

## *Chapter 18*

# MONITORING TRADE POLICIES/MEASURES

## 1. INTRODUCTION

Monitoring trade policies/measures is an important function of the WTO alongside improvement of trade rules and market access through multilateral negotiations and resolution of trade disputes through dispute settlement proceedings.

The WTO promotes securing transparency through notification obligations on the respective agreements; discussions between member countries at various Councils, Committees, or the Trade Policy Review Mechanism (TPRM); and compliance of member countries with agreements through dispute settlement procedures. Of these, (1) discussions on individual policies/measures through various Committees, (2) trade policy review of member countries based on the TPRM, and (3) release of trade monitoring reports based on the TPRM, in particular, are regarded as monitoring activities clarifying trade policies/measures of member countries and enabling mutual monitoring, thereby preventing trade policies/measures from developing into trade disputes.

In addition, while countries employed or considered protectionist measures to protect domestic industries and employment after the economic crisis started in late 2008, international organizations including WTO strengthened activities for monitoring their trade policies/measures aimed at countering protectionist trends<sup>1</sup>.

Activities for monitoring international trade have been implemented with the aim of (1) ensuring compliance with international trade rules and (2) inhibiting/correcting protectionist trends. Considering the expansion of trade disputes and protectionist measures mainly in emerging countries in recent years, however, the importance of these activities is more and more increasing.

This Chapter provides an overview of how international organizations, including the WTO, monitor international trades by describing the efforts of the WTO and other

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<sup>1</sup> See reference material at the end of the “2013 Report on Compliance by Major Trading Partners with Trade Agreements”.

international organizations and describing their significance. Trade policies/measures (policies and measures related to trade) discussed in this Chapter include those related to investment.

## **2. MONITORING BY THE WTO**

### ***(1) Monitoring by Committees, etc.***

Many WTO Agreements require member countries to notify and publish their trade policies/measures. In addition, Councils and Committees (hereinafter referred to as “Committees, etc.”) for the enforcement of the respective Agreements have been established and function as places for multilateral discussions about the consistency of individual policies and measures with the Agreements. Member countries disclose information on their policies through notification/publication concerning their domestic (and in some cases other countries’) trade policies/measures. Interested countries may respond by requesting more detailed information or bringing up the issue of consistency of the measure with the relevant Agreement at meetings of the relevant Committees, etc. Discussions actually taking place in the Committees, etc. are mainly related to the consistency of measures with the Agreements but they also cover a wide range of other topics, including the objectives of the policies of concern, economic rationality, impacts on industries, and impacts on WTO systems, in addition to information provision necessary for making decisions.

Unless the concerns are addressed, they are repeatedly raised as issues at Committees, etc. regularly held two or three times a year. Countries implementing the policies/measures of concern are therefore expected to provide detailed information, explain why they believe the measures are consistent with the WTO Agreements, and discuss correction of the measures. An additional advantage of multilateral discussions is that countries sharing the same concerns can cooperate in raising issues, and the implementing countries are given stronger motivations to correct their measures than through bilateral efforts. Unlike dispute settlement procedures, however, correction obligations are not imposed in the Committees, etc., and therefore final decisions on corrections are left to concerned parties (or through use of dispute settlement procedures).

Monitoring by the Committees, etc., as described above is introduced in many Agreements, including agreements related to trade in goods, GATS and TRIPS, in other words in all cases involving measures related to sectors covered by the WTO.

See 1. (3) “Column: Practical tips for taking advantage of the TBT Agreement” in Chapter 11 “Standards and Conformity Assessment Systems”, Part II for concrete discussions taking place at Committees, etc..

### ***(2) Trade Policy Review Mechanism (TPRM)***

Annex 3 of the Agreement Establishing the WTO (Marrakesh Agreement) provides rules and procedures relating to the Trade Policy Review Mechanism (TPRM). This is a system for conducting periodic reviews on trade policies and measures of member countries based on the reports by the member countries under review and by the Secretariat at the Trade Policy Review Body (TPRB), consisting of all member countries. The original system had been in operation since 1989 (prior to the establishment of the WTO) as discussions in the GATT Council. Between 1995 and the end of 2013, a total of 348 reviews were conducted for 147 of 159 member countries. However, reviews have yet been conducted for newly acceded countries such as Russia, Ukraine and Laos, etc.

Outline, significance and issues relating to the TPRM are as follows.

### **[1] Outline of the TPRM**

According to Annex 3 of the Agreement Establishing the WTO, the purpose of the TPRM is to (1) improve adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements, (2) achieve greater transparency in, and understanding of, the trade policies and practices of Members, and (3) contribute to the smoother functioning of the multilateral trading system.

Reviews cover all member countries, and the frequencies are based on the share of world trade of the countries of concern. Reviews are conducted once every two years for the top four countries (at present Japan, the US, China and the EU), once every four years for the next 16 countries, and once every six years for other member countries.

No specific limits on the scope of “trade policies and practices” subject to review are defined in the Agreement. In practice, the scope is not limited to matters related to the WTO Agreements; any trade policies/measures may be addressed.

Concrete review procedures are as follows. First, member countries are required to prepare and submit a detailed report to the Trade Policy Review Body (TPRB) about their trade policies. The Secretariat also prepares reports on trade policies/measures of the countries under review. In preparing its reports, the Secretariat gathers accurate and up-to-date information from the countries under review through inquiries and meetings with relevant ministries and agencies, etc., in addition to ordinary WTO notifications and published information. Based on these reports by the countries under review and the Secretariat, reviews are conducted through submitting/answering questionnaires and discussions at TPRB meetings.

With regard to review criteria, Annex 3 provides that discussions at the review meetings shall take place against the background of the wider economic and developmental needs, policies and objectives of the Member concerned, as well as of its external environment. Since criteria are given in an abstract way, findings may also include general political issues beyond the scope of WTO rules. In the reviews, the countries under review are often requested to explain about the consistency of specific measures with the WTO Agreements. In addition to Annex 3, detailed rules of TPRM

review procedures, including time frames, etc. are provided in the rules of procedure adopted by the TPRB<sup>2</sup>. Annex 3 also provides that appraisals of the operation of the TPRM shall be undertaken at specific intervals. Since 1999, four appraisals have been undertaken. At present, the fifth appraisal is being undertaken, and the results of the appraisal will be reflected in the revised procedural rules.

With regard to the results of the reviews, the minutes of the meeting of the TPRB together with the reports by the countries under review and by the Secretariat are to be published promptly after the completion of the reviews. There is no mechanism under the system to ensure concrete responses to the findings of the reviews. Annex 3 provides that “It is not, however, intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members”. Therefore the content of reviews of TPRM cannot be used as factual findings in dispute settlement proceedings, and discussions at the review meetings do not impose any obligations on the countries under review to correct the measures.

## **[2] Significance of the TPRM**

As described above, the system does not bind the countries under review to correct the measures, but there are various practical significant effects. Here, the significance of the TPRM is presented from the following four points of views: (a) improved transparency, (b) opportunity to identify issues, (c) discussion from the multilateral point of view, and (d) promotion of understanding of international rules.

### **(a) Improved transparency**

First, the TPRM contributes to the improved transparency of trade policies/measures of all WTO member countries. Although the frequencies of the reviews vary, all WTO member countries are subject to review, and discussion items cover a broad range, and are not just limited to trade, but also include investment, intellectual property rights, energy, taxation systems/subsidies, competition, FTA/EPA, etc. No other frameworks regularly provide member countries with such a broad range of information. In addition to the reports, questions from member countries, answers from the countries under review, and related statements, etc. are all published after the reviews. Therefore, it is expected that the reviews will have the mutual monitoring effects between member countries and will inhibit the country under review from introducing measures that may violate the WTO Agreements or encourage them to eliminate such measures.

### **(b) Opportunities to identify issues**

In addition, although TPRM reviews cannot provide the basis of factual findings in dispute settlement proceedings, the transparency provided by information collection

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<sup>2</sup> WT/TPR/6/Rev.3

and discussions on the consistency with the WTO Agreements can be beneficial. For countries with limited capacities or resources in collecting information, in particular, periodic and comprehensive reviews give opportunities to identify the existence of measures that could cause problems for them and to respond to prevent the problems from occurring or correct the measures.

**(c) Discussions from the multilateral point of view**

Discussions in the TPRM take place from a more multilateral point of views than dispute settlement procedures or meetings of Committees, etc.. Unlike dispute settlement procedures, which consider the illegality of measures, and meetings of Committees, etc., which mainly consider the consistency with the relevant agreements, measures that are consistent with the Agreements can also be addressed from the point of view of economic rationality, etc. In the reports by the Secretariat and questions from member countries, matters other than the consistency with the Agreements, for example, inward direct investment, competition policy, the energy sector, etc., are often raised and discussed. This has the advantage of enabling more broad policies/measures to be monitored.

**(d) Promotion of understanding of international trade rules**

Furthermore, through answering questions and discussions at review meetings, the countries under review can reconsider the rationality and consistency with the WTO Agreements of their policies. During these activities, many government officials involved are provided with opportunities to deepen their understanding of international trade rules, and this is likely to lead to improved consistency of their policies with the WTO Agreements. In particular, for policymakers of newly acceded countries and developing countries, the system functions as part of capacity building for deepening understanding of the WTO Agreements.

**[3] Issues Related to the TPRM**

As described above, the TPRM contributes to a significant extent in the multilateral trade systems as a part of monitoring functions of the WTO. However, some issues exist.

The frequencies of TPRM reviews are decided based only on the share of world trade, and thus some countries receive reviews less frequently. Therefore, emerging countries that have not yet gained a large share in world trade but have impacts on multilateral trade systems, in particular, are not monitored effectively. For example, Brazil, India, the Republic of Korea, Indonesia, etc. are major players in international trade, and their trade policies are frequently being formulated/revised. Thus conducting reviews once every four years cannot impose timely and effective monitoring sufficient for their policy developments. As a result, for these countries the TPRM cannot be utilized effectively, and countries need to rely on Committees, etc. and dispute settlement procedures to resolve problems.

### ***(3) Effective Utilization of Monitoring Systems***

Other than TPRM, multi-layered systems for ensuring compliance with the Agreements such as the above-mentioned Committees, etc. and dispute settlement procedures are established in the WTO. From the point of view of more effectively promoting consistency with the Agreements, it is desirable that member countries optimally combine these systems in dealing with the policies/measures at issue. For example, after broadly collecting information and having initial discussions at the TPRM, countries should discuss the consistency of the individual measures in more detail at Committees, etc., and then utilize dispute settlement procedures for measures suspected of being inconsistent with WTO Agreements. For cases where dispute settlement procedures cannot easily be utilized because of questions of consistency or lack of consistency of a measure or because of the costs of a dispute settlement proceeding, relying on the findings of Committees, etc. or of the TPRM may be a better decision. Utilizing the systems that will enable the most appropriate responses after considering the characteristics of the measure of concern, degree of impacts, cost-effectiveness, and rapidity in resolving issues, etc. in a comprehensive manner is important.

### ***(4) TPRM Monitoring Report***

The above-mentioned monitoring by the Committees, etc. and the TPRM is a function that existed in the WTO from the beginning. In responding to the trends of expanding protectionist trade policies/measures in countries after the economic crisis started in late 2008, the WTO commenced a new trade monitoring system on the authority of Annex 3 of the Agreement Establishing the WTO.

This monitoring is to identify trends of protectionist measures by regularly investigating trade-related measures by WTO member countries and preparing public reports on these measures. In addition, as requested by G-20 Leaders the WTO, in cooperation with OECD and UNCTAD, started preparing similar reports for G-20 countries (see (5) “Joint Monitoring Report by WTO/UNCTAD/OECD” below for details).

#### **[1] Background**

As part of the WTO’s efforts to respond to the economic crisis, the Director-General of the WTO announced at the General Council meeting in October 2008 that a work group would be established within the WTO Secretariat to discuss the impacts of the economic crisis on WTO rules.

In January 2009, the WTO Secretariat reported the results of the trade measure monitoring compiled by the work group to WTO member countries in an unpublished document. This report was prepared under the responsibility of the WTO Secretariat based on Annex 3 of the Agreement Establishing the WTO (overview of developments in the international trading environment); it was intended to report the facts on policies

that have impacts on multilateral trade systems, and was not intended to have legal effects or be the basis of new agreements.

This monitoring activity was officially approved at an informal TPRB meeting in April 2009. To date reports covering a quarter or half-year period have been prepared six times (April and July 2009, June 2010, June 2011, June 2012, and July 2013), and annual reports five times (November 2009, November 2010, November 2011, November 2012 and January 2014<sup>3</sup>).

## **[2] Outline of the TPRM monitoring report**

The TPRM monitoring report compiles policies/measures taken by the respective countries during the monitoring period in a table format and covers measures pertaining to trade in goods and trade in services, including investigations/invocations of quantitative restrictions, increases in tariffs, and trade remedy measures, as well as matters outside the scope of the WTO Agreements such as economic-stimulus measures and financial institution support measures, etc. of the respective countries. Furthermore, trade-promoting measures, including measures to eliminate trade-restrictive measures, are also listed in the report.

However, the report clearly states that its objective is purely to report the facts and that it has no legal impacts on rights and obligations of member countries, and does not provide any judgments/suggestions on the consistencies of the listed measures with the WTO Agreements or on their protectionist aspects.

In preparing the report, the Secretariat first collect information on the measures taken by member countries based on the notifications of trade policies/measures by WTO member countries (obligatory notifications under the WTO Agreements, voluntary notifications, and responses to requests made by the Secretariat for provision of information) and information provided by various public institutions. After collecting information, the Secretariat makes inquiries to member countries to verify the accuracy of the compiled policies/measures. Information not verified by member countries is listed with a comment indicating this.

The report is submitted to the annual TPRM meeting. At the meeting, member countries can express their opinions on the content of the report, but as described above the report does not make any judgment on the consistency with the WTO Agreements, and therefore no investigation takes place. The report and the minutes of the meeting are disclosed to the public.

## ***(5) Joint Monitoring Report by WTO/UNCTAD/OECD***

### **[1] Background**

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<sup>3</sup> WT/TPR/OV/16

At the G-20 Summit meeting held in Washington in November 2008 immediately after the economic crisis, the Leaders Declaration included commitments to an open global economy, not to impose new barriers on investments and trade in goods or services, not to impose new trade restrictions, and not to take export stimulus measures not consistent with the WTO Agreements for the next 12 months. In addition, the Lima APEC Leaders' Declaration on the Global Economy released in the same month also contained political determinations on restraining protectionist activities similar to those of the Washington Summit meeting. While efforts to counter protectionism are gathering momentum, and in light of publication of the TPRM monitoring report, at the London Summit meeting in April 2009 G-20 Leaders requested the WTO to cooperate with other international organizations within their respective authorities to monitor the compliance status of G-20 countries with the protectionism restraining commitments, and to report to them every quarter<sup>4</sup>. In response to this request, the WTO, OECD and UNCTAD have been providing reports on trade and investment measures of G-20 countries under the joint names of the directors of the respective organizations since September 2009.

## **[2] Outline of the joint monitoring report**

The report initially covered the areas of trade-related measures, economic-stimulus measures, measures for financial institutions, and investment related measures. In recent years, measures for financial institutions were excluded, while trade finance and recent economy/trade trends were added; thus the report now covers five areas. In addition to summarizing the trends in the respective areas, a list of measures by country is maintained and quantitative estimation of the impacts of the measures on the trade volume is provided as an addendum.

The contents of the report are divided into the trade section and the investment section; the trade section is written by the WTO alone. The list of trade-related measures by country in the TPRM monitoring report and in the joint monitoring report is based on the same information collected by the WTO, and therefore both reports contain the same information about G-20 countries. The section on investment-related measures is prepared by the Secretariats of the OECD and UNCTAD based on information collected by the respective organizations (see 3. "Monitoring by International Organizations other than WTO" for the activities of OECD and UNCTAD).

Although not listed as a contributor, the IMF is also involved in the preparation of the report.

Similar to the TPRM monitoring report, this report also clearly states that it has no legal impact on rights and obligations of member countries, and does not provide any judgments/suggestions on the consistency of the listed trade/investment related measures with the agreements of the respective international organizations or on the

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<sup>4</sup> [http://www.mofa.go.jp/mofaj/kaidan/s\\_aso/fwe\\_09/communique.html](http://www.mofa.go.jp/mofaj/kaidan/s_aso/fwe_09/communique.html)



protectionist aspects of the measures.

After its first release in September 2009, the report was released quarterly until 2010 (March, June, and November 2010) and has been released semi-annually from 2011 onward (May and October 2011, June and October 2012, June and December 2013) (December 2013 report was the 10th report<sup>5</sup>). Meanwhile G-20 Summits repeatedly have requested in their declarations the continuation/reinforcement of this monitoring activity.

### **[3] Cooperation between international organizations**

As described above, this report is jointly prepared/published by WTO, UNCTAD and OECD, as requested by G-20. It is meaningful that a global trade and investment monitoring network is jointly being undertaken by international organizations coordinating the activities of monitoring the trade sector (by the WTO) and the investment sector (by the OECD and UNCTAD), and that there is sharing/integrating of the information. At present this monitoring network only covers G-20 countries, but information collection and reporting is more frequently conducted when compared to the original TPRM reviews or the monitoring activities by UNCTAD and the OECD (releasing global investment reports and implementation of investment liberalization processes) prior to the economic crisis. The report provides useful information in understanding the present situation in global multilateral trade/investment systems.

The possibility of such cooperation between the WTO and other international organizations is provided for in Article III:5<sup>6</sup> of the Agreement Establishing the WTO.

In carrying out the direction to “cooperate with other international organizations within their respective authorities” in preparing the report, as requested in the Leaders Declaration at the G-20 London Summit meeting, the respective organizations work within the legal framework of their existing authorities/duties. More concretely, the WTO uses Annex 3 of the Agreement Establishing the WTO as the legal basis in conducting this activity, which is considered to contribute to the objectives of the TPRM.

### ***(6) Evaluation of Monitoring by the WTO***

Figure II-18 compares the outlines of the TPRM country-based review, the TPRM monitoring report, and the joint monitoring report by the WTO, OECD and UNCTAD. While TPRM country-based reviews are conducted once every few years, other two monitoring reports are more frequently released, quarterly or semi-annually. The joint

<sup>5</sup> [http://www.wto.org/english/news\\_e/news13\\_e/trdev\\_18dec13\\_e.htm](http://www.wto.org/english/news_e/news13_e/trdev_18dec13_e.htm)

<sup>6</sup> Article III:5 of the Marrakesh Agreement Establishing the World Trade Organization:

*With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.*

monitoring report has wider coverage than the TPRM reports, as it also contains policies/measures in the investment sector (in practice, the TPRM does cover some investment-related measures).

In contrast, review meetings are held only in TPRM country-based reviews, and thus these reviews are considered to impose the most pressure because of written questions and the ability to raise concerns at the TPRM meetings. In addition, the TPRM has the objectives of ensuring compliance with the WTO Agreements, and thus consistency with the WTO Agreements is used as the practical review criterion. In contrast, the objective of the two monitoring reports is purely to report the facts and not to make assessments on the individual measures based on any criteria. For this reason, the TPRM country-based reviews are considered to give stronger motivation to correct the measures.

**Figure II-18 Outline of Monitoring by WTO**

		TPRM country-based review	TPRM monitoring report	Joint monitoring report by the WTO, OECD, and UNCTAD
Institutional background	Governing agreements/provisions	Annex 3 of the Agreement Establishing the WTO	Paragraph G, Annex 3 of the Agreement Establishing the WTO	Paragraph G, Annex 3 of the Agreement Establishing the WTO (with respect to the trade portion, for which the WTO is responsible)
	Implementing body	WTO Secretariat (TPR Division) and member countries	WTO Secretariat (TPR Division)	WTO Secretariat (TPR Division) and Secretariats of the respective organizations
	Objective	Ensuring transparency and compliance with the WTO Agreements	Ensuring transparency (purely to report the facts)	Ensuring transparency (purely to report the facts)
Content of implementation	Subject country	All WTO member countries	All WTO member countries	G-20 countries
	Subject matter	Trade policies/practices (including investment measures)	Trade-related measures	Trade/investment-related measures
	Frequency	Once every 2-6 years	Approximately once every half-year	Approximately once every half-year
	Content of implementation	Preparation of report Question and answer in writing Conducting review meetings	Publishing report (report to annual TPRB meeting)	Publishing report (report to G-20)

### 3. MONITORING BY INTERNATIONAL ORGANIZATIONS OTHER THAN THE WTO

As described at the beginning, this Chapter provides an overview of the international monitoring of international trade and investment. The WTO plays the major role in trade monitoring, and UNCTAD, the IMF, and the International Bank for Reconstruction and Development (IBRD) also conduct some activities. For example, in addition to the investment-related report, UNCTAD also publishes a trade development report, conducts examinations of trade in services (implemented upon request) and peer reviews of competition policies, etc. However, the objective of UNCTAD is to provide support for development of developing countries, and thus their trade-related analysis is conducted mostly from the point of view of trade and development, benefits from trade, capacity building, and cooperation, etc.; there is no periodic monitoring of policy developments. In addition, as described below, the IMF and IBRD also conduct investigations on trade related to their primary duties, but such investigations are totally different from the monitoring described in this Chapter.

Therefore, in this Chapter, covered trade monitoring is that conducted by the WTO, and investment monitoring by UNCTAD and the OECD, as described below.

#### ***(1) United Nations Conference on Trade and Development (UNCTAD)***

The United Nations Conference on Trade and Development (UNCTAD) prepares and publishes the following two reports on investment policies/measures, and, upon request from G-20 after the economic crisis, utilizes these reports to prepare joint monitoring reports.

##### **[1] World Investment Report**

UNCTAD publishes various reports on trade and investment. In particular, the World Investment Report has been published annually since 1991 with the aim of investigating/reporting developments related to investment policies. (The 2013 report was published in June 2013<sup>7</sup>).

UNCTAD has regularly collected information on changes in foreign direct investment (FDI)-related policies of member countries and storing the information in a database. The information is utilized in preparing the World Investment Report and the investment policy monitoring report described below.

The report is generally contains four chapters, with Chapters 1 and 2 describing the trends of investments and FDI at the respective levels of global, regional and

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<sup>7</sup> <http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=588>

domestic. In addition, Chapter 4 addresses the important topic of the year, such as global value chain, etc. In the context of monitoring, information on recent developments of the policies described in Chapter 3 is important. Investment-related policies of the respective countries, trends in FTAs including the International Investment Agreement (IIA) and investment chapters, and trends in Investor-to-State Dispute Settlement (ISDS), etc. are investigated. In the general comments on recent investment policy developments, investment policies implemented by the respective countries during the investigation period are classified on the basis of whether they will contribute to the liberalization/promotion or restriction/regulation of investments, and then overall trends are reported. For example, in the 2013 report, of 86 measures newly taken globally in 2012, 61 (75%) were classified as investment liberalization/promotion and 20 (25%) restriction/regulation. However, measures of the individual countries are not listed, except for some given as examples, and so this report is not expected to give motivations to correct individual measures.

## **[2] Investment Policy Monitor**

In response to the request from G-20 Leaders at the London and Pittsburgh Summit meetings after the economic crisis, since December 2009 UNCTAD has been publishing two to three times a year, in parallel with the World Investment Report, the Investment Policy Monitor to report on trends in investment-related policies of the respective countries. (The most recent edition was published in November 2013<sup>8</sup>).

This report contains more detailed information than that found in Chapter 3 of the World Investment Report (Recent Policy Developments), and investment-related policies and measures implemented during the investigation period are listed by country. Policies/measures by country are classified into four categories -- (1) entry/establishment of investment, (2) operational treatment of investment, (3) promotion/facilitation of investment, and (4) investment retention and repatriation) -- and the concrete descriptions and information sources of the respective measures are listed in a table. With regard to evaluation of policies/measures, similar to World Investment Report, this report only mentions the overall trends.

This report covers UNCTAD member countries, and the information on G-20 countries in this report is also used in the joint monitoring report.

## ***(2) Organisation for Economic Co-operation and Development (OECD)***

See Chapter 5 (Investment), Part III for the efforts of OECD in formulating international agreements on investment by OECD<sup>9</sup>.

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<sup>8</sup> [http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d11\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d11_en.pdf)

<sup>9</sup> With regard to the OECD, the relationship between the WTO Agreement on Subsidies and Countervailing Measures and the OECD guidelines on export credits are described in Chapter 7 (Subsidies and Countervailing Measures), Part II; the “OECD Council Recommendation Concerning

### **[1] Freedom of Investment process**

The OECD Investment Committee has been hosting the Freedom of Investment process as an intergovernmental forum since 2006. In this forum, representatives of 55 countries, including non-OECD member countries such as Brazil, China, India, Russia and South Africa, exchange opinions on investment policies. The forum is held twice a year, and it has been held 18 times as of March 2013.

The objectives of this forum are to (1) formulate standards and develop guidelines on investments, (2) monitor investment policies, and (3) research and development. Of these, monitoring investment policies is conducted as follows. In every forum, several countries are selected to be the subjects, and then discussions by member countries based on the report prepared by the Secretariat (described below) take place. (Countries selected for the 18th forum were Canada, Costa Rica, Italy, France, and the United States). In this forum, countries subject to monitoring explain their investment-related measures addressed in the report.

### **[2] Inventory of Investment Measures**

Information collected in Freedom of Investment process is published as the Inventory of Investment Measures, and information on G-20 countries also is reported in the joint monitoring report with WTO and UNCTAD.

The Inventory of Investment Measures is published once every half-year, and has been issued nine times, from the first report in October 2009 to the ninth report in October 2013<sup>10</sup> (October 2009, March and October 2013, April 2011, January, April, and November 2012, and May and October 2013). In this report, investment policies of 55 countries participating in Freedom of Investment process are classified, country-by-country, into three categories (investment policy measures, investment measures relating to national security, and other developments) and then concrete descriptions and information sources are listed. However, policies introduced are not evaluated in this report.

### **(3) Others (IMF, IBRD)**

In order to maintain stability in the international monetary system, the IMF monitors the economic/financial policies of its member countries. In this monitoring activity called surveillance, IMF economists visit member countries and consult with the government and central bank mainly to discuss exchange rates and

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Co-operation between Member Countries on Anti-competitive Practices Affecting International Trade” are described in Chapter 15 (Unilateral Measures), Part II; and the OECD guidelines on electronic commerce are described in Chapter 7 (Electronic Commerce), Part III.

<sup>10</sup> <http://www.oecd.org/daf/inv/investment-policy/g20.htm>

monetary/financial policies. The results are reported to the OECD Council. Whether or not trade policies have impacts on the trends in the macro economy, such as how the balance of trade relates to the stability of the international monetary system, are discussed, but they are addressed only to the extent necessary for the objective of maintaining the stability of the international monetary system, and they are not intended to be monitored or examined.

In addition, the IBRD collects information on trade policies that are trade barriers. More concretely, a database (Temporary Trade Barriers Database: TTBD) of information on trade remedy measures such as anti-dumping duties and safeguard measures since mid-1980s has been created.

### **Column: Monitoring System by Each Country**

In the main chapter, international trade/investment monitoring systems by the WTO and other international organizations are outlined. In this Column, some of the efforts of the United States, the EU and China in monitoring trade policies/measures are discussed. Although monitoring by the individual countries is not intended to monitor international trade, but is focuses on impacts on their trade and consistency with the international rules, it is expected to provide some information useful in understanding the trade monitoring system. In addition, these countries have been making these efforts prior to the economic crisis. Further, correction of the measures addressed in the reports is expected to be requested at various bilateral consultations and negotiations. This provides useful information for identifying the measures that the major trading partner countries of Japan regard as issues.

The reports by the respective countries presented here are described in more detail in the “2006 Report on Compliance by Major Trading Partners with Trade Agreements”<sup>11</sup>.

See also the “2013 Report on Compliance by Major Trading Partners with Trade Agreements”<sup>12</sup> and “‘Protectionist’ measures in the current economic crisis and actions by the Ministry of Economy, Trade and Industry” (published in May 2009)<sup>13</sup> for Japan’s responses to protectionist measures.

#### **(1) The United States**

##### **[1] National Trade Estimate Report on Foreign Trade Barriers**

Based on the 1974 Trade Act, the Office of the United States Trade Representative

<sup>11</sup> See Chapter 3, Part III of the “2006 Report on Compliance by Major Trading Partners with Trade Agreements”.

<sup>12</sup> See reference material at the end of the “2013 Report on Compliance by Major Trading Partners with Trade Agreements”.

<sup>13</sup> <http://www.meti.go.jp/report/downloadfiles/g90527c02j.pdf>

(USTR) is required to submit reports on foreign trade barriers to the President, the Senate Committee on Finance, and proper Committees of the House of Representatives. USTR therefore publishes the National Trade Estimate Report on Foreign Trade Barriers at the end of March every year. (The 2013 report was the 28th report published<sup>14</sup>).

This report covers approximately 60 countries and for each country lists foreign trade barriers that have impacts on exports of goods/services, direct investment by the US citizens, and the protection of intellectual property rights. The report is based on information from the US Embassies in the respective countries, US companies and other stakeholders. Areas of coverage include import policies, standards and conformity assessment, services barriers, investment barriers, anti-competitive practices, and electronic commerce. The measures listed in the report include policies/measures that the United States considers to violate/obstruct trade in goods/services regardless of their consistencies with the WTO Agreements and other international trade rules.

For measures listed in this report, further investigations or bilateral consultations with the implementing countries will be conducted or processes toward their correction, including utilization of the WTO dispute settlement procedures and invocation of trade remedy measures, etc. will be taken.

## **[2] Interagency Trade Enforcement Center (ITEC)**

ITEC is an institution that handles domestic and foreign trade issues in an integrated and cross-departmental manner; it was established in February 2012 through an Executive Order. The objectives of ITEC include monitoring and ensuring compliance with international trade rules, and enforcement of domestic trade laws. ITEC consists of USTR and representatives of other trade-related government agencies, including the Departments of Treasury, Justice, Commerce and Agriculture.

It is aimed at enabling the entire government to respond more flexibly and effectively through exchanging information among USTR and other relevant agencies when ITEC encounters information regarding a suspected violation of trade agreements. For example, in the case of import restriction measures by Argentina brought to the WTO dispute settlement procedures by the US in 2012, ITEC submitted a large volume of investigation and analysis resources, and supported monitoring and enforcement units of USTR. In addition, in order to find trade barriers and unfair trades, ITEC conducts outreach activities targeting industries and interested parties to promote their participation in the efforts for reducing trade barriers.

## **(2) European Union**

<sup>14</sup> <http://www.ustr.gov/about-us/press-office/reports-and-publications/2013/NTE-FTB>

### **[1] Market Access Database**

The Directorate General for Trade of the European Commission has created a database of market access status of exporting countries and published it on their website<sup>15</sup>.

All types of tariffs and non-tariff measures related to market access are contained in the database and can be viewed by country, type of measure, and type of industry. An outline, background, the EU's responding policy (negotiating through diplomatic offices in the implementing countries, etc.), and progress status are provided for each measure, and the information is updated as needed.

### **[2] Report on Potentially Trade-Restrictive Measures**

At a meeting of the Article 133 committee, which discusses/directs trade policies of the EU, during the economic crisis in 2009, the EU was requested by its member countries to investigate and report trade-restrictive policies/measures taken by the trade partner countries of the EU. In response to this, the EU has been publishing the Report on Potentially Trade-Restrictive Measures since February 2009. (The 10th report was published in September 2013<sup>16</sup>).

Information collected by the EC Directorate General for Trade through diplomatic offices in the foreign countries is analyzed and compiled in this report. It covers G-20 countries and other trade partner countries of the EU broadly (31 countries in the most recent edition).

The content of the report includes trade-related areas (tariffs, export restrictions, export support measures, and trade remedy measures) as well as government procurement, investment/services, and economic-stimulus measures, etc. Detailed information on the measures taken during the investigation period is listed by country. The report basically describes trade-restrictive measures, but the status of elimination of trade-restrictive measures is also reported. The consistency of the individual measures with international trade rules are not discussed.

The measures addressed in this report will be monitored and their correction will be requested through all possible means, as necessary.

### **(3) China**

#### **Foreign Market Access Report**

The Chinese Ministry of Commerce (MOFCOM) has been publishing the Foreign Market Access Report annually since 2003. With the aim of promoting the

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<sup>15</sup> <http://madb.europa.eu/madb/indexPubli.htm>

<sup>16</sup> [http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc\\_151703.pdf](http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151703.pdf)



understanding of Chinese companies/organizations regarding the status of international trade/investment systems and thereby expanding the opportunities for them to engage in international activities, the report provides overviews of (1) bilateral trade relationships, (2) trade and investment systems, and (3) trade barriers of around 20 major trade partner countries of China.

This report is intended to express the concerns that the Chinese government and industries have with regard to the consistency of the trade policies/measures adopted by foreign countries with international trade rules in order to achieve fair and appropriate trade/investment environment for China. However, the report also contains many statements that the policies/measures taken by the foreign government should be corrected because of the substantial harms they have caused without discussion of the consistency of the individual measures with international trade rules.