

4.3.2 Issues related to Australian exports to and investment in Japan

4.3.2.1 Government Procurement

Japan operates a government procurement framework based on principles of non-discrimination and transparency as well as fairness and openness. This applies also to public works procurement.

Major Laws and Ordinances

With respect to Japan's government procurement procedures, numerous domestic laws and ordinances have been promulgated. These include the *Accounts Law* (Law No. 35 of 1947), Cabinet Order concerning the Budget, Auditing and Accounting (Imperial Ordinance No. 165 of 1947), and the *Local Autonomy Law* (Law No. 67 of 1947), among other laws and regulations.

The basic coverage of local government procurement is stipulated in the *Local Autonomy Law* and the Ordinance for Enforcement of the Local Autonomy Law. Irrespective of the contract amount and subject, the coverage of local government procurement is non-discriminatory and transparent within and outside the Japan.

A special cabinet order stipulates the procedures which govern regional government procurement and contracts to ensure they remain WTO compliant.

Voluntary Measures

As a part of Japan's efforts to increase access opportunities for foreign suppliers to the Japanese market, the government has initiated, as a voluntary measure, non-discriminatory, fair, and transparent procedures that surpass those stipulated in the WTO Agreement on Government Procurement (GPA). For instance, Japan has taken the Action Plan on Reform of the Bidding and Contracting procedures for Public Works (approved by Cabinet in January 1994) as a voluntary measure with a view to making the procurement procedures for public works and for design and consulting services more transparent, objective and competitive.

The main elements of Japan's Action Plan include adopting open and competitive bidding procedures for construction services, which are to be commissioned by central government entities and quasi-governmental agencies. The thresholds for each commissioning entity are the same as the those for the GPA.

The domestic laws and ordinances, the GPA and voluntary measures ensure that Japan's government procurement is undertaken in a transparent, fair, and competitive manner.

WTO Agreement of Government Procurement

The GPA is a plurilateral agreement designed to ensure the laws, regulations, procedures and practices in relation to government procurement are more transparent and less protective or discriminatory. The Agreement came into effect on January 1, 1996 and is managed under the framework of the WTO, with 28 Members, including Japan, becoming signatory parties by the end of 2001. Under the GPA, Japan is required to publish certain procurement statistics.³⁰

³⁰ Details are available in the statistics submitted by the Parties under Article XIX:5 of the Agreement through the WTO website (http://www.wto.org/english/tratop_e/gproc_e/gpstat_e.htm). In addition, the Cabinet Secretariat has issued "Japan's Government Procurement: Policy and Achievements Annual Report" since 1996. The report includes data and analysis on

While Japan is a signatory to the WTO-GPA, it does not have government procurement measures in place that currently treat suppliers from other WTO-GPA signatory countries any more favourably than other foreign suppliers in qualifying for or contesting government procurement opportunities.

Japanese Government Procurement and Bilateral Trade Agreements

In the Japan-Singapore Agreement for a New Age Economic Partnership (JSEPA), which entered into force in November 2002, government procurement is dealt with independently in the Chapter 11. (Please refer to the web site of <http://www.mofa.go.jp/region/asia-paci/singapore/jsepa.html> for the text of the agreement)

In the Agreement Between Japan and The United Mexican States for the Strengthening of the Economic Partnership, which was signed in September 2004 (and expected to enter into force in April 2005), the government procurement is dealt with independently in the Chapter 11. (Please refer to the web site of <http://www.mofa.go.jp/region/latin/mexico/agreement/overview.html> for the text of the agreement)

4.3.2.2 Competition Policy

In General

The *Antimonopoly Act* (AMA) was enacted in 1947. The AMA and subsequent amendments prohibit private monopolization, unreasonable restraint of trade, unfair trade practices and so on. The Fair Trade Commission (FTC) was created as an organ to implement the AMA. The FTC has the character of being an administrative organization under the council system, consisting of a Chairman and four Commissioners. In implementing the AMA, the FTC performs its duties without being directed or supervised by anyone else.

The FTC has a policy planning role on competition issues as well as an enforcement function to implement the Antimonopoly Act (AMA) and its supplement laws.

The FTC has engaged in tasks such as taking initiatives to strengthen the AMA, conducting surveys and proposing suggestions for deregulation, anti-competitive administrative guidance and anti-competitive private sector regulations, and giving support for firms' own initiatives to comply with the AMA.

The AMA prohibits anti-competitive practices, such as unreasonable restraint of trade, monopoly and oligopoly and unfair trade practices. Detailed information about the anti-competitive practices which are subject to control by the AMA is available on the FTC's web site: <http://www.jftc.go.jp>.

Recent Activities and Recent Development

The FTC is expected to serve as the guardian of the market and to establish competition policies appropriate for the 21st century. The FTC formulated the Grand Design for Competition Policy – Ensuring Effectiveness as Market Guardian based on three principles: (1) prompt and effective enforcement, (2) creation of competitive environment, and (3) building a competitive society with rules.

The FTC has been cracking down on the AMA violations. In FY2003, the FTC took legal measures (recommendations and orders to pay surcharge without recommendations) against 25 cases of AMA violations. The FTC issued warnings in 13 cases in which it identified suspicions of violations of the AMA,

overall trends in Japan's government procurement of goods and services. The FY2003 version of the report is available on the website: <http://www.kantei.go.jp/foreign/procurement/2003/index.html>

issued cautions in 75 cases, and terminated investigations in 10 cases in which it did not uncover any facts of illegal conduct.

The FTC issued surcharge payment orders to 507 firms amounting to ¥4,325.08 million. In addition, the FTC issued 14 orders to firms totaling ¥285.96 million following a decision in FY2003 on a case for which a hearing procedure had been initiated concerning a previous surcharge payment order. Of the 507 firms ordered to pay surcharges (except for surcharge payment orders as decisions via hearing procedures), 53 firms requested hearings in FY2003. The FTC initiated hearings on all of the cases, and surcharge payment orders totaling ¥741.08 million were nullified.

In recent years significant amendments of the AMA have been made. In May 2002, amendments were promulgated, including the repeal of the restriction on the total amount of stockholding by a major company (Article 9-2), the increase of the upper limit of a criminal fine against a juridical person (Article 95), etc.

Since the reorganization of government ministries in January 2001, the FTC had been an external organ of the Ministry of Public Management, Home Affairs, Posts and Telecommunications. In June 2001, however, it was made an extra organ of the Cabinet Office, to enhance its neutrality and independence from regulatory authorities.

More than 50 years have passed since the enactment of the AMA, and the Japanese economy has undergone tremendous changes during this time. The time has come to review the scope of enforcement systems as a whole from the perspective of whether the present legal system is functioning properly, and whether the Japanese antimonopoly framework stands on par with international standards. The FTC convened meetings of a Study Group on Reviewing the AMA from October 2002 and the Study Group issued a report in October 2003. Based on this report, the FTC examined a series of revisions designed to strengthen the AMA. These included the following: raising the surcharge rates, introduction of a leniency program, the enactment of compulsory measures for criminal investigations aimed at facilitating criminal charges and revision of hearing procedures, etc. The bill to amend the AMA was approved by Cabinet Decision and submitted to the Diet on October 15, 2004. It will be debated in the 2005 ordinary Diet session.

International Cooperation on Anticompetitive Activities

Given the continued growth in cross-border business activities resulting from economic globalization, there is a need for competition authorities throughout the world to come together to develop closer cooperation. In October 1999, the Government of Japan and the United States signed an agreement concerning cooperation on anticompetitive activities. In July 2003, the Government of Japan and European Community signed the same kind of agreement.

The contents of both agreements include notification, cooperation, coordination, request for enforcement activities (positive comity), consideration of important interests of the other party (negative comity), etc.

The following are expected to result through these agreements:

1. Strengthened enforcement of parties' competition laws against anti-competitive activities with international aspects.
2. Development of cooperation between competition authorities of each party.
3. Coping with the extraterritorial application of the competition laws by the other party.

Japan is now engaged in negotiations for conclusion of a cooperation agreement on competition with Canada. Since November 2002, the Governments of Japan and Canada have held several rounds of negotiations, and as a result have reached agreement in principle on the major elements of a draft agreement in January 2005. The relationship between Japan and Australia is not an exception. In May 2003, prior to the signature of the Australia-Japan Trade and Economic Framework in July 2003, it was publicly announced that the Australian Competition and Consumer Commission (ACCC) and the FTC had commenced discussions on ways to strengthen their cooperative relationship, that is, the possibility of a formal cooperation agreement on competition issues between Australia and Japan.

Since then, the ACCC and the FTC have been exchanging views on the form and elements of an agreement. Aiming to commence negotiations as early as possible, the ACCC and the FTC are pursuing continuous dialogue on this issue.

In addition, Japan is pursuing the conclusion of Economic Partnership Agreements (or FTAs) which include competition clauses in order to ensure the free flow of trade and investment. These clauses provide for appropriate measures against anticompetitive activities and cooperation between the competition authorities in controlling anti-competitive activities.

So far, Japan has concluded two bilateral FTAs with Singapore and Mexico. The Japan-Singapore FTA, which was signed in January 2002 and came into effect in November 2002, has a cooperation framework of notification and cooperation on enforcement activities. The Japan-Mexico FTA, which was signed in September and was ratified in November 2004, has a fully fledged cooperation framework of notification, cooperation on enforcement activities, coordination, negative comity and positive comity.

4.3.2.3 Sanitary and phytosanitary measures

Japan takes sanitary and phytosanitary (SPS) measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of WTO SPS Agreement.

To take these SPS measures, Japan pays due attention to following two points:

- responding to increasing requests from Japanese consumers to ensure the food safety,
- responding also to increasing demands from society to prevent pests being introduced from overseas.

Japan's related laws are as follows:

- 1) The Ministry of Health, Labour and Welfare
 - a) *Food Sanitation Law*
 - b) *Quarantine Law*
 - c) *Law Concerning the Prevention of Infectious Diseases and Medical Care for Patients Suffering Infectious Diseases*
- 2) The Ministry of Agriculture, Forestry and Fisheries
 - a) *Plant Protection Law*
 - b) *Domestic Animal Infectious Diseases Control Law*

Electrification of procedures

Japan pays close attention to the process of standardization of data elements of animal/plant quarantine currently under discussion in the World Customs Organization. In this context, Japan is considering the possibility of accepting electrification of sanitary and phytosanitary certificates, which should be both cost effective and versatile as a global standard.

4.3.2.4 Customs procedures

With drastically increasing volumes of trade and the ever increasing sophistication of products and transport services, Japan Customs is expected by the business community to facilitate such trade transactions. Japan Customs is also expected to combat smuggling of illicit drugs or firearms and infringement intellectual property rights, and to enhance public security. An adequate response to how to deal with such contradictory developments requires the use of information technology (IT) tools combined with risk management techniques.

Information Technology Tools

An electronic customs clearance system called “Nippon Automated Cargo Clearance System (NACCS)” was introduced in 1978. As of 2003, more than 98 per cent of the total import/export declarations were submitted in electronic form (sea-import 97.1 per cent; air-import 97.2 per cent; sea-export 97.4 per cent; air-export 99.97 per cent). The NACCS allows users (importers/exporters and forwarders/customs brokers) to complete customs formalities such as in-bond cargo reporting and import/export declarations by transmitting electronic data to the Customs. Import/export permissions are then issued through the system. As customs and the private users use the system jointly, strict measures are taken to maintain the confidentiality of the filed data.

With the NACCS, the time required from arrival to delivery of cargo has been remarkably shortened through automatic electronic processing. Furthermore, the NACCS allows for preliminary submission of import declaration prior to the arrival of the cargo to the border of Japan. In such cases, customs makes a pre-arrival documentary examination, and if no physical examination is required, the import is approved immediately after arrival of the cargo to the port is confirmed.

The “Single Window” system is a means for enabling users to complete all the necessary import/export procedures and port-related procedures in a single input and single transmission by linking NACCS and other relevant electronic systems of the Government. The Single Window system, which was first introduced in July 2003, has already enabled other governmental procedures mentioned above, but is in the process of further evolution.

Risk Management Techniques

With regard to risk management, a Customs Intelligence Database System (CIS) has been adopted since 1991, as a selectivity database which stores import/export declarations; past records and intelligence of exporters/importers; various type information including specific cargoes; and so on. The NACCS functions as the cargo selectively processing system. Its targeting/selection criteria are set out based on systematic analysis of the CIS database, which is updated simultaneously. Thus the NACCS can systematically identify “high-risk consignments” requiring more scrutiny, and to immediately release “low-risk consignments”; and to concentrate resources on targeting illegitimate trade. In addition, the CIS supports the documentary/physical examinations by the officers in charge of import/export clearance.

Based upon such risk management, Customs can introduce simplified or swift procedures that require minimum intervention by customs for the clearance and release of their cargoes. The following simplified procedures are beneficial for both Customs and the business community.

Clearance facilitation measures

A. Import

Preliminary Declaration and Pre-Arrival Examination

This system was introduced in 1991 to allow an importer to preliminarily lodge an import declaration before goods arrive at a port. Customs examines the declaration, and an import permit is issued immediately after the import declaration is formally presented, providing a physical examination is not required.

Immediate Permission and Release of Goods

This procedure is applied to cargoes that have undergone preliminary declarations through the NACCS and that Customs can examine before they arrive at the port (pre-arrival examination). When Customs judges that the cargoes present no enforcement concern, once the arrival of these cargoes is confirmed, they can be released immediately with import permission. Thus, such cargoes are not necessarily carried into the bonded areas. This system was introduced for air cargo in 1996, and for sea cargo in 2003.

Simplified Declaration Procedure

An importer who has received the approval of Customs in advance is able to use the “Simplified Declaration Procedure” for designated goods, which makes it possible to have the goods released prior to filing the declaration for duty/tax payment, by separating the import and duty/tax payment declarations, on condition of compliance with the law. After being approved, the importer is able to choose whether to use this procedure or the conventional import declaration. This system was introduced in 2001, and was improved in 2003.

B. Export

Preliminary Declaration and Examination

The system for air cargoes was introduced in 2001 to allow an exporter to lodge a preliminary export declaration once an Airway bill code label is attached to the cargo. This allows documentary examination to be completed before the cargo is carried into the bonded areas and a formal export declaration filed. Notification of the result of Customs examination is given to the exporter as soon as possible. The system for sea cargoes was introduced in March 2004.

Comprehensive Prior Examination

An exporter who has received the approval of Customs in advance can use the “Comprehensive Prior Examination Procedure” for designated goods, under which an export permit is basically granted immediately upon the exporter’s lodging declaration to Customs. This procedure was introduced in 1979.

4.3.2.5 Technical regulations and standards

Japan establishes and operates regulations based on scientific principles, taking into account international trends and public opinion. The relevant authorities in charge of each regulation are responsible for establishing and applying regulations in accordance with the WTO Technical Barriers to Trade (TBT Agreement).

In general, technical regulations are established, amended or abolished through the following procedures:

- deliberations of relevant Councils;
- consultation with the industries concerned, including foreign ones, and the public, based on the “Public Comment Procedure for Establishing, Amending or Abolishing a Regulation” established by the Government of Japan in 1999;
- examination of the technical regulations in terms of their necessity and appropriateness from the perspective of improving market access; and
- TBT notifications for comments or questions by WTO Member countries.

The regulations adopted are promulgated by “*Kanpo*”, the official gazette, etc. Most of the regulations adopted are available on the Web sites of authorities concerned and/or the Japan External Trade Organization (JETRO).

In Japan, International Trade Division, Economic Affairs Bureau, Ministry of Foreign Affairs and JETRO are the TBT enquiry points. They receive document requests and inquiries concerning regulations, and International Trade Division is responsible for submission of a TBT notification, response to comments on and inquiries about Japan’s TBT notifications from foreign countries and submission of Japan’s comments on TBT notifications from foreign countries. Following are examples of Japan’s “Technical regulations” and “Standards”:

Technical regulations

Ministry of Health, Labor and Welfare	<i>Food Sanitation Law</i>
	<i>Law for the control of Household Products Containing Harmful Substances</i>
	<i>Pharmaceutical Affairs Law</i>
Ministry of Economy, Trade and Industry	<i>Consumer Product Safety Law</i>
	<i>High Pressure Gas Safety Law</i>
	<i>Electrical Appliance and Material Safety Law</i>
	<i>Law Concerning the Securing of Safety and the Optimization of Transaction of Liquefied Petroleum Gas</i>
	<i>The Gas Utility Industry Law</i>
Ministry of Land, Infrastructure and Transport	<i>Civil Aeronautics Law</i>
	<i>Road Vehicle Law</i>
	<i>Ship Safety Law</i>
	<i>The Law Relating to the Prevention of Marine Pollution and Maritime Disaster</i>
	<i>Meteorological Service Law</i>
Ministry of Internal Affairs and Communications	<i>The Radio Law</i>
	<i>The Telecommunications Business Law</i>
The Fire Defense Agency	<i>Fire Services Law</i>

Standards

Ministry of Health, Labor and Welfare	<i>Industrial Standardization Law</i>
Ministry of Economy, Trade and Industry	<i>Industrial Standardization Law</i>
Ministry of Land, Infrastructure and Transport	<i>Industrial Standardization Law (Vessel)</i>

Technical regulations for vehicles

The Ministry of Land, Infrastructure and Transport (MLIT) is responsible for developing Japanese technical regulations covering safety and environmental requirements for vehicles. MLIT also participates in the United Nations Economic Commission for Europe (UN-ECE) World Forum for the Harmonization of Vehicle Regulations (WP29), which is the organization engaging in the international harmonization of vehicle regulations.

Japan acceded to the 1958 Agreement concerning vehicle regulation in November 1998. And since acceding to the agreement, it has actively worked under the agreement through the activities in order to accelerate the international harmonization of regulations, the appropriate implementation of mutual recognition of certifications and so on. Japan has applied about 30 ECE regulations.

Japan will apply more ECE regulations, taking into account domestic and international requests, their impact on safety and environment, the effects of harmonization on its economy, etc. It is working actively to pave the way for application of the ECE regulations, for example, by proposing amendments to ECE regulations.

Japanese Industrial Standards (JIS)

Japanese Industrial Standards (JIS) are national voluntary standards which cover industrial and mineral products. The number of JIS was 9,293 in 2004. Japan continues to bring its standards into line with their international counterparts. More than 90 per cent of JIS were aligned with international standards in 2004.

A number of laws adopt technical regulations to protect human life, health, and environment. These technical regulations shall respect JIS where appropriate, under the Industrial Standardization Law, although JIS are basically major national voluntary standards. Several thousands of JIS items are quoted by technical regulations in Japan.

The Japanese Industrial Standards Committee (JISC) has actively participated in international standardization activities, as a sole member in Japan, of the International Organization for Standardization (ISO) since 1952, and of the International Electrotechnics Commission (IEC) since 1953, under the authorization of the Cabinet council.

Japan is also a member of the WTO, and its technical regulations, standards and conformity assessments are prepared under the rules of WTO/TBT agreements which were enforced in 1995.

JIS covers industrial and mineral products with the exception of (1) medicines, (2) agricultural chemicals, (3) chemical fertilizers, (4) silk yarn, and (5) foodstuffs, agricultural and forest products designated under the *Law Concerning Standardization and Proper Labeling of Agricultural and Forestry Products*.

Japanese Agricultural Standards (JAS)

Japanese Agricultural Standards (JAS), which cover foods and forestry products, are also national voluntary standards. Products which meet JAS criteria can be sold with JAS mark on the package.

JAS are not standards for food safety such as hygiene, but for food quality, which is composed of grade, composition, performance, or production processes which define certain foods, such as organic foods.

There were 242 standards for 76 items in 2004. JAS law provides that standards shall be reviewed based on the trend of international standards as well as the present conditions including from the perspective of production, distribution and consumption. Consequently, JAS are established or reviewed based on corresponding Codex standards for foods or ISO standards for forestry products.

4.3.2.6 Electronic Commerce

Privacy

Companies will have a legal obligation to properly handle personal information after the *Act on the Protection of Personal Information* becomes effective on 1 April 2005. Prior to this, the Government of Japan adopted the Basic Policy for the Protection of Personal Information based on Article 7 of this law. Each Ministry is considering introduction of new implementation guidelines, and/or revision of existing guidelines, to reflect the current status of the individual business sectors for which they are responsible.

The duties of entities handling personal information in the "*Act on the Protection of Personal Information*" embody the 8 Principles of the OECD's 1980 *Guidelines on the Protection of Privacy and Trans-Border Flows of Personal Data*.³¹

Alternative Dispute Resolution Framework

Establishing a framework for fair and effective Alternative Dispute Resolution (ADR) is important to the development of e-commerce. The Government of Japan is considering the use of online dispute resolution including in the cross-border context.

Japan is conducting verification experiments in ADR services which provide advice online, such as via e-mail or the web, to consumers who have had problems with Internet-based transactions. Japan also has established the "*Interpretative Guidelines on Electronic Commerce*", which includes examples of previous consultations. The guidelines are not part of the formal legal system but offer an interpretation of how the present legal system applies to e-commerce.

Network Security

Trustmark

Secure IT infrastructure is essential to the development of e-commerce. For secure and credible e-commerce, the Government of Japan is promoting the use of electronic signatures and authentication. Private sectors are promoting the introduction of the 'Trustmark', which indicates a secure e-commerce site. Only Japanese-based companies may apply to use the 'Trustmark'.

³¹ The details are as follows: "Purpose Specification Principle" and "Use Limitation Principle": Specification of the Purpose of Use (Article 15), Restriction by the Purpose of Use (Article 16), Restriction of Supply to Third Parties (Article 23) "Collection Limitation Principle" : Proper Acquisition (Article 17) "Data Quality Principle" : Maintenance of the Accuracy of Data (Article 19) "Security Safeguards Principle": Security Control Measures (Article 20), Supervision of Employees (Article 21), Supervision of Trustees (Article 22) "Openness Principle", "Individual Participation Principle": Notice of the Purpose of Use at the Time of Acquisition (Article 18), Announcement of Matters Concerning Retained Personal Data (Article 24), Disclosure (Article 25), Corrections (Article 26), Stopping the Use (Article 27) "Accountability Principle": Handling of Complaints by Entities Handling Personal Information (Article 31)

The Specified Commercial Transactions Law

The *Specified Commercial Transactions Law* provides the rules of “identification requirement” and “prohibition of an exaggerated advertisement” in mail orders to protect the consumer. The law prohibits a seller from transmitting advertising mail to a person who indicates that they do not wish to receive advertising mail again. The *Law on Regulation of Transmission of Specified Electronic Mail* also provides a similar rule.

In Japan, laws for general transactions also apply to electronic commerce. In situations particular to e-commerce, special legislation applies. For example, general transactions adopt the doctrine of dispatch, whereas the *Electronic Contract Law* adopts a doctrine of arrival with respect to electronic contracts.

In relation to “digital signatures”, Japan has the *Law Concerning Electronic Signatures and Certification Services*. The law defines “electronic signature” as follows:

For the purpose of this law, “electronic signature” shall mean a measure taken with regard to information that can be recorded in an electro-magnetic record and to which both of the following requirements applies:

1. it indicates that the information was created by the person who performed the measure; and
2. it can confirm whether or not any alteration of the information has been performed.

Under the *Law Concerning Electronic Signatures*, service providers which are accredited in foreign countries can receive accreditation by filing documents stating facts prescribed by the ordinance, instead of being investigated pursuant to the provisions of the Law related to the criteria of accreditation, in cases where they fulfil the following conditions:

1. the service providers are performing the designated certification service based on laws or regulations of the foreign country that are similar to the provisions of the Law, and
2. Japan has a relevant international agreement or treaty with the country in question.

The Japan-Singapore Economic Partnership Agreement (JSEPA) has provisions for exemption of the investigation as stated above. Japan is currently negotiating EPAs with Korea, Malaysia, the Philippines and Thailand and is examining the equivalence of those countries’ laws or regulations on accreditation in order to provide the same provisions as JSEPA.

The case study on IT-related services in chapter 5 contains more information about the use of authentication for government transactions.

4.3.2.7 Transparency

As a signatory party of the WTO Agreement on Government Procurement, Japan’s government procurement is decided in a transparent, fair and competitive manner. While the current Agreement on Government Procurement rules apply to only a limited number of WTO Members, an agreement on transparency in government procurement would enable the development of a framework of rules, ensuring that a wide range of information on each WTO Member’s government procurement policies and practices was available to suppliers and service providers in other WTO Members.

Japan suggested launching negotiations to establish a framework agreement on transparency in government procurement, and WTO Members agreed to the inclusion of the issue in the Declaration

launching the Doha Round. Members agreed at Doha that on the question of whether to commence negotiations on transparency in government procurement would be considered at the 5th WTO Ministerial Conference held in Cancun in September 2003. In July 2004, WTO Members agreed that this work would not form part of the Doha Round negotiations but that efforts would continue in WTO working groups on transparency in government procurement.

4.3.2.8 Mutual Recognition of Qualifications

Educational and Academic Recognition

Various systems of professional qualifications exist in Japan. As the prerequisites for granting such qualifications are not limited to academic degrees, professional qualifications cannot necessarily be obtained immediately in Japan just by guaranteeing that the academic degrees in both nations are of the same level in terms of the formal education system.

An individual who has received formal education in another country is recognized as having received education to a level equivalent to that of Japan. The person's qualification to enter a higher-level school and transfer of credits to a Japanese university is recognized. For example, qualifications to enter a graduate school in Japan are recognized for those who fulfill the prerequisite of having completed 16 years of formal education. (Note: The actual recognition of admission to a graduate school or recognition of credit transfer depends on each university's judgment.)

The Information Technology Engineers Examination

The Information Technology Engineers Examination is a national examination implemented by the Japan Information Technology Engineers Examination Center (JITEC). It is one of the largest national examinations with 12 million applicants in total and 1.28 million successful candidates. Today JITEC is implementing thirteen categories of examinations. JITEC is also certifying the IT examinations of nine countries and regions: India, Singapore, Korea, China, Philippines, Thailand, Vietnam, Myanmar, and Chinese Taipei.

The Qualification of Professional Engineer in Japan (PEJ)

Professional Engineer in Japan (PEJ) is the national qualification stipulated by the *Professional Engineer Law* (enacted in 1957 and amended in 1983), with a view to developing the national economy and progressing the level of science and technology in Japan. A Professional Engineer is defined as an engineer in the professional practice of rendering services in planning, research, design, analysis, testing, evaluation, and guidance on scientific and technological matters.

PEJ is not an exclusive qualification such as a license for a doctor or architect, but PEJ has been recognized in various kinds of businesses as a qualification to prove the level of skills related to science and technology.

To be qualified as PEJ, applicants are required not only to pass the written and oral PEJ exams in Japanese, but also to be registered as PEJ. The PEJ exams are divided into the first step examination and the second step examination, and the examinations are implemented according to each technical discipline. The first step examination requires university-level knowledge of science and technology, and the second step examination requires application skills necessary for being qualified as PEJ.

The *Professional Engineer Law*, revised in 2003, provides the prerequisite that all applicants who wish to take the second step examination shall pass the first step examination and shall, before being allowed to

take the second step examination, have four or seven years of practical experience after passing the first step examination. Japan has approximately 56,000 engineers registered as PEJ (March, 2005).

Technical Disciplines For Professional Engineer Registration (21 Disciplines)

Mechanical Engineering, Ship & Marine Engineering, Aerospace Engineering, Electrics & Electronics, Chemistry, Textile, Metals, Mining, Civil Engineering, Water Supply & Sewerage, Environmental Engineering, Agriculture, Forestry, Fisheries, Industrial Management, Information Technologies, Applied Science, Biotechnology, Environment, Nuclear & Radiation, Comprehensive Technical Management

The approximate number of applicants for PEJ in 2004: The first step examination 55,000
The second step examination 26,000

4.3.2.9 Intellectual Property

Patent

(1) Filing

No matter how good an invention may be, a patent right cannot be obtained unless it is applied for. An application requires that one completes the forms prescribed in the relevant ordinances and submit them to the Japan Patent Office (JPO).

Japan has adopted the first-to-file system, i.e. the principle that where two parties apply for a patent for the same invention, the first to file will be granted the patent. Accordingly, it is advisable to file as soon as possible after invention. It is also advisable not to make the invention public before filing a patent application.

(2) Formality Examination

Application documents submitted to the JPO will be checked to see whether they are in the prescribed format.

(3) Publication of Unexamined Application

The JPO will publish the content of an application in the Patent Office Gazette after 18 months have elapsed from the date of filing.

(4) Request for Examination

Patent applications are not necessarily examined. An examination will be carried out only for those applications for which the applicant or a third party has filed a request for examination and paid the examination fees.

(5) Withdrawal

Any application for which a request for examination has not been filed within a period of three years from filing will automatically be regarded as abandoned and cannot be patented thereafter.

(6) Substantive Examination

The examination will be carried out by the examiners of the JPO, who will decide whether or not the claimed invention should be patented. An examination will firstly check whether the application fulfills the

requirements prescribed by law, i.e. whether or not there are any reasons for refusal. These requirements include the following:

- Whether the claimed invention is based on a technical idea which utilizes a law of nature;
- Whether it has any industrial applicability;
- Whether the technical idea existed before the filing of the current application;
- Whether the claimed invention could have been easily made by a person with a reasonable knowledge of the art in question;
- Whether the applicant is the first to file;
- Whether the claimed invention is liable to contravene public order and morality; and
- Whether the descriptions in the specification conform exactly with the requirements for patentability.

(7) Notification of Reasons for Refusal

If the examiner finds reasons for refusal, a notice to this effect will be sent to the applicant.

(8) Written Argument or Amendment

An applicant who has received a notification of refusal shall be given the opportunity to submit either a written argument claiming that the invention differs from the prior art to which the Notification of Reasons for Refusal refers, or an amendment of the application in the case that this would nullify the reasons for rejection.

(9) Decision to Grant a Patent / Decision of Refusal

Following the examination, the examiner will make a decision to grant a patent as the final assessment if no reasons for refusal have been found. The examiner will also make the same decision if the reasons for refusal have been eliminated by a claim or amendment.

On the other hand, if the examiner judges that the reasons for refusal have not been eliminated, a decision of refusal (the final assessment of the examination stage) will be made. If the examiner finds reasons for refusal, notification will be sent to inform the applicant of these reasons.

(10) Registration

Provided that the applicant pays the patent fee, the patent right will come into existence and be entered in the Patent Register once the decision to grant a patent has been made. It is not until this time that the invention acquires a patent number. After registration a certificate of patent will be sent to the applicant.

(11) Publication of Patent

The contents of the patent right as entered in the register will be published in the Patent Gazette.

Utility Model

(1) Application

Patent applications do not necessarily require the attachment of drawings; where utility model applications are concerned, however, their attachment is compulsory. In addition to the application fee, registration fees for the first three years must be paid at the time of application.

(2) Examination

In contrast to patent applications, there is no system of request for examination for applications for utility model registration. Having no substantive examination of whether the application is novel and involves an inventive step, the examination will check simply the basic requirements shown below in addition to the conventional formality check:

- The applied-for invention relates to the shape or construction of articles or a combination of articles;
- The claimed invention does not contravene public order and morality;
- The application satisfies the requirements for the format of the claims;
- All the necessary items are described in clear specifications and drawings; and
- Additionally, where the application does not meet either the formality check or the basic requirements, an order to amend will be issued. If there is no response to this, the application will be dismissed.

(3) Registration of Establishment

For all applications which have passed the formality check as well as satisfying the basic requirements, the registration of the establishment of a utility model right will be instituted without a substantive examination. However, as mentioned above, the registration fee for the first to third years must be paid at the time of application.

(4) Publication in Official Gazette

When the utility model right has been registered, the JPO publishes the details of the claimed device in an official gazette, laying it open to the public for the first time.

(5) Request for Registrability Report

A registrability report, prepared by an examiner on the basis of a search of prior art documents, enables an objective judgment to be made about the validity of a registered utility model right. It can be requested by any person at any time after the filing of the application.

Since utility model rights are registered without a substantive examination, it is essential that the decision on whether or not to file an application be made on the basis of a thorough prior art search.

Design

Application: In order to obtain a design right, one must submit documents to the JPO which describe the contents of the creation in the set form prescribed by the ordinances.

Formality Check: The documents filed at the JPO are checked to confirm that they fulfill the necessary procedural and physical requirements.

Examination (“Substantive Examination” as opposed to “Formality Examination”): A set of prescribed requirements must be fulfilled in order to obtain a design registration. An examiner will check whether an application meets these requirements.

(1) The requirements with respect to the contents of a design include the following:

- It should be a design, i.e. a shape, pattern, color or combination of these, in an article which arouses an aesthetic impression via the sense of sight;

- The design can be utilized industrially;
- The design should be innovative and without precedent; and
- The design should not be able to be easily created.

(2) In addition to these, there are several further requirements, for example that the design shall not contravene public order or morality.

Where the examiner judges that the application does not fulfill these requirements, a Notification of Reason for Refusal will be sent to the applicant.

Decision to Grant Design Registration: If the examiner judges that the application fulfills the requirements, a design registration will be granted.

Registration of Establishment: When the applicant pays the registration fee subsequent to receipt of the decision to grant, the design right shall be established.

Publication of Design Gazette: A design gazette shall be published containing the contents of the registered design in order to inform the public of its establishment.

Request for Trial for Invalidation: Even after the design registration has been established, a trial for invalidation can still be requested to dispute the validity of the right. The trial examination will be carried out by three appeal examiners.

Decision of Refusal: The application will be rejected if any of the requirements described above (see "Examination") have not been met.

Appeal against Examiner's Decision of Refusal: An applicant who is dissatisfied with the examiner's decision of refusal may demand appeal to have the application to be reexamined by a collegiate body of appeal examiners.

Appeal / Trial Decision: This is the decision made by a collegial body of appeal examiners in an appeal or trial. If there is dissatisfaction with this decision, it is possible to dispute it before the Tokyo High Court, and subsequently at the Supreme Court.

Trademark

1. Applicants shall submit to the JPO an application for trademark registration.
2. An examination will be made to determine whether the application fulfills the necessary procedural and formal requirements. An invitation to correct will be made where necessary documents are missing or required sections have not been completed.
3. An examination will be made into whether the application fulfills the substantive requirements. The following trademarks will be refused as they are deemed not to meet the substantive requirements:
 - a. Trademarks which do not enable consumers to differentiate the applicant's goods or services from those belonging to other parties; and
 - b. Trademarks which are unregistrable for reasons of public interest or for the protection of private interests.
4. Where an application fails to meet the substantive requirements a notification of reasons for refusal will be sent.

5. A written argument or opinion may be submitted in response to a notification of reasons for refusal.
6. If it is ultimately judged that there are no reasons for refusal, a decision to grant a trademark registration will be made.
7. With the payment of the registration fee, the registration of the establishment of the trademark right will take place and the trademark right will come into existence.
8. Any person may file an opposition to the grant of a trademark registration with the Commissioner of the JPO.
9. If the reasons for refusal are not eliminated the decision of refusal will stand.
10. An appeal may be requested where there is dissatisfaction with the decision of refusal.
11. If there is dissatisfaction with the appeal decision, a further appeal may be lodged with the Tokyo High Court.

Copyright Authorities of the Government

The protection of copyright (author's right and neighboring rights) is presided over by the cultural authorities of the Government of Japan, i.e. the Japan Copyright Office (JCO) of the Agency for Cultural Affairs, which reflects the fact that the Japanese copyright system puts emphasis on cultural and economic aspects of copyright. The JCO carries out a wide range of copyright policies including the planning of copyright legislations, effective law enforcement, supervision over collective societies, and educational activities for experts and the general public.

Plant Breeder's Right System

Japan and Australia are both members of the International Union for the Protection of New Plants (UPOV), and have ratified the UPOV1991 Convention. For this reason, conditions such as the range of the Plant Breeder's Rights (PBR) and the duration of the rights, are equivalent in Japan and Australia. The law concerning PBR in Japan is the *Seeds and Seedlings Law*.

The number of applications and registrations in Japan has increased since Japan became a UPOV member country. According to 2002 UPOV data, Japan has ranked third in the number of applications among member countries in recent years.

The table belows shows a comparison between Japan's and Australia's applications:

	Applications (2002)	Of which from non-resident	
Japan	1,068	269	Of which from Australia: 5
Australia	329	208	Of which from Japan: 5

4.3.2.10 Rules of origin

Japan applies non-preferential rules of origin (ROO) to Australian goods. These non-preferential ROO are used for the application of WTO-bound rates (or the General or Temporary rates if either of them is less than the WTO rate); for control of goods with false marking of origin; for compiling trade statistics; and for issuance of certificates of origin of the goods to be exported, which are used for the import control of goods.

Japan also applies other rules of origin for preferential tariff rate purposes. In addition to those under the Generalized System of Preferences (GSP), the Japan-Singapore Economic Partnership Agreement

(JSEPA) and the Economic Partnership Agreement (EPA) with Mexico have their own sets of ROO for the application of preferential tariffs under these EPA agreements.

ROO for the GSP

(1) Consignment Criteria

Under the ROO for the GSP, in order to qualify for preferential tariff treatment, the goods must be transported directly from the territory of a preference-receiving country to Japan without passing through the territory of another country. However, the following are considered as direct consignment to Japan from a preference-receiving country:

- Goods that have been reloaded or temporarily stored in a third country; and
- Goods exported for exhibitions in a third country, which are to be re-exported to Japan. This includes reloading, temporary storage or exhibitions conducted in a third country under customs control.

(2) Origin Criteria

In addition to the consignment criteria above, the goods must comply with the following origin criteria:

- Goods are regarded as originating in a preference-receiving country if they are wholly obtained or processed entirely in that country (wholly obtained products); and
- If goods are manufactured or processed wholly or partly from non-originating materials, those materials must undergo sufficient manufacturing or processing in the preference-receiving country (substantial transformation criteria).

As a general rule, manufacturing or processing is considered substantial transformation if the finished products are classified under a HS heading (4-digit) different from the HS headings covering the materials or parts used, according to the criteria of change in tariff classification (CTC). In some cases, specific manufacturing or processing operations or value added rules are applied exclusively or in combination with the CTC rules. The value added rules require that the value of imported (non-originating) materials (the Cost, Insurance and Freight (CIF) value at the time of importation into the beneficiary country) must not exceed a given percentage of the value of the exported goods (the Free on Board (FOB) value).

(3) Use of Materials Imported from Japan

In determining the origin of materials used for the production of goods, materials imported from Japan into the preference-receiving country and used there in production of goods to be exported to Japan are regarded as originating in that preference-receiving country ("Donor Country Content Rule").

(4) Cumulative Rules of Origin

In the case of the goods produced in Indonesia, Malaysia, the Philippines, Thailand and Vietnam (hereinafter "the five countries"), the five countries are regarded as a single preference-receiving country for the purpose of applying the above-mentioned origin criteria and "Donor Country Content Rule".

*The ROO for JSEPA***(1) Consignment Criteria**

In order to qualify for JSEPA tariff treatment in both Japan and Singapore (hereinafter referred to in this section as “the Parties”), the goods shall be deemed to meet the consignment criteria if they are:

“transported directly from the territory of the other party; or transported through the territory or territories of one or more non-Parties for the purpose of transit or temporary storing in warehouse in such territory or territories, provided that they do not undergo operations other than unloading, reloading or operations to preserve them in good condition.”

(2) Origin Criteria

According to the provisions in JSEPA, products are divided into two categories: one is wholly obtained products, the other is manufactured products from non-originating materials. Manufactured products mean that the products are manufactured or processed from non-originating materials in either Party. These products will be considered originating in either Party if they meet the product-specific rules in the Agreement. Essentially the ROO require that the products be sufficiently transformed in the Parties. Such transformation is deemed to have occurred if there is a change in tariff classification which satisfies the CTC rules. The CTC rules in the JSEPA require the final product to have a different 4-digit heading from the materials used in its production.

For 264 products of interest to Singapore, they will also qualify for preferential tariff treatment if the qualifying value content is at least 60 per cent of the FOB price. For those products, the qualifying value content (QVC) shall be calculated by the following formula:

$$QVC = [(FOB - NQM) / FOB] \times 100$$

NQM is the non-qualifying value of materials used by the producer in the production of the good. NQM is calculated by deducting the qualifying value of materials from the total value of materials.

(3) Cumulation

For the purpose of determining whether a good is an originating good of the other Party, either Party shall consider the production in its territory as that in the territory of the other Party, where the good is produced in the territory or territories of one or both Parties.

*The origin criteria for the EPA with Mexico***(1) Consignment Criteria**

In order to qualify for preferential treatment under the EPA between Japan and Mexico (hereinafter referred to in this section as “the Parties”), an originating good shall be considered as non-originating, when the good:

1. undergoes further production, or operations other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport it to the other Party; or
2. does not remain under surveillance of the customs authorities in one or more non-Parties where it undergoes transshipment or temporary storage in those non-Parties.

(2) Origin Criteria

According to the provisions in the EPA with Mexico, products are divided into two categories: one is wholly obtained products, the other is manufactured products from non-originating materials. The substantial transformation criteria for the EPA with Mexico is stipulated by every item, and origin criteria are applied to most of the items with a combination of the CTC rules and the value added rules.

With respect to the value added criteria, four types of threshold, 50 per cent, 55 per cent, 65 per cent and 90 per cent are used as the Regional Value Content (RVC).

For the calculating the RVC of a good, the following formula shall be applied:

$$RVC = (TV - VNM) / TV \times 100$$

TV is the transaction value of the good adjusted to an FOB basis, and VNM is the value of non-originating materials used by the producer in the production of the good. There are no substantial differences between VNM and NQM, which is provided in the JSEPA, except for the calculating method: VNM is calculated by adding up all values of non-originating materials, while NQM is the result of subtracting all values of originating materials from the total value of the good.

(3) Cumulation

For the purpose of determining whether a good is an originating good, a producer of the good may combine its production with that of other producers in the area of one or both Parties, of materials incorporated in the good, in a manner that the production of the materials is considered to have been performed by that producer.

4.3.2.11 Use of remedies

Japan has Anti-Dumping duty measures, Countervailing Duty measures and Safeguard measures, all of which are consistent with WTO rules. Anti-dumping duty and countervailing duty are extra duties imposed to protect Japanese industries from activities that undermine the trade order, such as dumping by exporters or subsidizing goods from exporting countries. Emergency duty, part of Japan's safeguard measures, is an extra duty to protect domestic industries from unforeseen circumstances, such as an increase in imports caused by a drop in prices abroad. The Ministry of Finance, the Ministry of Economy, Trade and Industry and the Ministry with jurisdiction over the industry, handle special duty cases.

Cases of Anti-dumping, and Emergency and Countervailing Duties

Anti-dumping duty (3 cases)

- Chinese ferro-silico-manganese (1993 – 1998)
- Pakistani cotton yarn (1995 – 2000)
- Korean and Taiwanese polyester staple fiber (2002 -)

Emergency duty

- Welsh onions, shiitake mushrooms and tatami-omote (Provisional emergency tariff; April - November 2001)
- Steel products imported from the United States (Countermeasure; June 2002 – December 2003)

Countervailing duty

Japan has never taken any countervailing measures. In June 2004, an application for imposition of countervailing duty against DRAMs (Dynamic Random Access Memories) originating in the Republic of Korea was filed to the Minister of Finance. The Government of Japan initiated an investigation with respect to the items in August 2004.

In addition, as transitional measures following China's entry to the WTO and conclusion of the Japan-Singapore EPA, Japan has introduced emergency duty systems applicable to specific import items from the two countries in order to avoid the damage to each party's domestic industries due to a sudden import increase since FY2002.

4.3.2.12 Handling of disputes

Disputes between Government and Private Entities

In 1982, the Japanese Government established the Office of Trade and Investment Ombudsman (OTO), which receives and processes specific complaints filed by private parties and foreign governments concerning market access problems and the facilitation of imports, including import procedures. OTO is an effective means for dispute settlement since this mechanism facilitates exchange of views between private parties / foreign governments and the government and also takes into consideration the recommendations made by the Market Access Ombudsman Council, which consist of scholars, business leaders and others.

Japan acceded to the *Convention on the Settlement of Investment Disputes* between States and Nationals of Other States in 1967, and has since utilized the International Center for Settlement of Investment Disputes (ICSID) established under this convention.

Disputes between private parties

Japanese law sets forth general arbitration rules in its *Arbitration Law*.

Japan has acceded to the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (the *New York Convention*). It has also concluded with 13 countries bilateral treaties containing clauses on the enforcement of arbitration awards.

In arbitration cases, the The Japan Commercial Arbitration Association applies either its own Commercial Arbitration Rules or the Administrative and Procedural Rules for Arbitration under the *United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules*, in order to resolve disputes among private parties.

Dispute settlement in Japan's FTAs

The Japan-Singapore EPA contains standard dispute settlement clauses involving consultations and the capacity for either party to request arbitration. It also includes an investor-state dispute settlement clause (Article 82). The Japan-Mexico EPA also includes general dispute settlement provisions (Chapter 15) involving consultations and arbitration at the request of either party and investor-state dispute settlement provisions (Ch 7, Section 2).

Annex 4E: Customs Clearance Procedures in Japan

Import Clearance Procedures

Any person wishing to import goods must declare them to the Director-General of Customs and obtain an import permit after necessary examinations of the goods concerned. When needed, Customs must verify a certificate of permit and approval as provided by various domestic laws and regulations including the quarantine restrictions. A total of 97 per cent of import declarations are filed with the electronic data processing system (Nippon Automated Cargo Clearance [NACCS]). The necessary procedures are as follows.

1. Procedures start with the filing of an entry notification to Customs. When a foreign trade vessel arrives at an open seaport, the captain must submit a notification of entry, cargo manifest, list of vessel stores, passenger manifest, and crew manifest to Customs within 24 hours. When a foreign trade aircraft lands at a Customs airport, the captain must submit a notification of entry, airway bill information, passenger manifest, and crew manifest to Customs immediately.
2. Goods arriving in Japan aboard foreign vessels/aircrafts ("foreign goods") shall be carried to a Customs Area ("Hozei Area") which are facilities (such as warehouses and container yards) designated and approved by the Director-General of Customs to store foreign goods.
3. Declaration must be made by filing an import declaration, which states the goods' names and classification numbers based on the Tariff Schedule (Harmonized System coding); a description of the quantity and value of the goods; and other particulars, to which supporting documents such as invoices are attached.
4. For the declaration of commercial cargo, the "self-assessment of valuation" system has been applied to the payment of duties/taxes. Thus, the import declaration is served concurrently as the declaration of duty/tax payment; the import declaration means, in principle, the concurrent declaration for goods release and for duty/tax payment.
5. In principle, the person who imports the goods must submit the import declaration. However, a customs broker usually files the declaration to Customs as a proxy for the importer.
6. Import declarations must be filed, in principle, after the goods have been carried into a Hozei Area. But in the case of some specific cargoes or when clearance facilitation measures are applied ("Immediate Permission and Release"), the declarations may be made before the goods are taken into a Hozei Area.
7. If required by laws and regulations other than the Customs laws ("other laws and regulations"), such as quarantine (food securities/plant/animal) laws and the Foreign Exchange and Foreign Trade Control Law (import quota items), the import declaration must be accompanied by a certificate of permit and approval under each other law or regulation.
8. Customs will conduct a documentary examination and a physical examination (cargo inspection) when needed.
9. After the necessary examinations, an import permit will be granted. In principle, the import permission will be given on condition that the due Customs duty and excise taxes are paid, except when using the payment deferral system.

Export Clearance Procedures

Any person wishing to export goods must declare them to the Director-General of Customs and obtain an export permit after necessary Customs' examinations of the goods concerned. When needed, Customs must verify a certificate of permit and approval as provided by domestic laws and regulations. In more than 99 per cent of export declarations, data is filed with the electronic data processing system (NACCS). Export procedures are similar to import procedures; however, payment declarations need not be considered because there is no export duty/tax.

1. Goods to be exported shall be carried into a Hozei Area.
2. Declaration must be made by filing an export declaration, which states the goods' names and classification numbers based on the Tariff Schedule (Harmonized System coding); a description of the quantity and value of the goods; and other particulars, to which supporting documents such as invoices are attached.
3. In principle, the person who exports the goods must submit the export declaration. However, a customs broker usually files the declaration to Customs as a proxy for the exporter.
4. Export declarations must be filed, in principle, after the goods have been carried into a Hozei Area. But in the case of some specific cargoes or when clearance facilitation measures are applied ("Preliminary Declaration and Examination"), the declarations may be made before the goods are taken into a Hozei Area.
5. If required by other laws and regulations, such as the Foreign Exchange and Foreign Trade Control Law (restriction/prohibition of arms and weapons; wastes, etc.), the export declaration must be accompanied by a certificate of permit and approval.
6. Customs will conduct a documentary examination and a physical examination (cargo inspection) when needed.
7. After the necessary examinations, an export permit will be granted.

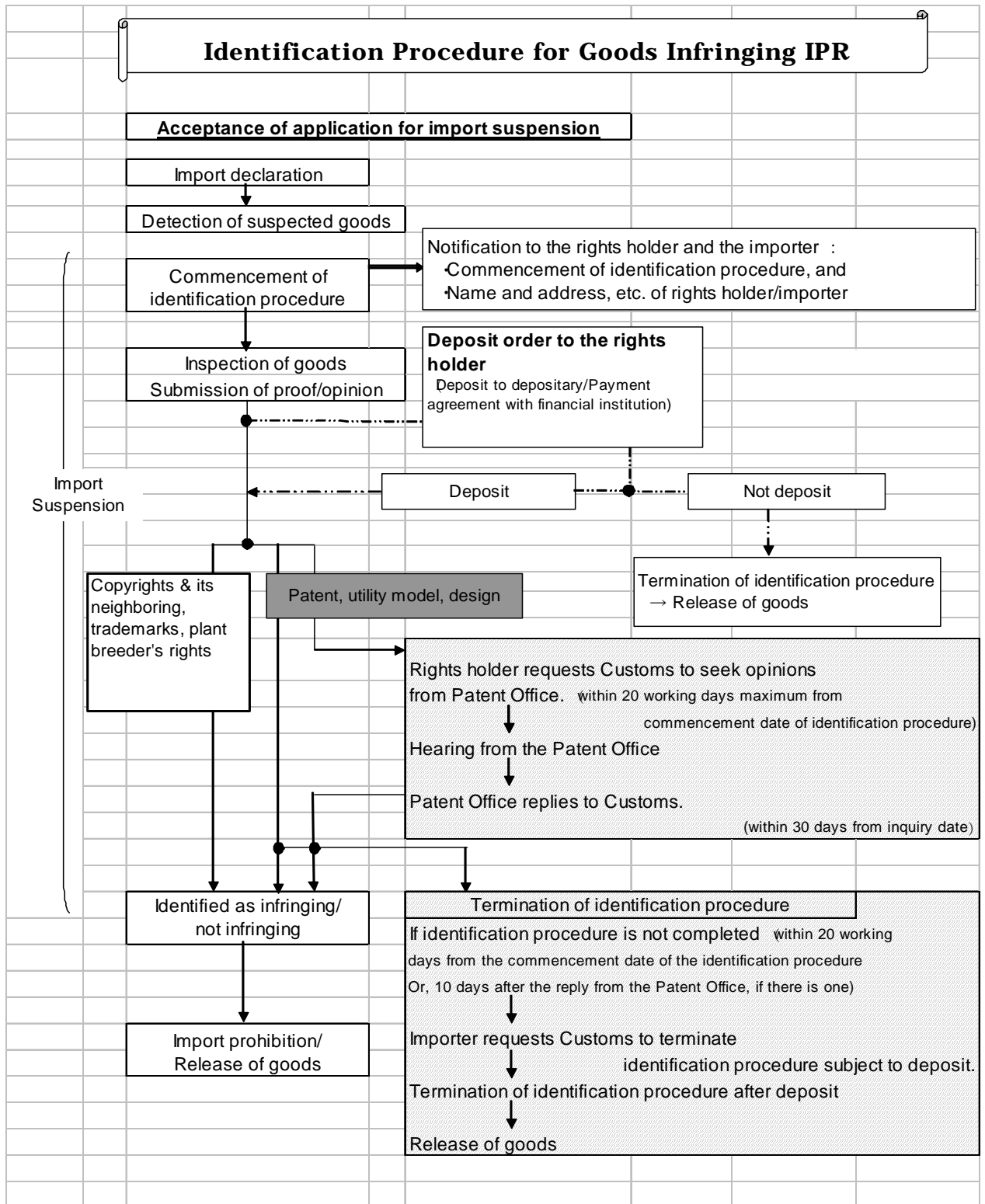
Annex 4F: Controlling Goods Contravening Intellectual Property Rights at Borders

1. The role of Customs in the enforcement of Intellectual Property Rights (IPR) dates from 1897 when it was stipulated in Article 21 of the Customs Tariff Law that goods shall not be imported which infringe on patent rights, design rights, trademark rights, or copyrights. Later, utility model rights, copyright neighboring rights, circuit layout rights, and plant breeder's rights were added to the IPR list. In January 1995, the relevant laws were amended, and Customs enforcement at borders is now conducted in accordance with the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was concluded in 1994 as a part of the negotiations and convention that established the WTO.
2. Customs' role in IPR control starts when an IPR holder submits an application for import suspension. When and where an IPR holder submits to the Director-General of Customs (DGC) an application for import suspension, which states the reason and type (and, if possible, the name and other relevant information) of the cargo recognized as contravening the specific rights, the applicant shall show evidence attesting to the fact of infringement, for instance, judicial judgments/decisions, or features/samples of the genuine articles and counterfeit ones. Then the DGC thoroughly examines the application and decides whether to accept it.
3. After the application is accepted, the procedure to identify the goods infringing the IPR proceeds as follows:
 - a. When a suspicious cargo is discovered, its importer and the IPR applicant/claimant are notified of the discovery, and the identification procedure begins.
 - b. At that time, the DGC shall advise the applicant of the name and address of the importer, and the importer of the applicant's. This information may help the parties initiate a lawsuit, and they may not use it for any other purpose.
 - c. The importer and/or the claimant may check the suspected cargo. Such inspection is to be conducted in the area under Customs' control and in the presence of a Customs officer in charge of IPR.
 - d. The importer and the IPR claimant can state their respective cases by submitting proof within 10 working days from the notice of the commencement of the identification procedure. The importer and/or the claimant are also given an opportunity to explain their evidence. The importer and the claimant are notified of the result of the identification procedure.
 - e. In case the suspected cargo is identified as infringing the stated IPR, the DGC is required, based upon Article 21 of the *Customs Tariff Law*, to confiscate and discard the said cargo.
4. In addition to the procedure stipulated in paragraph 3, when opinions on the identification on the suspected cargo differ, making it difficult to confirm whether or not it is an infringing good, the DGC may order the applicant to provide a deposit of security. The amount of the deposit is to be calculated by totaling the storage charge during the identification procedure, the loss of profit, and other charges.

5. With regard to patent rights, utility model rights, and design rights, the Patent Office Commissioner (POC) Opinion Inquiry System has been introduced in light of the technical nature of these rights and in fulfillment of the TRIPS requirement.
 - a. An applicant relating to those IPRs may request the DGC to obtain the POC's opinion regarding the technological scope of patented inventions and whether or not the goods in question violate those rights. Such a request shall be submitted to the DGC within a maximum period of 20 working days after receiving the notification of the procedure commencement.
 - b. Upon the request, the DGC shall issue an inquiry to the POC for the opinion.
 - c. The POC shall respond in writing within a period of 30 days after receiving the DGC's opinion inquiry.
 - d. The applicant and importer shall be notified of the POC's response, and they may then submit their relevant statement or proof to the DGC.
 - e. The DGC is expected to give due consideration to these opinions and reactions in the identification procedure.
6. With regard to patent rights, utility model rights, and design rights, a Customs Release System to terminate the identification procedures has been introduced paying due attention to the rights of both the importers and applicants and fulfilling the TRIPS requirement.
 - a. An importer of goods suspected of being in violation of those IPRs may request the DGC to release the goods, in the case that the identification procedure cannot reach a conclusion either after 20 working days have passed without requesting the POC's opinion, or after the lapse of 10 days after the receipt of the POC's response, whichever is later.
 - b. In such cases, the DGC shall demand a deposit ("Customs Release" deposit) to cover compensation for any damages sustained by the applicant due to such importation. The amount of the deposit shall be, in principle, the amount equivalent to the license fee of the concerned rights.
 - c. Once the deposit is received, the identification procedure is terminated and the cargo concerned is released.

Notes

- 1) The eight types of IPRs are stipulated in Article 21 of the *Customs Tariff Law*, whereby the goods infringing these IPRs shall not be permitted for import. As demonstrated in this memo, Customs procedures for suspected cargoes are triggered by the acceptance of an application from an IPR holder of any of the eight types, except for circuit layout rights. In addition, Customs may ex officio suspend suspected goods infringing any of the eight types of IPRs, including circuit layout rights, based on information submitted by an IPR holder. There has yet to be a case of circuit layout rights. Almost all cases have used the application system.
- 2) There are nine regional Customs headquarters in Japan. The "Director-General of Customs" means the head of any of these regional headquarters.
- 3) The importer may discard, destroy, abandon, remove the infringing part, or obtain the agreement of the IPR claimant, when cargo is identified as suspected goods or infringing ones in the identification procedures.



Annex 4G: History of Copyright System in Japan

1) Domestic changes in copyright system

In order to comply with the Berne Convention, the first modern copyright law was established in 1899, and dramatically revised in 1971. Keeping up with the significant development in relevant technologies, changes in socio-economic backgrounds and international movements after 1971, the *Copyright Law* has been amended a number of times. The recent and main revisions of the *Copyright Law* are as follows:

- | | |
|------|---|
| 1997 | Establishment of the new right of “making transmittable (available)” |
| 1999 | Amendments to comply with the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty

Establishment of the new provisions on “Technological Measures” and “Rights Management Information” |
| 2002 | Amendments to comply with the WIPO Performances and Phonograms Treaty

Establishment of the new moral rights of Performers

Establishment of the new right of making works available to broadcasting organizations and wire diffusion organizations |
| 2004 | Establishment of measures to prevent sound recordings from flowing back |

2) Accession to international conventions

With regard to international conventions, Japan has ratified or acceded to the following conventions:

- | | |
|------|------------------------------------|
| 1899 | The Berne Convention |
| 1956 | The Universal Copyright Convention |
| 1978 | The Phonograms Convention |
| 1989 | The Rome Convention |
| 1994 | The TRIPS Agreement |

To cope with the digitalization and networking society, Japan acceded to the WIPO Copyright Treaty in 2000 and the WIPO Performances and Phonograms Treaty in 2002. The level of the protection of author's right and neighboring rights in Japan exceeds the obligation of the above international conventions in a number of aspects.