

(Provisional Translation)

Comments of the Government of Japan
on
2005 National Trade Estimate Report

April 14, 2005

OVERVIEW

In the 2005 National Trade Estimate Report on Foreign Trade Barriers (hereinafter referred to as “the Report”), some parts describe actual circumstance in Japan accurately and provide fair assessment, and there are also positive expressions especially in the areas in which the Japan and United States are cooperating. For other parts, however, the Report regrettably includes one-sided accounts and does not correctly reflect the information that the Government of Japan has sincerely and repeatedly provided through constructive discussions with the U.S. Government in a variety of fora under “the U.S.-Japan Economic Partnership for Growth” established by the Prime Minister of Japan and the President of the United States in June 2001.

It should also be noted that in the Report there are references that the reform and improvement measures taken by the Government of Japan on its own initiative were realized as if they had been agreed bilaterally between Japan and the United States. The Governments of Japan and the United States are now actively engaged in regulatory reform as their own tasks, to which the exchange of views between the two countries under the Japan-U.S. Regulatory Reform and Competition Policy Initiative (“Regulatory Reform Initiative”) and other frameworks has been providing useful suggestions mutually. The Government of Japan requests the U.S. Government to correct those statements that regard Japan’s regulatory reform measures as the direct results of bilateral governmental negotiations, especially with a view to maintaining and further developing the current constructive economic relationship between the two countries.

The Government of Japan cannot agree with the Report in referring to, in a number of contexts, the low share of foreign-made products in Japan’s market and thus concluding in a sweeping manner that there are barriers hindering foreign access to Japan’s market. In reality, under market principles, market share is determined by a wide variety of factors, such as demand structures and suppliers’ marketing efforts. Accordingly, the Government of Japan points out that the level of market share of foreign products and whether the Japanese market is “closed” are not correlated.

Upon this recognition, the Government of Japan submits to the U.S. Government the following comments on the Report. It should also be emphasized that our making no reference in this paper to certain elements of the Report, including those on which the Government of Japan does not repeat its comments hitherto made, does not necessarily mean that the Government of Japan shares understanding with the U.S. Government on them. Japan and the U.S. are leading the growth and harmonization of the world economy as well as the reinforcement of an open and multilateral trading system, and then should demonstrate a model of dialogue and cooperation in this globalized age. Therefore, the objective of the Government of Japan is not to make detailed comments for its own sake. Rather, it firmly believes that continued constructive dialogue between Japan and the U.S. in a variety of areas under the spirit of “Japan-U.S. Economic Partnership for Growth” will make a better contribution to the promotion of interests of the two countries, the Asia-Pacific region and ultimately the entire world.

SECTORAL REGULATORY REFORM

Telecommunications

- (1) The Government of Japan has explained facts and its positions related to the points raised in the Report on a number of occasions at bilateral economic fora including the Telecommunications Working Group of the Regulatory Reform Initiative. The U.S. Government nevertheless repeats its argument in this year’s Report without taking account of such explanation. With

regard to the spectrum policy for mobile phones, which is a new item contained in the Report, the U.S. argument is one-sided without understanding and recognizing relevant facts accurately, which the Government of Japan has found regrettable.

- (2) Broadband services are available with the highest speed and lowest costs in the world in Japan, while Japan is also pioneering popular use of voice over internet protocol (VoIP) and the 3G wireless communications. Both these developments would have not been achieved without effective competitive and regulatory environment. Fairness and neutrality are ensured in making and revising regulations, in the course of which transparent processes such as public comment procedure are employed. Accordingly, the Government of Japan cannot share the views presented in the Report on Japan's regulatory status.
- (3) The Government of Japan has elaborated a variety of procedures under the Telecommunications Business Law for the settlement of disputes between telecommunications carriers including those concerning interconnections: submission of opinion, order (*meirei*) and award (*saitai*) by Minister for Internal Affairs and Communications, and mediation (*assenn*) and arbitration (*chusai*) by the Telecommunications Business Dispute Settlement Commission. The telecommunications carriers should primarily exhaust these measures to the maximum extent to address individual business problems.

Information Technologies

(1) Privacy Protection

The Government of Japan shares the basic view on the importance of ensuring transparency and respecting voluntary efforts by the private sector in the implementation of Act on the Protection of Personal Information. As a specific example to demonstrate such basic view, several Ministries and Agencies sent their experts to a round-table for U.S. enterprises on the Act arranged by the American Chamber of Commerce in Japan (ACCJ) in March, which provided participants with a valuable opportunity to better understand the implementation of the Act. The Government of Japan urges the U.S. Government to fully take into account of its basic view and its contributions when making any argument on this issue.

(2) Intellectual Property Rights Protection

- a. The Government of Japan has conducted adequate public information activities in a variety of forms on the definition and scope of temporary storage, to which no indication so far has been made that the sphere of protection is unclear except those made by the U.S. Government in this Report. The report has regrettably repeated the same argument since 2003, whereas both Governments already confirmed their shared view on the definition and scope of temporary storage as seen in the First Report to the Leaders on the Regulatory Reform Initiative (June 25, 2002). The Government of Japan, therefore, urges the U.S. Government to have correct understanding of the issue.
- b. The Government of Japan has explained sincerely and sufficiently to the U.S. Government that Japan has appropriately addressed the issues of copyright protection on the internet by the Law concerning the Liability of Internet Service Providers and its related measures, and that it, therefore, does not find the necessity to amend the Law at present. However, the Report has regrettably repeated the indication with no concrete ground that these measures are unclear and lack balance among parties concerned.

(3) Network Security

The Government of Japan regards it as a matter of course to consider a variety of broadly agreed techniques to be adopted in the information security standard, including international standards and domestic standards, and has no idea whatsoever to establish any non-tariff barriers. It also recognizes that comments from a wide range of interested parties will be useful in formulating the information security standard. It may not be appropriate, however, to employ the public comment procedure in determining the information security standard for certain characters of information, specifically those related to national security. Therefore, the Government of Japan will continue to consider appropriate ways to invite public input, along with formulating the details of draft information security standard. In this regard, the Government of Japan would also like to point out that there are shared understanding at the Information Technology Working Group of the Regulatory Reform Initiative in March that not every part of information security standard are suitable for the public comment procedure.

Medical Devices and Pharmaceuticals

- (1) In the pricing of pharmaceuticals, manufacturers are already allowed to attach reports based on health economics to their documents of application submitted to the Ministry of Health, Labour and Welfare (MHLW). Attached reports are reviewed and taken into consideration in establishing premiums in the comparator pricing method. The re-pricing rules for medical devices have been implemented to correct differences in medical devices' prices between domestic and overseas markets. Either of these rules does not intend to "penalize the value of innovation."
- (2) The delay of reviews by the Pharmaceutical and Medical Devices Agency (PMDA) are largely due to the failure for applicants to submit sufficient and appropriate documents rather than the speed of review by the Agency.
- (3) The legal framework regarding Japanese blood supply program was amended to ensure stable supply of blood products and further improve their safety. This amendment does not intend to unfairly discriminate foreign products/manufacturers nor to be implemented in restrictive ways unilaterally.

STRUCTURAL REGULATORY REFORM

Antimonopoly Law and Competition Policy

- (1) Since 1999, the Fair Trade Commission (JFTC) filed three criminal accusations against bid rigging and other cases, including the cartel case on ductile iron pipe manufacturing in February 1999, the bid rigging case on petroleum products for the Procuring Department of the National Defense Agency in October 1999, and the bid rigging case on purchase of water meters by the Tokyo Metropolitan Government in July 2003. The description that the JFTC has initiated only one criminal prosecution of the violators of the Antimonopoly Act (AMA) since 1999 is therefore not correct.
- (2) The description that the October 2004 legislative proposal to amend the AMA would expand the range of violations subject to criminal prosecution is not true. The description is confused with the strengthening of penalties which include imposing fine against corporations in

contravention of elimination order.

Transparency and Other Government Practices

Regarding the improvement of the Public Comment Procedures, a bill to amend the Administrative Procedures Law was submitted to the Diet on March 11. The bill contains the provisions that require: (1) a minimum 30-day period for the solicitation of public comments; (2) publication of the reasons for setting public comment period less than 30 days when an administrative agency in charge deems it unavoidable; and (3) publication of public comments as well as the official counter-comments and their reasons around the promulgation of orders. The Government of Japan is expecting the bill to be approved at an early stage.

Privatization

- (1) The “Basic Policy on the Privatization of the Japan Post,” which was decided by the Cabinet last September, lists the following conditions for the four functions of Japan Post (over-the-counter services, postal services, postal savings and postal life insurance) to become independent under market principles: expansion of operational freedom, ensuring equal footing with the private sector, and clarification of profits and losses of each business and elimination of risk of being affected by other businesses.
- (2) The Government of Japan is now designing architecture of and legal framework for a privatized Japan Post in line with the Basic Policy, and will then submit related bills to the current regular session of the Diet.

Commercial Law

On March 22, the Government of Japan submitted to the Diet a draft legislation of corporate law and related bills to permit flexibility in merger currency, including the introduction of triangular mergers, cash mergers, and short form mergers.

Legal System Reform

The Report describes the certification system created by the enactment of the Alternative Dispute Resolution (ADR) Law last year as applying to arbitration services as well, which is not the case. The certification system for ADR providers is voluntary, and non-certified ADR providers can continue to operate their business which has already been considered lawful since before the enactment of the ADR law. Moreover, ADR settlements in which non-certified ADR providers engage will not necessarily be invalid. Therefore, Japanese ADR system is consistent with international norms and practices.

Although the Government of Japan has explained the above sincerely and in detail on the occasion of the Regulatory Reform Initiative, the U.S. Government states that, upon misunderstandings, the ADR law has the potential to impede the use of ADR processes or is impractical in this Report. The Government of Japan regards such argument as one-sided and, therefore, urges the U.S. Government to have correct understanding based on Japan’s explanation.

IMPORT POLICIES on Agricultural Products (Rice, Wheat, Corn for Industrial Use, Pork, Beef, Citrus, Dairy), Wood Products and Leathers (Footwear)

Import policies on these products were agreed at and introduced as results of the Uruguay Round negotiations with countries concerned including the U.S. itself. The Government of Japan has faithfully observed these measures and decided tariff rates and prices within the scope of tariff schedules. Quotas are calculated automatically under publicized formulae without arbitrariness. Moreover, since the U.S. products are treated equally to those from other countries under the tariff quota system, it is not appropriate to point out that the system excludes the U.S. products. The related references in the Report are therefore regrettably one-sided without paying sufficient attention to those international agreements and the consistency of Japan's measures with the WTO rules. The Government of Japan, therefore, cannot share views with the U.S. Government on these points.

(1) Rice Import system

- a. Experiences show that a large part of U.S. rice imported to Japan has been used for processing purposes and for industrial purposes after being mixed with domestic rice, and not been usually retailed for households as a single item. The main reason is that the quality of U.S. rice falls relatively below that of domestic one. Consumers' and rice processors' access opportunity to minimum access rice has been fully provided. U.S. medium grain rice imported to Japan under the ordinary tender, carried out by Japanese Ministry of Agriculture, Forestry and Fisheries (MAFF), has been mainly used for rice processing purpose. The MAFF sells U.S. medium grain rice to rice processors and holds the remainder as stockpile. In the event of requests from international organizations or aid-recipient countries, the MAFF supplies a portion of stockpile of U.S. medium grain rice for food aid in accordance with international rules of food aid.
- b. The Government of Japan has introduced simultaneous-buy-sell (SBS) system, a highly transparent tender system based on a fair and free competition principle, upon request from the United States. In operating this system, the Japan Food Department of MAFF has never treated U.S. rice in a discriminatory manner. Furthermore, the mark-up, agreed in the Uruguay Round (UR), is consistent with WTO agreements, setting fair conditions within the limit of the agreed concessions. If U.S. rice is sluggish in SBS tender, it is because U.S. rice is less chosen from bidders in comparison with Chinese rice. In order to rival Chinese rice in SBS tender system, U.S. rice is required to improve its competitiveness in quality and price.
- c. In December 2002, the Government of Japan laid down a comprehensive rice policy reform, which underlined the importance of consumers and market orientation, and made necessary amendments to the Staple Food Law and decisions on the budget to put the policy reforms into practice. The reforms have been implemented since the beginning of FY2004 (i.e. last April).
- d. Japan's proposals on minimum access include revision of base period in domestic consumption so that the current situation can be more reflected in the access volume, and improvement of the current system that continues to impose extra penalty in spite of tariffication. The Government of Japan has been taking part in the negotiation in a constructive manner toward the goal of the Doha Development Agenda under the framework agreed in July last year.

(2) Wheat Import System

The sale prices of import wheat have been set based on its quality and other characteristics within the framework of the agreed concessions, thus the mechanism is consistent with the WTO agreements. The sale prices of import wheat have been decreased by 40 percent since 1986, while wheat consumption per capita in Japan has been at almost the same level. It should be noted that Japan depends on foreign countries for greater amount of wheat for domestic consumption, in which import from the United States occupies a significantly high percentage.

(3) Corn for Industrial Use

- a. The bound tariff rate on import corn for cornstarch is 50 percent or 12 yen per kilogram, whichever is higher. However, the tariff is zero under the tariff quota system on the condition that the importers purchase Japanese potato starch with a view to assuring demand of Japanese potato starch. This measure is more favorable for importers than choosing the bound tariff rate. The importers are free to choose the rate they prefer.
- b. The Government of Japan is now considering to abolish the current system and shift to a new more transparent system.

(4) Beef and Pork

The Government of Japan made a decision to accept the voluntary tariff reduction below the bound rate in spite of severe situations facing domestic producers during the Uruguay Round negotiations. The tariff emergency measures for beef and pork were introduced in a package as an indispensable compensation for the voluntary tariff reduction on them, also as a result of multilateral talks. It is therefore inappropriate that the Report criticizes the tariff emergency measures without paying due attention to these backgrounds. The Government of Japan also adds that the tariff emergency measure on pork was lifted on March 31, 2005.

(5) Wood Products

Japan's average tariff rate on wood products (2.1 percent) is not absolutely higher than those of other developed countries (1.2 percent for the U.S. and EC; 1.3 percent for Canada and 2.3 percent for New Zealand). As regards the reference to tariff escalation, the Government of Japan has argued that the abolition of tariff on individual wood products is not acceptable in the discussions at WTO, from the perspectives of global environmental protection and effective use of limited natural resources. The Government of Japan requests the U.S. Government not to view Japan's import policy of wood products as inadequate only from the tariff levels aspect.

(6) Leather/Footwear

- a. The Government of Japan introduced the tariff quota system on leather shoes in 1986. Therefore, the Report is not correct in pointing out that Japan liberalized footwear imports in 1991.
- b. In regard to the "potential threat" as the reason why the U.S. industry has avoided opting for license arrangement in footwear production, there is a description as if Japanese licensees had not been capable of upholding the brands' reputation. However, this reference is not based on clear evidence and one-sided.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Some descriptions in the Report sound as if the Government of Japan has taken arbitrary and excessive measures on standards, testing, labeling and certification without considering international standards and scientific findings. One example is found in the first paragraph of this section stating that “there appears to have been... a greater tendency to deviate from scientific principles in setting new import policies and requirements.” Two points should be articulately noted in this regard, however. First, the Government of Japan has introduced and maintained rational measures in this area, based on scientific principles and in compliance with related international rules. Second, transparent procedures are employed in standard-setting process, including examination at independent institutions such as risk assessment by experts, risk communication, and solicitation of comments from interested parties including foreign governments through the public comment procedure and under relevant provisions of the WTO Agreement. Consultations with foreign governments are also held when necessary. The U.S. argument in the Report is inappropriate in nevertheless criticizing Japanese measures in a unilateral manner without presenting any tangible evidence or examples.

With regard to the reference related to construction, it should also be noted that overseas performance evaluation bodies have already been recognized such as for fire-resistant structures and others.

(1) Beef

- a. Basic positions of the Government of Japan on the BSE issue
 - i. Japan depends on imports from foreign countries for about 60% of its food supply, and the people have high sensitivity in food safety. As the first BSE case in Japan was detected in 2001, and the first fatality of variant Creutzfeldt-Jakob disease (vCJD) in Japan was confirmed in February this year, the Japanese consumers have become more concerned about food safety than ever, especially about the BSE issue.
 - ii. Since BSE and vCJD were found relatively recently and relevant scientific evidence is insufficient, it requires prudent risk analysis processes to determine measures that could achieve the appropriate level of protection. Accordingly, the Government of Japan, without exception, suspends the import of beef and beef products from BSE-affected countries until measures applied to them are demonstrated to achieve the equivalent level of protection to those applied to Japanese beef and beef products. These whole process are fully compliant with the Agreement on the Application of Sanitary and Phytosanitary Measures of WTO.
 - iii. The Government of Japan has been addressing the issue of U.S. beef import resumption consistently with the principle of securing food safety and consumers' confidence as prerequisite, as well as based on science. Accordingly, the Government of Japan does not suspend import of U.S. beef for the sake of protection of domestic industry at all. In this sense, this is not a trade issue, but a food safety issue.
 - iv. The Government of Japan is reviewing its domestic BSE measures appropriately. In fact, the Food Safety Commission (FSC) concluded that the fact that “no case at the age of 20-months or younger has been found by testing” “should be fully taken into account in considering the future measures against BSE in Japan.” Accordingly, risk
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management agencies, namely the Ministry of Health, Labour and Welfare and Ministry of Agriculture, Forestry and Fisheries, consulted the FSC about whether all-cattle testing, which is currently implemented as a domestic BSE measure, could be reviewed or not based on latest science. On March 28, the Prion Expert Committee of the FSC approved a draft report on the reviewing of the domestic BSE measures and now public comments are under solicitation.

- v. The Government of Japan has explained its positions described above to the U.S. Government at a number of consultations between the two countries. As the Report mentions, the two Governments have already shared a view on necessary processes for the resumption of beef trade last October. The Government of Japan deems it important to steadily follow necessary procedures for the resumption, based on science and securing food safety as indispensable conditions, for an appropriate solution of the issue. Although the Government of Japan cannot predict specific timeframe of the resumption at this juncture of the review of domestic BSE measures ongoing, it shares the understanding with the U.S. Government on the necessity of early solution of the issue, and is of the view that this issue should not be a significant impediment to the bilateral relationship.

b. Specific Comments

- i. The Report points out that “after six months of operation of partial market opening, that program will then be reviewed, with a view toward returning trade to more normal patterns.”

However, all that both Governments share in this regard is the view referred to in last October Joint Press Statement, stating “The BEV Program will be reviewed for modification as may be appropriate in July 2005. The joint review by officials of the Governments of Japan and the United States will take into account a scientific review to be conducted by OIE and WHO experts. The conclusion of the review, including the action to be taken, will be made by the consensus judgment of both Governments. In Japan’s case, it will be subject to deliberation by the Food Safety Commission.” Thus, the U.S. description at this point in the Report is not accurate in light of what is actually described in the Joint Press Statement.

- ii. The Report also states that “the two Governments agreed on a framework on October 23, 2004 designed to pave the way for resumption of beef trade between Japan and the United States.” The Government of Japan, however, points out that the Joint Press Statement describes that the two Governments “shared the view.”
- iii. Whereas the Report states that “the United States has addressed all questions related to science and consumer safety raised by Japan about U.S. beef,” the Government of Japan believes that the two Governments still need to exchange necessary information on the BSE measures taken in respective countries for an early solution of the issue.

(2) Poultry

- a. In 2002, the Governments of Japan and the U.S. decided animal health requirements that importing suspension must be imposed on poultry meat state by state in the outbreak of low pathogenic strains of avian influenza (AI), and nationwide in the outbreak of highly

- pathogenic strains of AI. The Report contains a description which could lead readers into misunderstanding that Japan had been imposing importing suspension on all the states in the outbreak of low pathogenic strains of AI. In addition, although the Government of Japan imposed importing suspension on all the states in 2004 because of the outbreak of highly pathogenic strains of AI in Texas, this development is not referred to, and the inappropriate way of citing statistics here generate an incorrect impression that only the outbreak of low pathogenic strains led to the decrease of export to Japan.
- b. In the Report, there is a description that “the OIE declared the United States free of all types of AI in August 2004”. However, the OIE does not have mechanisms concerning declaration or recognition for the AI-free status of each country. Moreover, one notable background of Japan’s continued import suspension on poultry meat from Connecticut and New Jersey is that the Government of Japan has not been able to ascertain the AI-free status of the areas because the U.S. Government has not provided necessary information concerned in spite of request from the Government of Japan (it received the letter providing necessary information on March 31 this year.). The Government of Japan finds it inappropriate that the U.S. Government, without providing such necessary information which the government of animal-disease-affected country is legitimately requested to provide, shows recognition that Japan has been imposing an improper import suspension in a unilateral manner.

GOVERNMENT PROCUREMENT

- (1) The Government of Japan has formulated on its own initiative a series of measures that provide non-discriminatory business opportunities to both domestic and foreign enterprises, and has implemented them properly in accordance with the WTO Agreement on Government Procurement. However, they do not ensure results such as an increase in volume of procurement (in terms of value or number of procurement) of certain foreign products and services. It depends on the efforts made by foreign suppliers.
- (2) The Report is inappropriate in giving one-sided descriptions that disregard the measures the Government of Japan has taken and the explanations it has provided to the U.S. Government at the Trade Forum and other bilateral consultations, especially those references regarding the U.S. recognition of Japanese public construction works market, joint ventures, the qualifications and evaluation criteria, the structuring of individual procurement and transparency of bid/contract procedures.
- (3) The U.S. Government is also strongly requested to fully recognize that the Government of Japan has addressed many respective inquiries from the public and private sectors of the U.S. in a prompt and adequate manner.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

(1) Patents

- a. The Government of Japan has implemented all patent-related measures confirmed by both Governments at the Intellectual Property Working Group meeting under the Japan-U.S. Framework for New Economic Partnership in 1994. The U.S. Government still remains halfway in this regard, except for improvement in patent period. The Government of Japan requests the U.S. Government to implement the measures promptly in line with

confirmation at the Framework Talks, especially the abolition of the exception clauses for early publication system as well as the acceptance of all the requirement inadequacies listed in Article 112 of the U.S. Patent Act, except for the best mode requirement, as reasons for reexamination request.

- b. In response to the reference in the Report to the “slow process of patent litigation in Japanese courts,” the Government of Japan points out that it has taken necessary measures for the 2003 revision of the Code of Civil Procedure to realize reinforcement and speeding up of the litigations concerning intellectual property rights (IPRs), including: exclusive jurisdiction of Tokyo and Osaka District Courts over litigations regarding patents and utility models; exclusive jurisdiction of Tokyo High Court over appeals of these litigations; and creation of a system under which courts can hear from experts in course of trials. Moreover, it has taken necessary measures for the 2004 revision of the related laws that establishes the Intellectual Property High Court which is particularly in charge of patent-related cases and clarifies and expands the scope of the authority of the court investigators. In addition, it increases the number of judges in charge of IPR-related and other cases with a view to reinforcing judicial capacity to address such cases.

(2) Copyrights

In regard to the reference in the Report regarding copyrights stating that “Japan should make its law crystal clear that the use of peer-to-peer networks to copyright...”, the Government of Japan has ensured the right of making available in compliance with the WCT and WPPT, which the U.S. Government has not ensured, to address the infringement of copyrights on the peer-to-peer networks. The Government of Japan has already explained that such infringement could be covered by the right of making available on the occasion of the Regulatory Reform Initiative, and, therefore, urges the U.S. Government to have correct understanding on this point.

(3) Trademarks

The Government of Japan has implemented all the obligations concerning well-known marks provided in the Paris Convention and the TRIPS Agreement. The revision of the Trademark Law in 1996 reinforced the protection of well-known marks, and, therefore, the Report is inaccurate in describing that the protection in Japan “remains weak”.

(4) Geographical Indications

- a. The Unfair Competition Prevention Law prevents any act of making indication which may cause misidentification of actual place of origin. The registration of a trademark which contains such geographical indications (GIs) is refused or invalidated by the Trademark Law. The 2003 revision of the Law concerning Liquor Business Associations and Measures for Securing Revenue from Liquor Tax further reinforced countermeasures against illegal use of GIs.
- b. Also, the Government of Japan does not maintain any undisclosed list of protected GIs against which applications for trademark registration are reviewed.

(5) Trade Secrets

- a. The Code of Civil Procedure has the provisions regarding trade secrets in trials to protect them. Moreover, the 2004 revision of the IPR-related laws including the Unfair Competition Prevention Law introduced the court order restraining party concerned from use and/or disclosure of trade secrets in briefs and evidence, and certain requirement and conditions by which examination of parties or witnesses will be closed to the public in trials related to infringement of trade secrets (Articles 6.4 and 6.7 of the Unfair Competition Prevention Law).
- b. In addition, regarding the criminal protection for trade secrets introduced in the 2003 revision of the Unfair Competition Prevention Law, the Government of Japan submitted to the current session of the Diet the amendment of the Law containing a provision that subjects a retiree who illegally uses and discloses trade secrets to criminal sanctions under certain conditions.

(6) Border Enforcement

The border enforcement against products infringing IPRs conducted by the Japan Customs is based upon both the application for import suspension and *ex officio* confiscation. The Government of Japan suspends the import of infringing products intensively and effectively, making full use of these measures which are consistent with the TRIPS Agreement. The number of import suspension filings has been increasing every year to approximately 10,000 cases in 2004 (The number of suspended items was approximately 1.04 million in 2004). Moreover, a series of legislative revisions have been taking place for the three consecutive years to reinforce the border enforcement of protection, and the institutional capacity of Japan Customs has also been reinforced by the increase of officers in charge and the recruitment of experts. These measures are effectively used by foreign right holders and are appreciated.

SERVICE BARRIERS (Insurance)

(1) Postal Insurance

Japan Post provides *Kampo* under many obligations and restrictions which are not imposed on private life insurers. For example, Japan Post has the universal service duty, which means that there must be post offices all over Japan including every rural area, and maximum coverage of insured amounts is limited. Although the Government of Japan has explained these points on a number of occasions at the Regulatory Reform Initiative, the Report is only emphasizing *Kampo*'s advantageous aspects. The Government of Japan urges the U.S. Government to have correct recognition with an attention to *Kampo*'s disadvantageous aspects as well. Since the expansion of operational freedom and ensuring equal footing with the private sector are correlated with each other, and should be evaluated in a comprehensive manner.

Also as has been explained, the Government of Japan is now considering legal frameworks for the post-privatization *Kampo* including the elimination of government guarantee in line with the "Basic Policy on the Privatization of the Japan Post."

(2) *Kyosai*

Insurance Cooperatives (*kyosai*) services are different from private insurance services. *Kyosai* is provided as mutual assistance within cooperatives composed by those tied regionally or vocationally, whereas private insurance industry operates nationwide for the general public. It

is therefore not adequate to apply regulations, inspection and burden to *kyosai* that are equal to those imposed on private insurance.

ANTICOMPETITIVE PRACTICES

- (1) The Law Against Unjustified Premiums and Misleading Representations aims to secure fair competition by preventing inducement of consumers by means of excessive premium offers and misleading presentations, and thereby to protect the consumer's interests. It just prohibits excessive premiums and misleading representations which cannot be considered to be fair competing methods and does not impose overly restrictive restriction on marketing techniques.
- (2) The JFTC authorizes only those codes which are appropriate for the purpose of preventing unjustified inducement of customers and securing fair competition as "fair competition codes". Moreover, the levels of almost all the regulations of the codes concerning premiums have accommodated the same standard as the general regulation. Accordingly, the description "Trade associations often use the cover of these codes to adopt the additional standards that are stricter than required by JFTC regulations under the Premiums Law" is not true.

OTHER BARRIERS

(1) Civil Aviation

It should be noted that the US carriers' share of the slots at Narita is approximately 30 percent, which is considerably large in comparison with other cases in the world. In terms of cargo flights, the number of slots used by U.S. carriers is larger than that for Japanese carriers by more than 50 percent. Thus, there is a gap between Japanese and U.S. carriers in the number of slots they respectively use at Narita. It is regrettable that the Report describes as if U.S. carriers were in a disadvantageous position, disregarding the above-mentioned fact.

(2) Sea Transport/Port

The sanction that the Federal Maritime Commission (FMC) unilaterally took against Japanese carriers in 1997 violates the Treaty of Friendship, Commerce and Navigation between Japan and the United States (the Treaty), which provides national treatment and most-favored-nation treatment. The Government of Japan continuously insists on the illegality of those sanctions. The situation of ports in Japan has significantly improved, through such measures as the revision of the Port Transport Business Law that provided for significant deregulation of nine major ports in 2000 as well as the realization of full 24-hour/day, 364-day/year (excluding January 1) operation of terminals. Moreover, the Government of Japan submitted the revision of the Port Transport Business Law to the current regular session of the Diet to deregulate other ports in addition to the said nine major ports. The Government of Japan urges FMC to take into account these positive developments correctly.

FMC introduced a new order that requires carriers to submit a report of improved situation of the ports in Japan, in order to judge whether or not it should impose unilateral sanction that is in violation of the Treaty. The Government of Japan recognizes that this order constitutes a serious abuse of FMC's mandates and strongly urges the U.S. Government to withdraw the order.