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## CHINA - CERTAIN MEASURES ON THE TRANSFER OF TECHNOLOGY

### REQUEST TO JOIN CONSULTATIONS

#### *Communication from Japan*

The following communication, dated 8 June 2018, 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.

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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 6 June 2018, titled "*China - Certain Measures on the Transfer of Technology*" (WT/DS549/1, G/L/1244, IP/D/39). 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.

First, China's laws, regulations and other measures relating to technology transfers, which are identified in the request for consultations by the European Union, 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-".<sup>1</sup> 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."<sup>2</sup>, Japan has continuing concern about the legal instruments identified in the request for consultations by the European Union, 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).<sup>3</sup> Thus Japan is one of the largest stakeholders in technology transfer to China.

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<sup>1</sup> 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](http://www.meti.go.jp/english/report/data/2017WTO/gct17_1coe.html)

<sup>2</sup> *ibid*, page 61

<sup>3</sup> 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 rights<sup>4</sup> and approximately 36,000 patents were granted.<sup>5</sup> 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 European Union, because this measure mandates such contractual terms in technology transfer agreements between foreign and Chinese partners that 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 their technology transfer contract expires. 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.

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

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<sup>4</sup> 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>

<sup>5</sup> 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>