

(Provisional Translation)

Comments of the Government of Japan  
on  
2007 National Trade Estimate Report

May 9, 2007

**OVERVIEW**

The Governments of Japan and the United States have been maintaining close dialogue through fora under the “Japan-U.S. Economic Partnership for Growth” (“Partnership”) established by the Prime Minister of Japan and the President of the United States in 2001, in order to promote sustainable growth in both countries as well as the world. The Government of Japan has deemed these bilateral dialogues important and has sincerely engaged in the dialogue under the Partnership and other bilateral fora, and intends to continue constructive discussions between the two governments.

However, the National Trade Estimate Report on Foreign Trade Barriers (hereinafter referred to as “the Report”) released by the Government of the United States each year contains inappropriate or inaccurate descriptions in light of the accomplishments made through the dialogue between the two governments at various fora. Such descriptions could undermine or devalue the constructive dialogue and should be avoided. Although the Government of Japan has repeatedly pointed out the problems of the Report, the 2007 Report again contains inappropriate or inaccurate statements. Some statements are exactly the same as the ones in the previous year, word-for-word, despite the repeated explanation by the Government of Japan. After consideration, the Government of Japan once again points out the following problems of the Report to the U.S. Government. These comments are quite narrowed down reflecting the comments made by the Government of Japan in the past. The Government of Japan considers this kind of dialogue that the U.S. Government publishes the Report containing inappropriate or inaccurate descriptions every year and the Government of Japan repeatedly makes comments to the Report is not necessarily constructive.

First, constructive discussions are being held at the Japan-U.S. Regulatory Reform and Competition Policy Initiative (“Regulatory Reform Initiative”) that concern many issues mentioned in the Report. There are many references in the Report, however, which do not fully take into account the achievements made at the Initiative. One-sided arguments and descriptions that are not based on facts do not only harm the credibility of the Report, but also could undermine the credibility of the constructive dialogue.

Second, the Governments of Japan and the United States hold constructive exchanges of opinion at the Regulatory Reform Initiative and other fora, on regulatory reforms pertaining to each side. In the Report, however, there are descriptions that sound as if the reform and improvement measures the Government of Japan has taken on its own initiative were realized as results of international agreements with the U.S. Government. These statements do not reflect the facts and are against the objectives of the Regulatory Reform Initiative, and could also invite wrongly-based criticism against the joint endeavor.

Third, some parts of the Report conclude that there are barriers hindering foreign access to Japan’s market by citing the low share of U.S products in the market. In reality, under the market mechanism, market share is determined by a wide variety of factors, such as demand structures and suppliers’ marketing strategies. It is therefore inappropriate to consider the low level of market share of U.S products in the Japanese market to mean that the Japanese market is “closed.”

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 United States are leading the growth and harmonization of the world's economy as well as the reinforcement of an open and multilateral trading system, and two countries should demonstrate a model of dialogue and cooperation in this globalized age. The Government of Japan firmly believes that continued constructive dialogue between Japan and the United States in a variety of areas under the spirit of the "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**

### **1. Telecommunications**

Broadband services in Japan have been made available at the highest speed and lowest cost in the world. Japan is also one of the most advanced countries in pioneering popular use of Voice over Internet Protocol (VoIP) and 3G wireless communications. These developments would not have been achieved without an effective competitive and regulatory environment. In making and revising regulations, the Government of Japan employs fair and neutral policies through transparent processes including public comment procedures. Therefore, the Government of Japan thinks the views presented in the Report on Japan's regulatory status are inappropriate.

### **2. Medical Devices and Pharmaceuticals**

- (1) As for the transparency of the rule-making process, the Central Social Insurance Medical Council (*Chuikyō*) has provided pharmaceutical industries with opportunities to express their views on the Drug Pricing System including the frequency of the revision and the Foreign Average Price Adjustment System.
- (2) The Foreign Average Price Reference System for medical devices is intended to gradually set the medical device pricing system in Japan to near 1.5 times the average list prices of the U.S., the U.K., Germany, and France. The cost which derives from the differences of commercial customs between Japan and these four countries has been fully taken into consideration. In addition, Japan reviewed the system in FY2006 to make the functional categories more detailed to reflect functional differences.

## **STRUCTURAL REGULATORY REFORM**

### **1. Antimonopoly Law and Competition Policy**

- (1) The Japan Fair Trade Commission (JFTC) actively utilizes the criminal investigation powers which were introduced by the amendments to the Antimonopoly Act (AMA) and has referred two cases to the Prosecutor General since the AMA amendments came into effect in January 2006. Furthermore, the JFTC has filed 11 criminal accusations from 1990 to March 2007, including a bid rigging case concerning bridge construction projects in 2005. Regarding the criminal trial for this case, criminal sentences have been final and binding for the majority of defendants and a fine of 6.48 billion yen in total was imposed on 23 companies. This was the first case in which the increased fine set by the amendments in 2002 was applied.

- (2) The Report points out that the JFTC should extend due process to recipients of recommendations and warnings under the Subcontract Act. When the JFTC issues recommendations under the Subcontract Act, however, it in fact provides recipients with an opportunity to present their opinions. Thus, due process is ensured. Furthermore, unlike warnings issued under the AMA, the JFTC does not publish any facts including company names for each case when it issues warnings under the Subcontract Act.

## **2. Distribution and Customs Clearance**

The Report points out that, in regard to the privatization of Japan Post, Japan should ensure a level playing field among competitors and promote fair and free competition in cargo transportation. However, Japan Post's Express Mail Service (EMS) is a postal service in accordance with the Universal Postal Convention and continues to be part of the postal service in Japan following the privatization of postal services. As long as EMS is a postal service, it is still a nationwide service under Japan Post's universal postal service and it abides by the rules related to postal service. Regarding the improvement of the custom clearance procedures, some revisions have already been done.

## **IMPORT POLICIES**

### **1. Rice Import System**

- (1) Regarding the point in the Report that the majority of rice imported from the United States is destined for government stocks, food aid, and processing and are not directly consumed by consumers, access opportunity for minimum access rice to consumers and rice processors have been fully provided. 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 has not been usually retailed for households as a single item. The main reason for this is that the quality of U.S. rice falls relatively below that of the domestic one. 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 purposes. The MAFF sells U.S. medium grain rice to rice processors and holds the remainder as a stockpile. In the event of requests from international organizations or aid-recipient countries, the MAFF supplies a portion of the stockpile of U.S. medium grain rice for food aid in accordance with international rules of food aid.
- (2) Regarding the point that agricultural chemical residue testing is resulting in an exorbitant increase in the cost of importing U.S. rice to Japan, the MAFF is, as a state trading entity, looking for agricultural chemicals such as pesticides for which residue standards have been established pursuant to the Food Sanitation Law. The testing requirements are vital for export- and import-related entities from the viewpoint of complying with the law and ensuring the safety of rice imports, as well as avoiding economic losses from the return or disposition of imported rice which contain agricultural chemicals above the residue limits and whose sale is therefore prohibited under law.

### **2. Rice Stocks Release Program**

- (1) The Report points out that as a result of the rice stocks release program, imported rice stocks displace previously imported rice-flour based cake mixes. Rice flour from rice stocks is provided under the aforementioned program in response to the users' request for a stable-priced supply that

is unaffected by currency fluctuations and also from the viewpoint of stimulating the demand of users who had heretofore not been using rice stocks. The program does not induce users to displace imported rice-flour based cake mixes.

- (2) Regarding the decrease in rice-flour based cake mix imports from the United States in 2006, the Government of Japan believes that the decrease was the outcome of the comparatively high prices of rice-flour based cake mixes, which caused users in Japan to hold off on the import of cake mixes. The generally high prices of rice-flour cake mixes were not only the result of exchange rate movements that reflected the yen's depreciation, but also the result of other factors such as: (1) The fact that the market rates for sugar began to escalate from the end of 2005 and have remained at a high level even after hovering at a high rate until July 2006; and (2) The fact that FOB prices of U.S. (Californian) rice have been hovering at a high rate since October 2005. Cake mixes containing sucrose occupy 90% of the rice-flour based cake mixes imported from the United States.
- (3) Regarding national treatment concerns, the Government of Japan believes that national treatment issues should not be raised since domestic rice (e.g. specified rice (poorly-ripened rice) is also subject to release as rice stocks under the program.

### **3. Wheat Import System**

- (1) The Report points out that high wheat prices set by a state trading entity discourage wheat consumption. However, the sale prices of import wheat have been decreased by more than 40 percent since 1986, while wheat consumption per capita in Japan has remained at almost the same level.
- (2) In April 2007, Japan shifted to a new sale system and now forms prices linked to export prices. This has already been explained to the U.S. wheat industry and other relevant parties, and has been appreciated. The sale prices of wheat are set within the framework of the agreed concessions pursuant to WTO agreements. Therefore, it is incorrect that a state trading entity for wheat has a greater potential to distort trade compared to tariff measures.

### **4. Corn for Industrial Use**

The blending requirement, which has artificially created demands for Japanese potato starch, will be abolished and be transformed into a new levy system in October 2007, owing to the recent policy reform. This is accompanied by the introduction of direct payment for producers of potatoes for starch, which will replace the former price support for Japanese potato starch.

As a result of the above, the TRQ administration of corn for cornstarch will become highly transparent and be based on actual domestic demand for starch, while policy measures will adequately reflect market mechanism as a whole. Therefore, we see it that the U.S. comment, which points out that "these reforms do not go far enough to be truly market based," is irrelevant.

### **5. Beef and Pork Safeguard**

The Government of Japan made a decision to accept the voluntary tariff reduction on beef and pork below the bound rate in spite of severe situations the domestic producers faced in consultations with exporting countries, including the U.S., during the Uruguay Round negotiations. The tariff emergency measures for beef and pork were introduced as indispensable compensation for the

voluntary tariff reduction, again, based on the result of consultations with the negotiating countries involved. It is therefore inappropriate that the Report criticizes the tariff emergency measures without paying due attention to the fact that the Government of the United States joined the agreement.

One fact not reflected in the Report is that the Government of Japan has recently revised the base import volume for calculation of the trigger level with regard to the tariff emergency measure on beef as a special case for FY2007 in Revised Customs Tariff Law and Others, in consideration of the recent trend of beef prices and consumption. This special case was also taken last year.

#### **6. Propriety Ingredient Information Disclosure Requirement for Import**

The Report points out that ingredient information disclosure in the food import declaration form is overly burdensome. However, this process is indispensable from the viewpoint of ensuring food safety, and it is applied non-discriminatorily to foreign and domestic companies, not just to imports from the United States.

Furthermore, the Report points out that this process runs the risk of company product information being made public to potential competitors. However, information in the food import declaration form that may damage the legitimate interests of companies will not be made public pursuant to Act on Access to Information Held by Administrative Organs.

In addition, the Report states that Japan requires the disclosure of percentages of food ingredients, etc. However, the Government of Japan confirms the percentages only in cases where standards have been established for food additive amounts, etc. It is unfounded that the Government of Japan requires disclosure of all ingredients.

#### **7. Wood Products**

In reference to the point that Japan restricts imports from U.S. through tariff protection, Japan's average tariff rate on wood products (2.1 percent) is not especially higher than those of other developed countries (1.1 percent for Canada, 1.2 percent for the U.S., 1.4 percent for EC, and 2.4 percent for New Zealand).

In regard to Japan's opposition to further liberalization of wood products trade, the Government of Japan has argued that the abolition of tariffs on individual wood products is not acceptable in the discussions at WTO, from the perspectives of global environmental protection and sustainable use of exhaustible natural resources. The Government of Japan requests that the U.S. Government not view Japan's import policy of wood products as inappropriate only from the tariff levels aspect.

#### **8. Marine Craft**

- (1) Japan and the United States have been discussing Japan's marine craft certification system at the Japan-U.S. Trade Forum and at the Japan-U.S. Small Craft Working Group. Specifically, seven issues were placed on the agenda and four issues have already been resolved. The Government of Japan understands that discussions are continuing toward the resolution of the remaining issues. The points mentioned in the Report ignore this process to resolve the issues through the cooperative engagement of the two countries, as well as the efforts of both sides.
- (2) In particular, the U.S. proposal for Japan to exempt craft having CE certification from Japanese inspection is a completely new proposal which has not even been discussed as an agenda item at the above Japan-United States Small Craft Working Group meetings. Furthermore, the Government of Japan understands that CE certification is a regional certification system of the

European Union (E.U.) and has not been incorporated into law even in the United States. The unilateral assertion that Japan should adopt a certification system of a third country ignores the fact that certification systems are developed under national sovereignty, taking into account factors such as the legal system of each country, people's sense of safety, and circumstances of industry, and is therefore inappropriate.

### **9. Leather/Footwear**

- (1) Regarding the tariff quota system on leather shoes, the Government of Japan has made public the application procedures and the quota allocations and also distributed some amounts of quota to new entrants. The Report is therefore inaccurate in pointing out that, "Indeed, Japanese authorities make no effort to limit quota allocations to firms that plan to use them."
- (2) The Report cites the "potential threat to the reputation of their brands" as the reason the U.S. industry avoids opting for license arrangement in footwear production in Japan, and implies that Japanese licensees have not been capable of upholding the brands' reputation. However, the reference is groundless and one-sided.

## **STANDARDS, TESTING, LABELING AND CERTIFICATION**

### **1. Beef**

With respect to comments favoring to ease the import requirements, Japan has repeatedly indicated and would again like to point out that, first of all, every best effort should be devoted to complying with the current import requirements; and secondly, if there is a scientific justifications, any countries are allowed to introduce and maintain more stringent measures than those based on international standards.

### **2. Enforcement of Maximum Residue Limits (MRLs)**

- (1) The tightening of inspections performed when residual agrochemical violations are discovered has been implemented to the minimal extent necessary, taking into account Codex guidelines as well as the results of inspections at the time of import, data related to the status of control of agrochemical use, and residual agrochemicals of the exporting country submitted by the government of the exporting country.
- (2) Based on the same approach taken with domestically-produced food products, the Government of Japan has established a system of control over agrochemical use and residual agrochemicals which enables determination of cause and implementation of measures to prevent reoccurrences in cases of violation and thus exercises control to the minimum extent necessary.
- (3) As mentioned above, the level of the tightening inspection is differentiated by considering the status of control of agrochemical use and residual agrochemicals, and so on. Therefore, the concerns raised in the Report about the inspections from the perspective of national treatment are inappropriate.
- (4) Data concerning the status of control of agrochemical use and residual agrochemicals, which the Government of Japan has been requesting the U.S. Government to submit since May of last year, was presented in January of this year, and the Government of Japan has sent specific questions regarding this data.

### **3. Restrictive Food Additive List**

The Report claims that the Government of Japan has not proceeded to authorization of the food additives which are proven safe internationally and are widely used. However, with regard to 46 unauthorized food additives which the Government of Japan, on its own initiative, is proceeding with consideration on the authorization, 7 food additives have been authorized and 29 food additives are under evaluation by the Food Safety Commission, the independent agency, and thus procedures for authorization are definitely being implemented.

### **4. Poultry**

With respect to the claim in the Report that Japan's import suspension is in violation of international guidelines, Japan has imposed suspension on a state by state basis against low pathogenic avian influenza, since it has been reported that H5 and H7 viruses of low pathogenicity can mutate into highly pathogenic viruses. Therefore, it is not correct to state that said measure causes "unnecessary" damage to the poultry trade.

### **5. Cosmetics and Quasi-Drugs**

The Report claims that the process of applying for approval is complicated and not transparent and that advertising labels based on verifiable data are not permitted. However, the Government of Japan believes that transparency is ensured by publicly announcing the standards of approval, the documents necessary for application, widely used additives, and so on. Furthermore, the effectiveness of cosmetics and quasi-drugs can be advertised if approval is obtained by presenting substantiating data.

## **GOVERNMENT PROCUREMENT**

### **Construction, Architecture, and Engineering**

- (1) Regarding the number of public project contracts which the U.S. companies have received in Japan, as stated last year, 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. The measures do not ensure an increase in the value or number of procurements from foreign suppliers. Such increases depend on the efforts made by foreign suppliers.
- (2) The Report includes references regarding U.S. recognition of the Japanese public construction works market, joint ventures, qualifications and evaluation criteria, structuring of individual procurements, and transparency of bid/contract procedures. They are inappropriate and one-sided descriptions that reflect neither the measures the Government of Japan has taken nor the facts it has provided to the U.S. Government.
- (3) It should be fully acknowledged that the Government of Japan has responded to many inquiries from the public and private sectors of the U.S. in a prompt and adequate manner.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

### **1. Patents**

- (1) With regard to lawsuits relating to intellectual property rights (IPR), Japan has been implementing various appropriate measures to handle such lawsuits more expeditiously,

including the establishment of the Intellectual Property High Court in 2005 where the judges and judicial research officials being conversant with IPR cases are posted. As a result of those measures, the duration of court deliberations has been shortened. Therefore, it is incorrect that IPR lawsuit procedure in Japan is slow.

- (2) With regard to the protection of confidential business information associated with lawsuits, the amended Patent Law of 2004 (including Article 105-4, Article 105-7 and Article 200-2 of the Patent Law) allows the court to issue an order forbidding parties to the lawsuit to use or present confidential business information other than that which is relevant to the purpose of pursuing the lawsuit and provides for criminal penalties for violations of such an order. The amended Patent Law also introduces provisions that allow the trial to be closed to the public in order to protect confidential business information. Thus, the claim that protection is inadequate is incorrect.
- (3) The U.S. has expressed a new concern this year regarding the practice of allowing only a narrow interpretation of rights. However, factual evidence supporting this concern is completely absent from the Report, and Japan has not ascertained such factual evidence.
- (4) With regard to the system of request for examination, the more work sharing activities are enhanced between Japan and the U.S., the more incentives will be given for applicants to make a request at an early stage to enable the search/examination results in Japan to be used in the U.S.  
In view of enhancing such work sharing activities, the examination guideline ensures that all reasons for the rejection should be examined at the first action of the examination. That prevents so called "piecemeal examination".
- (5) While Japan has implemented all measures relating to the patent system, which were agreed upon under the Japan-U.S. Framework for a new Economic Partnership in 1994, the Government of the United States has yet to fully implement those measures, such as the abolition of exceptions to the early publication system. The Government of Japan urges the Government of the United States to promptly and fully implement the agreed upon measures.

## **2. Copyrights**

The Government of Japan has appropriately responded the violation of rights on the Internet by removing information which violates these rights as a measure related to the Law on Restrictions on the Liability of Internet Service Providers. Therefore the criticism in the Report mentioning that the measure is inadequate and unbalanced is incorrect.

## **3. Trademarks**

With regard to well-known trademarks, the Government of Japan has strengthened its protection more than is required under the TRIPS Agreement. The Trademark Law forbids trademark registration of foreign well-known trademarks which are used for unfair purposes (Section 4(1)19). Therefore, it is inaccurate that the protection of well-known marks remains weak in Japan.

## **4. Geographical Indications (GIs)**

- (1) With regard to GIs, the Unfair Competition Prevention Act prevents any indication which may cause misrecognition of a place of origin. Also, the Trademark Law refuses or invalidates a trademark registration which includes such geographical indications. In addition, with regard to

additional protection for GIs for wines and spirits stipulated in the Article 23 of the TRIPS agreement, it has been enforced by administrative action based on the Law Concerning Liquor Business Associations and Measures for Securing Revenue from Liquor Tax. Moreover, regarding the competition between Trademark and GIs, the Trademark Law refuses or invalidates a trademark registration which includes such competitive indications. In addition, registration of GIs for wines and spirits of other countries is not required, as they are protected under Article 23 of the TRIPS agreement.

Therefore, it is incorrect that the protection measures of GIs are uncertain.

- (2) The Government of Japan has disclosed all the lists of GIs which JPO examiners refer to in trademark examinations. Therefore, the reference in the Report in this respect is also incorrect.
- (3) There is a reference in the Report that the Commissioner of the National Tax Agency has designated the wines and distilled spirits GIs of Japan “to be protected in the territories of WTO members.” However, the Commissioner of the National Tax Agency was merely designating the place of origin of Japanese GIs as falling under Article 22, section 1 of the TRIPS Agreement, and protection outside of Japan is implemented in accordance with the laws of the various member countries based on the TRIPS Agreement, so the reference is incorrect.

## **5. Trade Secrets**

- (1) It was pointed out that Japan’s litigation procedures are inadequate to protect trade secrets: however, there are provisions in Japan’s Civil Proceedings Law for examination of evidence to protect trade secrets and the like. In addition, under the 2004 amendments to the laws related to intellectual property, such as the Unfair Competition Prevention Act, when trade secrets are included in preparatory documents or evidence, the courts can now prohibit the relevant trade secrets from being used or disclosed by concerned parties (Article 10, Unfair Competition Prevention Act, etc.) Moreover, when concerned parties conduct examinations pertaining to the trade secrets in trade secret infringement litigation, the courts are now able to prevent the release of those examinations under certain conditions and procedures (Article 13, etc. of the same law).
- (2) In regard to criminal law protection of trade secrets, under the 2005 and 2006 amendments to the Unfair Competition Prevention Act, unfair use of trade secrets by former employees is subject to punishment under certain circumstances, and, furthermore, penalties have been increased at the same time that penalties for violations overseas and corporate violations have been introduced.

## **SERVICES BARRIERS**

### **Insurance (Postal Insurance)**

- (1) The U.S. Government questioned if fair competitive conditions are being achieved, whether internal mutual support is occurring between companies, including whether arms length rules are being applied based on the Insurance Business Law, and whether appropriate disclosure is occurring. Financial information from the Japan Post Holdings, Postal Service, Post Office, Postal Savings and Postal Life Insurance is disclosed based on the Company Law, the Banking Law, the Insurance Business Law, and other relevant laws just as it is for other private companies. In addition, when there are transactions in public capital markets, they are subject to the Financial Instruments and Exchange Law (Securities and Exchange Law). Furthermore,

transactions between the Postal Life Insurance, and Japan Post Holdings or the Post Office are subject to obligations in the Insurance Business Law, including the arms length rule.

- (2) The U.S. Government has emphasized the importance of transparency and fairness in product sales between the Post Office and other private companies, but it is possible for the Post Office to enter life insurance underwriting contracts with private insurance companies other than the Postal Life Insurance. An equal footing is systematically ensured between the Postal Life Insurance and other life insurance companies, pertaining to the use of the Post Office network. Furthermore, the selection of products to be sold by the Post Office is entrusted to the management of the Post Office.
- (3) The U.S. government insists that approval of new Postal Life Insurance products be fair and transparent to concerned parties. Future expansion of the business scope of the privatized company will be approved through a transparent and fair procedure whereby the Prime Minister (whose power is delegated to the Commissioner of the Financial Services Agency) and the Minister of Internal Affairs and Communications, upon hearing an opinion from the Postal Services Privatization Committee, will decide on such expansions, considering both fair competitive relationships with other financial institutions and business conditions of the new companies for the introduction of new products.
- (4) The Government of Japan recognizes the importance of transparency in the privatization process. The Postal Services Privatization Committee has published the summary and detailed minutes based on its standing order and has provided opportunities for interested private parties to exchange views when the Committee thinks it is necessary.

#### **ANTICOMPETITIVE PRACTICES**

- (1) The Act against Unjustifiable Premiums and Misleading Representations (the Act) just prohibits misrepresentations and unjustifiable premium offers which cannot be considered as fair competitive measures, and so it is not correct that the Act imposes excessive restrictions on sales promotion techniques. In addition, in March 2007, the maximum amount that businesses may offer as non-prize premium in accordance with the premium regulation was doubled, which makes it possible to offer more non-prize premiums, and new entrants to the market may effectively make use of this provision.
- (2) The fair competition codes operated by the fair trade associations are entrepreneurs' voluntary rules intended to eliminate misrepresentations and unjustifiable premium offers, as part of the system to promote compliance with the Act. The JFTC authorizes those codes only if those are in accordance with the requirements of the Act, such as those that are appropriate for the purpose of preventing unjustifiable customer inducement and for securing fair competition. Accordingly, the description "the fair competition codes impose additional standards that are stricter than required under the Act" is inaccurate.

#### **OTHER BARRIERS**

##### **1. Aerospace**

When acquiring equipment and material, acquisition methods (e.g. domestic developments, domestic production based on license, imports) have been appropriately decided based on cost

effectiveness, with consideration on ease to maintain, supply, and educate/train, as well as the need to make improvements intrinsic to Japan, in addition to the aspect of performance and price. Thus, the description, "the JDA has a general preference for domestic production or the licensing of U.S. technology for production in Japan to support the domestic defense industry," is incorrect.

## **2. Civil Aviation**

- (1) It is regrettable that although the U.S. and Japanese aviation issues have been discussed, the U.S. Government only described their one-sided view in this Report.
- (2) It should be noted that the U.S. carriers have kept a considerably large share of slots at Narita as a grandfather right, which has resulted from longstanding inequality of the Air Transport Agreement. The number of slots used at Narita by the U.S. carriers is double that of the Japanese carriers for passenger services and is larger than that of Japanese carriers by 70% for cargo services, concerning the routes between the U.S. and Japan. Thus, there is a gap between the U.S. and Japanese carriers in the number of slots they respectively use at Narita. It is regrettable that the Report is described as if U.S. carriers were in a disadvantageous position, disregarding the above-mentioned fact. It is also worthwhile to note that the major reason why the recent formal consultations did not reach an agreement is considered to be that the U.S. Government could not resolve the issue of correcting inequalities in the above-mentioned slots at Narita, which is of the greatest interest for the Government of Japan.
- (3) The landing fee should be determined by discussions between airport companies and airlines. The appropriate discussion led to the NAA's recent change in 2005 of the landing fee which reduced about 11% of total airport costs. This change is highly appreciated by the IATA and not to be criticized by the U.S. Government. The Report is not correct in pointing out that the reduction of the landing fee is offset by the other fee changes.  
Furthermore, the Government of Japan recognizes the necessity to ensure transparency and fairness in fees at a privatized airport such as Narita Airport.

## **3. Business Aviation**

Japan's regulations pertaining to the operation and maintenance of aircraft and to aviation safety are in accordance with provisions of the Chicago Convention and with Annex 6 of that convention. Its Commercial Aviation is based on Part 1 of Annex 6 of that convention, and its Non-Commercial Aviation is based on Part 2 of Annex 6 of that convention. Therefore, it is a factual misapprehension to say that in Business Aviation, Non-Commercial Aviation operations and maintenance regulations are the same as regulations for Commercial Aviation.

## **4. Transport/ Port**

The Report insists that Japan's ports are restrictive, inefficient, and discriminatory. However, the situation of ports in Japan has significantly improved through such measures as the notable improvement of prior consultation systems, new business entry realized by the abolition of an economic needs test reflected by the revision of the Port Transport Business Law, and the realization of full 24-hour/day, 364-day/year operation of terminals. The Report does not reflect recent improvement made possible by those involved.