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**CHINA – CERTAIN MEASURES CONCERNING THE PROTECTION
OF INTELLECTUAL PROPERTY RIGHTS**

REQUEST TO JOIN CONSULTATIONS

Communication from Japan

The following communication, dated 3 April 2018, from the delegation of Japan to the delegation of China, the delegation of the United States and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.11 of the DSU.

I wish to refer to the consultations requested by the United States pursuant to Article 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article 64 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* ("TRIPS Agreement") and Article XXII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") in the communication circulated to WTO Members on 26 March 2018 titled "*China - Certain Measures Concerning the Protection of Intellectual Property Rights*" (WT/DS542/1, IP/D/38). My authorities have instructed me to notify the consulting Members and the Dispute Settlement Body of the desire of Japan to be joined in these consultations, pursuant to paragraph 11 of Article 4 of the DSU.

The subject matter of the consultations requested by the United States relates to China's practices and regulations of technology transfer contracts between Chinese companies and companies of other WTO Members, including Japan. Japan has a substantial trade interest in the consultations the United States requested for several reasons.

First, China's laws, regulations and other measures relating to technology transfers, which are identified in the request for consultations by the United States, are legal instruments with respect to which Japan has held and expressed its concerns for several years. For example, Japan has expressly raised its concerns with these Chinese licensing regulations on patents and know-how in its annual publication entitled "Report on Compliance by Major Trading Partners with Trade Agreements -WTO, EPA/FTA and IIA-".¹ As the latest report states that "a number of restrictive clauses and mandatory warranties contained in the Administrative Ordinance (i.e. "TIER") are subject to concern from the point of view of Article 3 of the TRIPS Agreement (national treatment) in relation to Article 28(2) of the same Agreement with respect to the right of patent owners to conclude licensing contracts."² Japan has continuous concern about the legal instruments identified in the request for consultations by the United States, which have a commercial impact on Japanese companies that transfer technologies to Chinese partners.

Second, Japan has been one of the major exporters of technology to China. In recent years, the technology provided by Japanese companies to Chinese companies accounted for about 20% of the technology imported into China (in terms of number of contracts).³ Thus Japan is one of the largest stakeholders in technology transfer to China.

¹ See, for example, the latest 2017 report, page 56-70, which is available at: http://www.meti.go.jp/english/report/data/2017WTO/gct17_1coe.html

² *ibid*, page 61

³ China statistical yearbook on science and technology

Third, Japan is also one of the major foreign countries whose nationals possess patent rights in China. For example, in 2015, Japanese nationals filed approximately 40,000 applications for patent rights⁴ and approximately 36,000 patents were granted.⁵ As such, these patent rights possessed by Japanese nationals in China are subject to China's technology transfer laws, regulations and other measures.

Specifically, the Japanese companies which transfer technologies to Chinese companies by contracts are directly affected by the *Regulations of the People's Republic of China on the Administration of the Import and Export of Technologies*, one of the measures identified by the United States, because this measure mandates contractual terms in technology transfer agreements between foreign and Chinese partners, which are disadvantageous to foreign partners, including Japanese companies. With respect to the regulations of China relating to joint ventures, the *Regulations for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures*, for example, denies foreign patent holders the ability to enforce their intellectual property rights against Chinese joint-venture parties after a technology transfer contract is expired. Thus, Japanese companies that have stakes in a joint-venture company with Chinese shareholders are directly affected, particularly when they have their technologies transferred to the joint-venture company.

⁴ SIPO statistics, Table 3 Distribution of Inventions Received from Major Countries and Regions 2015, which is available at: <http://english.sipo.gov.cn/statistics/2015s/12/1061552.htm>

⁵ SIPO statistics, Table 6 Distribution of Grants for Inventions Received from Major Countries and Regions 2015, which is available at: <http://english.sipo.gov.cn/statistics/2015s/12/1061548.htm>