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Page: 1/1

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CHINA – CERTAIN MEASURES ON THE TRANSFER OF TECHNOLOGY

REQUEST TO JOIN CONSULTATIONS

Communication from Japan

The following communication, dated 18 January 2019, from the delegation of Japan to the delegation of China, and the delegation of the European Union, is circulated to the Dispute Settlement Body in accordance with Article 4.11 of the DSU.

I wish to refer to the consultations requested by the European Union pursuant to Article 1 and Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and Article 64 of the Agreement on *Trade-Related Aspects of Intellectual Property Rights* ("TRIPS Agreement") in the communication circulated to WTO Members on 8 January 2019 titled "*China - Certain Measures on the Transfer of Technology*" (WT/DS549/1/Rev.1, G/L/1244/Rev.1, IP/D/39/Rev.1). My authorities have instructed me to notify the consulting Members and the Dispute Settlement Body of the desire of Japan to join in these consultations, pursuant to paragraph 11 of Article 4 of the DSU.

The subject matter of the consultations requested by the European Union relates to Chinese measures pertaining to the transfer of foreign technology into China. Japan has a substantial trade interest in the consultations the European Union requested for several reasons.

As stated in its communication dated 11 June 2018 (WT/DS549/2), Japan has held and expressed its concerns for several years with respect to the legal instruments identified in the request for consultations by the European Union. The legal instruments include the relevant provisions in the *Regulations of the People's Republic of China on the Administration of the Import and Export of Technologies*, which mandate discriminatory contractual terms in technology transfer agreements between foreign and Chinese partners that are disadvantageous to foreign partners, as well as the provisions in the *Regulations for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures*, which deny foreign patent holders the ability to enforce their intellectual property rights against Chinese joint-venture parties after their technology transfer contract expires.

Also, as again set out in its communication dated 11 June 2018 (WT/DS549/2), Japan is one of the major exporters of technology to China as well as one of the major foreign countries whose nationals possess patent rights in China. Japan's stake in this regard relates to various business sectors, including auto industry and biotechnology industry that are also sectors and industries covered by the issues the European Union raises in its request for consultations.

For these reasons, Japan has a substantial trade interest in the consultations requested by the European Union, and wishes to join in the consultation.
