<REFERENCE>

MISCELLANEOUS ISSUES

Although the following measures fall outside the scope of the countries/regions covered in this report, they are addressed below since they are recent measures having trade-distorting effects.

INTRODUCTION OF AN IMPORT LICENSE SYSTEM IN ARGENTINA

<Outline of the measure>

The November 4, 2008 Official Gazette gave notice of the introduction of an import license system for metal products (elevators, etc.) that would require applications to be submitted along with information on the importers/exporters, the prices and quantities of the goods to be imported, etc. After that, Argentina continued to expand items subject to the system. On December 10, 2010, the Ministry of Industry added automobiles to items subject to the system, and also made public its intention to start a new restriction, specifically, permitting import licenses to be issued for only up to 80% of actual imports in the past, in January 2011. Furthermore, Argentina decided to newly add 179 items to those subject to the non-automatic import licensing system in the February 16, 2011 Official Gazette, thereby the number of items subject to the system reached about 600. Cargo trade from Japan to Argentina has been stagnating due to implementation of the system, affecting trade. However, there is a concern about further impact on trade caused by the expansion of items subject to the system.

<Problems under international rules>

According to the Agreement on Import Licensing Procedures, in the case of introducing a non-automatic import licensing system, the system shall not have trade restrictive effects on imports (Article 3(1)), and import applications shall be processed in principle within 30 days after the application was received (within 60 days where all applications are processed simultaneously) (Article 3(5)(f)). However, for many items

to be imported from Japan to Argentina, import licenses have not been issued even after 60 days passed after the applications were received. Such application of the import licensing system in Argentina violates Article 3 of the Agreement on Import Licensing Procedures. In addition, depending on the purpose, the introduction of non-automatic import license measures could conflict with the "general elimination of quantitative restrictions" in GATT Article XI or the provisions of the Import Licensing Agreement. Argentina has asserted that its intent is to introduce a pre-sale monitoring and management system, but these measures should be examined to determine whether they would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade when considering whether it was within the scope of the general exception under GATT XX.

<Recent developments>

In March 2009, Japan made a request to the Argentine Ambassador to Japan for operation consistent with WTO rules. The Japanese Embassy in Argentina also requested that the Argentine Ministry of Economy and Production deal with this case in an appropriate manner. In April 2009, at the meeting of the WTO Import Licensing Committee, Japan, the US, the EU, Canada and China submitted questions in writing to Argentina. The Argentine government stated, in its reply, that with regard to standards, in selecting items that are subject to non-automatic import licensing, it needs to monitor those goods that are sensitive to economic circumstances in the face of the worldwide financial crises in 2008. It also stated that, with regard to the need for having non-automatic import licensing, it is necessary to observe the compliance of imported goods to the standards and regulations applied to domestic goods. However, no improvement was made on the measure. Therefore, Japan repeatedly requested Argentina to make improvements to the measure, and expressed concerns thereto in collaboration with the United States, the EU and other countries at the meetings of the WTO Import Licensing Committee and the Council for Trade in Goods held in 2010. Furthermore, in March 2011, Japan reiterated its concerns and requests through the Japanese Embassy in Argentina and bilateral consultations. Besides, Japan, allied with the United States and the EU, expressed concerns again at the meetings of the WTO Import Licensing Committee and the Council for Trade in Goods held in October 2011. Nonetheless, no progress has been made to date. Japan will continuously watch how Argentina deals with this measure.

EXPORT RESTRICTIONS ON GRAIN IN UKRAINE (EXPORT QUOTA)

<Outline of measures>

In October 2010, the Ukrainian government decided to introduce export quotas for grain, including wheat and barley, until December 31, 2010, due to a decrease in the domestic grain production, etc. caused by drought (Ministerial Meeting Resolution No. 938, October 4, 2010, effective from October 19th), and the following ceilings were set: 0.5 million tons for wheat and meslin, 2 million tons for corn, 0.2 million tons for barley, 1,000 tons for rye, and 1,000 tons for buckwheat. Furthermore, at the Ministerial Meeting in December, it was decided to add quotas (0.5 million tons for wheat and 1 million tons for corn), in addition to extension of the measure up to the end of March 2011 (Ministerial Meeting Resolution No. 1182, December 6, 2010). In April 2011, it extended the measure until June 30, and added 2 million tons for corn.

According to FAO's statistics, Ukraine's share in export volume (2008) was 7.9% for wheat and flour (sixth in the world), 21.4% for barley (first in the world), and 7.1% for corn (fourth in the world).

<Problems under international rules>

The Ukraine is a major exporting country of wheat and barley. This measure can impact grain supply and demand in the world and so affect its price.The Ukrainian government explains that the measure is taken for the reason of "critical shortages of foodstuffs" prescribed in Article XI(2)(a) of the GATT. Therefore, it is not possible to definitely say that the measure clearly has a problem in terms of the WTO Agreements. However, in answer to questions about the measure put by Japan, the Ukrainian government stated that it had decided to implement the measure while leaving 65% of export capacity for the season for wheat (approximately 3.8 million tons) and 89% of export capacity for the season for corn (approximately 3.77 million tons). Thus, it is questionable whether "critical shortages of foodstuffs" prescribed in Article XI:(2)(a) of the GATT are applicable to the case. In addition, as it cannot be said, under the present circumstances, that a mechanism for disclosing information on export restriction measures to the contracting parties has been sufficiently developed, it is impossible to determine whether measures taken by each country are consistent with Article XI(2) and Article XX of the GATT.

<Recent developments>

After the meeting of the WTO Agricultural Committee in November 2010, importing countries, including Japan and Israel, as well as the United States, the EU, etc. expressed concerns about the introduction of the protectionist measure. On June 4, 2011, the measure was cancelled, except for barley and buckwheat (May 25, 2011, Ministerial Conference Resolution No.566). After that, an export tariff was implemented on wheat, barley and corn from July 1, 2011, until January 1, 2012 (No.3387-VI, promulgated June 17, 2011). On October 22, 2011, it was withdrawn with respect to wheat and corn (No.3906-VI, promulgated on October 21, 2011).

INFRINGEMENT OF TRADEMARK RIGHTS IN TURKEY

<Outline of measures>

In July 2008, the Supreme Court of Appeals of Turkey rendered the following judgment concerning the penal provisions for infringement of trademark rights in Decree Law 556 on the protection of trademark rights: "It is unconstitutional to provide for penalties in a decree law, and the penal provisions in said decree law shall lose effect on January 5, 2009, which is six months later." Furthermore, the aforementioned penal provisions in the decree law ceased to be effective on January 1, 2009, as the revised Penal Code stipulating that a decree law set by an administrative agency may not prescribe either offenses or penalties entered into force on that date. However, since the revised Trademark Act, which included penal provisions, was not enacted until January 28, 2009, there was a period during which there was no penal provision for infringement of trademark rights.

In addition, the Constitution of Turkey provides that where penal provisions were revised, a law that is most advantageous to the defendant shall apply out of laws that were effective as of the time when the offence was committed and laws that were put in force after the offence was committed. In the criminal trials dealing with infringement of trademark rights committed before January 28, 2009, when the revised Trademark Act was enacted, and in those trials whose periods prior to decisions overlapped the lapse period as mentioned above, the most advantageous law, namely the one without penal provisions, was applied to the defendant. As a result, defendants were found not guilty in those trials. With regard to the infringing goods, if the goods were found to be: 1) harmful to the public safety or 2) subject to another criminal case, the court ruling was to confiscate the goods permanently. In all other cases, infringing

goods that were confiscated during investigations were returned to defendants.

<Problems under international rules>

The aforementioned penal provisions in the decree law lost effect on January 1, 2009, and there was no penal provision for infringement of trademark rights until the entry into force of the revised Trademark Act on January 28, 2009. This violates Article 41 of the TRIPS Agreement requiring Members to ensure enforcement procedures against any act of infringement of intellectual property right under their law, and Article 61 of said Agreement obliging Members to provide for criminal procedures and penalties that are to be applied to the unauthorized use of a trademark.

<Recent developments>

On June 4, 2010, the Japanese government decided to conduct investigations on facts, etc. in response to a motion filed with the Office of Intellectual Property Protection by a company on February 4, 2010, based on the investigation request system for intellectual property infringement overseas. On November 4th, Japan, the United States, and the EU jointly proposed that in order to comply with the TRIPS Agreement, infringing goods which are confiscated during the period of lapse of penal regulations, must be prevented from going into markets again. They also requested that the Turkish government promptly respond to the proposal. In May 2011, the Japanese government visited the Ministry of Justice, the Constitutional Court of Turkey and various local intellectual property courts. It requested simplification of procedures of provisional seizure of infringing goods in order to prevent the goods from going back into markets, and again to act quickly and appropriately to these situations.

REGULATIONS ON ENERGY LABELING IN MEXICO

<Outline of measure>

On September 10, 2010, the Secretariat of Energy of Mexico announced that consumption labelling would be mandatory from September 11, 2011, on 186 items, based on the Renewable Energy Law. It stipulates that manufacturers, importers and sellers of those 186 listed items are obligated to indicate on a label information regarding energy consumption (products for industrial use (B to B) are exempt).

<Problem under international rules>

The WTO Agreement stipulates that the announcement and implementation of trade regulations must be conducted in a "fair and equitable" manner. However, this TBT notification was released just before the implementation of the regulations. Therefore, it was inconsistent with TBT Agreement Article 2.9.2 – other WTO Members shall be notified of proposed regulations "at an early and appropriate stage, when amendments can still be introduced and comments taken into account." The Mexican regulations apply to wide range of products, from those that have a low level of energy consumption to stockpiles in the market. The methods of display or measurement are not clarified. Therefore, these regulations may cause a negative impact on consumers (who may find it difficult to obtain accurate information) and also on the manufacturers of goods (who may find it difficult to comply with the regulations). This may violate GATT Article X:3 ("Trade regulations must be implemented a fair and equitable manner)."

<Recent developments>

In May 2011, at the Mexican embassy, Japanese electric and electronic industry groups, such as the Communication and Information Network Association (CIAJ), Japan Business Machine and Information System Industries (JBMIA) and the Japan Electronics and Information Technology Industries Association (JEITA), submitted their opinions and expressed their concerns regarding this issue. In June 2011, at the meeting of the TBT Committee, Japan urged Mexico to extend the transitional period before implementation, to clarify the method of labelling and displaying information and the method of measuring values, and to reduce the number of items that are subject to the regulations. The Mexican government submitted a TBT notification in June. In August 2011, Japan responded with comments to Mexico's TBT notification. Subsequently, the regulations were implemented. Some industrial machinery was excluded from the list; however, the reduction did not take into consideration the detailed concerns raised by Japan. In November of the same year, at the TBT Committee meeting, Japan, South Korea, the US and the EU jointly expressed their concerns on this issue. Japan also appealed for improvement at a bilateral meeting. Further discussions with the Mexican government are needed to resolve this issue.

ISSUES ON COUNTERFEIT AND PIRATED ILLEGAL MERCHANDISE IN SOUTH AMERICA AND OTHER ISSUES

The damage from counterfeit and pirated goods that are copies of Japanese products in South America is a serious problem. The Survey published by the Japan Patent Office, "FY 2011 Survey Report on Loss Caused by Counterfeiting" (March 2012) shows that, among those Japanese enterprises that claim to have suffered from loss caused by counterfeiting, 7.4% stated that the loss was caused by products that passed through, or were manufactured, sold or consumed in, Central and South America. It also points out that the majority of those products are manufactured in East and Southeast Asia, and then flow into or through surrounding countries to a large market in Brazil. However, effective enforcement of rights may not be sufficiently ensured, as insufficient reaction by law enforcement authorities in importing countries may prevent effective seizure of those products In case where effective and prompt exercising of rights is not possible, such a situation may violate Article 41 and other article of the TRIPS Agreement, which permits members to request that authorities take effective and prompt action by using enforcement procedures.

In order to rectify this situation, Japan is undertaking cooperation initiatives through several approaches, such as by holding appraisal skill seminars for personnel in Brazil and Chile to improve the ability of law enforcement personnel.

The International Criminal Police Organization (ICPO) – INTERPOL -- and the World Customs Organization (WCO) conduct an operation called "Jupiter," which started in 2005, to seize counterfeit and illicit goods, with the cooperation of police, customs and private enterprises from various countries in South America, It is important to continue these international support efforts and encourage each country to enhance law enforcement while monitoring the implementation status of the TRIPS Agreement and regulations of the country's Economic Partnership Agreements (EPA) with Japan.