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Launch of “Osaka Track” on Digital Rules

Many difficulties lie ahead for WTO e-commerce negotiations

< Summary >

- ◆ The G20 Osaka Summit chaired by Japan concluded after issuing the Summit Declaration that confirmed the basic principles of the multinational free trade system, such as “free, fair and non-discriminatory” as to trade and investment issues. The Declaration also included the commitment to WTO reform.
- ◆ With regards to electronic commerce and data flow, Japan proposed the launch of “Osaka Track” and the concept of “DFFT (Data Free Flow with Trust),” which were met with approval by many participating countries.
- ◆ But while agreements were reached on general issues, itemized discussions remain unsettled. We will see even more divisive opinions in the future. We hope Japan to play a leading role in talks going forward.

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1. Agreement reached during the G20 Osaka Summit to launch “Osaka Track”

The G20 Summit was held in Osaka, chaired by Japan for the first time, on June 28 and 29, 2019. The summit was attended by current world leaders such as US President Donald Trump and Chinese President Xi Jinping to discuss a wide range of topics, including the world economy, trade/investment, environment/energy, and employment¹. With the US-China summit also held on the sidelines, the G20 Osaka Summit attracted attention from around the world.

Of all the main themes addressed during the summit, the topics drawing more attention than in the past were issues related to international trade. Amid intensification of US-China trade friction, the most important discussion point was whether the Osaka Summit would be able to convey the political message that underpins the importance of protecting the rule-based multinational free trade system and reach a political agreement to expedite reform of the WTO (World Trade Organization), which forms the basis of the multinational free trade system.

In the “G20 Osaka Leaders’ Declaration” (hereafter the “Summit Declaration”), the basic principles of the multinational free trade system, such as “free, fair and non-discriminatory,” were included and support for WTO reform was reconfirmed (paragraph 8, **Chart 1**).² There were also criticisms leveled at the Summit Declaration for failing to include such wordings as “fight against protectionism” and so forth. Nevertheless, we believe the Summit Declaration should be evaluated since it managed to obtain a political commitment from the leaders of major countries with conflicting opinion by overcoming a “great challenge” (Prime Minister Shinzo Abe).³

In conjunction with these achievements, the chair country Japan also placed emphasis on reaching an agreement to launch “Osaka Track.” “Osaka Track” is defined as “a process which demonstrates the commitment to promote efforts toward international rule-making on the digital economy, especially on data flow and electronic commerce.”⁴ In the World Economic Forum Annual Meeting (Davos meeting) held on January 23 this year, Prime Minister Abe proposed the launch of “Osaka Track” and introduced the concept of “DFFT

¹ The G20 Summit participants include Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, South Korea, Republic of South Africa, Russia, Saudi Arabia, Turkey, United Kingdom, United States, and European Union. The aggregate GDP (Gross Domestic Product) of the participant countries represents about 80% of the global GDP. Thailand, the 2019 chair country of ASEAN (Association of Southeast Asian Nations), and Chile, the 2019 chair country of APEC (Asia-Pacific Economic Cooperation), and six other countries were also invited to the G20 Osaka Summit, along with nine international organizations that included the IMF (International Monetary Fund) and OECD (Organisation for Economic Co-operation and Development) (from documents of the Ministry of Foreign Affairs).

² The topics of trade and investment, and electronic commerce and data flow, outlined in the “G20 Osaka Leaders’ Declaration” followed the declaration issued at the G20 Ministerial Meeting on Trade and Digital Economy in Tsukuba, Ibaraki Prefecture, on June 8 to 9 (the Ministry of Internal Affairs and Communications, the Ministry of Foreign Affairs, and the Ministry of Economy, Trade and Industry, “G20 Ministerial Statement on Trade and Digital Economy”).

³ The Prime Minister’s Office of Japan, “Presidency Press Conference by Prime Minister Shinzo Abe following the G20 Osaka Summit,” June 29, 2019.

⁴ The G20 Osaka Summit website, “Leaders’ Special Event on Digital Economy.”

(Data Free Flow with Trust).⁵ DFFT aims to “achieve free flow of data while securing public trust in protection of privacy and security,”⁶ and was also included in the Summit Declaration (paragraph 11, **Chart 1**). As part of the Leaders’ Special Event on the Digital Economy, held on the first day on the sidelines of the G20 Osaka Summit, the “Osaka Declaration on the Digital Economy” was made public; the Declaration also put forward the launch of “Osaka Track” with a view to “promoting international rule-making in the WTO on the trade-related aspects of electronic commerce” together with WTO member countries interested in electronic commerce, as well as the determination to “make further efforts to achieve substantial progress in negotiations by the 12th WTO Ministerial Conference in June 2020.”⁷

The movement referred to as “data protectionism” is now on the rise centered on emerging countries, creating a wide gap in opinions among the G20 nations as to how the rules on electronic commerce and data flow should be addressed. In this situation, reaching an agreement on the DFFT concept, which is expected to serve the basis for future discussions, and gaining political momentum on negotiation as the establishment of

Chart 1: G20 Osaka Leaders’ Declaration (extract)

8. We welcome the G20 Ministerial Statement on Trade and Digital Economy in Tsukuba. We strive to realize a free, fair, non-discriminatory, transparent, predictable and stable trade and investment environment, and to keep our markets open. International trade and investment are important engines of growth, productivity, innovation, job creation and development. We reaffirm our support for the necessary reform of the World Trade Organization (WTO) to improve its functions. We will work constructively with other WTO members, including in the lead up to the 12th WTO Ministerial Conference. We agree that action is necessary regarding the functioning of the dispute settlement system consistent with the rules as negotiated by WTO members. Furthermore, we recognize the complementary roles of bilateral and regional free trade agreements that are WTO-consistent. We will work to ensure a level playing field to foster an enabling business environment.
11. Cross-border flow of data, information, ideas and knowledge generates higher productivity, greater innovation, and improved sustainable development, while raising challenges related to privacy, data protection, intellectual property rights, and security. By continuing to address these challenges, we can further facilitate data free flow and strengthen consumer and business trust. In this respect, it is necessary that legal frameworks, both domestic and international, should be respected. Such data free flow with trust will harness the opportunities of the digital economy. We will cooperate to encourage the interoperability of different frameworks, and we affirm the role of data for development. We also reaffirm the importance of interface between trade and digital economy, and note the ongoing discussion under the Joint Statement Initiative on electronic commerce, and reaffirm the importance of the Work Programme on electronic commerce at the WTO.

Source: Extract from the “G20 Osaka Leaders’ Declaration,” taken from the G20 Osaka Summit website dated June 28 and 29, 2019.

⁵ In the speech, Prime Minister Abe said: “First off, I would like the Osaka G20 to be long remembered as the summit where worldwide data governance began. Let Osaka G20 lay down a new track for looking at data governance -- call it the Osaka Track -- under the roof of the WTO” (the Prime Minister’s Office of Japan, “the Prime Minister’s Keynote Speech at the World Economic Forum Annual Meeting,” January 23, 2019).

⁶ From documents of the Ministry of Economy, Trade and Industry.

⁷ The Ministry of Economy, Trade and Industry, “Osaka Declaration on the Digital Economy,” June 28, 2019.

“Osaka Track” can be evaluated as important achievements of this G20 Summit.⁸ With Japan viewed as falling behind in its response to the digital era, both in the private and public sectors, these achievements mean a great deal in terms of leading future international negotiations.

2. A wide gap in opinions exists over e-commerce rules

Discussions on “Osaka Track” are expected to be held under the WTO in the immediate future. The like-minded countries among the WTO members have already begun discussions on electronic commerce rules.

At the WTO 11th Ministerial Conference held in December 2017 (Buenos Aires, Argentina), 71 of the 164 WTO members released the “Joint Statement on Electronic Commerce.” In this statement, the participant countries agreed to initiate exploratory work with respect to future WTO negotiations on the trade-related aspects of electronic commerce.⁹ Based on this development, other WTO members who had not signed the joint statement also took part in the discussions toward formulating e-commerce rules from March 2018, and a new joint statement was announced in January 2019 at an informal ministerial meeting (Davos, Switzerland). The joint statement confirmed that the participant countries would “commence WTO negotiations on trade-related

**Chart 2: Joint Statement on Electronic Commerce (January 25, 2019, Davos)
Participating Countries and Separate Customs Territories**

Regions	78 WTO members signing the declaration
Asia Pacific	Japan, China, South Korea, Brunei, Laos, Malaysia, Myanmar, Singapore, Thailand, Australia, New Zealand, Hong Kong, Mongolia, Taiwan
Americas	United States, Canada, Mexico, Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Honduras, Nicaragua, Panama, Paraguay, Peru, Uruguay
Europe/Russia/CIS	EU 28 member countries, Norway, Switzerland, Iceland, Liechtenstein, Albania, North Macedonia, Moldova, Montenegro, Georgia, Kazakhstan, Ukraine, Russia
Middle East/Africa	Turkey, Bahrain, Kuwait, Qatar, United Arab Emirates, Saudi Arabia, Israel, Nigeria, Benin

Note: The table includes countries that later expressed their intention to participate.

Source: Made by MHRI based upon WTO document WT/L/1056, January 25, 2019 and materials of the Ministry of Foreign Affairs.

⁸ The Ministry of Economy, Trade and Industry highly evaluates the joint statement issued by the G20 Ministerial Meeting on Trade and Digital Economy, stating: “Under the current tensions of US-China trade friction, US-EU mutual distrust, and conflict between developed and developing countries, we evaluate the agreement reached on the basic concept of data among the G20 nations spearheaded by Japan as significant” (from materials of the Trade Committee, Industrial Structure Council [held on June 19, 2019], p. 18).

⁹ WTO document WT/MIN (17)/60, December 13, 2017.

aspects of electronic commerce.”¹⁰ Negotiations are now effectively underway,¹¹ with 78 members participating in the dialogue¹² (**Chart 2**).

However, G20 member countries like India, Indonesia and South Africa, as well as nations such as Vietnam that have already enacted the CPTTP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership, TPP11) with its own advanced rules on electronic commerce, have not taken part in these talks. Also, India, Indonesia and South Africa did not sign the “Osaka Declaration on the Digital Economy” mentioned earlier.¹³ This indicates that India, Indonesia and South Africa are particularly reluctant to create international rules governing e-commerce and data flow. Because the three countries did not participate in the “Osaka Declaration on the Digital Economy,” the Summit Declaration did not include the term “Osaka Track,” and the Osaka Declaration is not positioned as an annexed document of the Summit Declaration.

Chart 3: Key elements proposed in the WTO e-commerce negotiations

Facilitation	Electronic signatures and authentications
	Electronic documentation of trade documents (paperless trading)
	Access to online payment solutions/Electronic payment
Liberalization	Non-imposition of customs duties on electronic transmissions
	Free access to the Internet (prohibition of arbitrary blocking by the government)
	Non-discriminatory treatment of digital products
	Free cross-border transfer of information by electronic means
	Prohibition of data localization barriers including using or locating computing facilities
	Improving commitments on goods and services market access
Reliability (Trust)	Online consumer protection
	Unsolicited commercial e-mail (spam)
	Protection of personal information (privacy)
	Protection of important information such as trade secrets, including source codes and proprietary algorithms
Transparency/ Cooperation/ Development	Publication and exchange of information on regulatory measures and procedures
	Technical assistance and capacity building

Note: Extract the key elements from the proposals disclosed by the participating countries (WTO documents [INF/ECOM/*]). The list is exemplary and not comprehensive. This classification is provisional and may be subject to change in the future.

Source: Created by MHRI based upon WTO documents and materials prepared by the Ministry of Foreign Affairs and the Ministry of Economy, Trade and Industry.

¹⁰ The Ministry of Economy, Trade and Industry, “Joint Statement on Electronic Commerce,” January 25, 2019.

¹¹ There has been no official declaration of the launch of negotiations, and while it is referred to as “ongoing discussion” in the “G20 Ministerial Statement on Trade and Digital Economy,” actual negotiations are believed to be underway as seen in the submission of a draft texts of agreement by the participating countries.

¹² The Davos joint statement was first signed by 76 WTO members, but Benin and Saudi Arabia later expressed their intention to join the statement. 78 members are participating in the statement as of the end of June 2019 (from materials of the Ministry of Foreign Affairs).

¹³ Vietnam which participated in the G20 Osaka Summit as an invited country signed the Declaration.

Looking at the working process thus far, the participating countries have made many proposals proactively, and portions of these proposals have been disclosed. But it seems there is a wide discrepancy in the opinions of the participating countries on the elements (items) subject to negotiation.

If we extract the main items from the elements proposed by the participating countries and provisionally divide them into “facilitation,” “liberalization,” “reliability (trust),” and “transparency/cooperation/development” of electronic commerce (**Chart 3**),¹⁴ we can see that both Japan and the United States want to promote “liberalization” while securing “facilitation” and “reliability (trust)” of e-commerce, in accordance with the provisions on Electronic Commerce (Chapter 14) in the TPP (Trans-Pacific Partnership) and the provisions on Digital Trade (Chapter 19) in the USMCA (United States-Mexico-Canada Agreement), which was developed based on the TPP (**Chart 4**). This is in line with DFFT which attempts to achieve free data flow while securing trust.

On the other hand, China places emphasis on the “facilitation” and “development” aspects and seems unmotivated to promote “liberalization.” Especially for elements such as cross-border flow of data, data localization, and treatment of digital products, which are incorporated in the Electronic Commerce chapter of the TPP and the focus of

Chart 4: Treatment of key elements in recent FTAs and participating countries' proposals

	Elements	FTAs				Proposals			
		TPP	USMCA	Japan-EU	ASEAN ^{*1}	Japan	US	EU	China
Facilitation	Electronic signatures and authentications	○	○	○	○	○		○	○
	Paperless trading	○	○		○	○			○
	Electronic payment				○	○			○
Liberalization	Non-imposition of customs duties	○	○	○		○	○	○	△ ^{*4}
	Free access to the Internet	○	○			○	○	○	
	Non-discriminatory treatment	○	○			○	○		
	Free cross-border transfer of information	○	○		△ ^{*3}	○	○		
	Data localization	○	○		○	○	○	○	
	Market access	- ^{*2}	- ^{*2}	- ^{*2}		○	○	○	
Reliability (Trust)	Online consumer protection	○	○	○	○	○		○	○
	Unsolicited commercial e-mail	○	○	○		○		○	○
	Protection of personal information	○	○	○	○			○	○
	Source codes	○	○	○		○	○	○	
Transparency/Cooperation/Development	Publication and exchange of information on regulations	○	○	○	○	○			○
	Technical assistance and capacity building								○

Notes: *1 ASEAN Agreement on Electronic Commerce

*2 As a comprehensive FTA, provisions on market access are provided in other chapters.

*3 This provision is not obligatory.

*4 This provision does not make the obligation permanent.

Source: Made by MHRI based upon FTAs and WTO documents (INF/ECOM/*).

¹⁴ For details of each element, refer to “2019 Report on Compliance by Major Trading Partners with Trade Agreements,” Part III, Chapter 7 “Electronic Commerce,” by the Ministry of Economy, Trade and Industry, Trade Policy Bureau.

countries like Japan and the United States, China argues that “in light of their complexity and sensitivity, as well as the vastly divergent views among the Members, more exploratory discussions are needed before bringing such issues to the WTO negotiation.”¹⁵

3. Many difficult challenges lie ahead in the future negotiations

Considering the difficult world situation nowadays, we hold that the G20 Osaka Summit should be evaluated as a success. On the topics of trade and investment, and electronic commerce and data flow, reaching an agreement on basic principles such as “free, fair and non-discriminatory” and the concept of DFFT carries great significance. Some of the recent summit meetings, including the APEC (Asia-Pacific Economic Cooperation) Economic Leaders' Meeting held last November, have failed to issue a joint declaration due to conflicting positions on trade and investment issues. But this time we saw agreements reached on certain issues and a declaration was released including these agreements. This achievement should be appraised as a result of the chair country Japan’s stance to “focus on common points and agreements rather than differences in opinions.”¹⁶

But while the G20 Osaka Summit found “common points and agreements” among member nations, “differences in opinions” also remain. On the issues of electronic commerce and data flow discussed in this report as well as WTO reform that includes dispute settlement procedures, discord may intensify even further when countries begin talks on specific items.

The G20 Osaka Summit served as a good occasion to confirm the common recognition that is expected to become the basis for future discussions. Will Japan be able to lead these discussions by leveraging this common recognition in the face of even more divisive opinions? We hope Japan to play a leading role in talks going forward.

¹⁵ WTO document INF/ECOM/19, paragraph 4.2.

¹⁶ The Prime Minister’s Office of Japan, “Speech of Prime Minister Abe at the Closing Session of the G20 Osaka Summit,” June 29, 2019.