinese Government and industry by field of business. Japan also conducted questionnaire surveys to figure out the damage suffered by Japanese enterprises and the current status of controls by Chinese authorities.

Some improvement has been observed, as evidenced by the increase in the number of criminal prosecutions for infringement of intellectual property and in April 2007 criminal thresholds for units were lowered. However, the abundance of counterfeit, pirated and other infringing products is still a major concern. The damage suffered by Japanese companies has been huge and, accordingly, Japan will continue to request that China enforce legislation appropriately, take steps to strengthen criminal and administrative controls, and provide information regarding intellectual property enforcement.

#### **Improvement with regard to Inappropriate Application of Anti-dumping Measures**

Since China's accession to the WTO in December 2001, it has initiated 117 anti-dumping investigations (as of March 2007), 26 of which involve Japanese products. The number of anti-dumping investigations in China has risen markedly compared to the period before its accession. In China, there are various problems including the following:

- (i) The Ministry of Commerce (MOFCOM, China's investigating authority)

determined the initiation of investigation without examining the accuracy and adequacy of the evidence provided in the application.

- (ii) It was unclear how MOFCOM evaluates all relevant economic factors and indices having a bearing on the state of the industry, and MOFCOM did not disclose sufficient basis of “an objective examination” regarding a causal relationship between the dumped imports and injury to the domestic industry, in particular separating and distinguishing the injurious effects of other causal factors from the effect of dumped imports.
- (iii) MOFCOM made a determination of injury based on the volume of imports from all countries and territories under investigation including the import from a particular country that was treated as *de minimis* margins and not considered to be “dumped imports.”
- (iv) The authorities that apply the “facts available” shall provide the interested parties with the reason for the rejection, but MOFCOM did not give the reason nor full opportunities for comments.
- (v) MOFCOM determined individual margins of dumping for exporters or producers that registered as respondents after the questionnaires were sent to only the respondents. However, MOFCOM uniformly applied unfair margins from several dozens of percent to over 100% to the other exporters or producers.

Japan requested that China improve the procedures and the practices under the AD investigation at the meetings, including the regular meeting between METI and MOFCOM in April 2006 and the Transitional Review Mechanism on China at the Anti-Dumping Committee in October 2006. Furthermore, the Government of Japan’s comments were submitted to MOFCOM where Japan found inappropriate practices and inconsistent procedures with WTO Agreement in each case. As the result of the above, there were some examples where China improved its actions raised by Japan (such as relating to (iii) above). Japan will continue to make further strong approaches to MOFCOM in order to implement AD systems consistently with WTO agreements.

#### **Improvement of Import Regulation on toxic chemicals**

Foreign companies that export chemicals listed in the “List of Toxic Chemicals Severely Restricted in the People’s Republic of China” to China were obliged to pay charges of US\$10,000 to the State Environmental Protection Administration (SEPA) for each contract and to apply for issuance of a “Registration Certificate for Environmental Management on the Import and Export of Toxic Chemicals.” In order to strengthen regulations for the import and export of toxic chemicals, SEPA revised the List of Toxic

Chemicals on December 28, 2005, and added 158 chemicals to the 31 items listed in February 1995, when the original List was put into effect. This revision was put into effect on January 1, 2006.

Japan questioned the inconsistency of the revision with the WTO agreements, as well as expressing concerns regarding damage to the exports of chemicals and to Japanese user companies through demarches by the Japanese Embassy in Beijing to SEPA and the Ministry of Commerce, at the regular meeting between METI and the Ministry of Commerce, etc. As a result, there was a reply from China at the Japan-China Economic Partnership meeting in July 2006, “The registration fee of US\$10,000 is not charged with each sales contract; once a company obtains a registration certificate, it is able to import any number of times during the period of its validity (two years).” The most serious concern for Japan was therefore eliminated.

However, there remain questions about the inconsistency of this system with the WTO agreements. Furthermore, although a revision to the “List of Toxic Chemicals Severely Restricted in the People’s Republic of China” was announced on December 30, 2006 and put into effect on January 1, 2007, it was not notified to the TBT Committee in advance. Japan will take every opportunity to request that China correct this problem.

#### **Correction of Tariffs on Photographic Film**

In the tariff concessions provided by China, it committed to reduce tariffs on photographic products (HS 37) to 0-53.5% *ad valorem* as of 2002. However, for around half of the photographic products covered (37 items, including ordinary photographic film), the government of China has failed to apply the concession rates committed to at the time of its WTO accession and instead imposes specific duties. When translated into *ad valorem* terms, the specific duties were much higher than the concession rates.

Since 2002, Japan has raised this problem and urged China to fulfill its WTO obligations on numerous occasions, in particular at the Vice Minister-level regular meeting with the Chinese Ministry of Commerce in April 2005, the expert meeting in August, and high-official level meetings in October. As a result, in the revision of tariff rates published in January 2006, although there remain specific duties, *ad valorem* duty equivalent rates on some of the items of Japan’s interest were reduced to close to the levels of the bound tariff rates that China had committed.

Furthermore, Japan discussed and pointed out this problem at the Japan-China Economic Partnership meeting in July 2006 and the WTO Market Access Committee in October 2006. In November 2006, the Japanese Embassy in Beijing submitted written requests to the Ministry of Finance and the Ministry of Commerce, requesting that China correct this problem. As a result, by the 2007 revision of customs tariff schedules,

although there remain specific duties, the duties on eight photographic film items were reduced to comparable levels of tariff concession.

### <European Union>

#### **Correction of Tariffs on Products Covered by the Information Technology Agreements** <new item>

In the EU, while computers, computer-related equipment, semiconductors and other products subject to the WTO/ITA (Information Technology Agreement) are imported free of duties, high tariffs are imposed on electrical appliances such as television and video apparatus not covered by the ITA. Amid the progress in technological convergence involving these products in recent years, the EU has already imposed or is currently considering imposing custom duties on products covered by the ITA through arbitrary changes of its tariff classifications.

Given that technological developments take place quickly in the IT sector, the ITA from its beginning addressed the need to respond to technological progress by, for example, providing, “Each party's trade regime should evolve in a manner that enhances market access opportunities (for information technology products)” (refer to the first paragraph of the ITA declaration) and stipulating for agreement by consensus to incorporate additional products covered by the ITA. However, Japan is seriously concerned that the recent development taking place in the EU to impose tariffs on certain IT products that have incorporated multiple functions through technological development could go against the basic principle of the ITA, as well as its achievements to date..

In December 2006, Minister of Economy, Trade and Industry Akira Amari sent a letter to European Commissioner for Trade Peter Mandelson requesting action to resolve the problem, and there were also meetings between Minister Amari and Commissioner Mandelson and between the Vice-Minister of METI and the Director General for Trade of the European Commission to discuss resolution of this problem. Japan will continue to raise the issues toward a resolution, taking every possible opportunity such as bilateral negotiations and the WTO/ITA Committee.

#### **Registration, Evaluation and Authorization of Chemicals (REACH)**

In May 2003, the European Commission announced a draft regulation on the Registration, Evaluation and Authorization of Chemicals (REACH).

Although the REACH regulation's basic principles of human health and environmental protection are understandable, Japan, out of concern that the draft

regulation includes some contents that might become trade-restrictive depending on the application of the regulation, sought amendment to the draft regulation by taking such opportunities as the WTO/TBT Committee and the Japan-EU Regulatory Reform Dialogue. Subsequently, the regulation adopted by the European Parliament in November 2005 and the political agreement worked out at the EU Council on Competitiveness in December 2005 included the idea of “one substance, one registration” and the listing of chemical substances for registration, which represented significant improvements of the draft regulation. The REACH draft regulation, which finally did not reflect the Japan’s request concerning the exemption of polymer-constituting monomers from the obligation of the registration, was adopted by the EU Council of Environment Ministers on December 18, 2006, for enforcement from June 1, 2007.

The European Commission is now in the process of drawing up guidelines for the administration of the REACH regulation in preparation for its implementation. Japan will continue to make necessary approaches to the EU in order to ensure that the guidelines are feasible, sufficiently clearly defined and not discriminatory against non-EU companies.

#### **Directive on Waste Electrical and Electronic Equipment (WEEE)**

#### **Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS)**

WEEE is designed to prevent the generation of waste electrical and electronic equipment and also to promote the reuse, recycle or other forms of reuse of waste equipment for the purpose of reducing the disposal of waste equipment. RoHS, meanwhile, is designed to protect human health by converging laws and regulations of the EU member states concerning the restriction of the use of certain hazardous substances in electrical and electronic equipment and also to contribute to the reuse and disposal of waste electric and electronic equipment in a manner harmless to the environment. Both Directives took effect in February 2003.

Concerning the WEEE Directive, the EU member states are not taking unified approaches regarding the method of registration of manufacturers and the definition of “put on the market” of products concerned. Also, standards for the marking that is supposed to be affixed to products subject to the Directive on WEEE have yet to be developed and Japan is strongly interested in further clarification of the scope and definition of products subject to the regulation. Concerning RoHS, Japan is concerned that the process of defining the scope of products subject to regulation and those exempted items still remains to be clarified. As Japan sought to improve the situation on

these points at the Japan-EU Regulatory Reform Dialogue, the European Commission in May 2005 published FAQs (frequently asked questions) on the Directives on WEEE and RoHS. However, much remains to be clarified even after the FAQ publication. (Regarding the Directive on RoHS, the European Commission also issued a document on guidance for implementation in May 2006 as the guideline for the regulation's implementation in EU member states.) Japan requested appropriate further action at the Japan-EU Regulatory Reform Dialogue in March 2007 and will continue to urge the European Union for clear and unified administration of the Directives so that the regulations will not become unnecessarily trade-restrictive, as prohibited under the TBT Agreement.

### < Indonesia >

#### **Correction of Tariffs on digital cameras**

Indonesia, one of the member countries of the ITA, agreed to bind and eliminate tariffs on digital cameras beginning in 2003. In practice, however, Indonesia imposed 5% duties on them in 2003 onward, and in January 2004 it changed the classification for digital cameras and started imposing 15% duties on some of them.

Japan has taken every possible opportunity to ask Indonesia to improve the situation, e.g. through a series of bilateral consultations including the meeting between then-Minister of Economy, Trade and Industry Toshihiro Nikai and Indonesian Vice President Jusuf Kalla in January 2006. Consequently, in July 2006, the Governments of Japan and Indonesia agreed that Indonesia would gradually eliminate tariffs on digital cameras on the basis of most-favored-nation treatment over a period between January 2007 and January 2009. The agreement was confirmed in a letter in October 2006 of the Indonesian Minister of Industry Fahmi Idris addressed to the Minister of Economy, Trade and Industry Akira Amari.

The revised customs tariff schedule of Indonesia issued at the end of 2006 (implemetated from January 1, 2007) confirmed the revised tariff rate for digital cameras to be in line with the above-mentioned agreement. The Government of Japan will closely monitor the implementation of the agreement by the Government of Indonesia.

### < Malaysia >

#### **Handling of Discriminatory Taxes on Automobiles**

In Malaysia, automobiles manufactured by certain domestic companies are

designated as “national cars,” while automobiles manufactured in Malaysia by other companies, including Japanese-affiliated companies (non-national cars), are subject to a discriminatory excise duty. In the course of negotiations on the Japan-Malaysia Economic Partnership Agreement (EPA), Japan asked Malaysia to provide information on its national car policy and requested that Malaysia eliminate discriminatory treatment under the excise duty. On October 19, 2005, the Government of Malaysia announced its new Automobile Policy, the new customs tariff schedule and the new excise duty rate. Under these changes, the Common Effective Preferential Tariff (CEPT) applied to ASEAN member states and MFN tariff applied to non-ASEAN countries for completely built-up (CBU) passenger cars were reduced to 15% and 30%, respectively, and the excise duty rates were reduced by 10% to 50%. These measures effectively eliminated discriminatory treatment under the excise duty between national cars and non-national cars.

**< Asian Countries and Territories (ASEAN Countries, Republic of Korea, Chinese Taipei, Hong Kong and India) >**

**Handling of Counterfeit, Pirated and Other Infringing Products**

While the need is growing for the protection of intellectual property rights in Asian countries and territories, much remains to be improved in terms of legal systems and their administration and it is absolutely essential to strengthen the protection of the holders of intellectual property rights.

Japan has requested—through various opportunities and frameworks of multilateral as well as bilateral discussions, such as APEC, WIPO, WTO, etc.—that the countries and territories administer relevant legal systems appropriately and effectively and strengthen enforcement efforts by administrative and judicial branches.

Japan has also supported the training of personnel at related local organizations such as customs offices, police and administrative offices related to intellectual property rights, making strenuous efforts toward solving the problem in terms of both personnel and institutional aspects.

As ASEAN countries often become the locations of the distribution of infringing products, there is the need to promote an exchange of information on infringement cases of intellectual property rights among countries concerned. Japan has been leading international efforts to strengthen the protection of intellectual property rights, including the joint proposals, along with the United States and the Republic of Korea, (Hong Kong about the first guideline) of “APEC Model Guidelines for Effective Public Awareness Campaigns on Intellectual Property Rights” and “APEC Model Guidelines to Secure Supply Chains against Counterfeit and Pirated Goods,” agreed upon at the

APEC Ministerial Meetings in November 2006.

Further, mainly through the Office of Intellectual Property Protection, the Government's unified contact established in METI, Japan supports various activities, for example, responding to the requests of individual enterprises for advice and the provision of information.

However, the actual proliferation of counterfeit, pirated and other infringing products in Asian countries and territories, including the manufacture and distribution of infringing products, still poses great concern. Also, given the serious damage suffered by Japanese companies, Japan will continue to request that these countries and territories provide information on their appropriate improvement and administration of the legal systems concerned with intellectual property rights enforcement.