

## **METI Priorities Based on the 2013 Report on Compliance by Major Trading Partners with Trade Agreements (April 22, 2013)**

The 2013 Report on Compliance by Major Trading Partners with Trade Agreements — WTO, FTA/EPAs, and BITs — was today adopted by the Industrial Structure Council's Subcommittee on Unfair Trade Policies and Measures, and published. The Report addresses the consistency of wide-ranging trade policies and measures of major trading partners with WTO agreements and other international rules, and requests improvements of those policies and measures.

As for recent developments in trade policies and measures of individual countries, the number of protectionist measures which G20 members have introduced remains at high levels albeit on a decreasing trend, while global economic recovery that has been continuing is slowing down due to the fiscal crisis in Europe etc. We are strongly concerned to see that regarding the imposition of trade remedy measures, tariff increases and import restrictions in particular, in some cases introduction by one country of a protectionist measure is followed by other countries with similar measures. Surveillance over protectionist measures has been strengthened globally in order not to lead to destabilization of free trade system.

With close attention to the above trend, METI continues its efforts to solve each of the addressed measures. The cases it currently gives a high priority in its trade policy are enumerated.

In addition, the current status of each policies and measures specified in last year's METI Priorities and METI's relevant actions can be found in the annexed "Status of Recent METI Priorities in 2012," which shows significant improvements in various cases.

### **Issues for which Solutions Continue to be Sought by Various Means including Bilateral or Multilateral Consultations and the WTO Dispute Settlement Mechanism**

With regard to the following issues, solutions will be sought through various means such as bilateral consultations, the fora for the improvement of the business environment introduced by EPAs, mutual review mechanisms, including WTO standing committees, and the WTO dispute settlement mechanism.

#### **○ China**

- **Correction of Inappropriate Regulation/Implementation of Anti-dumping (AD) Investigations**

#### **○ Indonesia**

- **Elimination of Export Restrictions on Mineral Resources (i.e. Nickel etc.) and Related Local Content Requirements**

#### **○ Russia**

- **Correction of Discriminatory System/Implementation of Transport Vehicle Recycling Fee**

#### **○ Brazil**

- **Correction of Discriminatory System/Implementation of Automobile Industrial Product Tax (IPI)**

#### **○ Ukraine**

- **Revocation of Safeguard Measures against Automobiles**

#### **○ The United States**

- **Improvement of Sunset Review Practice and Early Termination of Inappropriate Long-Standing AD Duty Orders on Japanese Products**

### **Issues Already Referred to the WTO Dispute Settlement Mechanism**

The following issue has already been referred to the WTO dispute settlement procedures by Japan. Japan will keep seeking improvements of the measures concerned through the WTO mechanism.

- **China**
  - **Elimination of Export Restrictions on Raw Materials (i.e. Rare Earths etc.)**
  - **Elimination of AD Duty Measures on High-Performance Stainless Steel Seamless Tubes Originated in Japan**
  
- **Canada**
  - **Abolition of Local Content Requirements in the Ontario's Feed-in Tariff Program for Renewable Energy**
  
- **Argentina**
  - **Elimination of Import Restrictions on Wide-Ranging Items**

### **Issues on which Japan Urges Prompt Implementation of the WTO Recommendations**

With regard to the following issues as a result of recourse made by Japan and other Members to the WTO dispute settlement procedures, the WTO Dispute Settlement Body (DSB) adopted recommendations that require the United States and the EU to bring their measures into conformity with relevant WTO Agreements. Japan will continue urging these two Members to implement the WTO recommendations promptly and fully and to take appropriate action in accordance with the recommendations.

- **The United States**
  - **Confirming Abolition of Zeroing**
  - **Halt of Distribution of Duty Revenues Collected through AD and Countervailing Duty Measures to U.S. Companies Based upon the Byrd Amendment**
  - **Prompt Implementation of the WTO Recommendations on AD Duty Measures on Hot-Rolled Steel Products from Japan**
  
- **EU**
  - **Elimination of Import Duties Imposed on IT Products Specified as Non-Dutiable by the WTO Information Technology Agreement**

(ANNEX) Status of Recent METI Priorities in 2012

Country/region	Matter in Priority	State of improvement/effort
China	Correction of Inappropriate implementation of Anti-dumping Investigations	<p>In November 2012, Chinese Ministry of Commerce (MOFCOM) made a final ruling of imposing AD duties on high-performance stainless seamless steel tubes originated in Japan. As the measure appears to be inconsistent with the AD Agreement for the errors in the determination of injury and causation, and deficiencies in the investigation procedures, Japan requested consultations with China under the WTO dispute settlement procedures in December 2012. The bilateral consultations were held on January 31 and February 1, 2013.</p> <p>Besides, in other individual cases, METI has pointed out the inconsistencies with the AD Agreement through the submission of government opinions, participation in public hearings, the AD Committee and others, and further, exchanged views with MOFCOM over AD cases involving Japanese industries.</p> <p>We will continue our efforts to solve the dispute over AD on the high-performance stainless seamless steel tubes through the WTO dispute settlement procedures. Moreover, regarding other individual cases, we will tightly monitor whether the Chinese investigation authorities operate the AD measures in a WTO-consistent manner, and will strongly urge China to do so, utilizing measures available under the WTO agreements, if there is no improvement for the points we have raised.</p>
	Improvement of the Discriminatory Rules and Practices in Government Procurement	<p>Regarding the Indigenous Innovation Product Accreditation System, in May 2011, the United States announced as an achievement of the Third Meeting of the U.S.-China Strategic &amp; Economic Dialogue that China agreed to revise the draft regulation not to link the provision of government procurement preferences to indigenous innovation products. Later on June 28, 2011, the Chinese Ministry of Finance published on its homepage the “Notice of Revocation of Three Documents including Administrative Measures on Budgeting for Government Procurement of Indigenous Innovative Products,” and thereby suspended implementation of part of relevant regulations of this system.</p> <p>Moreover in November 2011, the United States announced, as an achievement of the U.S.-China Joint Commission on Commerce and Trade, China informed that the State Council had issued a measure requiring local governments to eliminate by December 1, 2011 any catalogues or other measures linking innovation policies to government procurement preferences.</p> <p>Japan continues monitoring the status of implementation as to whether China will change the system for both central and local governments in order for the indigenous innovation system not to be a preferential measure in government procurement. In addition, while monitoring their developments, Japan is requesting correction of other preferential treatments of domestic products in government procurement—especially, those with de facto requirement of technology transfer—including the draft implementation regulation of government procurement and the draft administrative measure on government procurement of domestic products.</p>

Country/region	Matter in Priority	State of improvement/effort
China	Improvement in Insufficient Regulations of Counterfeit, Pirated and Other Infringing Products	<p>We have been conducting comparative study of Chinese laws and regulations in order to promote understanding of the Anti-Counterfeiting Trade Agreement (ACTA) based on the agreement at the Third Japan-China Intellectual Property Rights WG in October 2011 while working simultaneously on requests for improvement of system as well as cooperation through a Japanese government-private sector joint mission to China for intellectual property protection in September 2012 and the like.</p>
	Addressing Export Restrictions on Raw Materials	<p>In December 2009, Japan joined a panel set up per request of the United States, et al. (9 items: bauxite, coke, fluorite, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus and zinc, are covered) as a third party, and later expressed its opinion in the proceeding. In July 2011, the panel published a report stating that China's export quotas and export duties for the above 9 items are not consistent with the WTO agreements. In August 2011, China appealed. However, at the end of January 2012, an Appellate Body report that mostly sustained the panel's findings was published. In response, China abolished the export duties on seven items—bauxite, coke, fluorspar, magnesium, manganese, silicon metal, and zinc—at the same time changed the rate of duties on yellow phosphorus to that within the ranges stipulated by the WTO accession protocol. In addition, it abolished the export quota for bauxite, coke, fluorspar, silicon-carbide, and zinc.</p> <p>In March 2012, Japan, jointly with the United States and the EU, made a request for WTO consultations on China's export restrictions (export quotas, export duties, minimum export prices) on rare earths, tungsten and molybdenum. However, it was not resolved by consultations. Accordingly, in June of the same year, Japan, jointly with the United States and the EU, requested the establishment of a panel, which was established in July of the same year. It is now in the process.</p>
Asian Countries and Territories <small>(Note)</small>	Improvement in Insufficient Regulations of Counterfeit, Pirated and Other Infringing Products	<p>We adopted the "Tokyo IP Statement" which confirmed Japan's cooperation for reinforcement of intellectual property rights protection at the First Heads of Intellectual Property Offices (IPOs) Meeting in February 2012. At the Second Heads of IPOs Meeting in July 2012, we concluded and signed a memorandum of cooperation concerning intellectual property rights with the Intellectual Property Offices of each ASEAN country. Through these efforts, we will promote the measures against intellectual property infringing goods by raising the awareness of people about intellectual property rights. At the same time, we will continue requesting these countries and territories to improve relevant legislation and strengthen enforcement efforts in multilateral and bilateral discussions under the auspices of APEC, WIPO, and WTO etc., and continue to support the development of human resources in the relevant national or regional organizations.</p>

Country/region	Matter in Priority	State of improvement/effort
Indonesia	Addressing Export Restrictions on Mineral Resources and Local Content Requirements	<p>Japan has repeatedly expressed concerns at the ministerial level, and further, at a subcommittee on investment based on the Japan-Indonesia EPA and the WTO Committee on Trade-Related Investment Measures (TRIMs), regarding various measures based on the new Mining Law and related regulations (high value-added obligations and ban on ore export (to be implemented in 2014), export duties, stock transfer requirements to companies of Indonesian capital, control of production and export volumes, local content requirements, etc.). At the Japan-Indonesia summit in June 2012, the Japanese Prime Minister expressed concerns and requested reconsideration to Indonesian President. While the implementation in May 2012—which had been indicated by the Indonesian government at some point—was postponed, Japan will continue requesting improvement of the system and its implementation, utilizing available channels such as bilateral consultations, subcommittees based on the Japan-Indonesia EPA, and the WTO Committees.</p>
United States	Improvement of Sunset Review Practice and Early Termination of Inappropriate Long-Standing AD Duty Orders on Japanese Products	<p>In 2012, Japan requested the early termination of the long-lasting AD measures at the WTO/AD committee meetings held in spring and fall. At the WTO Trade Policy Review Mechanism (TPRM) meeting on the United States in 2012, Japan discussed the way to make determinations in sunset reviews. Japan also requested the early termination of the long-lasting measures at working-level meetings, and made in-depth consultation with the United States on the operation of sunset review procedures.</p>

Country/region	Matter in Priority	State of improvement/effort
United States	Confirming Abolition of Zeroing	<p>In January 2007, the WTO Appellate Body fully accepted Japan's claims and concluded that zeroing is inconsistent with the WTO agreements. However, since the United States had not clarified the particulars of actions taken by the deadline for the WTO recommendations, Japan asked for the establishment of a compliance panel in April 2008. As a result, in August 2009, the WTO Appellate Body established the United States had failed to comply with the DSB's recommendations and rulings. Since the United States has not implemented the above ruling yet, in April 2010, Japan requested the resumption of the arbitration procedure to determine the level of the suspension of concession against the United States. In December 2010, for public comments, the United States published proposed modifications of its methodologies, including changes to certain provisions of its regulations in response to the WTO recommendations and rulings concerning zeroing. (Japan and the United States accordingly agreed on December 10, 2010 to suspend the arbitration procedures).</p> <p>In response to the announcement by the United States, Japan held unofficial talks with the United States, and discussed the substantive and procedural points of the draft amendment of the Department of Commerce regulation. On February 6, 2012, the United States consequently agreed on a memorandum for resolution of this dispute with Japan. As agreed in this memorandum, on February 14, the United States published the amendment to the Department of Commerce regulation in an official gazette. Moreover, in June of the same year, following the memorandum, the United States recalculated with administrative authority the countervailing duty rate on the Japanese item (stainless steel sheet)—according to the revised rule based on Section 129 of the Uruguay Round Agreements Act—and changed it from 0.54% to 0.00%.</p> <p>In response to the U.S. measure above, Japan withdrew the application for arbitration on countervailing measures based on the memorandum (As for arbitration procedures, Japan, jointly with the United States, notified that there would be no need for arbitrators to make a determination) in August of the same year.</p> <p>Japan welcomes the fact that the United States made an important step toward the resolution of this dispute, and will closely monitor the implementation of the new regulation of the United States so that the zeroing measure will be completely abolished.</p>
	Halt of Distribution of Duty Revenues Collected through Anti-dumping and Countervailing Duty Measures to U.S. Companies Based upon the Byrd Amendment	<p>The U.S. repealed the Byrd Amendment in February 2006. However, since the distribution of duties will be continued under the transitional clause, Japan has urged the United States to halt the distribution and extended the term of the countermeasures every year. As the United States had not yet ceased the distribution, Japan has again extended the term of the countermeasures by one year with tax rates changed and so on in response to the amount of the distribution most recently in September 2012.</p>

Country/region	Matter in Priority	State of improvement/effort
United States	<p>Prompt Implementation of the WTO Recommendations on Anti-dumping Measures on Hot-Rolled Steel Products from Japan</p>	<p>Following the continued request for the early implementation of the WTO recommendation at regular DSB meetings discussing the issue as an agenda/question at working-level talks between Japan and the United States and in the proceeding of TPRM for the United States in 2012.</p> <p>(In June 2011, as a result of the sunset review by the United States authorities for the AD measure on hot-rolled steel products from Japan, which measure had been enforced since 1999, the measure was terminated retroactively as of May 26, 2010.)</p>
E U	<p>Elimination of Import Duties Imposed on IT Products Specified as Non-Dutiable by the WTO Information Technology Agreement</p>	<p>Japan requested consultations under the WTO dispute settlement procedures in cooperation with the U.S. and Chinese Taipei in May 2008. However, Japan did not receive a satisfactory response from the EU at the consultations. Therefore, Japan requested the establishment of a panel in August 2008. In August 2010, the panel has released a report with respect to the ITA issue. The report supports all the claims of Japan and concluded that the EU's treatment is inconsistent with the WTO agreement. Since the EU did not file an appeal to the WTO Appellate Body, the report was adopted at the DSB meeting on September 21, 2010 as final and conclusive. In December 2010, Japan and the EU agreed that the reasonable period of time for the EU to implement the recommendation and ruling of the panel expires on June 30, 2011. Later, as implementing measures, the EU announced amendment to the inconsistent part of the customs tariff table in an official gazette dated June 25, 2011, and made it effective as of July 1, 2011. In addition, the EU announced a new regulation concerning classification criteria for multi-functional machines in an official gazette dated February 9, 2012, and another regulation concerning classification criteria for multi-functional machines and set top boxes in an official gazette dated February 21, 2012. Concerning monitors, the EU abolished an infringing customs regulation in 2009. However, a new customs regulation has not been announced.</p> <p>Japan will continue contacting and monitoring the EU so as to ensure that EU's implementation measures will be designed and operated in conformity with the panel report.</p>

Country/region	Matter in Priority	State of improvement/effort
Canada	Abolition of the “Local Content Requirement” in the Ontario’s Feed-in Tariff Program for Renewable Energy	<p>The Ontario Provincial Government in Canada adopted certain local content requirements in its fixed-price purchase program on electricity generated from renewable energy source, such as solar and wind power (Feed in Tariff Program). Japan considers that such a measure is inconsistent with Article III of the GATT which stipulates the national treatment obligations and Article II of the TRIMs Agreement, and further, it would fall under the definition of a “prohibited subsidy” (subsidies contingent on the use of domestic over imported goods) as specified in Article 3 of the WTO SCM (Subsidies and Countervailing Measures) Agreement. In September 2010, Japan requested consultations under the WTO with Canada and continued bilateral consultations. The dispute was not resolved despite the talks. Japan thus made a request for the establishment of a panel in June 2011. In December 2012, the panel published a report that accepted most of Japan’s arguments. After that, Canada appealed in February 2013, followed by the appeals of Japan and the EU, and it is currently under deliberation by the Appellate Body.</p>
Argentina	Improvement of Application of the Non-Automatic Import Licensing System	<p>On August 21, 2012, Japan, jointly with the United States and Mexico, requested consultations with Argentina under the WTO dispute settlement procedures. The consultations with Argentina were held on September 20 and 21, 2012. As the issue was not solved by the consultations, Japan, jointly with the United States and the EU, requested the establishment of a panel, which was established on January 28, 2013.</p> <p>Although there has been some progress including the abolition of non-automatic import licensing by Argentina on January 25 -just before the establishment of the panel- other measures (prior import declaration requirement and the trade balancing requirements, etc.) are still in place.</p> <p>Japan, in cooperation with the United States and the EU, will continue to make efforts to resolve the issue through the WTO dispute settlement procedures.</p>

Note: Asian Countries and Territories means ASEAN countries, South Korea, Chinese Taipei, Hong Kong, and India.

## **Summary of METI Priorities in 2013**

**Set forth below are a summary of METI priorities in 2013:**

**<China>**

### **Correction of Inappropriate Regulation/Implementation of AD Investigations**

China initiated AD investigations for 76 cases between 1995 and the end of March 2013. Most of the investigated products are material products, in particular, chemicals and steel products, which indicates the active use of the AD system by certain industries of China.

35 cases, among the AD investigations conducted by China, including those conducted before its accession to the WTO, are concerning Japanese products. Of the 35 investigations, in 28 cases, final determination to impose the AD measure was made. Of the 28 cases, in 21 cases, AD duties have been still imposed.

Japan has requested that China's relevant authority improve its procedures and practices which it believes to be inconsistent with the WTO agreement, at various opportunities such as talks with competent Chinese government officials, AD committee meetings or through submission of a written opinion of the Japanese government, with regard to the points indicated below:

- (1) In the determination of injury (causation), China should properly assess the impact of causes other than dumped imports on the domestic industry and "separate and distinguish" the injurious effects of these causes from those of dumped imports. Sufficient explanation of the analysis should be accordingly made.
- (2) In the disclosure of essential facts and the final determination, China should provide a sufficient explanation on the basis and method for dumping margin calculation, and clarify the sources of the facts available (FA) used in the calculation, in order to enable the interested parties to fully defend their interests.

Certain achievements have been observed for some of the problems Japan has pointed out, where some improvement is seen in individual investigations. For example, companies subject to investigation are now provided a prior notification of the initiation of investigation. However, China's practice in the AD investigations are still found deficient in many respects given the AD Agreement and the common practices conducted by investigation authorities of other countries, and therefore it is necessary to continue requesting improvements.

Regarding AD measures against Japanese high-performance stainless seamless steel tubes, Japan requested consultations with China under the WTO agreements in December 2012. The bilateral consultations were held on January 31 and February 1, 2013 (Details will be provided later in the section on this issue).

### **Elimination of Export Restrictions on Raw Materials (i.e. Rare Earths etc.)**

The Chinese government maintains the export licensing requirements for a number of raw material items in order to exercise control over the parties permitted to export these items and the quantities that can be exported. Further, the Chinese government imposed high rates of export taxes on exports of these products, for example, 40% on coke, 30% on zinc, and up to 25% on rare earths in 2011. These measures are inconsistent with China's WTO obligations, specifically, under GATT Article XI, which sets forth the general elimination of quantitative restrictions, and under China's Protocol on Accession, including commitments on the removal of export duties or the ceiling of export duty rates, while the Chinese government alleges that they are WTO-consistent because they are measures taken for environmental protection and conservation of exhaustible natural resources.

In this connection, in June 2009, the United States and the EU simultaneously requested consultations under the WTO Dispute Settlement rules, followed by Mexico in August 2009, with respect to measures on the following nine items and processed or semi-processed products using them as raw materials: bauxite, coke, fluorspar, magnesium, manganese, silicon-carbide, silicon metal, yellow phosphorus, and zinc. Since the consultation failed to

achieve a solution, a panel was established in December 2009 (DS394, 395 and 398). Japan participated in the dispute as a third party. China argued that these export restrictions were taken to protect the environment and to preserve exhaustible natural resources, and thus, consistent with the WTO rules. However, on July 5, 2011, the panel published a report that China's measures are not consistent with Article XI (the general prohibition of quantitative restrictions) of GATT, China's WTO accession protocol (abolition of export duties and setting of the ceiling export duty rate), and other relevant provisions. In August 2011, China appealed. However, at the end of January 2012, the Appellate Body published a report that sustained most of the panel findings and rulings. In response, China abolished the export duties on seven items—bauxite, coke, fluorspar, magnesium, manganese, silicon metal, and zinc—at the same time changed the rate of duties on yellow phosphorus to that within the ranges stipulated by the WTO accession protocol. In addition, it abolished the export quota for bauxite, coke, fluorspar, silicon-carbide, and zinc.

In March 2012, Japan, jointly with the United States and the EU, made a request for WTO consultations on China's export restrictions (export quotas, export duties, minimum export prices) for rare earths, tungsten and molybdenum (DS431, 432 and 433). However, it was not solved by the consultations. Therefore, in June of the same year, Japan, jointly with the United States and the EU, requested the establishment of a panel, which was established in July of the same year. It is now in the process.

### **Elimination of AD Duty Measures on High-Performance Stainless Seamless Steel Tubes Originated in Japan**

On September 8, 2011, Chinese Ministry of Commerce (MOFCOM) started an AD investigation on Japanese high-performance seamless steel tubes (high-value-added special steel used in boilers and the like at the coal-fired power plants). Although Japan had been making requests to China on various occasions—including the Minister of Economy, Trade and Industry request to the Chinese Minister of Commerce for exclusion of Japanese products on May 12, 2012—Chinese MOFCOM made a final ruling of imposing AD duties on Japanese products on November 8, 2012.

Since the imposition of AD duties is apparently inconsistent with the AD Agreement for its errors in the determination of injury and causation, and deficiencies in investigation procedures, Japan requested consultations with China under the WTO dispute settlement procedures on December 20, 2012. The bilateral consultations were held on January 31 and February 1, 2013.

Japan will continue to make efforts to solve the issue through the WTO dispute settlement procedures.

### **<Indonesia>**

### **Elimination of Export Restrictions on Mineral Resources (i.e. Nickel etc.) and Related Local Content Requirements**

In December 2008, the Indonesian Parliament passed the amendment to the old Mining law to establish a New Mining Law, which has introduced, with respect to certain minerals including copper and nickel, the requirements for domestic concentration and refinement, the quantitative restrictions on production and exports, and local content requirements (The New Mining Law was passed on December 16, 2008, promulgated and put in force after the President's signature in January 12, 2009). Implementation regulations on the operation of the New Mining Law, which were to be introduced within one year after the entry into force of the Law, were issued in the form of the Ministerial regulation on the value-add requirements, published on February 6, 2012, and of the amendment to the relevant governmental regulation published on February 21, 2012. The latter measure sets forth that the percentage of Indonesian capital be increased up to 51% or more within 10 years after investment. These requirements impose restrictions on exports of the subject products and thus, appear

inconsistent with the relevant provisions of the Japan-Indonesia EPA as well as the WTO Agreement, and further, impose on Japanese investors the obligation to transfer shares they hold to Indonesian investors, which would be inconsistent with the provision of the Japan-Indonesia EPA investment chapter.

Japan long expressed concerns, and those about the consistency with the relevant legal obligations at the Investment Subcommittee established pursuant to the Japan-Indonesia EPA held in December 2009. In addition, at the meeting of the WTO TRIMs Committee held in October 2011, Japan raised the concerns in cooperation with the United States, and the EU. Further, the concerns about the New Mining Law were expressed, in February 2011, by the Vice-Minister of Economy, Trade and Industry to the Indonesian Economic Coordination Minister, in June 2011, by the Minister of Economy, Trade and Industry to the Indonesian Industry Minister, in September 2011, by the Minister to the Indonesian Vice-President, Economic Coordination Minister, Industry Minister and Trade Minister, in November 2011, by the Minister to the Indonesian Trade Minister, and at the Japan-Indonesia Economic Joint Forum, by the Minister and the Keidanren to the Indonesian Economic Coordination Minister, Energy and Mineral Resources Minister and Industry Minister, and again in February 2012, the Minister to a Member of Presidential Advisory Board. Moreover, at the Japan-Indonesia summit in June 2012, the Japanese Prime Minister expressed concerns and requested reconsideration to the Indonesian President. At the Japan-Indonesia Dialogue on Material & Mineral Resources Industries in August 2012, the Japanese Industry requested improvement of measures and flexible implementation again as well. At the Indonesia-Japan Joint Economic Forum in October 2012, the Minister of Economy, Trade and Industry and the Japanese Industry repeatedly raised concerns and confirmed that two countries will continue to have dialogues at various levels for an early resolution.

Japan will continue requesting for the abolishment of these WTO/EPA inconsistent measures through opportunities such as WTO related committees, frameworks including subcommittees based on the Japan-Indonesia EPA, and talks between the two countries.

#### <United States>

#### **Improvement of the Practice of Sunset Review and Unfairly Long-Term Continuation of AD Duties on Japanese Products**

The AD Agreement stipulates that any definitive AD duty shall be terminated in five years (Sunset) unless the necessity for further continuation is found. However, the U.S. practice of sunset reviews is that AD measures are continued in general as long as a domestic company files an application for a review.

Currently, there are 14 definitive AD measures imposed by the United States on Japanese products. The longest duration of the U.S. measure exceeds 34 years and the duration of the five measures exceeds 20 years. The average duration of these U.S. measures is around 18 years.

They excessively discouraged exports of Japanese companies and imposed huge tax burdens on the importers and the users in the United States. For example, some high quality and high reliability Japanese iron or steel products that have won the wide support from U.S. users are unavailable to those customers due to the U.S AD measures, and it is pointed out that the users in the United States are forced to buy other products.

Japan thus is requesting the termination of these measures in the Japan-U.S. Economic Harmonization Initiative, and at the recent meetings of the WTO AD Committee.

Japan will continue to request improvements of the U.S. practice of sunset reviews that AD measures shall be continued easily as long as a domestic company files an application, and requests the termination of the inappropriate, long-standing AD measures on Japanese products as early as possible.

### **Confirming Abolition of Zeroing**

In AD procedures, the United States applies a dumping margin calculation methodology 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. The zeroing procedure for calculating dumping margins is unfair since in actual practice it ignores transactions in which dumping is not occurring.

For this reason, Japan requested consultations with the United States under the WTO dispute settlement procedures in November 2004, and asked for the establishment of a panel in February 2005. During the panel proceedings it argued that not only the actual application of zeroing by the United States in individual AD cases, but also the zeroing methodology as such were inconsistent with the WTO agreements. The WTO Appellate Body in its report issued in January 2007 fully accepted Japan’s claims, ruling that zeroing was inconsistent with the WTO agreements throughout AD procedures, and recommended that the United States bring the zeroing measure into conformity.

However, since the United States had not fully implemented the recommendations by the end of the reasonable period of time (December 24, 2007), Japan submitted to the WTO a request for authorization to impose countermeasures against the United States in January 2008, aiming to reserve the right to invoke the countermeasures. Following this, the U.S. alleged at the DSB meeting that it had fully implemented the recommendations, even though it actually had not. Thereafter, Japan and the United States reached an agreement on subsequent procedures in March 2008, and Japan requested the WTO to establish a compliance panel to confirm the United States’ failure to take measures to comply with the recommendations in April 2008. The compliance panel in its final report issued in April 2009 fully accepted Japan’s claims, and concluded that the United States has not rectified the zeroing methodology as such and the actual application of zeroing in individual AD cases and therefore has not fulfilled its obligation to implement the WTO recommendations. The United States appealed the compliance panel’s rulings to the WTO Appellate Body in May 2009. In August, the Appellate Body issued a report fully supporting the panel report, thereby finally concluding that the United States has not fulfilled its obligation to implement the WTO recommendations and rulings.

Since no movement toward implementation has been observed, on April 23, 2010, Japan requested the resumption of the arbitration procedure to induce the United States to implement the WTO recommendations fully and promptly. The Arbitrator’s hearing with the parties took place on October 6, 2010. After that, on December 28, 2010, for public comments, the United States published proposed modification of its methodologies, including changes to certain provisions of its regulations in response to the WTO recommendations and rulings concerning zeroing. They have, however, several unclear points in the proposed modification. Therefore, in cooperation with the EU and other countries, Japan will closely monitor the U.S. movement toward the implementation and may take appropriate action, if necessary. (Incidentally, Japan and the United States agreed to suspend the arbitration procedure on December 10, 2010.)

In response to the announcement by the United States, Japan held unofficial talks with the United States, and discussed the substantive and procedural points of the draft amendment of the Department of Commerce regulation, etc. On February 6, 2012, the United States agreed on a memorandum for resolution of this dispute with Japan. As set forth in this memorandum, on February 14, the United States published the amendment to the Department of Commerce regulation in an official gazette.

Moreover, in June of the same year, following the memorandum, the United States recalculated with administrative authority the countervailing duty rate on the Japanese item (stainless steel sheet)—according to the revised rule based on Section 129 of the Uruguay Round Agreements Act—and changed it from 0.54% to 0.00%.

In response to the U.S. measure above, Japan withdrew the application for arbitration on

countervailing measures based on the memorandum (As for arbitration procedures, Japan, jointly with the United States, notified that there would be no need for arbitrators to make a determination) in August of the same year.

Japan welcomes the fact that the United States made an important step toward the resulting of this dispute, and will closely monitor the implementation of the new regulation of the United States so that the zeroing measure will be completely abolished.

### **Halt of Distribution of Duty Revenues Collected through AD and Countervailing Duties Measures to U.S. Companies Based upon the Byrd Amendment**

A certain amendment to the Tariff Act of 1930 of the United States, as widely known as the “Byrd Amendment”, provides for the distribution of duty revenues collected through AD and countervailing duty (CVD) measures to U.S. companies, including such companies 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 WTO Appellate Body found that the Byrd Amendment is inconsistent with the WTO Agreements and recommended that the United States bring it into conformity with them. However, the December 2003 deadline for implementation passed without the United States having amended or abolished the Byrd Amendment. In response to the U.S. failure to comply, an application to impose retaliatory measures submitted by Japan and seven other countries and territories including the EU was approved in November 2004. The EU and Canada implemented the retaliatory measures in May 2005, Mexico in August, and Japan in September. Japan imposed an additional duty at the rate of 15% on 15 products, including bearings and steel.

In February 2006, an act to repeal the Byrd Amendment was enacted in the United States. However, the transitional clause of the act permits the distribution of duty revenues on entries of goods made and filed before October 1, 2007. As long as the distribution continues even after the repeal of the Byrd Amendment, the inconsistency with the WTO Agreements will remain and there still remain unfair competitive advantages for U.S. producers. In consideration of this situation, Japan twice extended the effective term of the retaliatory measures by one year in September 2006 and in September 2007. Nevertheless, since no move toward a halt of distribution was observed in the United States, Japan further extended the effective term of the retaliatory measures by one year in September 2008, in September 2009 and in September 2010 with subject items and duty rates changed in response to the reduction of the amount of the distribution in the United States (An additional duty rate of 10.6% was adopted on two models of bearing products in 2008. The duty rate was changed to 9.6% in 2009, 4.1% in 2010, and 1.7% in 2011). Japan further extended the effective term of the retaliatory measures by one year in September 2012 with subject item and duty changed, because the distribution based on transitional measures was also implemented in 2011 ( a 4.0% additional customs duty imposed on one bearing item).

Japan requested the U.S. Government to cease the distribution continued based on the transitional clause on the occasions of the Japan-United States Economic Harmonization Initiative and the WTO DSB meetings. Japan will continue to cooperate with other Members to strongly urge the U.S. Government to promptly halt the distribution and correct the inconsistency with the WTO agreements.

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

With regard to the AD measures that the United States imposed on certain hot-rolled steel products from Japan in June 1999, both the panel established upon the request of Japan and the WTO Appellate Body determined that the methodology of calculating the margin of dumping was inconsistent with the WTO agreements and in August 2001, the DSB recommended that the United States bring the measure into conformity with the relevant

agreement.

During the original reasonable period of time for implementation (which ended in November 2002), the United States failed to fully implement the recommendations, including the amendment of the U.S. anti-dumping duty statute. Japan and the United States subsequently agreed to extend the period three times. In May 2005, a bill to implement the recommendations was introduced in the U.S. House of Representatives (H.R. 2473,) but there was no prospect of adoption by the end of the extended period for implementation (end-July 2005.) In July 2005, recognizing the United States' intention to continue efforts to enact the bill, Japan reached an understanding with the United States that the period of time for compliance would not be extended any further and that Japan would retain its right to invoke retaliatory measures at any future date.

However, despite requests from Japan for the full and prompt implementation of the recommendations at several meetings, the 109th Congress did not pass the bill and it was discarded. Consequently, in January 2007, the Minister of Economy, Trade and Industry again requested the USTR to make further efforts to implement the recommendations as soon as possible. At the DSB meeting in January 2007, the U.S. Government expressed its intention to work with the new Congress on this issue, but the United States has not made the complete implementation of the recommendations, and Japan has made several requests at the DSB meetings, the Japan-United States Economic Harmonization Initiative, etc.

In June 2011, the specific AD order was terminated. However, the United States has not yet completed the implementation of the DSB recommendations. At the WTO Trade Policy Review Mechanism (TPRM) meeting on the United States in December 2012, Japan also requested revision of the relevant domestic law, while submitting a questionnaire as to when the domestic law stipulating the calculation method would be revised.

In order to avoid damaging the reliability of the WTO dispute resolution system, Japan still needs to, and will, continue to urge the United States to take implementation measures in line with the recommendation.

### **<European Union>**

#### **Elimination of Import Duties on IT Products Specified as Non-dutiable by the WTO Information Technology Agreement**

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 televisions and video apparatus, which are not covered by the ITA. Amid the diversification and sophistication of these products in recent years, the EU has already imposed or is currently considering imposing customs duties on such products that should be 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" (Paragraph 1 of the ITA declaration) and stipulating for agreement by consensus to incorporate additional products covered by the ITA. However, Japan is seriously concerned that recent developments taking place within the EU to impose tariffs on certain IT products incorporating multiple and/or advanced functions through technological development could go against the basic principle of the ITA, as well as its achievements to date (tax concessions made by various countries).

In January 2007, the Minister of Economy, Trade and Industry requested the European Commissioner for Trade to resolve this problem, and there have also been several meetings between the Vice-Minister of METI and the Director General for Trade of the European Commission to discuss resolution of this problem.

However, the EU didn't make an effort to solve this problem. In May 2008, therefore,

Japan requested consultations under the WTO dispute settlement procedures in cooperation with the U.S. and Chinese Taipei, claiming that the imposition of customs duties on these products is inconsistent with the WTO ITA. In July 2008, Japan held consultations with the EU.

However, Japan did not receive a satisfactory response from the EU at the consultations. Therefore, Japan requested the establishment of a panel in cooperation with the United States and Chinese Taipei. The panel was established in September 2008.

On 16 August, 2010, the panel has released a report supporting all the claims of Japan and concluding that the EU's treatment is inconsistent with the WTO agreement. Since the EU did not file an appeal to the WTO Appellate Body, the report was adopted at the DSB meeting on September 21, 2010 as final and conclusive. Later, Japan, together with the United States and Chinese Taipei, held talks with the EU on the period for implementation, and on December 20, 2010, agreed to set that period to be nine month and nine days (i.e., with the deadline of June 30, 2011). The EU subsequently announced an implementation measure for amending the WTO-inconsistent part of the customs tariff table in an official gazette dated June 25, 2011, and made it in effect as of July 1, 2011. The EU further announced a new regulation concerning classification criteria for multi-functional machines in an official gazette dated February 9, 2012, and classification criteria for multi-functional machines and set top boxes in an official gazette dated February 21, 2012. Concerning monitors, the EU abolished an infringing customs regulation in 2009 (published in an official gazette dated November 10 and December 3, 2009). However, a new customs regulation has not been announced. Japan will thus keep contacting and monitoring the EU to ensure that EU's implementation measures will be designed and operated in conformity with the panel report.

#### <Canada>

#### **Abolition of Local Content Requirements in the Ontario's Feed-in Tariff Program for Renewable Energy**

In May 2009, the Province of Ontario of Canada established a fixed price purchase system for electricity generated from solar or wind energy (Feed-in Tariff Program). This program, nevertheless, requires that generators that may participate therein meet certain local content requirements for using solar or wind power electricity generation facility with a certain percentage or more value-added (i.e., assembling and procured parts and components) in the Province. These local content requirements give generators intending to participate in the Program an incentive to purchase products originated in Ontario in preference to imported ones in procuring photovoltaic cells or other equipment for their generation facilities. Consequently, photovoltaic cells or other related products exported by Japanese companies to Ontario are less favorably treated than those produced in Ontario.

Japan's view is that the measure of Ontario is inconsistent with Article III of the GATT which stipulates the national treatment obligations and Article II of the TRIMs Agreement, and further, it would fall under the category of prohibited subsidies (subsidies contingent on the use of domestic over imported goods) specified in Article 3 of the WTO SCM (Subsidies and Countervailing Measures) Agreement.

Further, there is a significant risk that this type of preferential measures of domestic products will be spread all over the world, and consequently, Japan's environment-related industries including producers of photovoltaic cells will be seriously damaged. Therefore, Japan requested correction at the ministerial level, with no improvement.

Therefore, Japan requested for consultations under the WTO with Canada on September 13, 2010 through the Japanese Mission in Geneva and continued bilateral consultations.

However, the issue was not solved by consultations, and therefore, Japan requested the establishment of a panel in June 2011. In December 2012, the panel published a report supporting most of Japan's arguments that the local content requirements should be abolished as conditions for the purchase of electricity. The panel made the judgment that Canada was

giving unjustified preferential treatment to provincial goods in violation of national treatment obligations under Article 3 of the GATT and Article 2 of TRIMs. As for the Article 3 (Prohibition of subsidies) of the WTO SCM Agreement, the panel did not find inconsistency with it citing subsidies—the existence of benefit—was not proved; however, there was a dissenting opinion that existence of “benefit” was proved based on the evidence and arguments Japan submitted. Afterwards, following Canada’s appeal and subsequent appeals of Japan and the EU in February 2013, it is now examined by the Appellant Body.

#### **<Russia>**

#### **Correction of Discriminatory System/Implementation of Transport Vehicle Recycling Fee**

In September 2012, Russia introduced the Transport Vehicle Recycling Fee on domestically produced cars in Russia and imported cars allegedly with a view to protecting the environment by ensuring the appropriate disposal of automobile wastes. The amount of Recycling Fee is calculated by multiplying the respective standard amount for passenger cars, commercial cars and buses by the coefficient based on displacement and years in service. In particular, higher rates are applied for used cars compared to ones for new ones.

The system provides for a possibility of exemption for domestically produced cars, while excluding the possibility for imported cars; therefore, it is likely to be inconsistent with the national treatment requirements under Article III of the GATT. Moreover, cars imported from two countries—members of the customs union (Belarus and Kazakhstan)—are given a possibility for exemption from the Recycling Fee, which raises the possibility of violation of the most favored nation treatment under Paragraph 1, Article I of the GATT.

Japan expressed concerns to Russia— from the Minister of Economy, Trade and Industry to the Russian Minister of Economic Development in June 2012, as well as from the same Minister to the Russian First Deputy Prime Minister in September 2012. Moreover, at the WTO Council on Trade in Goods in November 2012, Japan, jointly with the United States and the EU, raised concerns. Furthermore, along with the above efforts, Japan continues gathering information and making requests through its embassy in Russia and other channels. As a result, Russia expressed its intention to improve the system at the WTO Council on Trade in Goods in March 2013.

Japan will continue consultations through various channels with the Russian government to request detailed information on the system and implementation, at the same time monitor carefully developments in the introduction of ancillary relevant rules and the revision of the system. We will continue, jointly with the United States and the EU, requesting correction of the measure as well, not only bilaterally but also at the relevant WTO committees.

#### **<Brazil>**

#### **Correction of Discriminatory System/Implementation of Automobile Industrial Product Tax (IPI)**

On September 16, 2011, the Brazilian government announced additional 30% imposition of Industrial Product Tax (IPI) on domestic as well as imported automobiles (a temporary measure effective on December 16, 2011 until December 2012). However, automobiles manufactured in Brazil, MERCOSUR and Mexico were to be exempt from the additional IPI, provided the manufacture became an “approved company” by fulfilling the following three requirements:

- (1) The average ratio of local contents of MERCOSUR area for the company is 65% or more.
- (2) Six or more of eleven manufacturing processes for car production are carried out in Brazil.
- (3) Out of total sales, 0.5 % or more is reinvested in research and development (R&D).

There were concerns that the system with such exemptions would have negative impacts on

manufactures which did not have production facilities in Brazil, in terms of their price competitiveness in the Brazilian domestic market. Accordingly, Japan, jointly with the United States, the EU, South Korea and others, expressed concerns at the WTO Market Access Committee in October 2011 and at the WTO Council on Trade in Goods in November 2011.

In October 2012, the Brazilian government announced the Inovar–Auto, which made it possible to reduce IPI for automobile manufacturers in exchange for achieving the prescribed fuel efficiency standards and implementation of manufacturing processes in Brazil etc., with the 30% increase of IPI on cars to be continued for five years from 2013 to 2017. As a preferential tax treatment, IPI credits—that can be used for IPI tax reduction—will be given if the conditions for participating in the Inovar–Auto are met. The conditions are: (1) Achieving the prescribed fuel efficiency standards (12% improvement of fuel efficiency for new cars in 2017 compared to that in 2012) and participation in vehicle labelling program; (2) Investing a certain amount or more in domestic research and development as well as innovation engineering etc.; and (3) Carrying out certain production processes such as assembly and pressing in Brazil (Conditions for participation and details of preferential treatments, however, differ according to activities of companies ((1) manufactures in Brazil, (2) import sales companies, and (3) companies with investment plans. In addition, according to some sources usage of local contents more than a certain percentage is also be a condition.).

The measure gives unfavorable treatments to imported parts in receiving the benefit of tax exemption for production of automobiles in Brazil. Moreover, even if a company becomes an exempt one, as automobiles made in countries other than in MERCOSUR or Mexico are not necessarily exempt, automobiles made in countries other than MERCOSUR or Mexico are treated unfavorably not only vis-à-vis domestic ones but also vis-à-vis those imported from MERCOSUR or Mexico. Accordingly, it is likely to be inconsistent with Article I (the most favored nation treatment requirements) and Article III (national treatment requirements) of the GATT, Article 2 of TRIMs, and Item (b), Paragraph 1 of Article 3 of the Agreement on Subsidies and Countervailing Measures.

As for this new policy, the Japanese Minister of Economy, Trade and Industry pointed out to the Brazilian Minister of Development, Commerce and Industry the possible infringement of the WTO rules in May and November 2012, respectively. Moreover, the METI Vice-Minister for International Affairs expressed concerns and requested cooperation including information provision at the Japan-Brazil Joint Committee on Promoting Trade and Investment in November 2012. Furthermore, Japan expressed concerns, jointly with the U.S., the EU and Australia, at the WTO Council on Trade in Goods in November 2012. Japan will continue to monitor Brazil's treatment of the measure.

## **<Argentine>**

### **Elimination of Import Restrictions on Wide-Ranging Items**

Since 2008, Argentina has introduced a series of import restrictions on wide-ranging items. In November 2008, it introduced the non-automatic licensing system for about 400 items, which were increased to about 600 items in February 2011. Moreover, it is imposing the trade balancing requirements on importers (for example, requiring one-dollar export as a condition for one-dollar import). Furthermore, in February 2012, it introduced the prior import declaration requirements as an additional system for import permission, thereby requiring importers to apply to the Inland Revenue Service in advance for all imports.

These import restrictive measures are likely to be inconsistent with the general prohibition of import restrictions under Article XI of the GATT, as the requirements etc. for these import restrictions are not specified and they are implemented arbitrarily by the discretion of authorities.

Although Japan continued making requests through its embassy in Argentina regarding these import restrictive measures, while expressing concerns several times, jointly with the United States, the EU and others, at the WTO Import Licensing Committee and the WTO

Council on Trade in Goods, Argentina did not show any plan for improvement. Accordingly, on August 21, 2012, Japan, jointly with the United States and Mexico, requested consultations with Argentina based on the WTO agreements, which were held on September 20-21, 2012. As the issue was not solved through the consultations, on December 16, 2012, Japan, jointly with the United States and the EU, requested the establishment of a panel, which was established on January 28, 2013.

Although there has been some progress including the abolition of non-automatic import licensing system by Argentina on January 25, 2013—just before the establishment of the panel—other measures (prior import declaration requirement, the trade balancing requirements, etc.) are still in place.

Japan, in cooperation with the United States and the EU, will continue to make efforts to solve the issue in accordance with the WTO dispute settlement procedures.

## **<Ukraine>**

### **Revocation of Safeguard Measures against Automobiles**

In July 2011, the Ukrainian Ministry of Economic Development and Trade, based upon the Inter-Departmental Commission for International Trade of Ukraine's decision dated June 302 (No. SP-259/2011/4402-27), started investigation on imported automobiles (those with 1,000cc-1,500cc and 1,500cc-2,200cc displacement) for the investigation period of 2008-2010, and conducted hearings with the interested parties. In April 2012, the Ministry provided the interested parties with the main conclusions of the investigation results that acknowledged a rate of relative increase of imported automobiles in Ukraine, the threat of injury to the domestic industry etc., and thereby proposing to the Ukrainian International Trade Commission to initiate special measures of additional tariffs for safeguards.

However, during the investigation period, the number of cars sold in Ukraine, the number of imported cars sold, and the number of imported cars all showed substantial decreasing trends. (In 2009, the number of cars sold in Ukraine decreased by about 71% from 2008, the number of imported cars sold in the same year by about 61% from 2008, and the number of imported cars in 2010 by about 72% from 2008.) It is very doubtful as to whether these measures at issue are consistent with the requirements for under the WTO Safeguard Agreement, and the Ukrainian government has not provided sufficient explanation and information.

In response to the initiation of safeguard investigation by the Ukrainian government in July 2011, Japan, jointly with the EU, expressed concerns at the Safeguard Committee in October 2011 and April 2012. After the decision by the Ukraine Inter-Departmental Commission—to allow the imposition of safeguard measures, we continued expressing concerns and requesting it to refrain from imposing the measure, taking the opportunities of public hearings, implementing bilateral consultations, sending a letter to the Ukrainian Minister of Economic Development and Trade, etc.

While there had been no developments for some time, on March 14, 2013, the Ukrainian government published to implement the safeguard measures to impose additional tariffs of 6.46% on imported cars with 1,000cc-1,500cc displacement and 12.95% on those with 1,500cc-2,000cc displacement for three years, effective after 30 days. Japan, jointly with the EU and other member countries, requested swift revocation of the decision to impose safeguard measures at the WTO Council on Trade in Goods in March 2013, as well as made requests etc. through the Japanese embassy in Ukraine.

Japan will continue to request Ukraine swift revocation of the decision to impose safeguards through all channels available.

(End)