



**TRADE POLICY DEVELOPMENTS PAPER NO. 4**

## **REPORT ON JAPAN**

**(for the period April 2011- June 2011)**

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*This report has been prepared by the Centre for International Trade and Economic Laws (CITEL), Jindal Global Law School, Sonapat, NCR of Delhi under a project of the Centre for WTO Studies, Indian Institute of Foreign Trade (IIFT), New Delhi.*

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## Summary

The review report for the quarter (April-June 2011) aims to highlight the developments in the below-mentioned areas of trade policy in Japan. The core issues shall also be monitored closely in the subsequent reports.

1. The developments in the economic partnership agreement entered into between Japan and India. The progress with respect to the impact on Indian professionals like musicians, accountants, architects and business consultants as well as nurses and their entry into the Japanese sector shall be closely monitored. The progress report of textile, pharmaceutical and agricultural products shall be analysed as they are expected to be the leading beneficiaries.
2. A comparative analysis of the benefits accruing to India *vis a vis* the benefits under other recent EPAs of Japan signed with Peru as well as countries of those signed with ASEAN. An update of the issues discussed under the trilateral summit of Japan, China and Republic of Korea which was initiated in 2008.
3. Changes in the GSP scheme of Japan and implications for India, if any.
4. The progress of the Bill tabled in the Diet during February, 2011, on Special Measures for the Promotion of Research and Development by Certified Multinational Enterprises aimed at enhancing investment opportunities in Japan shall be monitored as it may directly impact growing opportunities for Indian investors in Japan.
5. The progress of international harmonization for assessment of custom duties and taxes and the development in Customs Mutual Assistance Agreement shall be monitored. The agreement becomes important as India is still not a party to the agreement and India's role in CMAA which includes countries like China and S. Korea could be a potential policy change for India.
6. Changes in the government procurement policies.
7. The developments in the field of standards in Japan and the stringent added phytosanitary measures mandated by ordinances such as the "*Establishment of Proposed Revisions of the Enforcement Ordinance of the Plant Protection Law*" released during the review quarter shall be closely observed. This could have potential impact upon the India exporters exporting their products to Japan.
8. JPO's increasing ties with USPTO, EPO, KIPO and SIPO shall be monitored for paving the path of international harmonization between Japan and Indian laws on IP protection. Japan's nature of participation in the ACTA will also remain a matter of concern for India owing to the inclusion of several TRIPS plus provisions in the agreement which may impact the access to drugs in the developing countries.
9. Japan's bilateral cooperation agreements on anti-competitive activities with Canada, the European Union, and the United States shall be monitored for easing out the notification of anti-competitive procedure between India and Japan as well.
10. The growing ties between India and Japan shall be analysed from the perspective of the educational sector where Japan has progressed with US by setting accredited higher educational institutions and Foreign University, Japan Campus. This designation provides these campuses with benefits similar to those accorded Japanese educational institutions (e.g., student eligibility for student rail passes and student visas), but does not confer the tax benefits enjoyed by Japanese institutions and their students
11. The progress of air service agreements where India is a signatory shall be monitored and other developments relating to "open-sky" policies shall be looked into, where India is not included.

## **List of Abbreviations**

ACTA- Anti-Counterfeit Trade Agreement

AD- Anti dumping duty

ALIC- Agriculture & Livestock Industries Corporation

AMA- Anti-Monopoly Act

APEC- Asia and Pacific Economic Co-operation

BOCB- Registered Overseas Certifying Body

BOJ- Bank of Japan

c.i.f.- Cost, Insurance and Freight

CEPEA- Comprehensive Economic Partnership in East Asia

CITES- Convention on International Trade in Endangered Species of Wild Fauna and Flora

CVD- Countervailing Duty

CMAA- Customs Mutual Assistance Agreement

CPRR- Committee for the Promotion of Regulatory Reform

EAFTA- East Asian Free Trade Agreement

EPA- Economic Partnership Agreement

EPO- European Patent Office

EU- European Union

FDI- Foreign Direct Investment

FSA- Financial Services Agency

FTAAP - Free Trade Area of the Asia-Pacific

GAAP- Generally Accepted Accounting Principles

GATS- General Agreement on Trade in Services

GATT- General Agreement on Tariff and Trade

GCC- Gulf Cooperation Council

GDP- Gross Domestic Product

GI- Geographical indication

GM- Genetically Modified

GPA- Government Procurement Agreement  
GPEA- Agreement Government Policy Evaluations Act  
GRU- Government Revitalization Unit  
GSP- Generalized System of Preferences  
IAS- International Accounting Standards  
IBL- Insurance Business Law  
IIA- International Investment Agreements  
IMPI- Mexican Institute of Industrial Property  
IOSOC- International Organization of Securities Commissions  
IP- Intellectual Property  
IPSP- Intellectual Property Strategic Programme  
JAS- Japan Agricultural Standards  
JBIC- Japan Bank for International Cooperation  
JETRO- Japan External Trade Organization  
JFC- Japan Finance Corporation  
JFTC- Japan Free Trade Commission  
JICCI- Japan Chamber of Commerce and Industry  
JIS- Japan Industrial Standards  
JISC- Japanese Industrial Standards Committee  
JMC- Japan Machinery Center for Trade and Investment  
JPO- Japan Patent Office  
JT- Japan Tobacco Inc.  
KIPO- Korean Intellectual Property Office  
METI- Ministry of Economy, Trade, and Industry  
MFN- Most Favored Nation  
MIC- Ministry of Internal Affairs and Communications  
MLIT- Ministry of Land, Infrastructure, Transport and Tourism  
MOFA- Ministry of Foreign Affairs  
MOFF- Ministries of Agriculture, Forestry and Fisheries  
MRA- Mutual Recognition agreements

NEXI- Nippon Export and Investment Insurance

NTA- National Tax Agency

OECD- Organization for Economic Co-operation and Development

PPH- Patent Prosecution Highway

R&D- Research and Development

RCB- Registered Certifying Body

RIETI- Research Institute of Economy, Trade and Industry

SCC- Security Consultative Committees

SDR- Special Drawing Rights

SIPO- State Intellectual Property Office of People's Republic of China

SME- Small and Medium Enterprise

SMEA- Small and Medium Enterprise Agency

SMRJ- Small and Medium Enterprises and Regional Innovation

SPRING- Service Productivity and Innovation for Growth

SPS- Sanitary and Phytosanitary

TEPCO- Tokyo Electric Power Company

TICAD- Tokyo International Conference on African Development

TPP- Trans-Pacific Partnership

UNCLOS- United Nations Convention on the Law of the Sea, 1982

US- United States

USFS- Universal Service Fund System

VAT- Value Added Tax

WCO- World Custom Organization

WTO- World Trade Organization

## Part-I

### I. Economic Environment: Macro-Economic Fundamentals

#### IA. Japanese Economy- An Overview

With a GDP of US\$5.458 trillion, the Japanese economy is the third largest in the world, following US and China.<sup>1</sup>

#### *Economic History*

Japan's economic history can be divided into two significant periods- the pre-war Meiji Era and the post-war Economic Miracle. Being one of the earliest nations in Asia to have industrialized, the Japanese government actively pursued the western-style reforms and created a conducive business environment for private businesses to thrive during the 19<sup>th</sup> century. The support provided to the entrepreneurs expanded them into conglomerates known as the Zaibatsu. By the start of World War II, the Big Four Zaibatsu – Mitsubishi, Mitsui, Sumitomo and Yasuda had control over more than 30% of Japan's mining, chemical, metals industries, 50% of the machinery and equipment market, and 60% of the commercial stock exchange. The Zaibatsu also developed interlocking relationships among themselves and Japanese policy makers, thus allowing them a level of control over government policies.

The following years witnessed World War II devastating the economic and social foundations of the country. However, the constitutional and economic policies adopted during the US occupation period, initiated the road to economic recovery. The Zaibatsu managed to evolve into the system of Keiretsu (interlocking structures of manufacturers, suppliers, and distributors) with the six major Keiretsu being Mitsubishi, Sumitomo, Fuyo, Mitsui, Dai-ichi Kangyo and Sanwa Groups. Another important event during the Economic miracle phase was the establishment of MITI (Ministry of International Trade and Industry) in 1949. The role of MITI was to formalize cooperation between the Japanese government and private industry. This government-industry cooperation, strong work ethic coupled with government's policy of guaranteeing lifetime employment for a substantial portion of the urban labor force, mastery over high technology and a comparatively small defense allocation (1% of GDP) helped Japan to develop into a technologically advanced economy.<sup>2</sup>

During the post-war economic miracle from the 1960s to the 1990s, Japan experienced huge economic growth at an average of 10% annually in the 1960s, 5% in the 1970s, and 4% in the 1980s. However, this growth slowed markedly in the 1990s, averaging just 1.7%, primarily due to the effects of inefficient investment and an asset price bubble in the late 1980s requiring a protracted period of time for firms to reduce excess debt, capital, and labor. This phase also witnessed the ill effects of Plaza Accord signed in 1985 by the G-5 nations whose purpose was to force US to devalue its currency on account of current account deficits. Cheaper money for Japanese economy along with low interest rate policy adopted by the Bank of Japan led slow consumption, rising land prices and creation of asset bubble which led to the crash of the Tokyo Stock Exchange in 1990-92 leading to the "Lost Decade" of Japan.<sup>3</sup> The decade was thus a result of liquidity trap and massive wave of speculations by Japanese companies, banks and securities companies. In response the policy makers tried a series of economic stimulus programs and

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<sup>1</sup> Japan World Economic Outlook Survey, 2011 available at: [www.imf.org/external/country/jpn/index.htm](http://www.imf.org/external/country/jpn/index.htm) (herein after Economic Outlook Survey, 2011)

<sup>2</sup> Lucien Elington, , *Stanford Program on International and cross-cultural education*, THE JAPANESE ECONOMIC MIRACLE, (September 2004), available at <http://spice.stanford.edu/docs/122>

<sup>3</sup> Economic Outlook Survey, 2011.

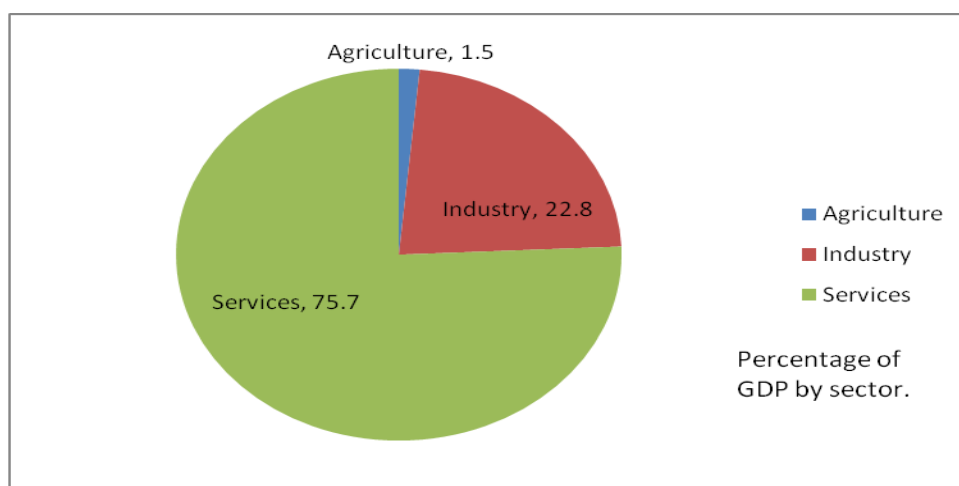


bank bailouts. A 2.4% budget surplus in 1991 turned to a deficit of 4.3% by 1996 and 10% by 1998, with the national debt to GDP ratio reaching 100%. Thus in 1998, a \$500 billion bank rescue plan was implemented to encourage bank lending and borrowing. The Central bank also tried increasing inflation to encourage consumer spending.

Later on the economy started recovering as it grew at an average annual rate of approximately 1.8% between 2002 and 2007. This was the longest period of expansion in Japan's post-war history, albeit at a relatively slow rate. Growth was driven mainly by exports, which grew at an average annual rate of over 10% during the same period.

In the aftermath of economic recession of 2008, Japan weathered the initial effect of the recent global credit crunch as the Japanese financial sector was not heavily exposed to sub-prime mortgages or their derivative instruments. But this was followed by a sharp downturn in business investment and global demand for Japan's exports in late 2008 pushing Japan into recession. Exports declined by approximately 25% in the year 2009. Against this background, real GDP contracted by 1.2% in 2008 and 5.2% in 2009. Therefore many economists include the period of 2001-2010 in the era of lost decade which was originally used for the period of 1990-2000. Resurgence in export demand in late 2009 and 2010 was thereafter evident, especially for capital goods from Asia bolstering the economic growth.<sup>4</sup> The economy received government's support by stimulus spendings which helped the economy recover in late 2009 and 2010. The GDP increase in the year 2010 was strongest in 20 years by a rate of 3%.

### ***An overview of Japan's economic sectors***



Source: *Economy Watch*<sup>5</sup>

### **The Current Challenges**

There are imminent problems that face the economy today. Japan's huge government debt, which exceeds 200% of GDP, its persistent deflation, reliance on exports to drive growth, downturn in the housing market, low interest rate, low performance of equities, and an aging and shrinking population are major long-term challenges for the economy<sup>6</sup>. The most important incident, affecting the economy occurred a few days before the review quarter began. On March 11, 2011, a 9.0-magnitude earthquake and an

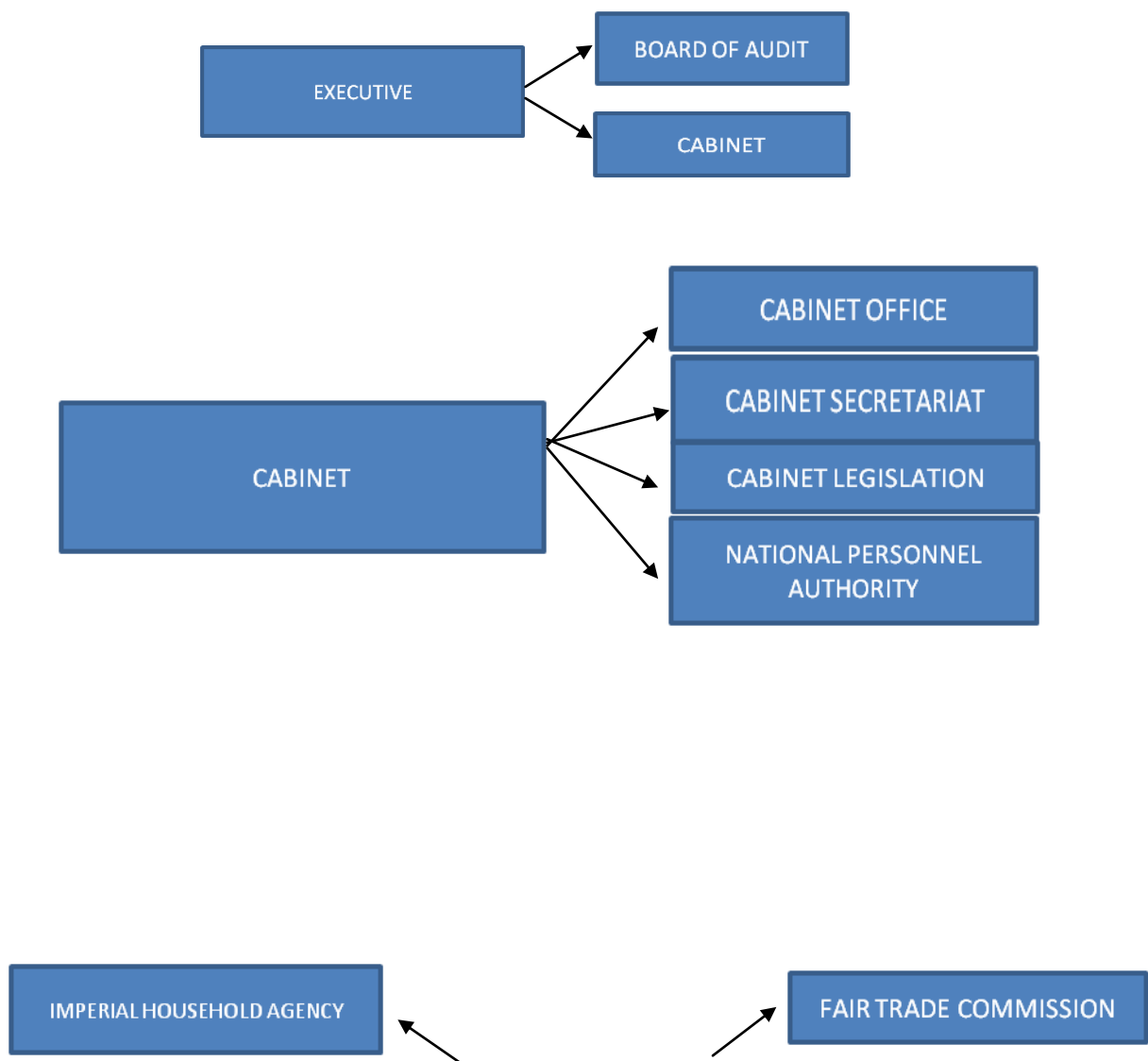
<sup>4</sup> Economic Outlook Survey, 2011.

<sup>5</sup> *Japan Economy*, ECONOMY WATCH, June 2011, [http://www.economywatch.com/world\\_economy/japan/](http://www.economywatch.com/world_economy/japan/).

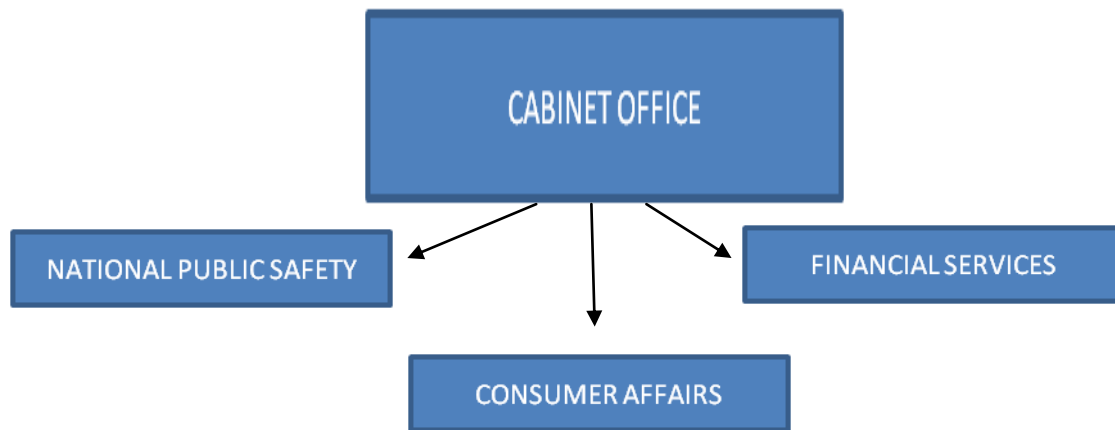
<sup>6</sup> *ibid*

ensuing tsunami devastated the northeast coast of Honshu Island, washing away buildings and infrastructure as much as 6 miles inland, killing thousands, severely damaging several nuclear power plants, displacing and leaving homeless more than 320,000 people, and leaving a million households without running water. Radiation leaks at the Fukushima Daiichi nuclear power plant prompted mass evacuations and the declaration of a no-fly zone initially for people and planes within 12.5 miles of the plant but later expanded to 19 miles. Radioactive iodine-131 was found as far as 100 miles from the plant in samples of water, milk, fish, beef, and certain vegetables, at levels making these foods unfit for consumption and creating uncertainty regarding possible long-term contamination of the area. Energy-cutting efforts by electric companies and train lines slowed the pace of business throughout Honshu Island, and the stock market gyrated, dropping as much as 10% in a single day. In order to stabilize financial markets and retard appreciation of the yen, the Bank of Japan injected more than \$325 billion in yen into the economy.<sup>7</sup>

### IB. Japan's institutional framework



<sup>7</sup>The World Factbook-Japan Overview, CENTRAL INTELLIGENCE AGENCY, <http://www.cia.gov/library/publications/the-world-factbook/geos/ja.html> (updated on June 14, 2011); Japan Economy, ECONOMY WATCH, [http://www.economywatch.com/world\\_economy/japan](http://www.economywatch.com/world_economy/japan).



### The Legislative Framework

The Japanese constitution seeks to construct a system of representative democracy, where the emperor remains the head of state, but merely as a ceremonial figure. The constitution guarantees the fundamental rights of citizens.<sup>8</sup> Japan is a parliamentary system and the Diet (Japanese Parliament) comprises of two Houses- the House of Representative (Shugiin) and the House of Councillors (Sangiin). The primary power in the Diet rests with the lower house. Diet comprises of two types of committees. There are 17 standing committees each in both the houses. The Budget Committee has the largest membership in each house and is vested with the duty of examining national revenue and expenditures. Each house may also appoint a special committee in order to examine those matters that the house decides are in need of examination or matters that do not come under the jurisdiction of any standing committee.

Japan's political system is similar to the British traditions and based on the fusion of powers, stressing more cohesion between the executive and legislative functions. The head of executive power (the Prime Minister) is indirectly elected by the parliament and he is the leader of the majority party in the parliament who names a cabinet that runs the various state ministries and carries out the policy of the majority party. The cabinet is recruited from the Diet and is largely made up of senior members of the majority party or members of coalition parties in the absence of a one-party majority. Both the prime minister and the cabinet members are responsible to the Diet, and all ministers must resign *en masse* if the House passes a no-confidence resolution or rejects a confidence motion. Japan is unitary system as the local governments (47 prefectures or counties) and their policies are largely controlled by the central government and can be modified by the central government on the nationwide base.

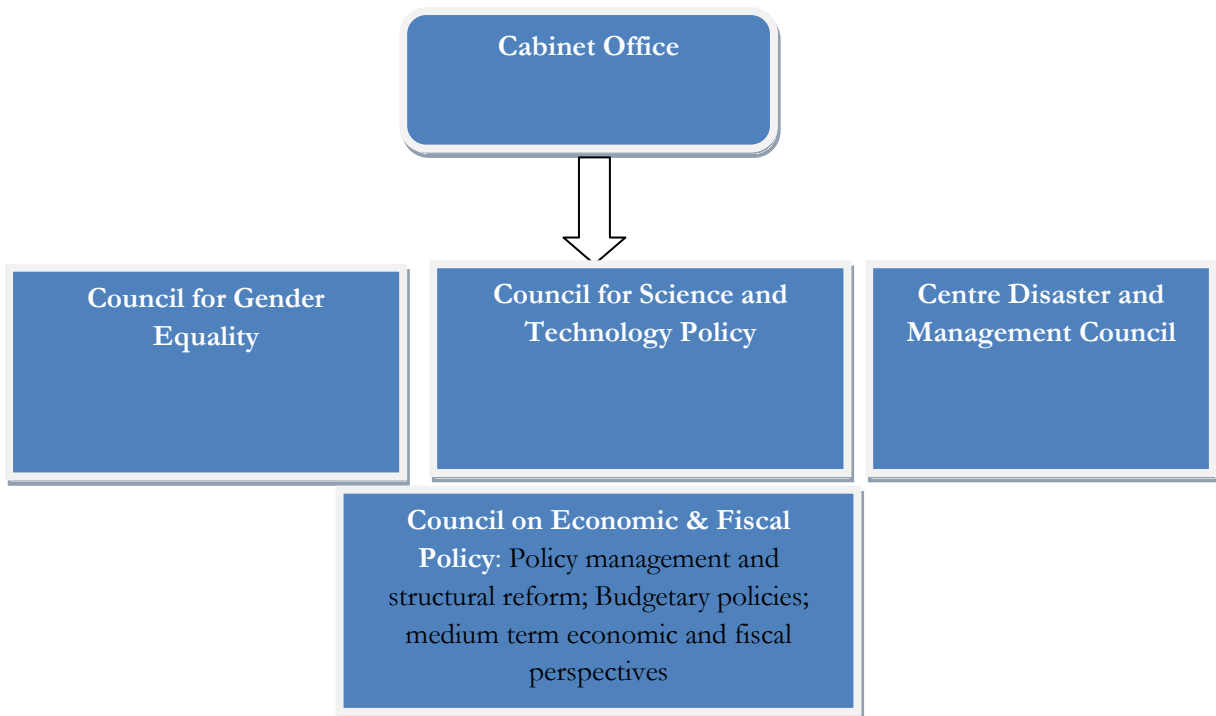
### The Executive Framework:

**Prime Minister and Cabinet-** The Prime Minister and the Cabinet work closely on all policy issues.<sup>9</sup> Post the administrative reforms in 2001, the role of Cabinet office became decisive as it works as "the place of wisdom" that helps the Cabinet and the Prime Minister. The cabinet office comprises of 4 main councils:<sup>10</sup>

<sup>8</sup> The 1947 Japanese constitution was imposed by the United States and its Occupation Authority after its victory in WWII.

<sup>9</sup> OFFICE OF THE PRIME MINISTER, <http://www.kantei.go.jp/foreign/index-e.html>.

<sup>10</sup> THE CABINET OFFICE, <http://www.cao.go.jp/en/importantcouncil.html> (only a few sections of the Cabinet office information have English translations. The main link to the Official website is in Japanese language).

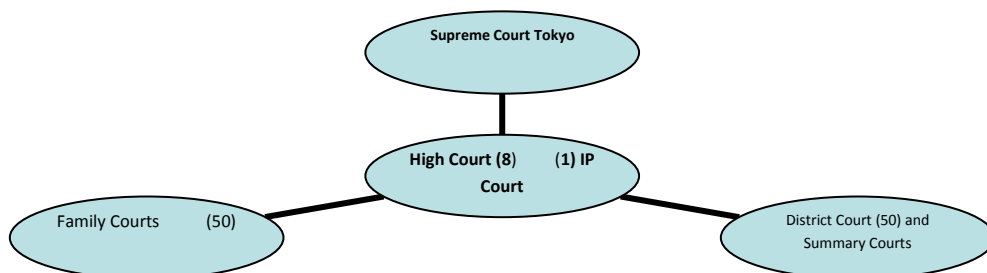


**Cabinet Legislation Bureau** - Cabinet Legislation Bureau is a body which assists the Cabinet in legislative matters. It is entrusted with the duty of:

1. Giving opinions on legal issues to the Prime Minister and to individual ministers as well as to the Cabinet as a whole ("opinion-giving work")
2. Examining legislative bills, draft Cabinet orders and draft treaties that are to be brought before Cabinet meetings ("examination work")<sup>11</sup>

### The Judicial Framework

The Constitution of Japan (promulgated on November 3, 1946, and put into force on May 3, 1947) provides the democratic foundation for the separation of state powers. The whole judicial power is vested in the Supreme Court and lower courts established by law.



The Supreme Court performs both the judicial and administrative functions. It is the highest court in the state and is composed of the Chief Justice and fourteen Justices.

<sup>11</sup> CABINET LEGISLATION BUREAU, <http://www.clb.go.jp/english/about.html>, (Official website of Cabinet Legislative Bureau).

High courts are located in eight major cities in Japan: Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo, and Takamatsu. Each high court has its own territorial jurisdiction over one of eight parts of Japan. In addition, in April 2005, the Intellectual Property High Court was newly established as a special branch of the Tokyo High Court, which handles cases relating to intellectual property only. The Tokyo High Court also has exclusive original jurisdiction over cases to rescind decisions of such quasi-judicial agencies as the Fair Trade Commission. It is to be noted that Japan Free Trade Commission (JFTC) has the duty of enforcing enforcement of the Antimonopoly Act and the Subcontract Act.<sup>12</sup> The Intellectual Property High Court exclusively handles cases relating to intellectual property as appeals from district courts in civil cases relating to patent rights and actions against trial decisions made by the Japan Patent Office.

### **Framework of Trade Institutions**

Trade-related issues remain the responsibility of a number of ministries and agencies, in particular, Foreign Affairs (MOFA), and Economy, Trade, and Industry (METI), as stipulated by laws establishing relevant ministries and agencies. Other ministries and agencies with responsibility for sectoral issues involved in trade policy formulation and implementation include the Ministries of Agriculture, Forestry and Fisheries; Education, Culture, Sports, Science and Technology; Environment; Finance; Health, Labour and Welfare; Justice; Land, Infrastructure and Transport; and Internal Affairs and Communications; as well as the Cabinet Office. The trade network of trade related institutions in Japan also include the following governmental and independent bodies which perform executive or regulatory functions with respect to trade policy and implementation.

**Japan Customs-** It is an executive organ under customs and tariff bureau of Ministry of Finance. It performs the functions of collecting customs duty, consumption, and other taxes on imported goods. It maintains surveillance and control over the movement of goods to prevent harmful items from being smuggled into Japan. It also aims to create international trade harmony and facilitates trade in Japan.<sup>13</sup> There are several regional custom agencies which include: Hakodate Customs; Kobe Customs; Moji Customs; Nagasaki Customs; Nagoya Customs; Narita Airport Customs; Okinawa Customs; Osaka Customs; Tokyo Customs; Yokohama Customs.

**National Tax Agency-** National Tax Agency (NTA) was founded in June 1, 1949 as Finance Ministry's affiliated agency in charge of assessing and collecting domestic taxes. NTA currently has 12 regional taxation bureaus and 524 tax offices throughout the nation.<sup>14</sup> It works in co-ordination with certain regional taxation bureau including: Kumamoto Regional Taxation Bureau; Kanazawa Regional Taxation Bureau; Nagoya Regional Taxation Bureau; Sapporo Regional Taxation Bureau and Sendai Regional Taxation Bureau.

**Government Revitalization Unit-** GRU was established on September 18, 2009 primarily responsible for regulatory reform in Japan.<sup>15</sup> While the Three-Year Program for the Promotion of Regulatory Reform, announced by the Committee for the Promotion of Regulatory Reform (CPRR) on June 22, 2007 is still in effect, on June 18, 2010, the Cabinet authorized a regulatory reform programme issued by

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<sup>12</sup> JAPAN FAIR TRADE COMMISSION, <http://www.jftc.go.jp/en/index.html>, (Official website of JFTC).

<sup>13</sup> JAPAN CUSTOMS, <http://www.customs.go.jp/english/exp-imp/index.htm>, (Official Website of Japan Customs).

<sup>14</sup> NATIONAL TAX AGENCY JAPAN, [http://www.nta.go.jp/foreign\\_language/index.htm](http://www.nta.go.jp/foreign_language/index.htm), (Official Website of NTA).

<sup>15</sup> The GRU, as a part of its responsibilities, has taken over the role of the previous Council for the Promotion of Regulatory Reform (CPRR).

the GRU.<sup>16</sup> Under this programme, the authorities are to review and improve about 60 regulations concerning, *inter alia*, environment and energy, medical and elderly care services, and agriculture. The GRU is to monitor the implementation of the programme.

**Consumer Affairs Agency-** This agency established by Government of Japan aims to protect and enhance consumer benefits. It covers broader range of jurisdictions related to consumer problems, such as trade, labeling, and consumer safety.<sup>17</sup>

**Japan External Trade Organization** – JETRO is a government-related regulator organization that works to promote mutual trade and investment between Japan and the rest of the world. Originally established in 1958 to promote Japanese exports abroad, JETRO's core focus in the 21st century has shifted toward promoting foreign direct investment into Japan and helping small to medium size Japanese firms maximize their global export potential.<sup>18</sup> Today JETRO is involved in prominent trade and investment programs by launching new business opportunities, helping investors, suggesting key areas of investment, through schemes such as: Invest Japan & Trade Tie up Promotion program.

**The Japan Chamber of Commerce and Industry** – JCCI is the central organization to which all local chambers of commerce belong. JCCI represents the local chambers by presenting their suggestions to the government and other bodies, and helping implement them. JCCI also plays an important role in the dissemination of information concerning government policies and programs and the promotion of nationwide projects.<sup>19</sup>

**Research Institute of Economy, Trade and Industry-** RIETI is a government-affiliated research institute that undertakes research in the areas of Economic Partnership Agreements and other aspects of trade policy. It is currently contributing to the early rehabilitation and reconstruction of the disaster-affected area.<sup>20</sup>

**Japan Machinery Center for Trade and Investment-** JMC is a non-profit organization that was established, under the authorization by the METI, in 1952 by the major electronics and machinery manufacturers and trading companies. The purpose of JMC was to promote sound development of foreign trade and direct investment by preventing unfair trade practices and removing barriers in the foreign markets, in accordance with the Export and Import Transaction Law. This body performs the following functions: to make international rules through WTO, WCO(World Custom Organization) and promote liberalization of trade and investment by concluding bilateral FTA with trade partner countries; to solve the problems in the international trade and investment, environmental protections, production safety rules and so on by submitting comments, talking with partner country industries and governments and/or taking cooperative action with the Japanese government; to collect and analyze information regarding trends in overseas markets, commerce and investment problems, trade-related environmental problems, standards and certifications in product safety, trends in export controls, international competitiveness measures.<sup>21</sup> Other think-tanks researching in the areas of trade and market economy include: National Institute of Research Advancement<sup>22</sup> and Policy Research Institute.<sup>23</sup>

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<sup>16</sup> The GRU online information (in Japanese). Viewed at: [http://www.cao.go.jp/sasshin/kisei-seido/publication/220618/item100618\\_03.pdf](http://www.cao.go.jp/sasshin/kisei-seido/publication/220618/item100618_03.pdf)

<sup>17</sup> CONSUMER AFFAIRS AGENCY GOVERNMENT OF JAPAN, <http://www.caa.go.jp/en/>, (Official Website of CAA).

<sup>18</sup> JETRO, <http://www.jetro.go.jp/en/jetro/>, (Official Website of JETRO).

<sup>19</sup> JCCI, <http://www.jcci.or.jp/home-e.html> (Official Website of JCCI).

<sup>20</sup> RIETI, <http://www.rieti.go.jp/en/data/index.html> (Official Website of RIETI).

<sup>21</sup> JMC, [http://www.jmcti.org/jmchomepage/english/about\\_JMC/index.htm](http://www.jmcti.org/jmchomepage/english/about_JMC/index.htm) (Official Website of JMC).

<sup>22</sup> NIRA, <http://www.nira.or.jp/english/index.html> (Official Website of NIRA)

## Framework of Other Regulatory Institutions

Some of the prominent regulatory institutions in Japan include:

**Bank of Japan-** The Bank of Japan is the central bank of Japan. It is neither a government agency nor a private corporation, but accorded the status of a juridical person established based on the Bank of Japan Act.<sup>24</sup>

**Financial Services Agency-** This government organization oversees the implementation and enforcement of Financial Instruments and Exchange Act which aims at: (i) Establishing a cross-sectional legislative framework for investor protection covering financial products with strong investment characteristics; (ii) Enhancing disclosure requirements; (iii) Ensuring appropriate management of self-regulatory operations by exchanges and (iv) Strict countermeasures against unfair trading.<sup>25</sup>

**Japan Patent Office-** JPO is a regulator organ under the METI. As an agency made up of the General Affairs Department, the Trademark, Design and Administrative Affairs Department, the First to Fourth Patent Examination Departments, and the Appeals Department, the JPO performs the role of boosting Japanese industry by: 1) appropriate granting of industrial property rights, 2) drafting of industrial property-related measures, 3) promotion of international harmonization and assistance to developing nations, 4) reviews of the industrial property rights system, 5) implementation of support measures designed for SMEs and universities, and 6) improvement in industrial property-related information services.<sup>26</sup>

**Japanese Industrial Standards Committee-** JISC established under METI conducts survey and deliberations on industrial standardization based on the Industrial Standardization Act. JISC consists of many national committees and plays central role in standardization activities in Japan. The task of JISC is establishment and maintenance of JIS, administration of accreditation and certification, participation and contribution in international standardization activities and development of measurement standards and technical infrastructure for standardization.<sup>27</sup>

**National Institute for Environmental Studies-** It is an independent administrative institution established in 1974.<sup>28</sup> It plays a pivotal role in environmental research in Japan. It deals with tackling environmental issues and assists the government of Japan by enacting five year plans to allocate resources strategically and dynamically in order to both enhance the quality of environment.

## IC. Japan's Economic Environment

To mitigate the adverse impact of the initial drop in exports on growth, the Government of Japan had instituted a series of stimulus packages (totalling 4.7% of GDP) since August 2008 in order to stimulate domestic demand. Stimulus package included the following focus areas: Increasing subsidies for employment adjustment; implementing measures that will support re-employment and develop vocational skills; creating new jobs; measures to protect dispatched workers, foreign workers, and temporary workers; measures to prevent withdrawal of job offers; creating jobs and providing

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<sup>23</sup> JPRI, [www.jpri.org/](http://www.jpri.org/) (Official Website of Policy Research Institute).

<sup>24</sup> BANK OF JAPAN, <http://www.boj.or.jp/en/about/outline/index.htm/> (Official Website of Bank of Japan)

<sup>25</sup> FINANCIAL SERVICE AGENCY, <http://www.fsa.go.jp/en/index.html>, (official website of Financial Services Agency).

<sup>26</sup> JPO, *The Role of Japan Patent Office*, JAPAN PATENT OFFICE, [http://www.jpo.go.jp/cgi/linke.cgi?url=/shoukai\\_e/soshiki\\_e/yakuwae.htm](http://www.jpo.go.jp/cgi/linke.cgi?url=/shoukai_e/soshiki_e/yakuwae.htm), (official website of JPO).

<sup>27</sup> JISC, <http://www.jisc.go.jp/eng/index.html>, (Official Website of JISC).

<sup>28</sup> NATIONAL INSTITUTE FOR ENVIRONMENTAL STUDIES, <http://www.nies.go.jp/gaiyo/index-e.html>, (Official Website of NIES).

employment support in priority business sectors; establishing a trampoline-type second safety net that provides poor and needy job applicants with an opportunity to rebound<sup>29</sup> and strengthening the functions of the employment insurance system.

The fiscal stimulus packages were complemented by accommodative monetary policy, with near-zero interest rates, adopted under the persistent deflationary environment in Japan. In June 2010, it introduced a New Growth Strategy, focusing on seven priority areas (i.e. environment and energy, medical and health care, economic integration with other Asian countries, tourism and revitalization of regional economies, science and technology, human resources, and financial services). The stimulus packages as a whole have focused on increasing domestic demand through, *inter alia*, financial sector measures; the extension of the environmentally friendly vehicle subsidy scheme and supporting the labour market. As part of the stimulus package, the Government announced a fixed payment of ¥12,000 for individuals aged between 19 and 64, and ¥20,000 for all others, as well as a temporary reduction in tolls.<sup>30</sup>

In addition, as regards tax reform, considering Japan's relatively low share of taxes in GDP, the authorities recognized the need to render the income tax system more neutral with respect to investment and other economic decisions by broadening the tax base and cutting relatively high corporate tax rates. Hence, the Government planned to reduce tax incentives and cut the statutory corporate tax rate from 40% to 35% from the year 2011.

With respect to monetary policy, the BOJ maintained an accommodative stance during so as to stimulate domestic demand.<sup>31</sup> The accommodative monetary policy was enabled by the deflationary environment in Japan, which persisted during the review period due to considerable slack in the economy.

The current economic environment in Japan has to be analysed in the light of the earthquake and nuclear disaster. According to an analysis presented by OECD, the four prefectures most affected by the earthquake (Iwate, Miyagi, Fukushima and Ibaraki) account for 6 to 7% of Japan's population and economic output. Though the full economic impact of the current disaster is still being assessed, an analogy drawn from the 1995 Kobe earthquake indicates damage estimated at around 2% of GDP. The impact of the March 11 disaster may be much worse, given the greater severity of the earthquake and the subsequent tsunami. A significant impact could be felt due to the damaged nuclear power plants in the Tohoku region, which was relied upon for the purpose of generating electricity. An estimated one-fifth of Japan's domestic nuclear capacity has been closed at least temporarily since the earthquake, resulting in electricity shortages. Power shortages and the need to repair the damage caused by the earthquake and tsunami has forced many factories to suspend production, including in the car and electric equipment sectors. Consequently the industrial production in March fell and this downturn is expected to follow

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<sup>29</sup> This includes providing free vocational training and guaranteeing the individuals' livelihood during the training period; providing loans to the unemployed so that they are able to rebound; and providing a housing allowance to those who lost their homes due to being unemployed.

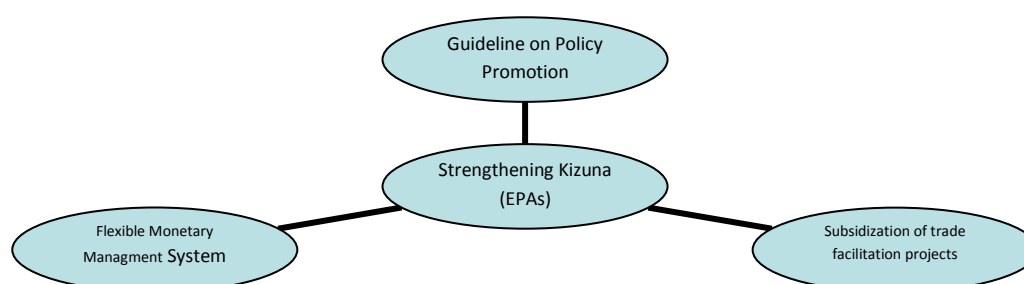
<sup>30</sup> Michiyo Nakamoto, *Tokyo to Launch Record Fiscal Stimulus*, FINANCIAL TIMES, April 6 2009, available at <http://www.ft.com/cms/s/0/651f7600-2280-11de-9c99-00144feabdc0.html#ixzz1QO0rRRXU>

<sup>31</sup> At the beginning of October 2010, the BOJ decided to implement "comprehensive monetary easing" BOJ online information. Viewed at: <http://www.boj.or.jp/en/type/release/adhoc10/k101005.pdf>



further. Equity prices have also fallen sharply since March 11, with the benchmark Nikkei average down by 16%.<sup>32</sup>

### Recent Government Policies and Initiatives during the review quarter



The government in response to the earthquake started discussions on reconstruction measures. At present, fiscal resources appear limited to the remaining 0.2 trillion yen (0.04% of GDP) reserve fund in the FY 2010 budget and the 1.1 trillion yen (0.2%) reserve in the FY 2011 budget.

The Cabinet decided the “*Guideline on Policy Promotion*” on May 17, 2011 whereby, the Government tried to overcome the restriction brought about by the great earthquake in a sequential and steady manner, as well as restoring the growth potential of the Japanese economy. The government will do so by promoting measures such as the early implementation of the FY2011 first supplementary budget. Some of the key measures under the guideline on policy promotion include: Policy responses to the electricity restrictions and the construction of a system for supplying energy that is resistant to disasters. Measures such as promotion and strengthening of "Japan brand" in order to prevent outflows of companies and human resources to overseas and ensuring inflows of human resources from overseas, and restoring tourism demand by overcoming the damage from rumors in Japan and abroad. The Council on the Realization of the New Growth Strategy shall start making considerations for revising the strategy for becoming an environment and energy power. The Minister-level Meeting on FTAAP (Free Trade Area of the Asia-Pacific)/EPA(Economic Partnership Agreements) shall consider the basic policy for strengthening "kizuna" (the bonds of friendship) with other countries, such as promoting high-level economic partnerships based on "Basic Policy on Comprehensive Economic Partnership" and establishing economic security, taking into consideration factors such as the sentiments of the farmers and fishermen who have suffered enormous damage by the earthquake and the nuclear incident, the progresses in the international negotiations, and concerns of de-industrialization. Deliberation on negotiations for the Trans-Pacific Partnership (TPP) Agreement is to be considered in the future.

The response of METI has been swift as it has already announced subsidy for trade facilitation projects. Since certain foreign governments demanded certification of radiation free products from Japan, the Government has announced to subsidize a certain percentage of the cost of radiation inspections on exports performed by government-designated inspection institutions; and thereby prevent delays in

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<sup>32</sup> Tim Webb, *Japan's Economy Heads into Freefall After Earthquake and Tsunami*, THE GUARDIAN, March 13, 2011, available at, <http://www.guardian.co.uk/world/2011/mar/13/japan-economy-recession-earthquake-tsunami>.

distribution due fees.<sup>33</sup> It has also initiated a number of programs to protect the Small and medium enterprises which shall be discussed in detail during the course of the report.

As stated by a Permanent Delegation of Japan to the WTO on May 2011, Financial aid (¥33 billion (US\$407.7 million) through the METI has been provided for 160 capital investment projects aiming at reducing the use of rare earth minerals.

### Recent Macro-economic trends

The Monthly Economic Report released by the Cabinet Office, Japan publishes the monthly data of economic trends in Japan. A study made by Tankan survey conducted by the Bank of Japan was published on July 1, 2011. Business and Monetary Indicators calculated in the light of the recent earthquake were also published during the review quarter.<sup>34</sup> An analysis of all economic indicators reveals the following macro-economic trends of the economy during the review quarter.

Decline in Real GDP in the January-March quarter of 2011 by 0.9% on a quarterly basis (at an annual rate of 3.7%) and decline in nominal GDP by 1.3% on a quarterly basis

¥853.7bn yen trade deficit in May; Exports dropped 10.3%oyoy (¥4.76tn), showing a second consecutive monthly double-digit decline, while imports rose 12.3% yoy after increasing 8.9%oyoy in April; Decline in import from EU but imports from US and Asia increased

Fall in employed population to 140K (-460K in March), and drop in corporate employment to 90K (-580K in March); Unemployment rate was 4.6% in March and the total unemployment rate of those aged 15 to 24 was 8.8%

Movement of yen against the U.S. dollar in the direction of appreciation from the 83 yen level to the 80 yen level, and thereafter moved at the 81 yen level. (Source- *Cabinet Office*<sup>1</sup>)

### Tankan Survey, 2011

Decline in the quarterly Tankan index of sentiment at large manufacturers to minus 9 in June from 6 in March as reported by the Bank of Japan which indicates that pessimists outnumber optimists

Prime Minister Naoto Kan is planning a second extra budget totaling about 2 trillion yen (\$25 billion) to follow a 4 trillion yen plan approved by parliament in May

Weak household demand, with consumer outlays sliding 1.9 percent in May, Consumer prices excluding fresh food increased 0.6 percent in May

Source- *Japan Tankan Survey, 2011*<sup>35</sup>

## Part-II

### Trade Agreements and Arrangements

<sup>33</sup> METI, <http://www.meti.go.jp/english/earthquake/business/>

<sup>34</sup> Credit Suisse, *Economics Research*, JAPAN ECONOMICS WEEKLY, June 30, 2011, <http://www.credit-suisse.com/researchandanalytics>

<sup>35</sup> *Japan Tankan Survey Shows Economic Rebound Gathering Steam*, BLOOMBERG, June 30, 2011 available at: <http://www.businessweek.com/news/2011-06-30/japan-tankan-survey-shows-economic-rebound-gathering-steam.html>.

## IIA. Trade Policy Framework

Japan is a member of WTO since January 1, 1995. Since then it has been an active member of WTO including its negotiations and dispute settlement process.

### *Transparency and Policy Evaluation*

All laws and regulations in Japan are published in the *Government Gazette*. The Government makes available all laws, Cabinet orders, and ministerial ordinances on the Internet; however, various Cabinet decisions and "understandings" are not automatically and fully available online.

Under the Government Policy Evaluations Act (GPEA) and the Basic Guidelines for Implementing Policy Evaluation, adopted by the Cabinet in December 2001, the Cabinet Office and ministries are required to evaluate their own policies before and after implementation and to publish the results of their evaluations. GPEA obliges the Ministry of Internal Affairs and Communications (MIC) to undertake independent assessments of the policies implemented by other ministries, and the Ministry of Finance conducts its own policy evaluation of selected expenditure programmes. Ministries and agencies must publish draft regulations, including draft cabinet orders or ministerial orders, and receive comments from the public; they must allow, in principle, at least 30 days to receive comments, from the date of publication of the draft.<sup>36</sup> "Improving Transparency of Special Taxation Measures Law" was entered into force on April 1, 2010. Since March 2007, all administrative organs have been required to conduct ex-ante evaluation of regulations, and a procedure for ex-ante regulatory impact analysis has been introduced. Nonetheless, cost-benefit analyses are not frequently used when introducing, revising, or abolishing measures; such analyses are rarely used to evaluate existing measures, such as the costs and benefits of tariff and non-tariff protection on agriculture, or to evaluate the economic effects of regional trade agreements.<sup>37</sup>

## IIIB. Trade Agreements

### *The policy behind Economic Partnership Agreements*

Japan terms its trade agreements as "Economic Partnership Agreements" (EPAs), as the government holds that the term "free trade agreement" doesn't capture the broader integration of economic and social policies that these treaties aim to achieve between the partner countries.

On November 9, 2010, the Cabinet released the "*Basic Policy on Comprehensive Economic Partnerships*" in order to establish the policy behind the Economic Partnership Agreements with an aim to "open up the country" and "pioneer a new future"<sup>38</sup>

As per this policy statement, the Asia-Pacific region is of importance to Japan, politically, economically, and with regard to security. Hence The Free Trade Area of the Asia-Pacific (FTAAP) is an important initiative that would enable Japan to help create a seamless Asia-Pacific region. Japan will play a leading role in actively promoting bilateral Economic Partnership Agreements (EPAs) within the Asia-Pacific region, broader regional economic partnerships, and sectoral approaches in the APEC, and will take

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<sup>36</sup> If the authorities decide that comments are required within less than 30 days of publication, they must publish the reason for this decision. The authorities state that draft laws are not subject to the public comment requirements, as they are scrutinized in the Diet.

<sup>37</sup> World Trade Organization, Trade Policy Review-Japan, WT/TPR/S/243, (January 11, 2011), (herein after WT/TPR/S/243, (Report by Secretariat).

<sup>38</sup> METI, [http://www.meti.go.jp/english/policy/external\\_economy/trade/FTA\\_EPA/pdf/epa\\_20101109.pdf](http://www.meti.go.jp/english/policy/external_economy/trade/FTA_EPA/pdf/epa_20101109.pdf).

initiatives to formulate trade and investment rules designed for the twenty-first century in the Asia-Pacific region. Agreements with Peru, Korea, East Asian Free Trade Agreement (EAFTA) and Comprehensive Economic Partnership in East Asia (CEPEA) are some of the targeted initiatives under this policy. Consultations with respect to the Trans-Pacific Partnership (TPP) are on-going.

Japan is currently conducting a joint examination with the European Union (EU), its largest trading partner outside the Asia-Pacific region, and it will expedite arrangements to enter into negotiations with the EU at an early date. For this purpose, the Government will accelerate efforts to reform its domestic non-tariff measures. In addition, it will make efforts to facilitate ongoing negotiations with the Gulf Cooperation Council (GCC).

In order to strengthen high-level economic partnerships with major countries and regions, the Government of Japan, with a view to “opening the country”, will first promote appropriate domestic reforms with respect to areas of the agricultural industry, movement of natural persons from abroad to Japan, and regulatory reforms.

The Headquarters for the Promotion of Agricultural Structural Reform will consider the necessary and appropriate drastic domestic measures needed to improve competitiveness and other aspects of agriculture, and also the budgetary measures and financial resources they will require. In the course of taking these steps, the Government of Japan will review border measures, such as tariffs, which have been put in place so that the burden of maintaining domestic production is borne by consumers. When it deems it appropriate to do so, it also will consider transition to a more transparent system in which taxpayers will bear the burden by securing stable sources of revenue and shifting over from border measures to fiscal measures. The Government of Japan will consider measures to address the issues relating to the movement of natural persons from abroad, such as nurses and certified careworkers, on the basis of its efforts to promote the “employment and human resources strategies” described in its New Growth Strategy, and it will do so with due attention to future domestic demographic trends, the possible effect of such movement on employment in Japan, requests from other countries, as well as securing Japan’s economic growth and social stabilization. The Government of Japan will consider measures to address the issues relating to the movement of natural persons from abroad, such as nurses and certified careworkers, on the basis of its efforts to promote the “employment and human resources strategies” described in its New Growth Strategy, and it will do so with due attention to future domestic demographic trends, the possible effect of such movement on employment in Japan, requests from other countries, as well as securing Japan’s economic growth and social stabilization.<sup>39</sup>

#### *Economic Partnership Agreements in force*

Japan has twelve bilateral FTAs (EPAs) in force (with Singapore, Mexico, Malaysia, Chile, Thailand, Indonesia, Brunei, the Philippines, Switzerland, and Viet Nam, India and Peru) and one regional FTA with the ASEAN.<sup>40</sup> These agreements include the application of preferential rates of duty but also involve, *inter alia*, trade facilitation, investment, movement of natural persons, competition policy, and improvement of the business environment.

The EPAs under negotiation during the review quarter were ones with: Australia and South Korea. The EPAs with India and Peru were concluded around the same time of the review quarter.

According to a newsletter released by JETRO during February, 2011, only 16.5% of Japan’s trade is covered by formal agreements i.e. EPAs. They are less liberalized in comparison to FTAs of Korea, US etc. as agriculture still remains a restrictive area. The tariffs, including a 777% tariff on imported rice, a

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<sup>39</sup> METI, [http://www.meti.go.jp/english/policy/external\\_economy/trade/FTA\\_EPA/pdf/epa\\_20101109.pdf](http://www.meti.go.jp/english/policy/external_economy/trade/FTA_EPA/pdf/epa_20101109.pdf)

<sup>40</sup> METI, [http://www.meti.go.jp/english/policy/external\\_economy/trade/FTA\\_EPA/index.html](http://www.meti.go.jp/english/policy/external_economy/trade/FTA_EPA/index.html)

252% tariff on wheat, and 360% tariff on butter have sustained Japanese farmers for many years without requiring them to raise their competitiveness to international levels. As a result few have sought to expand their businesses in foreign markets despite the popularity of Japanese cuisine in world markets. Furthermore, the Ministry of Agriculture, Forestry and Fisheries warns that Japan's inclusion in regional FTAs would cause 3.4 million lost jobs at a cost to the country of about 4 trillion yen. As a result, in previously negotiated EPAs, Japan has always insisted agricultural produce like rice and dairy stay exempt from tariff reductions

The FTAs Japan has concluded do not have chapters on environment or labour. The authorities consider that most FTAs address the issue of sustainable development and labour standards through the reaffirmation of the rights and obligations under other existing international agreements and the various economic cooperation activities described in chapters on cooperation. Some FTAs stipulate the inappropriateness of encouraging investment through a relaxation of environmental measures or by weakening or reducing protection afforded in domestic labour laws.<sup>41</sup>

In its FTAs (EPAs), Japan has made services-related commitments that are not listed on its GATS schedules. For example, it has made commitments to further relax foreign equity participation in telecommunications and liberalize the distribution of salt, petroleum, and petroleum products. Japan considers that, besides additional commitments in specific services sectors, these EPAs enhanced transparency by the adoption of a negative-list approach. For example, the Japan-Switzerland EPA includes a negative-list approach for market access. With respect to investment, Japan has made commitments that are beyond the scope of its obligations under the TRIMS Agreement. For example, in the Japan-Singapore EPA, the prohibition of performance requirements applies to goods and to services, and prohibitions are included in "technology transfer requirements" and "research and development requirements".<sup>42</sup>

#### *Other negotiations*

Over the past two years, the Agreement on ASEAN-Japan Comprehensive Economic Partnership (AJCEP) entered into force between Japan and most ASEAN countries.<sup>43</sup> Certain agricultural and industrial products, such as alcoholic beverages, tobacco, and steel products are excluded from the agreement. The AJCEP is legally independent from the individual FTAs concluded bilaterally between Japan and ASEAN member countries; it neither nullifies nor integrates these FTAs.<sup>44</sup> The Japanese Customs applies a preferential tariff based on a bilateral FTA or the AJCEP, depending upon the certificate of origin of the item concerned, thus adding to the complexity of Japan's rules of origin.<sup>45</sup> Japan is also negotiating an EPA with Australia, though no formal agreement has been reached yet.

#### *Developments during the review quarter*

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<sup>41</sup> WTO document, WT/TPR/M/211/Add.1, (May 22, 2009),

<sup>42</sup> See Article 75 of the Japan-Singapore FTA

<sup>43</sup> The agreement entered into force on: 1 December 2008 between Japan, Lao PDR, Myanmar, Singapore, and Viet Nam; 1 January 2009 between Japan and Brunei; 1 February 2009 between Japan and Malaysia; 1 June 2009 between Japan and Thailand; 1 December 2009 between Japan and Cambodia, and 1 July 2010 between Japan and the Philippines. As of September 2010, the agreement had not yet entered into force between Indonesia and other contracting parties.

<sup>44</sup> Some chapters of the bilateral FTAs (e.g. chapters concerning intellectual property, competition, and government procurement) are not included in the AJCEP

<sup>45</sup> Thus, the rules of origin applied to imports into Japan depend on which agreement an exporter cites when exporting from one of Japan's FTA partners. The authorities maintain that this broadens the choice of preferential tariffs from which exporters can choose.

(1) Japan's 12<sup>th</sup> EPA was signed with India on February 15, 2011, two months before the review quarter began. The agreement aims to remove tariffs on 94% of goods over ten years. It is expected to boost bilateral trade between the two countries to \$25 billion from \$10.3 billion at present. The basic principles of the trade agreement that has been under negotiations for the last five years include liberalisation and facilitation of trade in goods and services, protection of intellectual property rights in both countries and improving business environment.

Among some of the steps that India is going to undertake is to reduce trade barriers and bring it to zero on auto parts, steel imports, electronics and machinery products gradually. India would also relax restrictions to single brand companies from Japan to have controlling stakes of 51% in local companies or set up franchisees. However, India has decided not to give any leeway to Japan on government procurement. India has also refused to part with its sensitive sectors like agricultural goods, fruits and spices. Japan has agreed to remove import tariffs on food products like pepper and tea within the next decade while at the same time allowing 'commercial presence' of working professionals to set shop in Japan. This would give a big boost to Indian professionals like musicians, accountants, architects and business consultants. The two countries would negotiate on the possibility of allowing Indian nurses from working in Japan which has its bulk population in their 60's.<sup>46</sup>

Further, Indian exports which were subject to rigid standards, technical regulations and conformity assessment procedures, particularly in drugs, food, cosmetics agricultural and fishery products etc. will find it easier to enter Japanese markets. For example, Japan is the second biggest market for pharmaceuticals and India is an emerging power in this. This is an opportunity for Indian companies to access Japanese market. However, they have to enter Japanese market through joint ventures with local companies to convince sensitive and quality conscious Japanese health professionals and customers in the short run. The sector where India would benefit the most include textile, pharmaceutical and agricultural products which would get substantial reduction of tariffs and non-tariff barriers.

Post EPA the major concerns of Japanese investors relating to transparency, delays, intellectual property rights and clearances would get addressed. The provisions in EPA for simplification and speeding up of procedures for applying various permissions related to construction would be a welcome step for Japanese investment. As JBIC surveys consistently show that India has become the most favored destination for long-term Japanese Investment, the further reduction of specific barriers to Japanese investment across sectors would see higher investment flows to India. Further, there are opportunities for Indian SMEs to synergise with strong Japanese SMEs in sectors such as food processing, textiles, garments, chemicals, metals and machinery due to a reduction in tariffs. The EPA would be beneficial to exchange human resources. Japanese workers are now entitled three years work permit which would be beneficial for Japanese investors involved in automobiles and infrastructure sectors. Since the agreement also facilitates easy entry into Japan, it would be a good opportunity for Indian professionals in service sector such as IT workers, engineers, and teachers to visit Japan. Overall, India-Japan CEPA is a major step for higher bilateral relations and also for harmonious economic rise of Asia.<sup>47</sup>

(2) On May 31, 2011, the Japanese government signed the 13<sup>th</sup> EPA with Peru to enhance trade ties with the South America economy. After 7 negotiating rounds, starting in May 2009, Japan and Peru governments had reached mutual agreement to conclude the Economic Partnership Agreement in

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<sup>46</sup> *India-Japan CEPA to boost bilateral trade to \$25 bn*, THE FINANCIAL EXPRESS, (Feb 17, 2011), <http://www.financialexpress.com/news/indiajapan-cepa-to-boost-bilateral-trade-to-25-bn/750965/0>

<sup>47</sup> *India-Japan CEPA, A Strategic Move*, (November 12, 2010), <http://www.eastasiaforum.org/2010/11/12/india-japan-cepa-a-strategic-move/>.

November 2010. The Japan-Peru EPA is expected to be implemented sometime in 2011. Tariffs on about 99% of total trade are scheduled to be abolished between the two countries within 10 years after implementation of the EPA. Peru's import duty on certain industrial items, currently 9% for most of items such as cars, automotive parts, steel products, machinery and electrical items will be reduced either progressively or immediately to 0% in the 10th year. On the other hand, Japan's import duties on almost all industrial items will immediately be duty free upon implementation of the EPA. Import duties on some agricultural products will be reduced with tariff quota system or progressively reduced in 10 years, such as pork, chicken, asparagus, and corn. Some of Japan's sensitive agricultural products are excluded in the duty reduction schedule, such as rice, wheat, and beef.

Compared with most of other EPAs Japan have concluded, the EPA with Peru has practical facilitation measure for traders with regard to origin certification. A Certificate of Origin can be issued by approved exporter's self-declaration. (Article 58 in Chapter 3 Rules of Origin of the main text of the Agreement) The ordinary certificate of origin issued by designated authority is also available as used to be as other EPAs. Among the EPAs Japan have concluded, this self-declaration method by approved exporter has been adopted first in Japan – Swiss EPA since September 2009. Peru is the second country Japan will introduce self-certification by approved exporter. In addition, among existing EPA, Japan-Mexico EPA will also adopt self-declaration method by amending the Agreement. This self-declaration system helps exporters to minimize administrative cost and lead time in export transaction.

(3) On May 22, 2011, the Fourth trilateral summit of Japan, China and Republic of Korea was conducted in Tokyo. Trilateral summits between the three nations began on December 13, 2008, in Fukuoka, Japan. The summit focussed on the areas of: (i) Cooperation on Nuclear Safety; (ii) Cooperation towards Sustainable Growth through Promotion of Renewable Energy and Energy Efficiency; and (iii) Cooperation on Disaster Management, whereby the leaders of the three countries affirmed their commitment to promoting trilateral cooperation in a wide range of fields. Even though the actual agreement on a trade pact remains difficult, the trilateral agreement among the leaders reflects a renewed willingness to closer economic ties despite recent diplomatic spats. The issues of rare earth export to Japan and other crucial aspects will remain at the core of this agreement.<sup>48</sup>

(4) Japan was also a part of the recent G-8 summit held in Deauville, France on May 26 & 27, 2011. In the light of the recent disaster in Japan, its PM explained that the nation will steadily continue its policy of achieving both fiscal sustainability as well as economic growth in line with the Fiscal Management Strategy, the New Growth Strategy and the Basic Policy on Comprehensive Economic Partnerships. The members also discussed issues on nuclear safety management, protection of Intellectual property and data privacy. On efforts towards better dialogue with the African nations, Japan stated that it continued implementation of measures pledged at the 4th Tokyo International Conference on African Development (TICAD IV) and will follow up the same during its next meeting in June, 2011.<sup>49</sup>

(4) Japan was involved in a series of Security Consultative Committees with the US. In their latest strategic meeting on June 21, 2011, SCC published a document titled, "*Cooperation in Response to the Great East Japan Earthquake*," pledging that US will continue to support Japan's recovery. This dialogue mainly focuses on defense and strengthening peace and security in Japan and Asia-Pacific region in the light of issues such as: North Korea's nuclear and missile programs and its provocative behavior; the emergence

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<sup>48</sup> Press release, [http://www.mofa.go.jp/region/asia\\_paci/jck/summit1105/overview.html](http://www.mofa.go.jp/region/asia_paci/jck/summit1105/overview.html) ; See also <http://www.eastasiaforum.org/2011/06/02/the-trilateral-summit-a-new-era-in-china-japan-relations/>

<sup>49</sup> Overview of the Deauville G-8 Summit, June 6, 2011 available at: <http://www.mofa.go.jp/announce/jfpu/2011/6/0606.html>

of non-traditional security concerns; and other evolving threats, such as to outer space, to the high seas, and to cyberspace. It involves strengthening ties among ASEAN, APEC and EAS. The dialogue also aims to encourage China's responsible and constructive role in regional stability and prosperity, its cooperation on global issues, and its adherence to international norms of behavior, while building trust among the United States, Japan, and China.<sup>50</sup>

(5) In the 20th EU-Japan Summit held at Brussels on May 28, 2011, the leaders agreed to start the process for parallel negotiations for a deep and comprehensive Free Trade Agreement EPA, addressing all issues of shared interest to both sides including tariffs, non-tariff measures, services, investment, Intellectual Property Rights, competition and public procurement and a binding agreement, covering political, global and other sectoral cooperation in a comprehensive manner, and underpinned by their shared commitment to fundamental values and principles.<sup>51</sup> Two days before the summit, Japan and Hungary agreed to work closely on Tokyo's intention to sign a free trade agreement with the European Union.<sup>52</sup>

### IIC. Generalized System of Preferences and Other Unilateral Measures

Under the Generalized System of Preferences GSP, the scheme provides benefits to developing countries by enabling qualified products to enter the markets of preference of developed countries at reduced or free rates of duty. Japan's GSP started on August 1, 1971, and the current scheme is effective until March 31, 2021. Japan grants preferential tariff treatment under its GSP scheme to 137 developing countries and 14 territories.<sup>53</sup>

Beneficiaries are designated by Cabinet Orders from countries/territories requesting for preferential treatment and the Government has the authority to unilaterally designate, withdraw, suspend, and limit the beneficiaries or products that receive preferential treatment under the GSP scheme. The products covered under the GSP scheme include: (1) Agricultural and Fishery Products (HS chapters 1-24). Japan grants GSP treatment for selected agricultural and fishery products in 337 items (9-digit base, hereinafter the same). Various tariff reductions, including duty-free treatment, apply to the certain agricultural and fishery products covered by the scheme; (2) Industrial Products (HS chapters 25-97).<sup>54</sup> Japan grants GSP treatment for selected industrial products in 3141 items. All industrial products are in principle given duty-free treatment while GSP rates on some sensitive items are 20, 40, 60 or 80 percent of Most-Favoured-Nation rates.

*Rules of Exclusion-* GSP system also has a provision for an escape clause where, preferential treatment on the product may be suspended temporarily when the increased preferential imports of a product cause or threaten to cause damage to a domestic industry. Advanced beneficiaries are also to be excluded from the list of GSP beneficiaries under the annual review.

There were no other reported changes during the review quarter.

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<sup>50</sup> Joint Statement of the Security Consultative Committee, *Toward a Deeper and Broader U.S.-Japan Alliance: Building on 50 Years of Partnership*, (June 21, 2011), available at: [http://www.mofa.go.jp/region/n-america/us/security/pdfs/joint1106\\_01.pdf](http://www.mofa.go.jp/region/n-america/us/security/pdfs/joint1106_01.pdf)

<sup>51</sup> 20th EU-Japan Summit Brussels, (May 28, 2011), Joint Press Statement available at: [http://www.kantei.go.jp/foreign/kan/topics/201105/28announcement\\_e.html](http://www.kantei.go.jp/foreign/kan/topics/201105/28announcement_e.html)

<sup>52</sup> *Kan wins Hungary's support for Japan to strike FTA deal with EU*, MAINICHI DAILY NEWS, Japan, (May 26, 2011) available at: <http://www.bilaterals.org/spip.php?article19563>

<sup>53</sup> A list of all beneficiaries as of April, 2011 can be found at: <http://www.mofa.go.jp/policy/economy/gsp/benef.pdf>

<sup>54</sup> List of products under GSP treatment as of April 2011 can be found at: <http://www.mofa.go.jp/policy/economy/gsp/product.pdf>



### III. Aid for Trade

Japan's aid policy is coordinated mainly by the Ministry of Foreign Affairs, and its aid programme is implemented mainly by the MOFA and the JICA. JICA has conducted various types of evaluation on its aid for trade and Aid projects at the pre-implementation, implementation, and post-implementation stages. The JICA Advisory Committee on Evaluation aims to improve evaluation techniques and its systems, as well as the quality of evaluation, placing a greater focus on outcomes, especially given the need for aid effectiveness in the light of the strain on public budgets, and for accountability. JICA also conducts joint-evaluations with recipient countries, and its 2009 Evaluation Report reflected evaluations undertaken in a number of countries across various regions.<sup>55</sup> Evaluations are conducted on technical assistance, grant support, and ODA loans.

The major recipients of Japan's aid for trade are Asia, the Middle East, and Africa. In 2008, US\$5.5 billion (62.3% of the total) was allocated to Asia, US\$1.9 billion (22.0%) to Middle East, and US\$1.0 billion (11.7%) to Africa. Japan also had the largest levels of disbursements in 2008 with US\$5.3 billion, an increase of 21% over 2007.

#### Developments during the review quarter

(1) On May 18, 2011 JICA signed agreements with the Government of Bangladesh to provide three Japanese ODA Loan Projects, total of which amounted to 54.929 billion Japanese Yen. The volume of assistance shows JICA's strong commitment to support the Bangladesh Government's development plan which focuses on accelerating growth and poverty reduction.<sup>56</sup>

(2) On May 19, the JICA signed an agreement with the Government of United Republic of Tanzania to provide a loan of up to a total of 1.5 billion yen for the Eighth Poverty Reduction Support Credit (PRSC8). JICA has provided poverty reduction support credit to the Government of Tanzania in the past, and is currently reviewing the status of policy and system reforms with thirteen other donors including the World Bank, providing similar financial assistance. This Japanese ODA loan came about as the result of an evaluation of the efforts the Government of Tanzania has made toward reforms, with a focus on the achievement of policy objectives related to infrastructure. JICA also dispatched policy dialogue experts to Tanzania for policy formulation and system improvements, with a focus on the vulnerability in the infrastructure sector. Also, in the fields of agriculture and governance, JICA has assisted policy formulation and the construction of an implementation framework at the central and local government levels through technical cooperation. JICA is thus not only providing financial assistance to the Tanzanian government with this loan, but also supporting efforts to achieve MKUKUTA (National Strategy for Growth and Reduction of Poverty, known by its Swahili name of MKUKUTA) through active participation in locally held meetings and providing policy formulation. Assistance is being provided with cooperation from thirteen donors, including the World Bank.<sup>57</sup>

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<sup>55</sup> JICA Annual Evaluation Report 2009, Viewed at: <http://www.jica.go.jp/english/operations/evaluation/reports/2009>

<sup>56</sup> Press Release, *Signing of Japanese ODA Loan with the People's Republic of Bangladesh*, (May 18, 2011), <http://www.jica.go.jp/english/news/press/2011/110518.html>

<sup>57</sup> Press Release, *Signing of Japanese ODA Loan with the United Republic of Tanzania*, (May 19, 2011) <http://www.jica.go.jp/english/news/press/2011/110519.html>

(3) On June 15, JICA signed Japanese ODA agreements with the Government of the Socialist Republic of Vietnam for a total of up to 40.946 billion yen for two construction projects.<sup>58</sup>

(4) On June 16, JICA signed Japanese ODA loan agreements with the Government of India to provide six loans of up to a total of 132.646 billion yen which aims at creating investment climate in India, giving boost to renewable energy projects and promote programs such as Rajasthan Forestry and Biodiversity Project.<sup>59</sup>

(5) On June 22, JICA signed a Japanese ODA loan agreement with the İller Bankası Anonim Şirketi (İller Bank) of Turkey to provide a loan of up to 12.784 billion yen for assistance for the Municipal Sewerage and Wastewater Treatment Improvement Project and signed a Japanese ODA loan agreement with the Government of the Republic of Turkey to provide a loan of up to 4.225 billion yen for assistance for the Coruh River Watershed Rehabilitation Project.<sup>60</sup>

## IV. Foreign Investment Regime

### IVA. Foreign Direct Investment Policy

Japan's regulatory regime on inward and outward FDI is governed mainly by the Foreign Exchange and Foreign Trade Act, together with relevant cabinet and ministerial ordinances, such as the Foreign Exchange Order and the Order of Inward Foreign Direct Investment.<sup>61</sup> Cross-border mergers and acquisitions are subject to the Anti-Monopoly Act. Since 2009, no merger or acquisition has been rejected by the Japan Fair Trade Commission in accordance with the Act. Despite being the world's third largest economy, Japan continues to have the lowest inward foreign direct investment (FDI) as a proportion of total output of any major OECD country. Inward foreign merger and acquisition (M&A) activity, which accounts for up to 80 percent of FDI in other OECD countries, also lags in Japan. While the Japanese government has recognized the importance of FDI to revitalizing the country's economy, its performance in implementing domestic regulatory reforms to encourage a sustained increase in FDI has been uneven. In September 2006, the Japanese government set a goal of doubling the stock of FDI in Japan by 2010 to the equivalent of five percent of Gross Domestic Product (GDP). As of December 2009, this figure stood at 3.9 percent of GDP, well short of the FDI goal. Estimates for FDI levels for December 2010 suggest that figure will remain below 4 percent. Even before the financial crisis of 2008-2009, questions existed regarding the adequacy of measures taken to promote a level of cross border M&A necessary to achieve the government's target. A variety of factors make cross border M&A difficult in Japan. These include: attitudes toward outside investors; inadequate corporate governance mechanisms that protect entrenched management over the interest of shareholders; and a relative lack of financial transparency and disclosure. Japan's Foreign Exchange and Foreign Trade Act governs investment in sectors deemed to have national sovereignty or national security implications.<sup>62</sup>

The Five Recommendations Toward the Drastic Expansion of Foreign Direct Investment in Japan, issued by the Expert Committee on FDI Promotion on May 20, 2008, consider that the Government

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<sup>58</sup> Press Release, Signing of Japanese ODA Loan with the Socialist Republic of Vietnam, (June 15, 2011), <http://www.jica.go.jp/english/news/press/2011/110615.html>

<sup>59</sup> Press Release, Signing of Japanese ODA Loan Agreements with the Government of India, (June 16, 2011), <http://www.jica.go.jp/english/news/press/2011/110616.html>

<sup>60</sup> Press Release, Signing of Japanese ODA Loan with the Republic of Turkey, (June 22, 2011), <http://www.jica.go.jp/english/news/press/2011/110622.html>

<sup>61</sup> For an English translation for the Foreign Exchange and Foreign Trade Act, see The Cabinet Secretariat online information. Viewed at: [http://www.cas.go.jp/jp/seisaku/hourei/data/FTA\\_2.pdf](http://www.cas.go.jp/jp/seisaku/hourei/data/FTA_2.pdf).

<sup>62</sup> WT/TPR/S/243

should promote: enhancement of the system to facilitate M&A; comprehensive studies on FDI regulations; establishment of priority strategies by sector; reduction of business costs and improvement of transparency and regional revitalization by FDI.<sup>63</sup> Against this background, Japan has continued to take measures to make itself an attractive investment destination for foreign firms. Japan's FY2009 budget associated with the programme included ¥750 million allocated to projects to, *inter alia*, provide business opportunities in Japan. In addition, the Government adopted a New Growth Strategy in June 2010, under which the promotion of FDI was considered as one of the most important elements to secure growth. During November 2010, METI launched the 'Inward Promotion Program' with the following aims: (1) Building the world's best investment environment (2) Making Japan a central base for Asia businesses (3) Making Japan an innovation.<sup>64</sup>

As per the Cabinet Decision on Dec 16, 2010, the FY 2011 Tax Reform proposes that taxation system should promote a comprehensive special zone system and the establishment of an Asian business center to improve Japan's location competitiveness amid international competition. Japan should also to take tax measures that suit the characteristics of the region or the target companies, in addition to slashing the statutory corporate tax rate. Furthermore, the government shall establish tax incentives towards global companies to locate their Asian headquarters or R&D centers in Japan.

JETRO runs a website titled "Investing in Japan" which promotes measures and provides guidelines for better trade facilitation and investment in Japan.

### **Investment Promotion measures during the review quarter**

METI proposed the "Bill on Special Measures for the Promotion of Research and Development by Certified Multinational Enterprises" in the 177th session of the Diet during February 2011. It aims to provide measures in support of multinational enterprises in connection with their implementation of new research and development (R&D) activities and head office operations in Japan.<sup>65</sup> The proposed bill offers the following incentives:

- Tax incentives- 20% deduction in corporate tax for 5 years for certified companies (tax rate for certified companies to be reduced to a little under 29% combined with 5% reduction of effective corporate tax rate)
- Patent fee reduction- Patent fees and examination request fees reduced by half for certified R&D operations
- Preferential treatment under Foreign Exchange Act- Shorter statutory inaction period (from 30 days to 2 weeks) after prior application of inward direct investment under the Foreign Exchange Act, which is mandatory for entities establishing a new business
- Exemption for the Small and Medium Business Investment & Consultation Co., Ltd.- Allowing small and medium business investment & consultation firms to invest in stock companies capitalized at over ¥300 million

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<sup>63</sup> Cabinet Office online information (in Japanese), Viewed at: <http://www.invest-japan.go.jp/committee.html>

<sup>64</sup> *Overview of Inward Investment Promotion Program*, METI, (November 2010), available at: [http://www.meti.go.jp/english/policy/economy/inward\\_investment/overview.pdf](http://www.meti.go.jp/english/policy/economy/inward_investment/overview.pdf).

<sup>65</sup> METI, (February 10, 2011), [http://www.meti.go.jp/english/press/2011/0210\\_04.html](http://www.meti.go.jp/english/press/2011/0210_04.html)

- Budgetary measure- Initial investment support for establishment of Asian headquarters/R&D center with potential for particularly large economic benefits [Subsidy Program for Project Promoting Asian Site Location in Japan Budget amount: ¥2.5 billion (FY 2010 supplementary budget & FY 2011 regular budget)]
- Expedited immigration procedures- Expedited visa examination for foreigners expected to work for certified companies, through supportive implementation of the system (examination in about 10 days, compared with the normal period of one month)

Some of the recent government initiatives aimed at promoting foreign investment in Japan include:

(1) On June 1, 2011, METI announced for applications for a subsidy program targeting Innovative Low-Carbon Technology-Intensive Industries. Its aim is to promote the growth of low-carbon industry and increase industrial plant location in Japan by supporting those companies planning to make facility investment to develop manufacturing method of cutting-edge “low-carbon products” by utilizing cutting edge technology which will lead to effective reduction of Carbon Dioxide.<sup>66</sup>

(2) In furtherance of the New Growth Strategy, On April 28, 2011, subsidy program for certain selected companies was launched to sustain and strengthen high-value-added business sites in Japan to achieve sustainable growth of the Japanese economy by supporting the establishment of new high-value-added sites in Japan, such as Head Sites or R&D Sites, which have been proven to have a significant impact on the Japanese economy, and to strategically and proactively invite and build high-value-added business functions that match the strength of the Japanese economy. The application period ran from February 9, 2011 to March 29, 2011. The projects to be adopted were decided upon based on opinions given by experts on an independent committee. The Companies Selected for the Japanese Fiscal Year 2010 Subsidy Program for Projects Promoting Asian Site Location in Japan belonged to US, India, Australia, France & Singapore.<sup>67</sup>

#### **IVB. Investment Treaties**

METI released a document titled Japan’s Policies and Strategies on International Investment Agreements in July 2008. It states that the increasing number of IIAs and EPAs entered into by other countries including Germany, China, UK, US, Switzerland exceed 100 whereas Japan had only 21 such agreements till 2007. Japanese government Economic and Fiscal Reforms (2008) stated its policy of investment diversification and more international co-operation in a strategic manner. Level of investment risk, future potential growth, natural reserves and specific requests from the industry are a few criterion of entering into IIA. The “Improvement of the Business Environment” Chapter in the Japanese BIT framework sets up a committee to allow investors and governments to work together to improve the business environment. Such provisions coupled with other regulatory flexibilities enable a congenial environment for investment in Japan.<sup>68</sup>

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<sup>66</sup> METI’s *Subsidy Program for Projects Promoting the Location of Innovative Low-Carbon Technology-Intensive Industries*, METI, (Jun 01, 2011), <http://www.jetro.go.jp/en/invest/newsroom/announcements/2011/20110602739.html>

<sup>67</sup> METI, (April 28, 2011), <http://www.jetro.go.jp/en/invest/newsroom/announcements/2011/20110427470.html>.

<sup>68</sup> METI, *Japan’s Policies and Strategies on IIAs*, (July 2008), [http://www.meti.go.jp/english/policy/external\\_economy/trade/FTA\\_EPA/image/Japans\\_policies\\_strategies\\_IIA\\_s.pdf](http://www.meti.go.jp/english/policy/external_economy/trade/FTA_EPA/image/Japans_policies_strategies_IIA_s.pdf).

Japan has 15 investment treaties entered into force (as of now) with countries including: Egypt, Sri-lanka, China, Turkey, Hong-Kong, Bangladesh, Russia, Mongolia, Pakistan, Korea, Vietnam, Cambodia, Laos, Uzbekistan and Peru.<sup>69</sup>

There were no developments of further negotiations on BITs reported during the review quarter.

## Trade Policy and Practice by Measure

### VA. Customs Clearance and Valuation

Japan has adopted a Customs Valuation System based on the WTO Valuation Agreement and stipulates provisions regarding the system in the Customs Tariff Law.<sup>70</sup> The Customs Tariff Law stipulates rules and methods for Customs valuation in accordance with the WTO Customs Valuation Agreement (the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994).

The Japanese Customs, as a part of the Ministry of Finance, is in charge of administering and enforcing customs legislation. The formal venues for consultations with the private sector on customs matters include the Commission on Trade Facilitation and Customs Administration.<sup>71</sup> The Customs publishes all its decisions, rulings, regulations, and regulatory proposals on customs matters online, except for those containing private information.<sup>72</sup> There are no special registration requirements for importers upon importation; the use of a customs broker is optional. Those who wish to operate as customs brokers must obtain approval from the Director of Customs where they wish to operate.<sup>73</sup> There is no nationality requirement to obtain licences.

Imports are valued according to their c.i.f. value (which is taken to be the transaction value of the imports). Customs duty can be paid through a multi-payment network system<sup>74</sup>, which connects teller institutions (government authorities) with financial institutions. No fee is charged by the Government for the use of this system<sup>75</sup>; the financial institutions involved may collect variable fees.

Articles 89-93 of the Customs Law, Articles 14 and 45 of the Administrative Appeal Act, and Article 14 of the Administrative Cases Litigation Law specify procedures for administrative review of certain customs decisions.<sup>76</sup> Complaints against Customs' decisions may be made to the Director-General of Customs within two months of the decision. Further appeals may be lodged with the Minister of Finance

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<sup>69</sup> METI, [http://www.meti.go.jp/english/policy/external\\_economy/trade/FTA\\_EPA/index.html](http://www.meti.go.jp/english/policy/external_economy/trade/FTA_EPA/index.html)

<sup>70</sup> Details of Customs Valuation System available at: [http://www.customs.go.jp/english/summary/value\\_details.htm](http://www.customs.go.jp/english/summary/value_details.htm)

<sup>71</sup> Ministry of Finance online information (in Japanese), Viewed at: [http://www.mof.go.jp/singikai/boueki\\_enkatsu/top.htm](http://www.mof.go.jp/singikai/boueki_enkatsu/top.htm)

<sup>72</sup> Customs online information (in Japanese), Viewed at: <http://www.customs.go.jp/koukai/top.htm>

<sup>73</sup> The Law of Customs Brokerage, Article 3.

<sup>74</sup> The system is managed by the Japan Multi-payment Network Management Organization (JAMMO); only financial institutions that participate in the organization may use the system. One foreign bank (locally established) has participated in this system to date. See JAMMO online information (in Japanese), Viewed at: <http://www.jammo.org/index.html>.

<sup>75</sup> Customs clearance fees include an inspection fee if inspection is at a place other than a designated area (¥5,000/hour)

<sup>76</sup> See Japan Customs online information, Viewed at: [http://www.customs.go.jp/english/c-answer\\_e/sonota/9401\\_e.htm](http://www.customs.go.jp/english/c-answer_e/sonota/9401_e.htm)

within one month of the decision by the Director-General of Customs. A law suit may be filed against the Minister's decision within six months of the decision.<sup>77</sup>

There are several Customs Mutual Assistance Agreement (CMAA) signed by Japan with countries such as US, Korea, China, EU, Russia, Italy, Netherlands and certain arrangements signed with Australia, Newzealand, Canada, Hongkong and Macaou.<sup>78</sup> The aim of such arrangements is to establish a regime for accurate assessment of customs duties and other taxes, recognizing the need for international cooperation in matters related to the administration and enforcement of the customs laws of their respective countries and abiding by the international conventions containing prohibitions, restrictions, and special measures of control in respect of specific goods, thereby facilitating cooperation between their Customs Administrations.

## **VB. Customs Procedure**

Exporters must declare to the Director-General of Customs the nature of the goods as well as the quantity, price, and any other necessary particulars. An export permit must also be obtained after the necessary physical examination. Goods for export must be brought into the Customs (Hozei) area or a specially permitted place for storage. The exporter or his proxy (known as a Customs broker) prepares an export declaration describing the nature, quantity, and value, of the goods to be exported. This declaration is accompanied by invoices and other supporting documents and, if required by Japanese laws and regulations other than the Customs Law by other documents, such as permits, approvals, or licenses (e.g., exportation of strategically sensitive materials under the control of the Ministry of Economy, Trade and Industry). The submitted export declaration is checked against invoices and other supporting documents at Customs.

The purpose of these laws and regulations<sup>79</sup> is to regulate unrestricted and disorderly exports and to assist in the normal development of foreign trade by either prohibiting or restricting the export of certain cargoes. These laws and regulations were enacted to achieve administrative objectives through the confirmation of required permits, approvals, completion of inspection, and other conditions in the physical presence of cargo at Customs as the final check-point.<sup>80</sup>

The METI has designated the Japan Chamber of Commerce and Industry (JCCI) as an issuing body for certificates of origin and other trade certificates.<sup>81</sup>

There were no developments reported during the review quarter with respect to any change in the customs procedure or valuation method.

## **VC. Tariff**

### *Bound tariff*

Japan's tariff schedule comprised 8,826 lines at the HS nine-digit level in FY2010.<sup>82</sup> Japan has bound 98.8% of lines (108 lines are unbound); unbound lines relate mainly to fisheries (fish, crustaceans,

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<sup>77</sup> District courts have jurisdiction over such law suits as first instance. The decisions by those courts may be appealed to High Courts and then the Supreme Court

<sup>78</sup> CMAA available at: <http://www.customs.go.jp/english/cmaa/index.htm>

<sup>79</sup> The list of 15 relevant laws include: Export Trade Control Order; Export Exchange Control Order; Export-Import Trading Law; Law for the Protection of Cultural Properties; Forest Seeding Law; Law Concerning Wildlife Protection and Hunting; Narcotics and Psychotropics Control Law; Cannabis Control Law; Opium Law; Stimulant Drug Control Law

<sup>80</sup> Export Procedures, Japan Customs, Official Website: <http://www.customs.go.jp/english/summary/export.htm>

<sup>81</sup> JCCI information, available at: <http://www.jcci.or.jp/home-e.html>

seaweed), petroleum oils, and wood and articles thereof. *Ad valorem* rates account for 8,159 bound lines (92.4%); 212 lines (2.4%) carry specific rates, 57 lines (0.6%) compound rates, and 290 lines (3.3%) have alternate rates of duty. The average bound MFN tariff (5.9%) in FY2010 remained very close to the average applied MFN tariff (5.8%), suggesting a high degree of predictability in the tariff.<sup>83</sup> The average bound rate is considerably higher for agricultural products (WTO definition), at 16.0%, than for non-agricultural products, at 3.5%; without further commitments in tariff reduction, this average for agricultural products is expected to remain unchanged, as Japan completed the implementation of its Uruguay Round commitments in 2009.

The latest tariff schedule in Japan was introduced on April 1, 2011 during the review quarter.<sup>84</sup>

#### VD. Rules of Origin

Japan has preferential rules of origin under various Economic Partnership Agreements,<sup>85</sup> in addition to those under the Generalized System of Preferences.<sup>86</sup> Certificates of origin issued by authorized institutions in the exporting country are required for preferential duties under FTAs and the GSP, as a proof that the product concerned is "basically wholly obtained" or "substantially transformed" (i.e. change of tariff classification at the HS 4-digit or 40% of value added). Preferential rules include lists of exceptions for some goods; the exceptions involve specific criteria for some goods, such as processing rules and value added on a product-by-product basis. Rules of origin under FTAs and the GSP adopt this criterion for many products, as well as the processing operations criterion and the value-added criterion. Japan's MFN rules of origin to, *inter alia*, determine whether to apply MFN rates (as opposed to general rates) are stipulated in Article 4-2 of the Cabinet Order for Enforcement of the Customs Law and Articles 1-5 and 1-6 of the Ordinance for Enforcement of the Customs Law.<sup>87</sup> To apply MFN tariff rates, the country of origin for imported goods is defined as the country in which the good concerned has been basically wholly obtained or has last undergone substantial transformation.

There were no changes reported with respect to the rules of origin, during the review quarter.

#### VE. Non tariff border measures

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<sup>82</sup> Excluding in-quota lines (in-quota lines subject to state trading are included in the calculations). The Japanese tariff schedule has three distinct sets of rates: statutory rates (which include both general and temporary rates); WTO bound rates and preferential rates (under the GSP, the JSEPA, JUMSEPA, the JMEPA, JCEPA, JTEPA, JPEPA, JIEPA, JBEP, JVEPA, and JSFTEPA). In the case of statutory rates, the "temporary" rate, which is reviewed annually, is normally used instead of the higher general rate; the lower of the statutory and WTO bound rates are applied to WTO Members on an MFN basis, except when preferential rates are applied. Where the temporary, general, or preferential rate is above the WTO bound rate, the latter rate applies to WTO Members. Currently, 475 lines (including in-quota lines) or 308 lines (excluding only in-quota rates not subject to state trading) or 283 lines (excluding all in-quota rates) at the HS nine-digit level are subject to temporary rates; the effective period of these rates was extended until the end of FY 2010.

<sup>83</sup> Whereas bound and applied MFN rates coincide for most lines, bound rates exceed applied MFN rates for, *inter alia*, live animals and animal products (HS Section 1), vegetables (Section 2), prepared foods, beverages, and tobacco (Section 4), chemicals and products (Section 6), plastics and rubber (Section 7), textiles and clothing (Section 11), and base metals (Section 15). Gaps between bound and applied rates range from 0.3 percentage points to 40 percentage points.

<sup>84</sup> The tariff schedule can be obtained at: [http://www.customs.go.jp/english/tariff/2011\\_4/index.htm](http://www.customs.go.jp/english/tariff/2011_4/index.htm)

<sup>85</sup> The Chapters on ROO for different EPAs can be viewed at: [http://www.meti.go.jp/policy/trade\\_policy/webtr/index.html](http://www.meti.go.jp/policy/trade_policy/webtr/index.html)

<sup>86</sup> GSP rules can be found at: <http://www.mofa.go.jp/policy/economy/gsp/explain.html#08>

<sup>87</sup> The MFN rules of origin are also used to determine the country of origin for trade remedy measures and import trade statistics.

The Foreign Exchange and Foreign Trade Law governs import licensing procedures in Japan. Other relevant regulations include: Cabinet Order 414 of December 29, 1929 (Import Trade Control Order)<sup>88</sup> and Public Notice of METI (No. 170 of April 30, 1996)

Imports of narcotics, certain weapons, and animals or plants listed in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), among others, may be prohibited or subject to import licensing in order to ensure national security, safeguard consumer health and well-being, or to preserve domestic plant and animal life and the environment. Some commodities, including certain fish, are subject to import quotas. There were no changes developments during the review quarter.

#### **VF. Import prohibition and licensing**

Products currently subject to import approval or prohibition include<sup>89</sup> certain marine products, medicines and chemical products, propellant powders, nuclear goods, weapons, animals and plants, substances that deplete the ozone layer, specified hazardous wastes, waste chemical weapons goods, alcohol, rough diamonds, cultural property illegally removed from Iraq, all goods from North Korea, weapons and other items related to nuclear programmes or ballistic missile programmes from Iran, and weapons and other items from Eritrea. Licences are issued at no cost.

During the review period April, 2011, Japan imposed an extension of ban on imports from and exports to North Korea, pursuant to the Foreign Exchange and Foreign Trade Act.<sup>90</sup>

#### **VG. Import quotas**

The import quota system in Japan is administered by the METI, which issues eligible importers with a certificate of import quota allocation. The method allocating quotas, which tends to be intricate, is specified in METI notices.<sup>91</sup> The quota amount to be allocated is decided annually. Fish-related quotas are determined by the METI, with the consent of the Ministry of Agriculture, Forestry and Fisheries (MAFF)<sup>92</sup>. A certificate of import quota allocation, normally with a validity of four or six months, is issued by the METI to eligible importers.

Japan continues to use quantitative restrictions on imports via import quotas based on the WTO Agreements. Quotas are currently imposed on certain fish products and controlled substances listed in the Montreal Protocol on Substances that Deplete the Ozone Layer. There were no changes reported during the review quarter.

#### **VH. Trade Contingency measures**

The Customs Tariff Law and the relevant Cabinet Orders and Guidelines define Japan's legal framework regarding the use of anti-dumping, countervailing, and safeguard measures.

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<sup>88</sup> <http://www.asianlii.org/jp/legis/laws/itco1949con414od291949468/>

<sup>89</sup> G/LIC/N/3/JPN/8, 7 October 2009. Japan's latest notification (October 6, 2010) can be found at [http://www.wto.org.tw/SmartKMS/do/www/readDoc?document\\_id=110017](http://www.wto.org.tw/SmartKMS/do/www/readDoc?document_id=110017)

<sup>90</sup> Extension of Ban from North Korea, METI press, April 5, 2011 available at: [http://www.meti.go.jp/english/press/2011/0405\\_03.html](http://www.meti.go.jp/english/press/2011/0405_03.html)

<sup>91</sup> METI online information (in Japanese), Viewed at: [http://www.meti.go.jp/policy/external\\_economy/trade\\_control/marine\\_products/index.htm](http://www.meti.go.jp/policy/external_economy/trade_control/marine_products/index.htm)

<sup>92</sup> In general, an applicant must be: an importer who has in the past obtained a certificate of import quota and actually imported the item; an importer who is delegated by a government-approved industrial association to obtain materials for food processing; or an importer who plans to import items subject to the import quota.



On April 1, 2009, Japan amended the relevant Cabinet Orders and Guidelines relating to anti-dumping, countervailing, and safeguard measures with a view to improving the procedures of investigation.<sup>93</sup> Japan submitted its Semi-Annual Report under Article 16.4 of the Agreement to the WTO on April 4, 2011.<sup>94</sup> Japan had definitive Anti-Dumping measures in force as of December 31, 2010 against the following countries: Australia, China, P.R., Republic of Korea, South Africa, Spain and Chinese Taipei. Japan has not imposed any safeguard measures since 2001, when measures were applied on Welsh onions, Shiitake mushrooms and tatami-omote imported mainly from China.

### ***Anti-dumping law***

In Japan, general anti-dumping legislation is provided by article 8 of the Customs and Tariff Law (Law No. 54 of 1910, *kanzei teiritsu bou* in Japanese), whereas specific details are provided in Ordinance No. 416 of 1994 and the guidelines thereunder. The methodology for determination of the normal value of a product is not clearly defined in any of Japan's anti-dumping laws or regulations. Generally, the domestic sales price of the investigated product (including similar products, if any) destined for consumption in its country of origin will be regarded as the normal value. However, if there are no domestic sales of the product, the constructed value or, alternatively, its export price to a third country shall be referenced as the normal value.

Generally, the MoF and the METI will, a few months after their collection of data from interested parties, visit each interested party's facility and examine the authenticity of the original data and materials previously filed with the MoF and the METI in the presence of the person(s) responsible for compiling the data within the company. Under the guidelines, each interested party is entitled to receive a list of investigation items at least 17 days prior to the commencement of the on-site verification.

### **Developments during the review quarter**

Investigation details	Matter involved	Countries concerned	Status of proceedings
731-TA-308-310 and 520-521 (Third Review)	The five-year (sunset) reviews concerning <i>Carbon Steel Butt-Weld Pipe Fittings</i>	Brazil, China, Japan, Taiwan, and Thailand	USA instituted the review on October 1, 2010.  As per a press release of On March 24, 2011, USITC determined that revoking the existing antidumping duty orders would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time <sup>95</sup>

Investigation details	Matter involved	Countries concerned	Status of proceedings

<sup>93</sup> For example, the decision on whether to initiate an investigation must be made within approximately 2 months of the date of submission of the document by the domestic industry. See WTO document G/ADP/N1/JPN/2/Suppl.6 (G/SCM/N/1/JPN/Suppl.6, G/SG/N/1/JPN/2/Suppl.2), 17 August 2009.

<sup>94</sup> G/ADP/N/209/JPN, April 4, 2011

<sup>95</sup> USITC Makes Determinations In Five-Year (Sunset) Reviews Concerning Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, And Thailand March 24, 2011, News Release 11-030, Inv. Nos. 731-TA-308-310 and 520-521 (Third Review) available at: [http://www.usitc.gov/press\\_room/news\\_release/2011/er0324jj1.htm](http://www.usitc.gov/press_room/news_release/2011/er0324jj1.htm)

701-TA-384 and 731-TA-806-808 (Second Review)	AD measure on Hot-rolled Flat-rolled Carbon-quality Steel products	Japan	Termination of AD measure on June 21, 2011 which was initiated on May 26, 2010. The termination is based on the determination in the sunset review by the USITC that expiry of the AD measure would not be likely to lead to continuation or recurrence of dumping and injury. The sunset review had been conducted to determine whether continuation of the AD measure is necessary or not, which started in April 2010. <sup>96</sup>
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There were no developments in CVD and safeguard measures during the review period.

### V I. Government Procurement

Japan is a party to the WTO Agreement on Government Procurement (GPA).<sup>97</sup> Under the agreement, Japan made notifications under the GPA on: national legislation<sup>98</sup>, statistics for the period 2007 and 2008<sup>99</sup>, and modifications to Appendix I.<sup>100</sup> All the proposals for modifications to Appendix I notified since January 2009 have been certified.

The Account Law and relevant ordinances specify the procurement procedures for central government entities, while the Local Autonomy Law and relevant ordinances stipulate the procedures for local governments.

In addition to its commitment under the GPA, Japan has chapters on government procurement in nine of its FTAs<sup>101</sup>; the Japan – Malaysia FTA does not have such a chapter. For example, the Japan-Singapore FTA stipulated that the Japan's SDR threshold is lowered to 100,000 SDR from 130,000 SDR (Japan's threshold under the GPA).

A specific contractor may be selected under the "single tendering" contract method if, *inter alia*, the nature or objectives of the law does not allow competition, or competition is not possible or disadvantageous to the Government because of the urgent nature of the contract, or the contract value is small, in accordance with clause 4 or 5 of Article 29.3 of the Accounts Law. The authorities state that single tendering corresponds to "limited tendering" stipulated in the GPA.

On 19 May 2010, Japan also established a law promoting the use of wood in the construction of public buildings. In accordance with the Basic Guideline for Public Procurement of Information Systems, adopted in March 2007, procurement under the basic guidelines may not exceed ¥500 million per

<sup>96</sup> Termination of the U.S. Anti-dumping Measure on Hot-rolled Flat-rolled Carbon-quality Steel products from Japan, METI, June 2011 available at: [http://www.meti.go.jp/english/press/2011/0621\\_01.html](http://www.meti.go.jp/english/press/2011/0621_01.html)

<sup>97</sup> There is no single electronic portal that covers all entities listed in Japan's Annexes to the GPA. There is a single portal for the central government entities. Local governments covered by the GPA publish notices of intended procurements.

<sup>98</sup> WTO documents GPA/37/Add.6, 23 July 2009 and GPA/37/Add.7, July 6, 2010

<sup>99</sup> WTO documents GPA/84/Add.4, 13 March 2009; GPA/88/Add.3, 13 March 2009; GPA/91/Add.2, March 13 2009; GPA/94/Add.2, 9 April 2009; and GPA/102/Add.2, January 29, 2010

<sup>100</sup> WTO documents GPA/MOD/JPN/34, 20 February 2009; GPA/MOD/JPN/36, 21 April 2009; GPA/MOD/JPN/37, 27 April 2009; GPA/MOD/JPN/38, 4 September 2009; GPA/MOD/JPN/39, 17 September 2009; GPA/MOD/JPN/40, 17 September 2009; GPA/MOD/JPN/42, 1 February 2010; GPA/MOD/JPN/43, 1 February 2010; GPA/MOD/JPN/46, 29 March 2010; GPA/MOD/JPN/46/Corr.1, 30 March 2010; GPA/MOD/JPN/47, 13 April 2010; GPA/MOD/JPN/50, 31 May 2010; GPA/MOD/JPN/51, 15 June 2010; and GPA/MOD/JPN/52, 22 June 2010.

<sup>101</sup> Japan's FTAs with Indonesia, the Philippines, Viet Nam, Switzerland, Singapore, Mexico, Chile, Brunei, and Thailand have chapters on government procurement.

contract; any planned procurement in excess of this threshold must be divided. Government organizations are also required to formulate procurement plans. Each local government covered by the GPA has its own review body and its own regulation on the structure and administration of its review body. The authorities state that members of the body are selected in line with Article 20.6 of the GPA. There were no reported changes in the procurement scheme during the review quarter.

## **VJ. State trading**

State-trading activities in Japan involved leaf tobacco, opium, rice, wheat and barley, and milk products, as per the notification submitted to the WTO in October, 2010.<sup>102</sup> The Tobacco Business Law requires the Japan Tobacco Inc. (JT) to purchase all leaf tobacco grown in Japan specifically for the purpose of selling it to JT, based on an agreement between JT and the tobacco cultivators, except for leaf tobacco not deemed suitable as raw material for manufactured tobacco.<sup>103</sup> On dairy products, the Agriculture & Livestock Industries Corporation (ALIC) is authorized to take measures to "stabilize supply-demand situations and prices for milk products" with a view to "promoting sound development of dairy and related industries and to improve national diet" in accordance with the Manufacturing Milk Producer Compensation Temporary Law and the Agriculture and Livestock Industries Corporation Law.

While the authorities maintain that the aims of Japan's state-trading activities are to "stabilize the supply and price of these commodities and protect consumer interests", prices of these commodities in Japan tend to be higher than the world prices

There were no practices of state trading reported during the review quarter.

## **VK. Standards- SPS and TBT**

### *Institutional and legal framework*

The agencies for coordinating and developing international trade policy on standards activities and in discussions and negotiations with foreign countries in Japan include: the MOFA, METI, MOFF, MIC, Ministry of Health, Labour and Welfare and Land, Infrastructure and Transport. Japan submitted a notification on the implementation and administration of the TBT Agreement in June 1996.<sup>104</sup> Its enquiry points under the Agreement are the Standards Information Service within the International Trade Division of the Ministry of Foreign Affairs (mainly handling enquiries on drugs, cosmetics, medical devices, foodstuffs, food additives, telecommunication facilities, motor vehicles, ships, aircraft, and railway equipment (excluding enquiries concerning certain JIS handled by JETRO) and the Standards Information Service within the Information Service Department of the Japan External Trade Organization (JETRO) (mainly handling enquiries on electric equipment, gas appliances, measurement scales, foodstuffs, food additives, and JIS related to medical devices, motor vehicles, ships, aircraft, and railway equipment).<sup>105</sup> The Ministry of Foreign Affairs is Japan's notification authority under the Agreement.

Technical regulations and conformity assessment procedures are adopted by the Japanese central government in accordance with various relevant laws and regulations. These laws include: the Pharmaceutical Affairs Law, the Industrial Standardization Law, and the Law Concerning Standardization and Proper Labelling of Agricultural and Forestry Products (JAS Law).<sup>106</sup> While regulatory impact

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<sup>102</sup> WTO document G/STR/N/13/JPN, October 11, 2010

<sup>103</sup> Articles 3.1 and 3.4, the Tobacco Business Law

<sup>104</sup> WTO document, G/TBT/2/Add.10, June 11, 1996

<sup>105</sup> WTO document, G/TBT/2/Add.10, June 11, 1996

<sup>106</sup> Other relevant laws and regulations include the Building Standard Law, the Pharmaceutical Affairs Law, the Food Sanitation Law, the Electrical Appliance and Material Safety Law, the Consumer Product Safety Law, the High Pressure Gas Safety Law, the Road Vehicle Law, the Safety Regulations for Road Vehicles, the Rational Use of

assessments are conducted by each ministry on technical regulations, no cost-benefit analyses are conducted.

#### *Voluntary standards*

The Japan Agricultural Standards Law stipulates that, in order to establish or revise JAS standards, international standards (such as Codex) must be "taken into account". The authorities state that, for example, organic JAS standards were established in accordance with the Codex "Guidelines for Production, Processing, Labelling and Marketing of Organically Produced Foods". Since 2008, two new JAS items have been established and two have been abolished, while 39 have been revised.

Compliance with the JAS is not required for imports into Japan. Under the JAS Law, third-party organizations are entitled to certify operators (e.g. manufacturers) to affix JAS marks. The Minister of Agriculture, Forestry and Fisheries as well as Registered Certifying Bodies and Registered Overseas Certifying Bodies (RCBs and ROCBs) are responsible for monitoring and managing JAS marks.

#### *Mandatory technical regulation*

Regulations to implement these laws have been coordinated by the Consumer Affairs Agency and other government bodies since September 1, 2009. In addition, in order to evaluate the risks of all chemical substances, the Chemical Substances Control Law was amended in 2009 and partially entered into force on April 1, 2010.<sup>107</sup> Japan is also a party to the Agreement on Uniform Technical Prescriptions for Vehicles.

#### *Conformity assessment*

Foreign manufacturers of electrical products and consumer products can undergo conformity assessment and certification conducted in foreign countries by foreign registered conformity assessment bodies, in accordance with relevant laws (e.g. the Electrical Appliance and Material Safety Law and the Consumer Product Safety Law). Foreign manufacturers of containers and designated equipment for high pressure gas are allowed to self-certify their products if they are registered with the Government, in accordance with the High Pressure Gas Safety Law.

METI has designated 22 inspection bodies (down from 26 in 2009<sup>108</sup>), 7 of which are foreign, for testing based on the major standards and certification systems under the METI's jurisdiction. The result of the inspection is submitted to competent Japanese authorities or inspection bodies for examination. The Third Party Certification System for medical devices was introduced in April 2005. Currently, 13 bodies are registered (6 are foreign). As for the JAS, there are 25 registered overseas certifying bodies as of in March 2010.

#### *Sanitary and phytosanitary measures*

The establishment of SPS measures is governed by a number of laws and regulations, including: the Food Sanitation Law, the Quarantine Law, the Plant Protection Law, and the Domestic Animal Infectious Diseases Control Law. The authorities state that Japan carries out risk assessments and publishes their results when introducing, amending, or abolishing laws and regulations related to SPS measures.<sup>109</sup> The Guidelines for Implementation of the Monitoring and Guidance under the Food Sanitation Law (Ministry of Health, Labour and Welfare Public Notice No.301, 2003) specifies inspection methods and approaches

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Energy Law, and the Fire Service Law, the Law concerning the Safety Assurance and Quality Improvement of Feed, the Law concerning Examination and Regulation of Chemical Substances and Regulation of their Manufacture, the Industrial Safety and Health Law, the Telecommunications Business Law, the Radio Law, and the Fertilizer Control Law.

<sup>107</sup> The law is to enter into force fully on 1 April 2011.

<sup>108</sup> Two bodies have discontinued operation in accordance with the Consumer Product Safety Act, and two others have been removed from the list, in accordance with the Electrical Appliances and Materials Safety Act, due to non-conformity.

<sup>109</sup> See also, The Standard Procedure for Approval for Import of Designated Items into Japan to be Quarantined, and the Procedures for Lifting the Ban of Importation specify steps to conduct risk assessment for removing restrictions on designated items. The conclusion of risk assessment is published on the MAFF website

for domestic and imported agricultural products; under the Guideline, these products are inspected according to the same inspection methods and approaches. The Quarantine measures on plants and animals are implemented, respectively, by the Plant Protection Station and the Animal Quarantine Service, both attached to the Ministry of Agriculture, Forestry and Fisheries.<sup>110</sup>

Japan's enquiry point and national notification authority under the SPS Agreement is the Standards Information Service within the International Trade Division of the MOFA's Economic Affairs Bureau.<sup>111</sup>

The Act on Ensuring of Safety of Pet Animals Feed, which entered into force on June 1, 2009, set standards for pet foods and stipulated manufacturing and import regulations.

#### *Trade arrangements on SPS and TBT*

Since 2009, Japan has concluded two FTAs that include SPS and TBT chapters: the Japan-Switzerland FTA, which entered into force on 1 September 2009, and the Japan-Viet Nam FTA, which entered into force on 1 October 2009. Japan also has mutual recognition agreements (MRAs) on conformity assessment procedures with the European Union for electrical products, telecommunications terminal equipment and radio equipment, good laboratory practice for chemicals, and good manufacturing practice for medicinal products (since January 2002); with Singapore for electrical products, telecommunications terminal equipment, and radio equipment (since November 2002); and with the United States for telecommunications terminal equipment and radio equipment (since January 2008).

Japan is a member of the Codex Alimentarius Commission and the World Organization for Animal Health (OIE), and a contracting party to the International Plant Protection Convention (IPPC). Japan participates in the International Conference on Harmonization toward the harmonization of pharmaceutical standards/regulations.

#### *Labeling and packaging requirements*

Food labelling in Japan is subject to the JAS Law and the Food Sanitation Law. A total of 54 technical regulations are in force based on the JAS Law. They include: cross-category quality labelling standards for processed foods, fresh foods, and genetically modified foods<sup>112</sup>; individual quality labelling standards<sup>113</sup> and standards for organic plants and organic processed foods (made of plants). Any food containing additives must also be labelled with the names of all additives included. Imported processed food is excluded from the mandatory labelling of place of origin of the ingredients. All organic plants and organic processed foods to be sold in Japan must comply with the JAS organic standards and carry the JAS organic mark.<sup>114</sup>

Under the Food Sanitation Law, any allergenic substances contained in processed foods must be indicated on the labels. Mandatory labelling for genetically modified (GM) foods is regulated under the Food Sanitation Law and the JAS Law. The Ministry of Health, Labour and Welfare does not permit imports of GM foods that do not meet its safety requirements.

#### *Regulation on Chemical substances*

The Chemical Substances Control Law regulates manufacture and import of persistent, bioaccumulative and toxic chemical substances. It also enables the government to conduct hazard assessment of chemical

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<sup>110</sup> Plant Protection Station online information. Viewed at: <http://www.pps.go.jp/english/index.html>, Animal Quarantine Service online information, Viewed at: <http://www.maff.go.jp/aqs/english/index.html>

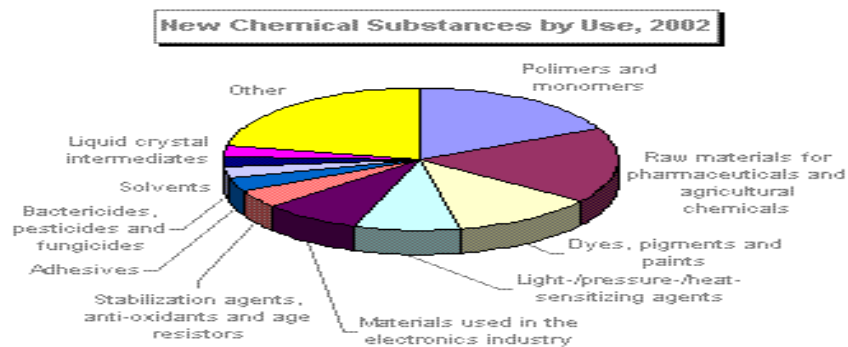
<sup>111</sup> WTO document G/SPS/ENQ/25, October, 15, 2009

<sup>112</sup> Cross-category quality labelling standards are provided for all processed foods and beverages (except alcohol and medical drugs). Fresh foods must be labelled with their name and place of origin. Processed foods must be labelled with the name, the list of ingredients, the net content, the date of minimum durability or use-by date, instructions for storage, the name and address of the manufacturer, and the country of origin (only for imported products)

<sup>113</sup> Specific labelling requirements are provided as quality labelling standards for individual products depending on their characteristics

<sup>114</sup> To label food as "organic", certification is needed from a registered certifying body or a registered overseas certifying body that the food meets certain JAS requirements. Only certified food is allowed to be distributed with a JAS organic mark

substances manufactured or imported after the enactment of the law, prior to their manufacturing or import. At that time, there were no similar statutes in the world, and Japan pioneered the introduction of a pre-manufacturing evaluation and regulation system for new chemical substances. The law was amended in 1986 in order to be able to control manufacture and import of persistent, not- bioaccumulative but toxic chemical substances. In 2003, the law underwent another substantial revision.



Source: METI<sup>115</sup>

The 2003 amendments extended the scope of the law to address persistent, bioaccumulative, and toxic substances and expanded already existing reduced notification requirements slightly. The 2003 amendments continue to allow new substances with total domestic manufacturing and import quantities of 1 ton or less per year to forego a hazard and toxicity evaluation. However, existing test data which a submitter has for a new substance must be provided to the authorities, even for substances that qualify for reduced notification. In addition, the amendments establish a system of "prior confirmation and post-monitoring." Under this system, certain substances escape the requirement for new toxicity data for instance:<sup>116</sup>

- "*Low risk*" new substances for total manufacturing and import quantities of 10 tons or less if the substance is judged to be persistent but not highly bioaccumulative, and considered not to present significant risk to human health and living organisms based on already known information. Again, in cases, import could proceed without obligatory submission of toxicity data; and
- New substances for which there is "little or no possibility of exposure." The following cases are offered by the authorities to illustrate this category: chemical intermediates that are wholly reacted to form another chemical substance, substances processed in a closed system, and substances for export only to a country with a well-established prior evaluation system. While the translation is not as clear as we would like, it appears that these are the only circumstances that would qualify under this particular provision.

There is no general "de minimis" exemption from notification under the Japanese system either in the past or as a result of the 2003 amendments. The 2003 amendments simply reaffirmed and slightly expanded the reduced notification program in this respect.

<sup>115</sup> Policy Information, available at: [http://www.meti.go.jp/english/information/data/chemical\\_substances01.html](http://www.meti.go.jp/english/information/data/chemical_substances01.html)

<sup>116</sup> See "Outline of the 2003 Partial Amendment to the Chemical Substances Control Law," Ministry of Economy Trade and Industry, Ministry of Health, Labour and Welfare, Ministry of the Environment, Government of Japan, June 2003.

Under its Industrial Safety and Health Law (ISHL), Japan imposes separate notification requirements for chemical substances used in Japanese workplaces. Normally only an Ames test is required for this notification. If positive results are obtained, additional testing is required.<sup>117</sup>

While certain exemptions do exist, there are no exemptions for pharmaceutical intermediates, cosmetic ingredients, or site-limited intermediates. There is an exemption for R&D substances, but it is restricted to chemicals used in a research facility. Workplaces also can request a low volume exemption for substances used up to 100 kg/yr per factory (application must be made annually 30 days before use). Certain reduced notification requirements exist for certain polymers with number-average molecular weights greater than 2000. The reduced notification request is made without submission of test data.<sup>118</sup>

In April 2006, Japan responded to the RoHS directive (regulating six hazardous substances in electrical and electronic equipment in the European Union) by amending fifteen ministerial ordinances related to the Law for the Promotion of Effective Utilization of Resources. Taken together, these fifteen ordinances are informally known as Japan RoHS. Beginning in April 2001, the law established design for the environment (DfE) mandates for certain products, making the 3Rs of reduce, reuse, and recycle mandatory for Japanese manufacturers. Sixty-two ministerial ordinances provide the DfE requirements or "judgment criteria" for a wide range of industries and products. Then in 2006, the Minister of Economy, Trade and Industry (METI) revised the ordinances for eight electrical/electronic products: PCs, TVs, copy machines, refrigerators, washers, dryers, microwave ovens and unit air conditioners. Revisions were effective July 1, 2006.<sup>119</sup>

### Developments during the review quarter

Japan notified its "*Establishment of Proposed Revisions of the Enforcement Ordinance of the Plant Protection Law*" to the WTO during April 2011 which was officially released on May 4, 2011.<sup>120</sup> The Ministry of Agriculture, Forestry and Fisheries of Japan had earlier notified the proposed Revisions to the Enforcement Ordinance of the Plant Protection Law in on November 4, 2010.<sup>121</sup> This amendment was adopted on March 7, 2011, and is to take effect on September 7, 2011 after a half-year grace period, except the provisions regarding inspections at growing sites in exporting countries. The provisions regarding the inspections would take effect on March 7, 2012, one year from the entry into force of the revised law.

After the entry into force of the provisions regarding inspections at growing sites in exporting countries and the newly added phytosanitary measures that should be carried out in exporting countries, additional statements specified in the explanatory note attached to the notification will have to be stated on a phytosanitary certificate of exporting countries specified in the annexed tables 1-2 and 2-2 of the revised Enforcement Ordinance respectively. The detailed tables enlisting items of the amended Enforcement Ordinance of the Plant Protection Law and pest lists can be found at the website of MAFF.<sup>122</sup>

There were no changes/developments during the quarter with respect to the TBT arrangement.

## VL. Import promotion measures

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<sup>117</sup> Notification for new chemical substance in Japan, March 2004, Keller & Heckman LLP, <http://www.khlaw.com/showpublication.aspx?Show=1117>

<sup>118</sup> Outline of the 2003 Partial Amendment to the Chemical Substances Control Law, METI, June 2003, available at: <http://www.safe.nite.go.jp/kasinn/pdf/kaiseieng.pdf>

<sup>119</sup> Japan RoHS, RSJ Technical consultancy, available at: <http://www.rsjtechnical.com/WhatisJapanRoHS.htm>

<sup>120</sup> G/SPS/N/JPN/266/Add.1, May 4, 2011

<sup>121</sup> G/SPS/N/JPN/266

<sup>122</sup> MAFF, available at: <http://www.maff.go.jp/j/syouan/keneki/kikaku/english-ver.html>

Programmes to promote imports in Japan are mainly implemented by MIPRO. They include free consultation regarding small-lot imports; providing reference materials, such as wholesale catalogues, import guides, and import handbooks; conducting seminars in Japan and business missions to international trade shows.<sup>123</sup>

There were no new developments initiated during the review quarter.

## Measures Affecting Exports

### VIA. Export taxes, charges, and levies

There are no export taxes or levies in operation in Japan.

### VIB. Border adjustment in respect of internal taxes and import duties (relating to exports)

#### Consumption tax

The consumption tax is zero-rated on exported goods, international aviation and transportation services, and selling or licensing patents to foreigners; domestic components and raw materials used in exported goods are eligible for refund of consumption tax.<sup>124</sup> For a refund of the consumption tax, a declaration must be made to the tax authorities with the proof of export.

There were no reported developments during the review period.

### VIC. Import duties

According to Article 19 of Customs Tariff Law, import duties levied on raw materials used in the production of certain exported goods may be exempted, reduced, or refunded, as determined by the Government.<sup>125</sup> The authorities state that these schemes, whose basic structure remains unchanged since the 1950s, are intended to remove impediments to trade by reducing the tariff burden for imported materials to be used in the production of export goods; the products eligible for the schemes reflect the needs of the industries concerned.

#### *Exemption and reduction of import duties*

In accordance with paragraph 1 of Article 47 of the Cabinet Order for Enforcement of the Customs Tariff Law, the following items are fully exempted from tariffs: lead (for the production of alloys using lead and antimony); cotton seed oil (for fish products (canned or bottled)); soya bean oil cake, certain starches and molasses (for the production of monosodium glutamate); sugar (for refined sugar); certain starches (for caramels); molasses (for lysine); certain starches (for refined glucose); and inputs approved by Customs (for export goods approved by Customs).

In accordance with paragraph 2 of Article 47 of the Cabinet Order, reduced tariff rates apply to certain inputs at the time of importation. The reduced tariff rates are applied to wheat flour (for the production of monosodium glutamate) and certain starches (for the production of vitamin C, crystallized glucose, and eythorbate or sorbitol).

In order to be eligible for this tariff exemption or reduction, manufacturers require approval from Customs as a "manufacturing factory" (as defined in Article 19 of the Customs Tariff Law), and manufactured goods need to be exported within two years of importation of relevant inputs.<sup>126</sup> The manufacturers must submit an import declaration and other relevant documents for the imports to be used as inputs (as prescribed in the Cabinet Order for the enforcement of the Law), and obtain import permission for the relevant materials.

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<sup>123</sup> MIPRO online information, Viewed at: <http://www.mipro.or.jp/english>

<sup>124</sup> JETRO online information (in Japanese), Viewed at: [http://www.jetro.go.jp/world/japan/qa/export\\_10/04A-011045](http://www.jetro.go.jp/world/japan/qa/export_10/04A-011045)

<sup>125</sup> Article 19, the Customs Tariff Law

<sup>126</sup> Article 19, the Customs Tariff Law



There were no reported developments during the review period.

#### **VID. Export prohibitions, restrictions, and licensing**

Items subject to export controls, as set out in the Foreign Exchange and Foreign Trade Law and the Export Trade Control Order, include arms and certain dual-use items based on the UN Security Council Resolution 1540 and other relevant international commitments, such as international export control regimes, and some other items under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>127</sup>

##### **Developments during the review quarter**

On April 1, 2011, The METI imposed an administrative sanction in the form of an import ban on Masaki Mizukami in accordance with Article 53, Paragraph 2 of the Foreign Exchange and Foreign Trade Law (Foreign Exchange Law), in response to his contravention of this law. In December 2009, Masaki Mizukami illegally imported feathers of Ara macao (Scarlet Macaw), which are listed in Appendix I of the CITES of Wild Fauna and Flora (Washington Convention), from the U.S. without obtaining permission from the Minister of Economy, Trade and Industry (METI Minister). Import of such items requires permission from the METI Minister in accordance with Article 52 of the Foreign Exchange Law and Article 4 of the Import Trade Control Order.<sup>128</sup> The details of the sanction are:

Subject of the sanction	Masaki Mizukami (Sapporo City, Hokkaido)
Goods banned from import	All Goods
Origin and shipping regions subject to the ban	All regions
Import ban period	April 8, 2011 to May 7, 2011 (one month)

#### **VIE. Export cartels**

While export cartels are exempted from the general prohibition of cartels under Japan's Anti-monopoly Act, the authorities indicate that there are no known export cartels in Japan.<sup>129</sup> The authorities do not consider that shipping cartels (e.g. liner conferences), which are exempt from the Anti-monopoly Act under the Marine Transportation Law, constitute export cartels.

There were no developments reported during the review period.

#### **VIF. Export promotion schemes**

*Export subsidies, finance, insurance, and guarantees*

Japan has no subsidy or tax concession schemes to promote exports. Japan provides medium- and long-term export credits. These are administered by the Japan Bank for International Cooperation (JBIC) (a government-affiliated financial institution), and Nippon Export and Investment Insurance (NEXI) (an

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<sup>127</sup> For an unofficial English translation of the Export Control Order, see Cabinet Office online information. Viewed at: <http://www.cas.go.jp/jp/seisaku/hourei/data/ETCO.pdf>; Other export items requiring permission from METI include: certain seeds, endangered animals, and plants specified in international treaties; narcotics; designated art works; counterfeit currencies; and other products associated with criminal offences in Japan. For certain agricultural products, including wheat bran, rice bran, oat bran, clams, mussels and eels, the Minister of Economy, Trade and Industry also needs the consent of the Minister of Agriculture, Forestry and Fisheries prior to granting export approval. Export controls (prior approval) are maintained to ensure national security and public safety and to ensure adequate domestic supplies of certain agricultural and other primary products (Article 48, Foreign Exchange and Foreign Trade Law).

<sup>128</sup> METI, available at: [http://www.meti.go.jp/english/press/2011/0401\\_04.html](http://www.meti.go.jp/english/press/2011/0401_04.html)

<sup>129</sup> The Export and Import Transaction Law stipulates that prior notification must be given, for approval, to the Minister of Economy, Trade and Industry before establishing an export cartel

independent administrative institution, insuring risks not covered by existing private insurance institutions).

#### *Other export promotion schemes*

Export promotion schemes handled by JETRO include provision of information, market and company studies, and support for participation at international trade fairs. The Ministry of Agriculture, Forestry and Fisheries provides support to agricultural exporters through information-sharing on Japanese agricultural products and foodstuff. Support includes setting up Japanese pavilions at international exhibitions and promotion abroad of Japanese foods including agricultural products.

There were no developments reported during the review period.

#### **Developments during Review Quarter**

As notified by a Permanent Delegation of Japan to the WTO on May 11, 2011, Enhanced Facility for Global Cooperation in Low Carbon Infrastructure and Equity Investment" (E-FACE) aimed at promoting a package of infrastructure related exports. The E-FACE aims at mobilizing private capital through Japan Bank for International Cooperation's (JBIC) equity participation, guarantee functions and loans.<sup>130</sup>

### **Measures Affecting Production and Trade**

#### **VIIA. Regulatory Reforms**

In the light of the recent nuclear disaster in Japan, the Bank of Japan initiated several measures to introduce regulatory reforms.

On April 28, 2011, the BOJ decided the introduction of the funds-supplying operation to support financial institutions in disaster areas. As per this initiative, the bank announced its funds-supplying operation to support financial institutions in disaster areas, i.e., fixed-rate loans to financial institutions in disaster areas that are made against eligible collateral by way of open market operations within the maximum amount determined by the Bank, with the aim of supporting financial institutions in disaster areas in their initial response efforts in meeting the demand for funds for restoration and rebuilding by conducting appropriate money market operations.<sup>131</sup>

The Bank of Japan's Monetary Policy Board decided to double the size of the asset purchase programme, originally introduced in October 2010, from 5 trillion yen to 10 trillion yen (2% of GDP) during March, 2011. The central bank is also monitoring the impact of the earthquake on financial markets and financial institutions.<sup>132</sup>

On June 14, 2011, the Bank of Japan also introduced the new line of credit. In a policy statement, it was stated that the Fund-Provisioning Measure to Support Strengthening the Foundations for Economic Growth, which was introduced in the summer of last year, has been playing the role of a catalyst in promoting financial institutions' own initiatives. With a view to further encouraging financial institutions' efforts, the Bank deems it appropriate to focus on supporting their provision of equity-like funds and loans without conventional collateral or guarantees. Based on such consideration, the Bank decided at to establish a new line of credit for equity investments and the so-called ABL, or asset-based lending. The

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<sup>130</sup> Report On G20 Trade Measures (Mid-October 2010 To April 2011), Issued by Director General WTO, 2011

<sup>131</sup> Funds-Supplying Operation to Support Financial Institutions in Disaster Areas, Monetary Policy Measures, Bank of Japan available at: [http://www.boj.or.jp/en/mopo/measures/mkt\\_ope/ope\\_n/index.htm/](http://www.boj.or.jp/en/mopo/measures/mkt_ope/ope_n/index.htm/)

<sup>132</sup> The Tohoku Pacific earthquake: Economic consequences, OECD, March 15, 2011 available at: [http://www.oecd.org/document/8/0,3746,en\\_2649\\_201185\\_47347080\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/8/0,3746,en_2649_201185_47347080_1_1_1_1,00.html)

Bank expects that this decision will further enhance financial institutions' efforts to strengthen the foundations for economic growth through the use of a wider range of financial techniques.<sup>133</sup>

#### **VIII.B. Taxation and tax-related assistance**

The tax regime in Japan is governed by the Ministry of Finance. The main taxes include: Individual income tax, Corporation tax, Consumption tax (VAT) and Property based tax. The main laws governing the tax regime include: Income Tax Act, Corporation Tax Act, Act on Special Measures Concerning Taxation (Limited to the provisions related to nonresidents and foreign corporations), National Tax Collection Act and Order for Enforcement of the Income Tax Act (Limited to the provisions related to nonresidents and foreign corporations)

Direct taxes, which include personal and corporate income taxes, are expected to account for about 53.5% of total tax revenue in FY2010. Indirect taxes, which include consumption tax (VAT) and excise taxes (applied, *inter alia*, to liquor, tobacco, gasoline, and automobiles), account for the remainder of total tax revenue in FY2010. The highest personal income tax rate, including local taxes, is 50%, and the highest corporate tax rate (including local taxes) is 40% (FY2009).<sup>134</sup> Japan's tax to GDP ratio is one of the lowest by international standards (18% in 2007)<sup>135</sup>; tax revenue in Japan has been decreasing and this has contributed to high public debt. Japan also has the highest (40%) statutory corporate tax rate within the OECD and the neighbouring Asian region.

##### *Tax incentives*

The incentives are detailed in the Special Taxation Measures Law, which stipulated 241 special tax measures (in FY2009) involving, *inter alia*, accelerated depreciation, tax credits, and reduced tax rates. In order to improve the transparency of those measures, Japan adopted the Law to Improve Transparency of Special Tax Measures, which entered into force on April 1, 2010. The law includes the establishment of a mechanism that discloses how special taxation measures are applied, with a view to examining the effects of those measures.

##### *Some recent reforms*

There have been a series of tax reforms in Japan. The latest reforms were incorporated in the FY2011 Tax Reform introduced by the Ministry of Finance on December 16, 2010. These reforms affect the tax brackets with respect to direct and indirect taxes. Provisions for gift taxation, inheritance tax, consumption tax on energy etc. and other measures relating to tax compliance and enforcement.<sup>136</sup>

There have been no reported changes in the tax policy during the review period.

#### **VIII.C. Subsidies and other financial assistance**

Japan has notified various specific subsidy programmes to the WTO. In its latest notification, Japan indicated 68 subsidy schemes to assist agriculture, forestry, and fisheries, industry, finance, and transport sectors.<sup>137</sup> Changes since 2009, as noted in the notification, include elimination of the subsidy for the promotion of advanced research and development in salt manufacturing technology and the subsidy for promoting bio-fuel in March 2009. With a view to stimulating the domestic economy, the Japanese

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<sup>133</sup> Statement on Monetary Policy, June 14, 2011, Bank of Japan available at: [http://www.boj.or.jp/en/announcements/release\\_2011/k110614a.pdf](http://www.boj.or.jp/en/announcements/release_2011/k110614a.pdf)

<sup>134</sup> For comparisons of corporate tax rates in selected countries, see MOF online information, Viewed at: <http://www.mof.go.jp/jouhou/syuzei/siryou/084.htm>

<sup>135</sup> World Economic Report, IMF, 2010

<sup>136</sup> Details of all the changes can be found at: [http://www.mof.go.jp/english/tax\\_policy/tax\\_reform/fy2011/tax2011a.pdf](http://www.mof.go.jp/english/tax_policy/tax_reform/fy2011/tax2011a.pdf)

<sup>137</sup> WTO document G/SCM/N/186/JPN, June 25, 2009

government introduced subsidies for purchasing new environmentally friendly vehicles in April 2009. Under the new Growth Strategy, adopted by the Cabinet on June 18, 2010, the Government has concentrated its resources into the development of "seven strategic areas" (environment and energy, medical and health care, economic integration with other Asian countries, tourism and revitalization of regional economies, science and technology, human resources, and financial services).<sup>138</sup> The strategy indicates that potential demand is largest in these seven areas.<sup>139</sup>

### Developments during the review quarter

During the review period, the following instances of subsidies were published:

(1) On May 2, 2011, The “*Cabinet Ordinance for the Enforcement of Provisions Related to the Ministry of Economy, Trade and Industry regarding the Act on Special Fiscal Aid and Subsidy for Recovery from the Great East Japan Earthquake*” was decided by the Cabinet.

Following the enforcement of the Act on Special Fiscal Aid and Subsidy for Recovery from the Great East Japan Earthquake, this Cabinet Ordinance defines the eligibility criteria for and the period of the special provisions that the Act stipulates for the Small and Medium-sized Enterprise Credit Insurance Act, the Act on Equipment Installation Support for Small Enterprises, and the Organization for Small and Medium-sized Enterprises and Regional Innovation Act. The Act defines that fiscal aid for local governments to expedite emergency recovery activities (24 items, including one related to METI); reduction or exemption social insurance premiums charged on earthquake-affected people, and special assistance measures such as financial assistance of small and medium-sized enterprises (SMEs) (116 items, including 4 related to METI). Measures related to METI (5 items in total) include special provisions of the Small and Medium-sized Enterprise Credit Insurance Act and those of the Act on Equipment Installation Support for Small Enterprises.

(2) In the FY 2011 preliminary supplementary budget, the following measures were decided: 1) Subsidy for restoration of facilities and equipment indispensable for recovery plans to be promoted integrally by small and medium enterprises (SMEs); 2) Subsidy for restoration of facilities that belong to business associations and chambers of commerce and industry; and 3) Subsidy for restoration of commonly used facilities that belong to business cooperatives or other associations of SMEs. Applications for these subsidies have been called for during the review period.<sup>140</sup>

(3) In accordance with the draft FY 2011 first supplementary budget approved by the Cabinet, the Small and Medium Enterprise Agency (SMEA) has decided to significantly enhance financing assistance measures for small and medium enterprises (SMEs). The Agency will support SMEs severely affected by the disaster either directly or indirectly by establishing disaster response financing programs, aside from existing schemes. The new programs will provide for greater support, such as extended loan limits and lower interest rates:

1) Establishment of the “Great East Japan Earthquake Recovery Emergency Guarantee” program [Credit guarantee associations 2) Establishment of the “Great East Japan Earthquake Recovery Special Loan”

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<sup>138</sup> Prime Minister's Office online information, Viewed at: [http://www.kantei.go.jp/foreign/kan/topics/sinseichou01\\_e.pdf](http://www.kantei.go.jp/foreign/kan/topics/sinseichou01_e.pdf)

<sup>139</sup> Cabinet Office online information, Viewed at: [http://www5.cao.go.jp/keizai2/2010/0618\\_reference.pdf](http://www5.cao.go.jp/keizai2/2010/0618_reference.pdf)

<sup>140</sup> Call for Restoration and Construction Subsidy Projects for Facilities and Equipment of Small and Medium Enterprises, METI, June 2011 available at: [http://www.meti.go.jp/english/press/2011/0609\\_01.html](http://www.meti.go.jp/english/press/2011/0609_01.html)

program [Japan Finance Corporation and Shoko Chukin Bank]- Japan Finance Corporation (JFC) will institute a new long-term, low-interest loan program.<sup>141</sup>

### **Subsidies in different sectors of manufacturing**

On May 26, 2011, Dyesol Japan was declared as one of only five companies from around the world to be awarded a subsidy to support the establishment of a major R&D facility in Japan by METI. With the assistance of the Japanese government, Dyesol intends to establish a material integration centre in what it considers to be the centre for materials R&D in Asia. Benefits for Dyesol include access to excellent IP generation capability and will facilitate working relationships with centres of research in Japan. The facilities will be a substantial expansion of Dyesol's R&D activities in Japan and provides it with a government imprimatur.<sup>142</sup>

The Subsidy Program for Promoting Asian Site Location in Japan is intended to sustain and strengthen high-value-added business sites in Japan and to achieve sustainable growth of the Japanese economy.

### ***Benefits to SME's***

(1) Small and Medium Enterprises and Regional Innovation, Japan (SMRJ) decided to establish a program to loan funds for facility and equipment through small and medium enterprise support institutions (SME support institutions) (e.g., semi-public corporations run by prefectural governments) to recovery projects jointly conducted by groups of SMEs affected by the earthquake. This loan program will be implemented along with the subsidies for facility and equipment restoration (¥16.5 billion) secured in the FY 2011 primary supplementary budget.<sup>143</sup>

(2) In accordance with the draft FY 2011 first supplementary budget just approved by the Cabinet, the Small and Medium Enterprise Agency decided to significantly enhance financing assistance measures for small and medium enterprises (SMEs). The Agency would support SMEs severely affected by the disaster either directly or indirectly by establishing disaster response financing programs, aside from existing schemes. The new programs will provide for greater support, such as extended loan limits and lower interest rates. Japan Finance Corporation (JFC) will institute a new long-term, low-interest loan program. Shoko Chukin Bank will create a similar loan program as well. These programs are designed to help SMEs severely affected directly or indirectly by the disaster and will bring greater benefits than the existing programs (disaster recovery loans and safety-net loans) through extended loan limits and periods and application of lower interest rates. In addition, an interest subsidy program whereby interest on loans is reduced to zero through subsidies from the Organization for Small and Medium Enterprises and Regional Innovation, Japan (SMRJ), or the local government will be set up especially for SMEs whose business sites have been completely destroyed or washed away by the earthquake or tsunami. SMEA will also implement measures to reinforce the financial foundation of JFC (Crisis Response Finance Department),

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<sup>141</sup> Enhancement of financing assistance measures for SMEs following the Cabinet approval of the draft FY 2011 first supplementary budget, METI, April 2011 available at: [http://www.meti.go.jp/english/press/2011/0428\\_02.html](http://www.meti.go.jp/english/press/2011/0428_02.html)

<sup>142</sup> Dyesol receives Japan Govt. subsidy, Business Spectator, May 26, 2011 available at: <http://www.businessspectator.com.au/bs.nsf/Article/Dyesol-receives-Japan-govt-subsidy-H83R3?OpenDocument>

<sup>143</sup> Measures to expand the enhancement loans from SMRJ regarding disaster recovery, and electricity supply and demand, May 2011, METI available at: [http://www.meti.go.jp/english/press/2011/0516\\_01.html](http://www.meti.go.jp/english/press/2011/0516_01.html)

which plays an essential role in providing interest subsidies, as well as security against losses, for loans made by Shoko Chukin Bank.<sup>144</sup>

## **VIID. Intellectual Property Regime**

### ***Legal framework***

The purpose of a system of industrial property rights is to encourage and to motivate inventors of inventions and creators of designs, to protect their rights and to instill confidence in the maintenance of business activities related to trademarks. The IP regime in Japan comprises of patents including utility models, designs and copyrights.

Article 1 of the Intellectual Property Basic Act, 2002 states its purpose of: realizing a dynamic economy and society that is based on the creation of added values through the creation of new intellectual property and effective exploitation of such intellectual property by stipulating the basic principles on the creation, protection and exploitation of intellectual property and the basic matters to achieve the principles.

### ***Institutional framework***

The Intellectual Property Strategic Programme (IPSP) 2010 was adopted by the IP Headquarters on May 21, 2010.<sup>145</sup> It aims to promote the establishment of international standards that would enhance Japan's competitiveness, particularly in the areas of advanced medicine, water, next-generation automobiles, railways, energy management, media contents, and robotics. The IPSP also aims to strengthen the global IP strategy, including promoting initiatives for establishing a globally unified patent system, and strengthening efforts to tackle counterfeit and pirated goods; and promoting a strategy to develop the content industries, such as supporting the overseas distribution of Japanese content (e.g. animation).

### ***Recent changes in IP legislations***

An amendment to the Patent Act, which entered into force fully on April 1, 2009, established a new licence registration system. A licence may be registered if the applicant has an agreement with the patent applicant on the use of the intellectual property. Once the patent is granted, the registered licensee may continue to use the intellectual property in accordance with the terms of the prior agreement. The amendment to the Patent Act also restricted the disclosure of information on licensees (users) of a pending patent to persons with a "legitimate interest", reduced the fees for registration and maintenance of patent rights and trade mark rights, and extended the period for filing an appeal against the examiner's decision from 30 days to three month.<sup>146</sup> Amendments to the Copyright Law entered into force on January 1, 2010, and to the Unfair Competition Prevention Act on July 1, 2009. The amendment to the Copyright Law, *inter alia*, allowed certain use of copyrighted works by Internet search service providers without the consent of copyright holders, and the amendment to the Unfair Competition Prevention Act expanded the scope of application of criminal penalties for infringement of trade secrets.<sup>147</sup> Parallel imports are allowed in Japan in accordance with the principle of "international exhaustion".<sup>148</sup> Japan considers that parallel imports of goods manufactured under the foreign patent do not infringe a corresponding Japanese patent if there was no mutual agreement between the patent holder and transferees of patented goods that exclude Japan from the sales territory. Geographical indications (GIs)

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<sup>144</sup> Enhancement of financing assistance measures for SMEs following the Cabinet approval of the draft FY 2011 first supplementary budget, May 2011, METI available at: [http://www.meti.go.jp/english/press/2011/0428\\_02.html](http://www.meti.go.jp/english/press/2011/0428_02.html)

<sup>145</sup> The Intellectual Property Strategy Headquarters online information, Viewed at: [http://www.kantei.go.jp/jp/singi/titeki2/2010chizaisuisin\\_plan.pdf](http://www.kantei.go.jp/jp/singi/titeki2/2010chizaisuisin_plan.pdf)

<sup>146</sup> METI online information, Viewed at: [http://www.meti.go.jp/english/newtopics/data/nBackIssue20080201\\_03.html](http://www.meti.go.jp/english/newtopics/data/nBackIssue20080201_03.html)

<sup>147</sup> MEXT online information (in Japanese), Viewed at: [http://www.mext.go.jp/b\\_menu/houan/an/171/1251917.htm](http://www.mext.go.jp/b_menu/houan/an/171/1251917.htm), see also, METI online information (in Japanese), Viewed at: <http://www.meti.go.jp/press/20090227001/20090227001.html>

<sup>148</sup> Under international exhaustion, the right of the patent holder relating to the patented product is exhausted by putting the patented product on any market anywhere in the world

are protected in Japan under the Trademark Act and the Unfair Competition Prevention Act. In addition, GIs relating to wines and spirits are protected under the Law Concerning Liquor Business Association and Measures for Securing Revenue from Liquor Tax, through its Labelling Standard Concerning Geographical Indications.<sup>149</sup> Five GIs for Japanese liquors have been designated in Japan.<sup>150</sup> Furthermore, under FTAs signed by Japan, various GIs for foreign spirits are recognized as GIs referred to in paragraph 1 of Article 22 of TRIPS.

### ***International harmonization and cooperation***

Japan participates in the WIPO Standing Committee on the Law of Patents (SCP), a forum to discuss issues, facilitate coordination, and provide guidance concerning the progressive international development of patent law.<sup>151</sup> Japan has been involved in the mutual cooperation of the Trilateral Offices (IP-related authorities of Japan, the United States, and the EU) with a view to addressing common problems in the area of patents. In addition, the JPO has been discussing issues of mutual interest with the USPTO, the EPO, the Korean Intellectual Property Office (KIPO), and China's State Intellectual Property Office (SIPO). The JPO, the USPTO, and the EC Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) have been meeting regularly to discuss trade mark issues, including the Trilateral Identification Manual Project, to consider whether certain English identifications of goods and services proposed by each office is acceptable by all three offices, and cooperation with China.<sup>152</sup> Japan also participates in discussions in the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, concerning, *inter alia*, the revision of the Trademark Law Treaty and the substantive harmonization of trade mark laws. Regarding copyrights and related rights, the Agency for Cultural Affairs has held regular bilateral consultations with its counterparts in China and the Republic of Korea to exchange views on current issues, including enforcement.

Japan is party to the Anti-Counterfeiting Trade Agreement (ACTA), negotiations among several countries with the intention of concluding a treaty to "combat counterfeiting and piracy".<sup>153</sup> A consolidated draft text was released in April 2009 following the eighth round of negotiations in New Zealand. All of Japan's bilateral FTAs to date include provisions on intellectual property, such as simplifying procedures and enhancing the transparency of procedures; strengthening the protection of intellectual property rights and strengthening enforcement.

The authorities consider that Japan's obligations under these provisions are often beyond those of the TRIPS Agreement. For example, the Japan-Switzerland FTA has an intellectual property chapter with 23 articles including enhancement of efficiency of procedural matters; transparency; copyrights and related rights; trademarks; industrial designs; patents; new varieties of plants; unfair competition; enforcement-border measures; enforcement-civil remedies; and enforcement-criminal remedies.

### **Developments during the review quarter**

(1) The Anti-Counterfeiting Trade Agreement (ACTA) was opened for signature on May 1, following its adoption by participants in its negotiations on April 15, 2011. The Government of Japan will receive

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<sup>149</sup> For a description of the system under the Law and Labelling Standard, see WTO document WT/TPR/M211/Add.1, 22 May 2009, pp. 256-257

<sup>150</sup> They are: Iki, Kuma, Ryukyu, Satsuma (Spirits) And Hakusan (Sake)

<sup>151</sup> WIPO online information, Viewed at: <http://www.wipo.int/patent-law/en/scp.htm>

<sup>152</sup> Strategic working group meetings were held in December 2008, while a meeting of deputies of patent offices was held in December 2009

<sup>153</sup> MOFA online information., Viewed at: [http://www.mofa.go.jp/announce/announce/2010/4/0416\\_2.html](http://www.mofa.go.jp/announce/announce/2010/4/0416_2.html)

signatures as the Depository of this Agreement. The Government of Japan looks to continue efforts with the other concerned countries with a view to bringing the ACTA into effect as soon as possible.<sup>154</sup>

(2) On May 10, 2011, in order to strengthen IPR protection actions in China, METI exchanged a memorandum of understanding with China's Ministry of Commerce and State Administration for Industry & Commerce, and implemented inter-governmental dialogs such as the Working Groups on Counterfeit Goods. METI pledges to continue making efforts for improving IPR problems, including as the use of the present survey results on occasions of inter-governmental dialog.<sup>155</sup>

(3) On June 23 and 24, 2011, the heads of the world's five largest patent offices of Japan, the U.S., Europe, South Korea, and China (IP5 Offices) held the fourth meeting in Tokyo under the leadership of JPO. The discussions focused on: harmonization of patent systems for the first time in their meeting which if followed up will allow the Japanese industry to expand overseas operations and conduct international R&D with a greater feeling of security. At this meeting, it was agreed that the IP5 Offices would accelerate the establishment of a common patent classification, based on the patent classification of the JPO and that of the European Patent Office (EPO).<sup>156</sup>

(4) In June 2011, the Japan Patent Office (JPO) and the patent offices of seven countries (U.S., U.K., Canada, Australia, Finland, Russia and Spain) agreed that they would launch the "PPH MOTTAINAI" pilot program on July 15, 2011. The PPH MOTTAINAI<sup>157</sup> imposes simpler requirements on filing requests to allow for an accelerated examination of patent applications under the Patent Prosecution Highway (PPH)<sup>158</sup> in order to expand eligibility for the PPH.

The JPO will apply the PPH MOTTAINAI pilot program to its PPH partners that are either in the implementation phase or the pilot phase (U.S., U.K., Canada, Finland, Russia and Spain). Under the pilot program, an applicant can file a request for the PPH with regard to applications that have been assumed as patentable by any of the participating patent offices, regardless of which office the application was first filed with. The pilot period is one year and is subject to extension as needed.<sup>159</sup>

(5) During June, 2011, the Japan Patent Office (JPO) concurred with the Mexican Institute of Industrial Property (IMPI) that the two offices would launch a pilot program for the Patent Prosecution Highway (PPH) on July 1, 2011, as a result of the meeting between the JPO Commissioner and the IMPI Director General held in Tokyo on June 2. This arrangement has taken the number of Japan's PPH partners to 15. The PPH pilot program will allow applicants to obtain corresponding patents faster and more efficiently in each country.<sup>160</sup>

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<sup>154</sup> Anti-Counterfeiting Trade Agreement (ACTA)(Opening for Signature), Ministry of Foreign Affairs of Japan, May 1, 2011 available at: [http://www.mofa.go.jp/announce/announce/2011/5/0501\\_01.html](http://www.mofa.go.jp/announce/announce/2011/5/0501_01.html)

<sup>155</sup> Results of FY 2010 Field Survey of Intellectual Property Rights Infringement in China- Over 50% of Japanese companies recognize the IPR infringement, METI, May 2011 available at: [http://www.meti.go.jp/english/press/2011/0510\\_02.html](http://www.meti.go.jp/english/press/2011/0510_02.html)

<sup>156</sup> Results of the Fourth Meeting of the IP5 Heads of Office held in Tokyo, METI, June 2011 available at: [http://www.meti.go.jp/english/press/2011/0624\\_07.html](http://www.meti.go.jp/english/press/2011/0624_07.html)

<sup>157</sup> This program is designed to allow patent applicants to file requests for an accelerated examination under the PPH with regard to applications that have been assumed as patentable by one of the participating patent offices, regardless of which office the application was first filed with. The PPH programs to date, accepted only PPH requests based on the examination results of the Office of First Filing, or the patent office with which the corresponding application was filed first. This restriction on PPH requests has created a "wasteful" (mottainai in Japanese) situation where useful examination outcomes are not fully utilized at the international level. Thus the pilot program was named "PPH MOTTAINAI."

<sup>158</sup> Patent Prosecution Highway (PPH): A scheme whereby patent applicants whose applications have been assumed as patentable by a patent office are entitled to request, through a simple procedure, an accelerated examination of the corresponding applications in another patent office

<sup>159</sup> PPH MOTTAINAI Pilot Program: New patent prosecution highway pilot program with relaxed requirements to commence on July 15, June 2011 available at: [http://www.meti.go.jp/english/press/2011/0617\\_02.html](http://www.meti.go.jp/english/press/2011/0617_02.html)

<sup>160</sup> Commencement of the Patent Prosecution Highway Pilot Program between the JPO and the IMPI in July, June 2011 available at: [http://www.meti.go.jp/english/press/2011/0602\\_01.html](http://www.meti.go.jp/english/press/2011/0602_01.html)



(6) During May, 2011 the Japan Patent Office (JPO) announced that it will commence a pilot project for the Patent Prosecution Highway (PCT-PPH pilot program) with the Swedish Patent and Registration Office (PRV) based on Patent Cooperation Treaty (PCT) work products. The pilot period will start on June 1, 2011 for a period of two years. This arrangement has taken the number of Japan's PPH partners to 14. Under the PCT-PPH pilot program, an applicant receiving a positive written opinion or a positive international preliminary report in a PCT application where the JPO or the PRV were the International Searching Authority or the International Preliminary Examination Authority may request that the other office fast track the examination of corresponding claims in corresponding applications. The PCT-PPH pilot program will permit each office to benefit from the PCT work previously done by the other office, which reduces the examination workload and improves patent quality. The expedited examination in each office allows applicants to obtain corresponding patents faster and more efficiently in each country.<sup>161</sup>

(7) On May 4, 2011 Commissioner Iwai of the JPO and Commissioner Tian Lipu of State Intellectual Property Office of the People's Republic of China (SIPO) agreed to initiate a PPH pre-pilot program between Japan and the P.R. China using a prescribed number of applications, recognizing and sharing the effectiveness and importance of the PPH program.<sup>162</sup>

### **VIII. Competition Policy**

Japan Fair Trade Commission (JFTC) is the regulatory body for competition policy in Japan.

*The Anti-Monopoly Act (Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, 1947)* prohibits private monopolization, unreasonable restraint of trade and unfair trade practices, by preventing excessive concentration of economic power and by eliminating unreasonable restraint of production, sale, price, technology, etc., and all other unjust restriction on business activities through combinations, agreements, etc.. *The Subcontract Act (Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors 1956)* ensures that transactions between main subcontracting entrepreneurs and subcontractors are fair and, at the same time, to protect the interests of the subcontractors, thereby contributing to the sound development of the national economy. *Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm Fairness of Bidding, 2002* provides for measures to be taken to eliminate and prevent involvement in bid rigging etc, including demands by the Fair Trade Commission to the Heads of Ministries and Agencies etc. regarding improvement measures necessary to eliminate involvement in bid rigging etc., claims directed at employees involved in said bid rigging for damage compensation, investigation of the reasons for disciplinary actions against said employees, and coordination and cooperation among the administrative organs concerned and provide for punishments to be imposed on employees for acts that harm the fairness of bidding, etc.

An amendment to the Anti-monopoly Act (AMA) was adopted by the Diet in June 2009, and entered into force in January 2010. The amendment expanded the coverage of fines (surcharges) to *inter alia* exclusionary types of private monopolization, abuse of superior bargaining position, discriminatory pricing, concerted refusal to trade, and resale price restriction. The amendment also introduced a 50% increase in surcharges on enterprises that have played a leading role in cartels and bid-rigging. Furthermore, the amendment extended the maximum period between the dates of termination of infringement and issuance of an administrative order from three to five years; it also modified regulations on business combinations, such as the introduction of an approval requirement (prior notification) for

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<sup>161</sup> Commencement of the Patent Prosecution Highway Pilot Program between the JPO and the PRV, May 2011 available at: [http://www.meti.go.jp/english/press/2011/0525\\_02.html](http://www.meti.go.jp/english/press/2011/0525_02.html)

<sup>162</sup> Agreed on Further Enhancement of Examination Cooperation at JPO- SIPO Commissioners Meeting Commencement of the Patent Prosecution Highway Pre-Pilot Program between the JPO and SIPO, May 2011, available at: [http://www.meti.go.jp/english/press/2011/0511\\_03.html](http://www.meti.go.jp/english/press/2011/0511_03.html)

share acquisitions over certain thresholds.<sup>163</sup> The amendment also required that where the total amount of a foreign company's group sales in Japan (including its "ultimate parent" company and subsidiaries) exceed ¥20 billion, it must submit to the JFTC a prior notification before acquiring another company whose sales in Japan (including those of its subsidiaries), exceed ¥5 billion; the previous threshold of sales in Japan for an acquired company was ¥1 billion. A bill to further amend the AMA was submitted to the Diet on March 2010 but has not yet been adopted. The bill seeks to abolish the JFTC's hearing procedure for administrative appeals before imposing surcharges on enterprises, and the current administrative appeal procedure itself. Instead, the bill intends to have courts receive all appeals.<sup>164</sup>

## International arrangements

All of Japan's free-trade agreements provide for each party to take appropriate measures against anti-competitive activities in accordance with its laws and regulations, and to cooperate in controlling anti-competitive activities, e.g. by notifying the other party of enforcement activities, cooperation, coordination, requests for enforcement activities, and consideration of the other party's interests.<sup>165</sup> Japan has three other bilateral cooperation agreements on anti-competitive activities with Canada, the European Union, and the United States.

## Enforcement

An investigation into possible violations of the AMA may be initiated as a result of: a report from the general public, detection by the JFTC itself, notification by the Small and Medium Enterprise Agency, or a report by leniency applicants. The AMA provides three types of measures to penalize and thereby deter violations of the Act: administrative measures, such as surcharges and orders to take "elimination measures" (cease and desist orders); criminal penalties<sup>166</sup>, and private damages actions. With the entry into force of the 2009 amendment to the AMA in January 2010, the period of imprisonment for unreasonable restraint of trade increased from three years to five years.

## Developments during the review quarter

On June 14, 2011, JFTC announced partial amendment of the "Rules on Applications for Approval, Reporting, Notification, etc. Pursuant to the Provisions of Articles 9 to 16 of the Act on Prohibition of

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<sup>163</sup> Other than these changes, the amendment exempted notification of mergers and acquisitions within a corporate group (i.e. a number of enterprises that are operationally independent, but coordinated by a central body, such as conglomerates). The leniency programme was also amended to allow for joint application by two or more violators within the same company group, upon certain conditions being met, and the expansion of the number of leniency applicants from three to five. JFTC online information, Viewed at: <http://www.jftc.go.jp/e-page/pressreleases/2009/June/090603-1.pdf>, and <http://www.jftc.go.jp/e-page/pressreleases/2009/June/090603-2.pdf>

<sup>164</sup> JFTC online information, Viewed at: <http://www.jftc.go.jp/e-page/pressreleases/2010/March/0312a.pdf>, and <http://www.jftc.go.jp/e-page/pressreleases/2010/March/0312c.pdf>

<sup>165</sup> Chapter 10 of the FTA with Switzerland; Chapter 10 of the FTA with Viet Nam; Chapter 11 of the FTA with Indonesia; Chapter 12 of the FTA with Thailand; Chapter 14 of the FTA with Chile; Chapter 12 of the FTA with the Philippines; Chapter 10 of the FTA with Malaysia; Chapter 12 of the FTA with Mexico; and Chapter 12 of the FTA with Singapore. MOFA and JFTC online information, Viewed at: <http://www.mofa.go.jp>, and <http://www.jftc.go.jp/e-page/internationalrelations/index.html>

<sup>166</sup> Criminal penalties currently include imprisonment of up to five years or a fine of up to ¥5 million for private monopolies and unreasonable restraint of trade, and imprisonment of up to two years or a fine of up to ¥3 million for international agreements constituting unreasonable restraint of trade and unfair trade practices, restrictions of the number of members of trade associations, and violations of final decisions by the JFTC. Criminal proceedings may be initiated only after an accusation is filed by the JFTC with the Public Prosecutor General. Appeals are available with the High Courts and eventually the Supreme Court

Private Monopolization and Maintenance of Fair Trade”; “Policies Concerning Procedures of Review of Business Combination ” and partial amendment of the “Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination”.<sup>167</sup>

#### VIII.F. Corporate Governance

Under the Companies Act, the boards of large companies<sup>168</sup> (or the directors in the case of corporations without a board) must decide on a basic framework for their internal control systems and disclose a summary of this decision to their shareholders in their business reports. Article 821 of the Companies Act stipulates that a foreign company (i.e. a company established under foreign law and not under Japanese law) that "has its head office in Japan or whose main purpose is to conduct business in Japan" may not carry out transactions continuously in Japan.<sup>169</sup> Under the Financial Instruments and Exchange Act, the management of listed companies must implement assessments of internal controls over financial reporting, and these assessments must be audited by certified public accountants (Internal Control Report System). Furthermore, listed companies must submit annual reports certified by the management (Certification Report System).

The listing rules of stock exchanges in Japan require listed companies to publish reports (on the stock exchange's website) describing their corporate governance structure, including: the reasons for adopting an in-house auditor or committee-style governance structure; whether they have outside directors; and whether they adopt any measures to prevent takeovers. In addition, from March 31, 2010, listed companies are required to disclose information on remuneration for directors and statutory auditors, cross-shareholding, and the exercise of voting rights.<sup>170</sup> The authorities consider that this additional information improves the transparency of listed companies.

Japan's Generally Accepted Accounting Principles (GAAP) are, taken as a whole, equivalent to the International Accounting Standards (IAS), while acknowledging limited differences in certain areas. Financial Services Agency, published "*Japan's Roadmap for application of IFRS*" on 30 June 2009. The document states that: it is appropriate that a voluntary application of IFRS for the consolidated financial statements of certain listed companies whose financial or business activities are conducted internationally is allowed from the fiscal year ending in March 2010; a decision regarding mandatory application of IFRS for listed companies is expected to be made around 2012 and if the decision is made, the mandatory use of IFRS will start from 2015 or 2016. Subsequently, in December 2009, the FSA published, *inter alia*, a set of revised Cabinet Office Ordinances for voluntary application of IFRS in Japan. With these revisions, companies listed in Japan that meet certain requirements are to be given the option to prepare their financial statements, starting from the consolidated fiscal years ending on or after March 31, 2010, by applying certain IFRSs, in accordance with the revised Cabinet Office Ordinance and other relevant rules.

There were no developments reported during the review quarter.

### Trade Policy By Sector

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<sup>167</sup> Partial Amendment, etc. of the Fair Trade Commission Rules Associated with Reviews of Business Combination Regulations (Investigation Procedures and Criteria) JFTC, Press Release, June 14, 2011 available at: <http://www.jftc.go.jp/en/pressreleases/archives/individual-000432.html>

<sup>168</sup> Corporations with ¥500 million or more of capital or ¥20 billion or more of liabilities on their most recently audited and approved balance sheets are considered to be large companies

<sup>169</sup> Ministry of Justice (Japanese Law Translation) online information, Viewed at: <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&id=149&re=02&vm=02>

<sup>170</sup> The Financial Service Agency online information, Viewed at: <http://www.fsa.go.jp/en/news/2010/20100326-1.html>

## VIIIA. Agriculture

### Institutional framework

The Ministry of Agriculture, forestry and fisheries is the nodal agency of the agriculture sector in Japan. The Ministry comprehensively undertakes administration related to agricultural, forestry and fisheries products, covering from production to consumption and also to rural development and promotion of the welfare of rural inhabitants with a view to achieving stable supply of food, sound development of the agriculture, forestry and fisheries industries and upgrading of the welfare of rural inhabitants. The Ministry functions with the aid of several organs and departments including: International affairs department, General Food Policy Bureau, Staple Food Department, Food Safety and Consumer Affairs Bureau, Agricultural Production Bureau, Rural Development Bureau, Agriculture, Forestry and Fisheries Research Council, Forestry Agency, Forestry Policy Council, Fisheries Agency, Fisheries Infrastructure Department and several incorporated administrative agencies and councils.<sup>171</sup>

#### *Legal Framework*

The Basic Law on Food, Agriculture and Rural Areas continues to provide the framework and policy direction for agriculture; implementation of the Law is through the revised Basic Plan for Food, Agriculture and Rural Areas, adopted in March 2010. Salient features of the current plan include: achieving a higher self-sufficiency ratio; encouraging consolidation of production, processing, and distribution of agricultural produce with a view to increasing value-added; improving food safety; participating in international standard-setting; and establishing income support regardless of the size of farms.<sup>172</sup> Under the Agricultural Management Reinforcement Law, "general corporations" (including stock companies and non-profit organizations) are permitted to lease farmland.<sup>173</sup>

#### *Border measures*

The average applied MFN tariff for agriculture (WTO definition) is 15.7% (FY2010)<sup>174</sup>, compared with an overall average of 5.8%. In addition to having relatively high tariffs on agriculture goods, the rate varies considerably from chapter to chapter and often from one product to another within the same HS chapter. Of the applied MFN tariffs on agricultural goods (WTO definition), 17.4% are non-*ad valorem*. Many sub-sectors within agriculture are protected by relatively higher MFN tariffs than the sectoral average; these include industrial and medicinal plants, dairy products, edible vegetables, sugars, and cereals and products

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<sup>171</sup> Food and Agricultural Materials Inspection Center, National Livestock Breeding Center, National Fisheries University, National Agriculture and Food Research Organization, National Agricultural Research Center, National Agricultural Research Center for Hokkaido Region, National Agricultural Research Center for Tohoku Region, National Farmers Academy, National Institute of Crop Science, National Institute of Fruit Tree Science, National Institute of Floricultural Science, National Institute of Vegetable and Tea Science, National Institute of Livestock and Grassland Science, National Institute of Animal Health, National Institute for Rural Engineering, National Food Research Institute, Bio-oriented Technology Research Advancement Institution, National Institute of Agrobiological Sciences, National Institute for Agro-Environmental Sciences, Japan International Research Center for Agricultural Sciences, Forestry and Forest Products Research Institute, Center for Forestry and Agriculture Development, Fisheries Research Agency, Hokkaido National Fisheries Research Institute

<sup>172</sup> Ministry of Agriculture, Forestry and Fisheries (MAFF) online information (in Japanese), Viewed at: [http://www.maff.go.jp/j/keikaku/k\\_aratana/index.html](http://www.maff.go.jp/j/keikaku/k_aratana/index.html)

<sup>173</sup> Before 1 September 2005, only "agricultural production legal persons" were allowed to lease farmland (with a few exceptions), and eligibility requirements had to be fulfilled: corporations had to be in the form of agricultural cooperatives, partnerships or stock companies engaged mainly in agricultural activities and with more than 50% of their sales from agriculture; three-quarters of the members had to be farmers; and the majority of directors had to be full-time farmers

<sup>174</sup> The average applied MFN tariff for agriculture (HS 1-24) in FY2010 is 14.7%

thereof. Additionally, several agricultural sub-sectors are also subject to tariff peaks (defined here as tariff rates exceeding three times the simple applied MFN average). AVEs were not available for 115 tariff lines at the HS nine-digit level, which included milk and dairy products, live swine and meat of swine, rice and cereals, fruit juices, groundnuts and their oil, and prepared foods. For example, the rate payable on imports of broad beans is among the highest in Japan's customs tariff with an *ad valorem* equivalent of 458% (out-of-quota rate). Tariffs tend to be particularly high and variable for vegetables, cereals, and sugars and sugar confectionery (HS Chapters 7, 10 and 17). Japan operates 18 tariff quotas, which it has notified to the WTO Committee on Agriculture, covering 175 tariff lines, mainly for dairy products and cereals (including rice).<sup>175</sup>

As part of Japan's tariff quota commitments, a certain amount of imported rice may be purchased and marketed directly under the simultaneous buy-and-sell (SBS) system. Japan provides rice as food aid. Japan donated 57,298 tonnes of rice in 2007 and 126,006 tonnes in 2008 as direct transfers (it also donated significant quantities through local and triangular purchase arrangements).<sup>176</sup> In 2006 and 2007, Japan notified the Committee on Agriculture that it provided US\$51.65 million and US\$76.32 million, respectively, for the purchase of grains as food aid for LDCs and net-food-importing developing countries.<sup>177</sup>

#### *Domestic policy in agriculture*

For rice, the Government implements "supply-demand adjustment" measures, which *inter alia* set a volume cap for production.<sup>178</sup> According to the authorities, the supply-demand adjustment is in place to keep domestic prices stable and raise the food self-sufficiency ratio. The rice diversion programme pays farmers to use rice paddies for purposes other than growing rice for food.

#### **Impact of earthquake on Japan's agriculture and fisheries sector**

Japan's Ministry of Agriculture, Forestry, and Fisheries (MAFF) released its latest damage assessment on April 18th for prefectures directly affected by the earthquake, tsunami, and nuclear crisis, as well as for surrounding areas. These figures value the damage to agriculture in the region at 729 billion JPY (\$8.8 billion) and damage to fisheries at 603 billion JPY (\$7.3 billion). According to MAFF, roughly 23,600 ha of mainly-paddy farmland was flooded with seawater, rendering it temporarily infertile. MAFF also recently revealed that the country would not meet its rice production target of 7.95 million tons this year, while noting that it holds around 1 million tons in reserves, reducing or eliminating the need for imports to fill the supply gap. Concerns about radiation levels are affecting more than just seafood.

The situation in Fukushima has led to a domestic ban on shipments of vegetables and milk not only from that prefecture, but also from the surrounding prefectures of Tochigi, Ibaraki, and Chiba. Internationally, as of the end of March more than 50 countries restricted to a certain degree imports from Japan. China,

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<sup>175</sup> WTO document G/AG/N/JPN/153, 24 February 2010 and information provided by the authorities

<sup>176</sup> World Food Programme, Food Aid Information System (INTERFAIS) online database: <http://www.wfp.org/fais/quantity-reporting>

<sup>177</sup> WTO document G/AG/N/JPN/145, 27 March 2009

<sup>178</sup> Based on the decision of the Principle and Outline of Rice Policy Reform in 2002 and the entry into force of the amendments to the Law for Stabilization of Supply-Demand and Price of Staple Food in 2004, domestic distribution of rice was liberalized, and Government purchase and selling prices for rice are determined by tender

one of Japan's largest markets for agriculture and food exports, has completely banned imports from 12 prefectures, including Tokyo.<sup>179</sup>

### Other developments during the quarter

(1) On January 17, 2011, a few months before the review quarter, Japan submitted Fisheries proposals to the WTO negotiations.<sup>180</sup> Japan's policy stance with respect to the fisheries subsidies highlighted the following:

In considering the discipline of fisheries subsidies, the Members have to bear in mind the fact that subsidies do not a priori contribute to overcapacity or overfishing. Capacity-enhancing or effort enhancing effect, if any, caused by subsidies which were emphasized by some Members, is not as significant in its magnitude as was previously believed<sup>181</sup>. Also, the implementation of effective fisheries management can prevent the negative effects on fisheries resources even if such enhancing effects are induced. It should be also noted that other factors, separate from subsidies, are contributing to overcapacity and overfishing. In particular, illegal, unreported or unregulated fishing ("IUU fishing") activities significantly contribute to overfishing.<sup>182</sup> Developing a workable and cooperative international framework through which Members' fisheries management can be improved, using the subsidy discipline as a "leverage", would contribute to the long-term sustainability of fisheries resources. For this purpose, fisheries management should not be limited to the condition of exceptions, but should constitute the conceptual backbone of the discipline. For example, while remaining consistent with the provisions of the United Nations Convention on the Law of the Sea ("the 1982 UNCLOS"), cooperative frameworks with international fisheries organizations such as the Food and Agriculture Organization of the United Nations and Regional Fisheries Management Organizations need to be further explored.

(2) On May 9, 2011, the MAFF and the METI signed the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information of the International Organization of Securities Commissions (IOSCO) through which securities and derivatives regulators share with each other essential investigative material. At present, 80 regulators of the world have become signatories of the MMOU. In order to cope with market abuse and manipulation in the commodity derivatives market, regulations and supervision of the market and cooperation among authorities are requested at G20 summit meetings etc. Under such circumstances, it is indispensable for authorities in the world to mutually and smoothly cooperate in information exchange so as to properly monitor and supervise the commodity derivatives market. Further, in response to the amendment of the Commodity Exchange Act in FY 2009, the MAFF and the METI are implementing measures toward market surveillance in coordination with the IOSCO and overseas market supervising authorities. This will also boost cross-border trading facilities.<sup>183</sup>

(3) On June 15, 2011 MAFF notified ensuring smooth food distribution after the accident occurred at Fukushima Daiichi nuclear power station of Tokyo Electric Power Company by seeking a "*Request for shipment restraint and other measures issues*". It updated information in the column below based on the current

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<sup>179</sup> Special Report: Impact of Japan's Earthquake on its Food and Agriculture Industries: Volume 2, April 22, 2011, available at: <http://www.promarconsulting.com/company-news/special-report-impact-of-japans-disasters2/>

<sup>180</sup> MAFF, available at: <http://www.maff.go.jp/e/maffud/2011/pdf/110118-02.pdf>

<sup>181</sup> In the Working Documents submitted by Japan for October 2010 session, Japan introduced a set of statistical analyses that subsidies do not always lead to overcapacity or overfishing

<sup>182</sup> The magnitude of IUU fishing is estimated to be between \$10 billion and \$23.5 billion annually. See, Agnew DJ, Pearce J, Pramod G, Peatman T, Watson R, et al. (2009) Estimating the Worldwide Extent of Illegal Fishing. PLoS ONE 4(2): e4570. doi:10.1371/journal.pone.0004570

<sup>183</sup> Signing of the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information of the International Organization of Securities Commissions (IOSCO), May 10, 2011 available at: [http://www.maff.go.jp/e/soushoku/syoutori/20110510\\_press.html](http://www.maff.go.jp/e/soushoku/syoutori/20110510_press.html)

situation that the shipment restraint on Bud vegetables belonging to brassicaceae such as Broccoli produced in Shinchi town, Soma city, Minamisoma city (except for the district within 20km radius of Fukushima Nuclear Power Station and planned evacuation zones), Fukushima city, Nihonmatsu city, Date city, Motomiya city, Koori town, Kunimi town, Kawamata town (except for the Yamakiya district) and Otama village was lifted by the Prime minister as the head of the Nuclear Emergency Response Headquarters.<sup>184</sup>

(4) With respect to goods exported from Japan, on May 23, 2011, China eased the restrictions on the import of agricultural products from two prefectures far from Japan's stricken Fukushima plant, post the restrictions imposed in the wake of earthquake.<sup>185</sup>

## VIII.B. Manufacturing

### Institutional framework

METI is the nodal organization handling the industrial sector of Japan. Following the Cabinet approval of the New Growth Strategy (Basic Policies) on December 30, 2009, METI established the Industrial Competitiveness Committee under the Industrial Structure Council with the aim of formulating the "Industrial Structure Vision 2010," which states the future that Japan's industry should pursue, and directions of policies needed.

#### Industrial Structure Vision

<p>Comprehensive strategy to make Japan Asia's industrial centre- Strong promotion of 'open sky' policy</p> <p>Corporate tax reform aiming at international standards</p> <p>Promotion of R&amp;D to produce new values</p> <p>Increased human resources capacity to meet changes in industrial structure</p>
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Source- *METI*<sup>186</sup>

### 100 measures of achieving the Growth Strategy, August 2010<sup>187</sup>

<p>Corporate tax reform aiming at reaching international standards (a 5% cut targeted at first)</p> <p>Attract/develop excellent international talent, support industry-government-academia collaboration to develop excellent human resources in technology, etc.</p> <p>Create Future Cities through large-scale demonstrations of next-generation energy demand-supply systems (Smart Grid); Enhance and accelerate technology development in the environment and energy fields; Establish bilateral offset mechanisms and support international expansion of the environment and energy industry</p> <p>Revise systems in medical and nursing care service sector and create related industries, digitize medical care, medical interaction, support new bio-industry creation, foster development of innovative medical equipment and life support robots, etc.</p> <p>Creative industries strategy (Cool Japan Strategy)- Formulate and implement country-/sector-specific strategies to "profit from culture"; Establish "Overseas Content Marketing Support Fund"; Set up "Creative Industries Department" (provisional name) Invigoration of regional economies and SMEs; Support measures to meet diversity Implementation of diverse "regional economic development models"</p> <p>Review of the patent system and stricter trade secret management in order to support a strategic combination of open and closed technologies IT as the basis for industrial and social advances (Source: METI)</p>
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1 Japan farmers welcome China's ease in food import restrictions, CNTV, May 23, 2011 available at <http://english.cntv.cn/program/newshour/20110523/106397.shtml>

2 <sup>186</sup> METI available at: [http://www.meti.go.jp/english/policy/economy/pdf/isvision2010\\_Growth.pdf](http://www.meti.go.jp/english/policy/economy/pdf/isvision2010_Growth.pdf)

1 <sup>187</sup> METI available at: [www.meti.go.jp/english/aboutmeti/policy/2011policies.pdf](http://www.meti.go.jp/english/aboutmeti/policy/2011policies.pdf)

Source: METI<sup>188</sup>

### **Overview of different areas of manufacturing**

**Automobile Industry-** Japan became the world's largest vehicle producers of automobile in 2007, surpassing the United States by producing 11.48 million vehicles, compared to 11.36 million in the United States. More than 50 percent of the vehicles made in Japan are exported. Exports of vehicles and vehicle parts reached about \$180 billion in 2007, accounting for roughly 20 percent of Japan exports. Japan's auto companies maintain about 30% global market share. As trends toward green vehicles has been accelerated in developed markets, METI formulated the Next-Generation Vehicle Plan 2010. The recent earthquake however affected the production and global supply of the Japanese cars to a great extent. Japanese carmakers lost a massive 4.5 percentage points of market share to countries like South Korea and US. The quake cost Toyota ¥100 billion (\$1.2 billion) and Nissan was also hit even though its losses were recouped due to its other ventures with European companies.<sup>189</sup>

**Electronics Industry-** Japanese consumer electronics industry is one of the most prominent industries in the world and is the world's largest electronics manufacturer by companies. In 2010, approximately 13.9 percent of all global electronic equipment revenue came from the Japan, which included items such as computers, electronic devices and communications equipment. Japan earned U.S. \$ 216.6 billion (1,900 billion) during the year 2010. Japan also accounted for 16.5 percent of total consumer electronics revenue in 2010. Companies in Japan at least contribute more than 1/5 of global world's semiconductor production in 2010 a number of these Japanese companies also generate revenues up to U.S. \$ 63.3 billion in microchip business, which controls 20.8% global market. Japan Electronics and Information Technology Industry Associations is the key body which publishes data and statistics on the production and export of different electronic items. The earthquake hit the electronic industry hard as Sony closed six of its manufacturing facilities, Panasonic's EV Energy plant in Sendai, was destroyed by the tsunami, and a number of semi-conductors industries were also affected.<sup>190</sup>

According to the document released by JEITA on June 1, 2011, it welcomed the Japan-EU summit of May 28 which paves a path for an economic partnership agreement between the two countries.<sup>191</sup>

**Chemical Industry-** Japan's chemical industry is the world's fourth largest in terms of shipments and totaled US \$286 billion in 2009. Base chemicals, petro-chemicals, pharmaceuticals and agricultural chemicals are the components of this industry. The industry however has been blamed of protectionism as a result its exports have been subjected to anti-dumping duties by countries like China.<sup>192</sup> The recent earthquake impacted the chemical industry including Japanese chemical companies- Mitsubishi Chemical,

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<sup>188</sup> 100 Actions to Launch Japan's New Growth Strategy- Maximize Market's Function through Reimagined Public-Private Cooperation, FY 2011, METI, August 2011 available at: <http://www.meti.go.jp/english/aboutmeti/policy/2011policies.pdf>

<sup>189</sup> *The Global Car Industry: After The Quake*, (May 19, 2011) Available at: <http://Www.Economist.Com/Node/18712767>

<sup>190</sup> Isaac Leung, How Japan's 2011 earthquake will impact electronics industry, March 14, 2011 available at: <http://www.electronicnews.com.au/news/how-japans-2011-earthquake-will-impact-electronic>

<sup>191</sup> JEITA, available at: <http://www.jeita.or.jp/english/press/2011/0601/release20110601.pdf>

<sup>192</sup> Japanese Chemical Industry, Finding the Right Path, KPMG Publications, April 2011 available at: <http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/japanese-chemical-industry.pdf>



Shin-Etsu Chemical, Kyowa Hakko Kirin, Sumitomo Chemical, JSR, Kuraray, Mitsui Chemicals, and others which operated facilities in Chiba and Ibaraki, two prefectures that neighbored Tokyo to the northeast. The quake triggered automatic emergency shutdown of their plants.<sup>193</sup>

**SMEs (Small and medium scale enterprises)** - There are numerous policies and institutions facilitating the small and medium scale industries in Japan. The policies deal with: Facilitation of Fund Supply Building of Business Support Systems; Promotion of Business Start-ups and Venture Business Support of Technical Development Support of Business Innovation. The sector continues to be open, with the simple average MFN tariff for industrial products (HS25-97) at 3.4% in FY2010, compared with 14.7% for agricultural products (HS01-24), and an overall simple average MFN rate of 5.8%. However, tariff rates for textiles and clothing and for leather products are significantly higher.

Sector-specific subsidies, such as those provided to companies involved in the manufacture of civil aircraft have been provided by the government.<sup>194</sup> Foreign direct investment in certain manufacturing sub-sectors remains subject to approval (prior-notification); additionally, investment (domestic or foreign) in certain sectors requires permission or *ex post* reporting, as stipulated in various laws and relevant regulations. For example, investors, domestic or foreign, who intend to invest in aircraft manufacturing, require approval by the Ministry of Economy, Trade and Industry, in accordance with the Law on Aircraft Manufacturing.

#### **Developments during the review quarter**

According to the official data published by the METI, Japanese industrial output was up a seasonally adjusted 1% in April as compared to the month of March. Overall new business fell in the month of May and new export orders fell at a similarly mild rate, extending the current period of decline to three months. For discussion on sector specific subsidy, refer to Part VII C of the report dealing with subsidies.

#### **VIIIC. Energy and Utilities Sector**

Japanese power output in 2009 was 1046 Twh, made up of coal fired power (28%), nuclear (27%), gas (sourced almost entirely from LNG) 26%, oil 9%, and hydro 8%. The energy and environment sector is managed by METI as the nodal organization.<sup>195</sup>

#### **Strategic energy plan of Japan**

The Basic Energy Plan is established by the government pursuant to the Basic Act on Energy Policy. It sets the basic direction of the national energy policy of Japan in line with the three fundamental principles of energy policy: “securing of a stable supply,” “environmental suitability,” and “utilization of market mechanisms.”

#### **Japan’s promotion measures for renewable energy**

**Subsidies**- Subsidies are provided to reduce initial cost for renewable energy introduction and taxation to provide incentives for introduction are easily understood by introducers and greatly contribute to dissemination and expansion. The New Buyback Program for Photovoltaic Generation- Launched on November 1, 2009, the program applies only to surplus electricity generated using PV power systems.

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<sup>193</sup> Earthquake Rocks Japan's Chemical Industry, CN&E news, March 14, 2011 available at: <http://pubs.acs.org/cen/news/89/i12/8912news.html>

<sup>194</sup> WTO document G/SCM/N/186/JPN, June 25, 2009

<sup>195</sup> <http://www.iea.org/files/japanfactsheet.pdf>

Purchase at a fixed price is guaranteed for 10 years from the start of the program.<sup>196</sup> METI also promotes "3Rs" in order to create a sustainable society: one that has balance between the environment and the economy.

**Japanese Feed in Tariff scheme-** Feed-in-Tariff is the system which obligates electricity companies to purchase the electricity from renewable energy at certain price for certain period under certain conditions. In terms of designing the system, it is important to strike a balance between three factors: "expanded introduction of renewable energy," "burden on the population" and "system stabilization measures". Therefore, the basic policy is to maximize the introduction effect while reducing the burden on the electricity cost as much as possible.

**Impact of earthquake on Japan's energy sector-** The damage and impact to the power sector has been greatest in the area of the Tokyo Electric Power Company (TEPCO), largest power utility and that of Tohoku Electric Power Company (Tohoku-EPCO). Regarding the refining sector in Japan, 6 refineries<sup>197</sup> with a total refining capacity of 1.4 mb/d (around 30% of Japan's total refining capacity) were shut down.<sup>198</sup>

### Developments during the review quarter

On June 12, 2011 a review of Japan's energy policy was made. The expert panel on future energy policy laid out the following agenda in the light of recent earthquake:

- Energy policy conducive to the revival of the Japanese economy
- Directions of future nuclear policy in light of the accident
- Reform of Japan's energy supply system (electricity, oil, gas, and renewable energy) - the energy industry, energy market and energy regulations -
- Medium- to long-term energy supply structure
- Energy conservation and electricity saving suited to new lifestyles.<sup>199</sup>

## VIIID. SERVICES SECTOR

The services sector is the largest contributor to GDP and employment in Japan. The services sector in Japan has been largely protected from foreign competition. This protection has been afforded through restrictive internal regulations, such as licensing, restrictions on foreign investment, and generally the high cost of doing business in Japan.

In order to solve the cross-sectional problems in service industries, an organization called "Service Productivity and Innovation for Growth (SPRING)" was established by to conduct a range of activities to implement the various solutions and ideas. It co-ordinates its functions with METI and other government agencies.

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<sup>196</sup> The set price varies depending on the starting year. The initial price has been set to be ¥48/kWh for households (less than 10 kW)

<sup>197</sup> The six refineries include JX Nippon Oil & Energy (Sendai, Kashima and Negishi), Cosmo Oil (Chiba), Kyokuto (Chiba) and TonenGeneral (Kawasaki).

<sup>198</sup> Impact Of Earthquakes And Tsunamis On Energy Sectors In Japan, International Energy Agency, March 15, 2011, available at: <http://www.iea.org/files/japanfactsheet.pdf>

<sup>199</sup> Review of Japan's energy policy, May 2011, METI available at: [http://www.meti.go.jp/english/policy/energy\\_environment/review/index.html](http://www.meti.go.jp/english/policy/energy_environment/review/index.html)

In its schedule of specific commitments under the GATS, Japan has commitments in 121 sectors and has not taken any MFN exemptions.<sup>200</sup> In June 2005, Japan submitted its revised conditional offer on services.<sup>201</sup>

## Overview of Japan's services sector

**Financial services-** The banking sector is regulated by the Financial Services Agency (FSA), which administers the Banking Law. Under the law, all banks need to be licensed to conduct business in Japan.<sup>202</sup> Foreign banks may provide banking services through branches and subsidiaries (incorporated in Japan). Under the Banking Law, deposit insurance does not apply to branches of foreign banks not incorporated in Japan. Nationally licensed subsidiaries of foreign banks are subject to the same prudential requirements as domestic banks.

A ministerial licence is required to conduct insurance business in Japan. Approval is required for new insurance products, for modifications to existing products, and for premium rates. Life and non-life insurance companies may enter each other's markets only through subsidiaries. Commercial presence is normally required in order to offer insurance services in Japan except, *inter alia*, for certain reinsurance, commercial aviation insurance, and international marine hull insurance.<sup>203</sup> The criteria for granting licences and the solvency margin requirements are the same for Japanese and foreign insurance providers.

**Banking services-** Reforms regarding the privatization of Japan Post, a landmark reform initiated in 2007, have been under review since 2009, with a view, *inter alia*, to introducing measures to maintain a certain postal network level.

Action taken by the FSA included allowing the Banks Shareholding Purchase Corporation to purchase equities held by banks, and raising the upper limit on such purchases to ¥20 trillion. This measure was expected to improve the capital position of the banking sector. The Act on Special Measures for Strengthening Financial Functions was reactivated and its conditions relaxed in December 2008. The Act provides a framework for the injection of public funds in depository institutions. Since the Act's revival, three institutions have received a total of ¥121 billion under its provisions. Capital adequacy requirements for banks were also relaxed until March 2012, so that large changes in the capital adequacy ratio do not hamper intermediation functions.

**Securities-** Certain measures were already in place and the FSA initiated new measures to ensure the soundness of financial institutions affected by the decline in the equity market. Measures included firms being allowed to purchase their own equities; facilitating stock purchases by employee stock ownership plans; and strengthening regulations and enhancing disclosure requirements of short selling positions. Restrictions on short selling included prohibition on short selling at prices lower than the latest market

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<sup>200</sup> WTO documents GATS/SC/46, 15 April 1994, and its supplements

<sup>201</sup> WTO document TN/S/O/JPN/Rev.1, 24 June 2005

<sup>202</sup> Banks licensed in Japan may establish agencies, with ministerial authorization. A "bank agent" dealing with agency and brokerage businesses, such as deposit, lending, and exchange transactions, also requires a licence. Bank agents are required to meet various obligations, such as segregated custody. The bank to which bank agents belong must give them business advice or take measures to secure sound and appropriate business. Bank agents must submit their business reports to the FSA. The Government makes their reports publicly available; it also conducts on-site inspections

<sup>203</sup> For other insurance contracts, prior approval is required for foreign insurers without commercial presence in Japan

price, naked short selling<sup>204</sup>, and the requirement that short selling positions taken at or above a certain threshold must be reported and disclosed.<sup>205</sup>

**Insurance services-** Japan's insurance market comprises three subsectors: non-life, life, and the "third sector", which includes accident and health care insurance. There have been no significant changes in the industry during the period under review. The Financial Services Agency remains the regulatory authority, while the Insurance Business Law (IBL) is the main law governing the sector. The Ministry of Finance and the Financial Services Agency are responsible, *inter alia*, for the management of the Deposit Insurance Corporation, and other public insurance schemes for deposits and investment.

Recent changes undertaken include the revamping of regulations pertaining to the holding of concurrent posts at banks, securities firms, and insurance companies; allowing firms to undertake investment advisory business; allowing firms to engage in Islamic finance and allowing firms to participate in emissions trading business. Additionally, an alternative dispute resolution system for insurance issues has been established, as well as a system for managing insurance firms' conflicts of interest. Insurance groups are also now permitted to conduct money broking business.

**Telecom sector-** The Ministry of Internal Affairs and Communications continues to be the regulatory authority responsible for the sector, while the regulatory framework is provided by the Telecommunications Business Law. The Telecommunications Bureau is another agency under the Ministry which works for the telecom sector. In June 2008 it introduced the "*Strategies for Bridging the Digital Divide*" with policies developed to eliminate the digital divide as soon as possible. To achieve these development goals, broadband infrastructure is being developed through "composite" projects that promote "broadband infrastructure" and "mobile phone area development" for the integrated development of environments for using satellite broadband in areas where other types of broadband infrastructure are difficult to develop. For the development of mobile phone areas, support is being provided to eliminate service dead zones for mobile phones by eliminating shares of burdens held by municipalities and private businesses through a higher percentage of government subsidies granted for supported projects or by easing the requirements for adopting and promoting efforts toward developing new technologies that can contribute to the development of areas facing severe conditions.

Under the Telecommunications Business Law, the category I and category II classification pertains to facilities (not carriers). Carriers that install category I designated telecommunications facilities are required to set tariffs only on their above-mentioned facilities. Not all tariffs on the category I designated telecommunications facilities are required to undergo public comment. Carriers that install Category II designated telecommunications facilities are required to disclose their interconnection tariff rates of Category II designated telecommunications facilities. The authorities maintain that, during the review period, interconnection rates have declined and are comparable with those in other OECD countries.

NTT, which is partly government owned, continues to be the single largest player in Japan's telecommunications sector.<sup>206</sup> The Universal Service Fund System (USFS) has been operational since

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<sup>204</sup> Naked short selling is the practice of short-selling a financial instrument without first borrowing the security or ensuring that the security can be borrowed, as is conventionally done in a short sale

<sup>205</sup> Holders of a short position that is in excess of 0.25% of outstanding issued stocks of an entity must report changes to their positions to securities firms and exchanges. The latter are required to publicly disclose such information

<sup>206</sup> According to Article 4 of the NTT Law, the Government must hold at least one third of the shares in the NTT Corporation. At present the Government holds 33.7%. The authorities maintain that the Government holds the share for public interest and safety reasons

2006 it subsidizes the costs of telecoms carriers that provide universal services with respect to both subscriber and public telephone services. Medical services

**Healthcare services-** Japan's healthcare system is considered to be among the best in the world in terms of access and effectiveness. The Japanese population has the highest life expectancy in the OECD and among the lowest rates of infant mortality. However, Japan's healthcare system is heavily regulated and is facing a number of challenges. All hospitals and clinics must be "*not-for-profit*" organizations directed by a medical doctor with Japanese medical qualifications. Within the nationwide health insurance system, the Government sets all prices for procedures, drugs, and devices, which apply to all physicians and hospitals adopting the system. The "*not-for-profit*" nature of hospital and clinics effectively prevents equity financing. Thus, to cover capital costs, which are not covered by the fee structure, hospitals have to rely on bank loans or issue bonds. Bank financing tends to be difficult as hospitals can only offer limited collateral, whereby hospital expansion, which may result in increased efficiency, is also constrained. However, most hospitals run at a loss and their numbers declined by 6% between 1999-2009.

In the Basic Policy on Comprehensive Economic Partnerships, announced by the Ministerial Committee on Comprehensive Economic Partnerships on November 6, 2010, Japan intended to "*consider measures to address the issues relating to the movement of natural persons from abroad, such as nurses and certified care workers*" with regard to EPAs.<sup>207</sup>

**Educational Services-** Excessive regulation remains one of the factors that has discouraged foreign universities from operating branch campuses in Japan, presenting obstacles both in the form of administrative requirements and restrictions on pedagogical choices. Under the United States-Japan Investment Initiative, the Japanese government established a new category "Foreign University, Japan Campus" for foreign accredited institutions of higher education. This designation provides these campuses with benefits similar to those accorded Japanese educational institutions (*e.g.*, student eligibility for student rail passes and student visas), but does not confer the tax benefits enjoyed by Japanese institutions and their students.<sup>208</sup>

### Developments in the services sector during the review quarter

FSA introduced the consolidated regulation and supervision of securities companies, which came into effect on April 1, 2011, based on the 2010 amendment of the Financial Instruments and Exchange Act, etc. The amendments mainly deal with: Mandatory use of central counterparties (CCPs) for clearing OTC derivatives transactions, Systems for the development of the infrastructure for clearings Establishment of a system for data storage and reporting of trading information, Introduction of consolidated regulation and supervision of securities companies, Introduction of consolidated prudential regulations of insurance companies.<sup>209</sup>

### VIII.E. Transport Sector

The sector is regulated by the Ports and Harbour Bureau of the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) and the Maritime Bureau. Legislation governing the sector includes the Ship Law, the Marine Transportation Law, and the Coastal Shipping Law. Japan is especially reliant on maritime transport particularly for traded goods, almost all of which are shipped by sea. Foreign investment in the water transport industry is subject to the prior notification requirement.

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<sup>207</sup> MOFA online information, Viewed at: [http://www.mofa.go.jp/policy/economy/fta/policy2010\\_1106.html](http://www.mofa.go.jp/policy/economy/fta/policy2010_1106.html)

<sup>208</sup> USTR Trade summary: Japan, April 1, 2011 available at: [www.ustr.gov/sites/default/files/uploads/.../2010\\_NTE\\_Japan\\_final.pdf](http://www.ustr.gov/sites/default/files/uploads/.../2010_NTE_Japan_final.pdf)

<sup>209</sup> <http://www.fsa.go.jp/en/index.html>

Under cabotage restrictions, as in most countries, only Japanese flag carriers are permitted to carry cargo and passengers between Japanese ports. However, under treaties of friendship, commerce and navigation, Japan allows ships to access cabotage services on a reciprocal basis. Japan does not discriminate against foreign participation in international maritime services and accords national treatment.

Entry into the port transport sector requires permission from the MLIT, and port transport charges are subject to prior notification procedures; licensing requirements and the economic needs test have been abolished since 2006.<sup>210</sup> Under the Port and Harbour Act of 1950, port development, management and operation is entrusted to local public organizations.<sup>211</sup> In October 2008, Japan integrated the Nippon Automated Cargo and Port Consolidated System (NACCS) for customs procedures with the Port-Electronic Data Interchange (Port-EDI) for port-related procedures. Furthermore, in October 2009, simplified port-related procedures were added to the integrated system.

Under the Super-Hub Port project, which aims to reduce port-related charges by 30% to the level of Busan and Kaohsiung ports, as well as lead times to less than 24 hours by FY2010, lead times are now approximately one day, and port charges were reduced by 20% between 2000 and 2008.

The Government continues to provide support to Japanese flag carriers under the international ship regime.<sup>212</sup> It also continues to provide a tonnage tax, adopted in 2008, under which a company may calculate its corporate tax based on assumed profit per net tonne of vessels flying the Japanese flag. The presumably lower tonnage tax is applicable instead of the corporate tax and is an incentive for shipping companies. An internationally operating shipping company must submit a plan that ensures stable international maritime transport to the MLIT; this must be approved by the Minister before the tonnage tax can be applied.

### ***Air transport***

The Japanese air transport sector is regulated by the Civil Aeronautics Law and the many bilateral air agreements that Japan has signed. Administration of airline entry into the market, pricing, route allocation, and safety regulations are the responsibility of the Civil Aviation Bureau of the MLIT. Cabotage restrictions apply, as in most countries, and the provision of domestic air services is limited to Japanese air carriers only. Foreign ownership continues to be restricted to one-third of voting rights in domestic airlines and under the Foreign Exchange and Foreign Trade Laws, prior notification is required for FDI in air transport and aircraft using businesses.

Japan has signed bilateral air service agreements with 58 trading partners.<sup>213</sup> Japan has continued to pursue an aviation liberalization policy. Of the 58 bilateral agreements, 10 are "open sky" agreements (with Canada; Hong Kong, China; Macao, China; the Republic of Korea; Malaysia; Singapore; Sri Lanka; Thailand; the United States; and Viet Nam). Under the open sky arrangements, restrictions are removed, on a reciprocal basis, on entry points, routes and frequency of flights. Other areas that open

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<sup>210</sup> WTO document S/C/N/571, 5 October 2010

<sup>211</sup> Ports of Singapore Authority has invested in Hibiki port

<sup>212</sup> For details, see WTO Document WT/TPR/S/211/Rev.1, 12 May 2009

<sup>213</sup> These are: Australia; Austria; Bahrain; Bangladesh; Belgium; Brazil; Brunei; Canada; China; Denmark; Egypt; Ethiopia; Fiji; Finland; France; Germany; Greece; Hong Kong, China; Hungary; India; Indonesia; Iraq; Israel; Italy; Jordan; Kuwait; Lebanon; Macao SAR; Malaysia; Mexico; Mongolia; Myanmar; Nepal; the Netherlands; New Zealand; Norway; Oman; Pakistan; Papua New Guinea; the Philippines; Poland; Qatar; the Republic of Korea; the Russian Federation; Saudi Arabia; Singapore; South Africa; Spain; Sri Lanka; Sweden; Switzerland; Thailand; Turkey; the United Arab Emirates; the United States; the United Kingdom; Uzbekistan; and Viet Nam.

sky agreements address are prices/tariffs, airline capacities. Competition should increase as a result of open sky agreements.<sup>214</sup> Other changes that have taken place, include the introduction of scheduled international flights from the Tokyo International Airport (Haneda) in October 2010.

There were no developments in the transport policy affecting trade during the review quarter.

### Annexures

#### (i) Annexure I

##### WTO disputes during the review quarter

There were no negotiations or proposals submitted by Japan during the review quarter.

##### Request for constitution of panel

Member country	Date	Issue concerned	Alleged violations
Canada	01/06/2011	<p>Issue of local use for renewable energy programme in the province of Ontario</p> <p>In May 2009, the Ontario Provincial Government in Canada established a fixed-price subsidy program on electricity generated from renewable energy sources, such as solar and wind power (a Feed-in Tariff program (FIT)). In the FIT program, the government also requires electricity generators participating in the program to achieve certain percentages of added value (including assembly and material procurement) in their solar and/or wind power generating equipment. Solar panels or other equipment exported by foreign companies including Japanese to Ontario are less favorably treated than those locally produced.</p> <p>Despite the consultations that took place in October, 2011, Canada raised the local content requirement from 50% to 60% on January 1, 2011</p>	<p>Article III of the GATT; Article 2 of the TRIM Agreement, provision alleged to fall under “prohibited subsidy” under Article 3 of the SCM</p>

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<sup>214</sup> Preparing ASEAN for Open Sky, Viewed at: <http://www.aseansec.org/aadcp/repsf/docs/02-008-ExecutiveSummary.pdf>