Comments of the Government of Japan on 2006 National Trade Estimate Report

April 19, 2006
OVERVIEW

The Governments of Japan and the United States are having 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 important and sincerely engaged in the dialogue under the Partnership and other bilateral fora, and intends to continue constructive discussions between the two governments.

In the 2006 National Trade Estimate Report on Foreign Trade Barriers (hereinafter referred to as “the Report”), however, there are inappropriate or inaccurate descriptions in light of the accomplishments made through the dialogue between the two governments. Such descriptions could undermine or devaluate the constructive dialogue, and should be avoided.

From this perspective, the Government of Japan points out to the Government of the United States the following problems of the Report in general as well as those on specific issues below. It strongly urges the U.S. Government to redress these points in compiling similar reports hereinafter.

First, the Government of Japan urges the U.S. Government to accurately reflect in the Report the achievements of the dialogue between the two countries. On many issues mentioned in the Report, constructive discussions are being held at the Japan-U.S. Regulatory Reform and Competition Policy Initiative (“Regulatory Reform Initiative”). There are many references in the Report, however, which do not take into account the achievements made at the initiative. One-sided arguments and descriptions that are not based on facts could undermine the credibility of the constructive dialogue.

Second, the Government of Japan urges the U.S. Government to accurately present the meaningful role of the existing framework of the Japan-U.S. dialogue to its people and Congress. The two countries, as important economic partners, exchange opinions at the Regulatory Reform Initiative and other fora, on regulatory reforms each side deals with, on its own initiative, based on the principle of two-way dialogue. 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 invite wrongly-based criticism against the joint endeavor.

Third, the Government of Japan expresses its concerns about some parts of the Report which conclude that there are barriers hindering foreign access to Japan’s market by citing the low share of U.S products in the market. It urges the U.S. Government to refrain from publicly expressing this inaccurate recognition. 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 a 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 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. 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**

1. **Telecommunications**

   (1) The Government of Japan has presented 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 presentation. In addition, the U.S. argument is one-sided without understanding and recognizing relevant facts accurately, which the Government of Japan finds regrettable.

   (2) For example, it is indicated that NTT imposes high interconnection charges on DSL services, but this statement is groundless. Ministry of Internal Affairs and Communications has regulated the line-sharing charges of the subscriber lines of NTT East and West at the cheapest level in the world. As the UK’s Ofcom report mentions, this has created Japan’s unprecedentedly competitive DSL market.

   (3) 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 the 3G wireless communications. Both these developments would have not been achieved without an effective competitive and regulatory environment, which is stated in the Report. In making and revising regulations, the Government of Japan employs fair and neutral policies through transparent processes including public comment procedures. Therefore, it cannot share the views presented in the Report on Japan’s regulatory status.

   (4) The Government of Japan has established 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 (saitei) by Minister for Internal Affairs and Communications, and mediation (assenn) and arbitration (chusai) by the Telecommunications Business Dispute Settlement Commission. The telecommunications carriers should first make full use of these measures to address individual business problems.
2. Information Technologies

(1) Privacy

Implementation guidelines for the Act on the Protection of Personal Information are developed through deliberations at the Quality-of-Life Policy Council. Also, the deliberation processes of guidelines are implemented in an adequate manner including setting periods of Public Comments based on the amended Administrative Procedures Law. In addition, the relevant ministries and agencies are in close contact and cooperation with each other. Therefore, there is no need for the U.S. Government to be concerned about consistent and fair enforcement of the Act and its guidelines.

Information about violation cases of the Act and corrective actions is published when necessary, and the outline of the information is to be made public as “the Status of Enforcement of the Act” in accordance with the Act. The Government of Japan urges the U.S. Government to fully take into account of these measures when discussing this issue between the two governments.

(2) Intellectual Property Rights Protection

The Government of Japan has made it clear sincerely and sufficiently to the U.S. Government that Japan has appropriately addressed the issues of copyright protection on the internet with 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 regrettably repeats the indication with no concrete ground that these measures are unclear and lack balance among parties concerned.

3. Medical Devices and Pharmaceuticals

(1) When review periods consumed by Japan’s Pharmaceuticals and Medical Devices Agency (PMDA) and US Food and Drug Administration (FDA) are compared, Japan’s review period does not take much longer than that of the United States. The delay in approval process through a series of steps from an application to an approval is partially caused by a timing of application and incomplete application documents.

(2) The Central Social Insurance Medical Council (Chuikyo) has provided medical device and pharmaceutical industries with opportunities to express their views on Reimbursement Pricing System reform, and held hearings from on the reform in FY2006.

(3) The "Foreign Average Price" rule for medical devices is intended to set the reimbursement prices of medical devices in Japan gradually near to 1.5 times of the average list prices of the U.S., the U.K., Germany, and France. The cost which derives from the differences of commercial custom between Japan and these four countries has been fully taken into consideration.

(4) The Law for Securing Stable Supply of Safe Blood Products was enacted in 2002 to ensure stable supply of blood products and to improve their safety. This law does not intend to unfairly
discriminate foreign manufacturers and products or to be implemented in an unilateral and trade-restrictive manner.

**STRUCTURAL REGULATORY REFORM**

1. **Antimonopoly Law and Competition Policy**

The Japan Fair Trade Commission (JFTC) has already taken measures to maximize the effectiveness of the leniency program, such as stipulating the requirements for leniency applications in the regulation of JFTC and clarifying the policy that JFTC will not disclose to the court or others the contents of a report submitted by leniency applicants to the JFTC. In addition, since January 2006 when the amended Antimonopoly Act came into effect, JFTC has implemented prior procedures (admitting proposed recipients of warning the opportunity to present views and submit evidence to the JFTC) to warning in two cases suspected of violation of the Premiums and Representations Act. Thus, JFTC’s procedural fairness is ensured adequately.

2. **Commercial Law**

(1) One year after the Corporate Code comes into effect, the triangular merger using a Japanese subsidiary will become available to foreign companies without such requirements as the subsidiary should be listed on Japanese stock markets. Under the Corporate Code, voting requirements for approving a merger at the shareholders’ meeting differ depending on the type of merger consideration. A ministerial ordinance regarding the details of classification of merger consideration and voting requirements is currently under consideration.

(2) As for tax treatments relating to the flexibility of merger consideration, the Government of Japan will examine the issue and reach a conclusion before the related provisions of the Corporate Law come into effect, taking into account the appropriateness and equity of taxation as well as how to prevent tax evasion, as it has repeatedly stated.

(3) Regarding facilitating Tender Offer Bids (TOB), the Government of Japan has taken appropriate measures, including the submission of the bill to amend the Securities and Exchange Law to the Diet on March 13, 2006, which would allow withdrawal of TOB and flexibility in changing TOB conditions.

(4) Article 821 of the Corporate Code regarding quasi-foreign companies is equivalent to Article 482 of the current Commercial Code. Article 821 is favorable to quasi-foreign companies since it will treat such company as a legal entity while the definition of quasi-foreign companies remains the same. Therefore, it is clear that Article 821 would not adversely affect foreign companies as long as they are duly registered in Japan and conduct their operations in a lawful manner. This was clarified during the deliberation on the Corporate Code bill in the Diet.

During the session in the Judicial Affairs Committee of the House of Councilors, an amendment that Article 821 should be deleted was proposed by an opposition party but rejected,
and the original provision was adopted by a majority vote of the government party and others. Given that the intention of the legislature regarding Article 821 was thus expressed, it is quite difficult for the Administration to propose an amendment to Article 821 when the Corporate Code is yet to come into effect. Therefore, the Government of Japan has no intention to propose such amendment before it comes into effect in May 2006.

In addition, while the Ministry of Justice presented its interpretation of Article 821 Section 1 at the deliberation at the Diet, it issued an internal notification which clarifies the interpretation in order to sweep away the suspicion of foreign companies operating in Japan.

3. Distribution and Customs Clearance

(1) Regarding customs procedures in Japan, the Government of Japan has introduced various measures to accelerate and promote efficiency: In 1996, the "Instant Import Permit upon Arrival System", which allows importers to obtain import permits at the time of arrival of the aircraft; in 2001, the "Simplified Declaration Procedure", which makes it possible to have goods released before filing declaration for customs duty payment; in 2004, the Simple Declaration System for non-dutiable air cargo. In addition, customs clearance procedures for arrival aircrafts from the entry to the cargo transfer have been computerized.

The Government of Japan imposes “the provisional opening handling charges” on customs procedures such as import declaration outside business hours of the customs, in accordance with the principle of beneficiary cost sharing. The U.S. Government, however, imposes the charges for customs procedures within or without business hours, with more emphasis on the principle of beneficiary cost sharing.

Therefore, it is incorrect that customs procedure in Japan is relatively inefficient and costly.

(2) The purpose of the amendment of the City Planning Law is not to restrict opening large-scale retail stores but to control locations of urban functions in order to cope with population decrease and rapidly aging society in Japan. In areas where large scale facilities that attract a large number of people would be restricted, those facilities may be constructed through due process of zoning amendment. The amended law would provide private developers with the right of the proposal of City Planning. Therefore, the amended law would not restrict business activities and competition between distribution enterprises, and not affect sales of goods in accordance with consumers’ needs. The Government of Japan, therefore, urges the U.S. Government to have correct understanding of the issue.

[IMPORT POLICIES]

1. Agricultural Products

Import policies on the agricultural products mentioned in the Report 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.

2. Rice Import System

(1) While access opportunity for minimum access rice to consumers and rice processors has 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 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. 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.

(2) 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 which competes against U.S. rice in terms of type of rice and usage in Japan. In order to rival Chinese rice in SBS tender system, U.S. rice needs to improve its competitiveness in quality and price.

(3) In December 2002, the Government of Japan launched 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.

(4) 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 2004.


3. 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 more than 40 percent since 1986, while wheat consumption per capita in Japan has been at almost the same level.

4. Corn for Industrial Use

The bound tariff rate on import corn for cornstarch is 50 percent or 12 yen per kilogram, whichever is higher. However, with a view to assuring demand of Japanese potato starch, the tariff is zero under the tariff quota system on the condition that the importers purchase Japanese potato starch. This measure gives preferential tariff to importers within the framework of the agreed concessions. The importers are free to choose the rate they prefer.

The Government of Japan has submitted a bill to the Diet to replace the condition above with a new more transparent levy system.

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 which the domestic producers were facing through consultations with exporting countries including the U.S. during the Uruguay Round negotiations. The tariff emergency measures for beef and pork were introduced as an indispensable compensation for the voluntary tariff reduction, again, based on the result of consultations with them. 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.

The Government of Japan 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 FY2006 in Revised Customs Tariff Law and Others, in consideration of the recent trend of beef price and consumption. This law has been enforced since April 1, 2006, but this fact is not covered by the Report.

6. Wood Products

Japan’s average tariff rate on wood products (2.1 percent) is not especially 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 inappropriate only from the tariff levels aspect.
7. Marine Craft

The Japanese and the U.S. Governments have been discussing specific issues on Marine Craft, including at the Japan-U.S. Trade Forum. The Government of Japan understands that the U.S. Government appreciated the outcomes. The recent share of the imported maritime crafts in the boat selling market in Japan is nearly 50%. This proves that there is no trade barrier.

The certification system should be designed based on the regulation system and the actual condition of the industries in each country. The Government of Japan is concerned that the U.S. Government has unilaterally proposed that Japan adopt the CE program, although the United States itself has not adopted the program in its marine craft certification system.

8. 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 amount 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 had not been capable of upholding the brands’ reputation. However, the reference is groundless and one-sided.

STANDARDS, TESTING, LABELING AND CERTIFICATION

1. Beef

(1) The Circumstances of Events after Resumption of US Beef Import on December 12, 2005

(a) The US beef import to Japan was resumed in accordance with the trade requirements which was confirmed between the Government of Japan and the Government of the United States on December 12, 2005; however, on January 20, 2006, the Government of Japan suspended import proceeding of all US beef because the imported veal contained vertebral column that is not allowed to be exported to Japan by the requirements. The Government of Japan urged the Government of the United States to conduct full investigation and thoroughly prevent recurrence of similar cases.

(b) In order to solve the issue, the two Governments have been exchanging views and information. On March 28 and 29, 2006, the two Governments held the expert talks on beef and shared, at a certain extent, common understanding as to the cause of the incident.

(c) The Government of Japan has suspended the US beef import procedures due to its doubts over the USDA's system to make proper checks in addition to problems of the
slaughterhouse and fabricator. For resumption of the import procedures, it is vital to dispel doubts over the confidence in the system agreed upon by the Government of Japan and the Government of the United States.

(d) While, the Government of Japan will present the situation to the Food Safety Commission and exchange views with consumers as a part of risk communication, the Government of the United States will re-audit the plants eligible for export to Japan and implement preventive measures. The Government of Japan and the Government of the United States will discuss the next step based on the results of the actions by both sides.

(2) Specific Comments

With regard to the US comment in the Report “the United States is also urging Japan to take the next step to bring its measures in line with international guidelines of the World Animal Health Organization (OIE) by allowing imports of all ruminant and ruminant products deemed safe,” the first priority for the Government of the United States should be fully complying with the requirements agreed upon by the governments and recovering the reliability of the Export Verification program. It is not appropriate to discuss reviewing the program while the import procedure has not been resumed.

2. Building Size, Designs, and Wood Product

Some descriptions of products such as wall coverings in the Report sound as if the Government of Japan has taken excessive measures on standards, testing, labeling and certification without considering international standards and scientific findings. In this regard, it should be articulately noted that the Government of Japan has made rational decisions on related measures taking international standards into consideration and based on examination by third-party institutions with scientists among their members, after going through necessary procedures including solicitation of public comments and consultation with interested countries.

3. Biotechnology

(1) With the consumers’ growing interest in food safety and security, labeling of genetically-modified (GM) foods with their safety authorized has been required in Japan since 2001, except for foods whose DNA or protein derived from gene modification technology do not remain after processing. The primary objectives are to enable consumers to choose products based on appropriate information and to indicate that the safety assessment is conducted under government responsibility for public health.

Japan has been actively participating in the discussion at Codex on developing international guidelines for labeling of GM foods.

(2) Since July 2003, Food Safety Commission (FSC) has been examining in a scientific and neutral manner the safety of GM food products based on the safety standards defined by FSC.
The standards were drafted on the basis of guidelines for the conduct of food safety assessment of GM food products established by Codex.

4. Restrictive Food Additive List

(1) The Government of Japan examines a revision of standards of food additives including a new designation of food additives, when a person or a company submits an application together with required documents to the Minister of Health, Labour and Welfare (MHLW). The Government of Japan understands that the U.S. and EU have similar authorization processes.

(2) Regarding post-harvest fungicides, the description in the Report “No post-harvest fungicides have been approved since the 1970s” is false, because the Government of Japan designated Imazalil as food additive in 1992.

5. Nutritional Supplements

In Japan, under the system for “Food for specified health uses (FOSHU)”, MHLW secures appropriate statements on labels and in advertising by approving health claims of foods whose effectiveness and safety have been confirmed. MHLW has established and properly administers the standard processing period of review of FOSHU. It has made public all requirements for FOSHU and “Food with nutrient function claims” and regulations and notifications, thereby securing transparency of the regulation.

6. Cosmetics and Quasi-Drugs

Japan’s regulation on cosmetics and quasi-drugs is equally imposed on domestic and foreign companies. In formulating the regulation, transparency is secured through public comment procedures and WTO notification. Therefore, the Government of Japan does not believe that Japan’s regulation includes unnecessary and burdensome requirements to the trade.

7. Poultry

(1) In 2002, the Governments of Japan and the United States agreed on animal health requirements that importing suspension should be imposed on poultry meat state by state in case of outbreak of low pathogenic strains of avian influenza (AI), and nationwide in case of outbreak of highly pathogenic strains of AI. The Report contains an inappropriate description which could lead readers into misunderstanding that Japan has imposed importing suspension on poultry meat from all the states at the outbreak of low pathogenic strains of AI.

(2) A notable background of Japan’s continued import suspension on poultry meat from Connecticut and New York 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...
in spite of the request from the Government of Japan. Japan lifted the suspension on poultry meat from New Jersey on August 2, 2005 because the AI free status was confirmed by information provided by the U.S. Government. The Government of Japan finds the description of the Report inappropriate because the U.S. Government, without providing such necessary information to Japan as the AI infected country, shows recognition as if Japan has imposed import suspension on poultry meat from these states arbitrarily.

**GOVERNMENT PROCUREMENT**

**Construction, Architecture, and Engineering**

(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. The measures do not ensure an increase in the value or number of procurements from foreign suppliers. Such increase depends on the efforts made by foreign suppliers.

(2) The Report includes the references regarding the U.S. recognition of Japanese public construction works market, joint ventures, the qualifications and evaluation criteria, the 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 and the increase in number of judges dealing with IPR cases. Therefore, it is incorrect that IPR lawsuit procedure in Japan is slow.

(2) In terms of the patent system, while Japan has implemented all the measures 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 measures.
2. Copyrights

(1) Although there is no system of statutory damages in Japan, the Copyright Law introduced a new calculating system of the amount of damages in order to lessen the burden of proof for the right holder in 2003. In this system, the amount of damages can be calculated as the amount multiplying the number of pirated copies sold by the amount of profit per legitimate copy. In addition, the Code of Civil Procedure has been amended to expand methods for pre-action procedure for the collection of evidence. In this manner, the Government of Japan has already taken adequate measures for the protection of copyrights.

(2) In addition, as an initiative by the Government to prohibit copyright infringement, it takes measures for protection of information assets of each government agency, such as regulations and decrees of the agencies which explicitly state any violations of the Copyright Law or other laws and regulations are subject to disciplinary sanction.

(3) In terms of the personal use exceptions in the use of peer-to-peer networks and in copying entire textbook by students, the Copyright Law sets an adequate balance between the protection of copyright holders and the needs of users of copyrighted works in accordance with the three-steps-test of the Berne Convention. Therefore, there is no inadequacy in the scope of personal use exception. The Government of Japan considers reproductions for use other than personal use as copyright infringement and takes adequate measures against these conducts.

(4) With regard to the access control against circumvention, the Unfair Competition Law provides for civil remedies including injunction and compensations for damages. Therefore, the Government of Japan considers these protections appropriate.

(5) The term of copyright protection should be determined by each country in consideration of the proper balance between protection of creative production and development of culture and in accordance with the obligations under international treaties. The term of copyright protection in Japan is adequately determined under such balance and in accordance with the international treaties.

3. Trademarks

With regard to well-known marks, the Government of Japan has strengthened its protection more than required under the TRIPS Agreement. The Trademark Law forbids a trademark registration of foreign well-known marks which are used for an illicit purpose (Section 4(1)19). Moreover, a legitimate owner of a well-known mark is allowed to challenge against the third party’s registration in an invalidation trial or an infringement lawsuit in addition to ex officio examination by JPO examiners (Section 46 of the Trademark Law, and Section 104ter of the Patent Law applicable mutatis mutandis under Section 39 of the Trademark Law). 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 Law prevents any indication which may cause misrecognition of 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. Therefore, it is incorrect that the protection of GIs is uncertain.

(2) The Government of Japan has disclosed all the lists of protected GIs to which JPO examiners refer in trademark examination. Therefore, the reference in the Report in this respect is also incorrect.

(3) With regard to a trademark consisting of the combination of a regional name and a product name, the Government of Japan has introduced a new system in the amendment of the Trademark Law, in which such trademark could be registered as a regionally-based collective marks in an early stage in order to protect region brand more adequately and to support enhancing competitiveness and revitalizing regional economy. The Government of Japan regards this system not as the protection/registration of GIs but as a system under the Trademark Law.

(4) Because alcohol beverage industry is administrated by National Tax Agency in the Government of Japan, the commissioner of National Tax Agency may designate the place of origin of GIs regarding alcoholic beverages exclusively.

5. Trade Secrets

(1) With regard to the protection of trade secrets in litigations, the amended Patent Law in 2004 has introduced new provisions allowing the court to issue an order which prohibits a litigating party to use/disclose the trade secrets of another party for other purposes than pursuing litigation, imposing criminal penalties against violation of such order, and allowing the court to make a trial private for the purpose of protecting trade secrets(e.g. Section 105quarter, 105septies, and 200bis, and so on). In this manner, the Government of Japan provides appropriate protection of trade secrets. Therefore, it is incorrect that the protection of trade secrets is inadequate.

(2) Also, the Unfair Competition Prevention Law enables the court to make examination of parties or witnesses regarding trade secrets private under certain requirements (Section 13 and so on). In addition, the amended Unfair Competition Prevention Law in 2005 provides the expansion of conducts which are subject to criminal penalty, the introduction of the punishment provisions against crimes occurred outside the country and corporations, and the raise of penalties. The Government of Japan has been dealing with in order to prevent illicit use of trade secrets
6. Border Enforcement

The border enforcement against products infringing IPRs conducted by the Japan Customs is based upon both the application for import suspension by right holder 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 has been increasing year by year to approximately 13,500 cases in 2005 (The number of suspended items was approximately 1.1 million in 2005). Moreover, a series of legislative revisions have been taking place for the four consecutive years to strengthen 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 and are appreciated by foreign right holders.

SERVICE BARRIERS

1. Insurance

(1) Postal Services Privatization

The Law of the Privatization of the Postal Services stipulates that future expansion of business scope 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 Minister of Internal Affairs and Communications, upon hearing an opinion from the Postal Services Privatization Committee, will decide on such expansions, considering both equivalent conditions of competition with other financial institutions and management freedom of the new companies.

The Government of Japan recognizes the importance of transparency in Japan Post reform process. In addition, the Government of Japan considers performing Public Comment Procedures appropriately in accordance with regulation of Administrative Procedure Act. The Postal Services Privatization Committee can appropriately make the opportunities to hear views of interested parties if the Committee considers it necessary.

(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 appropriate to apply regulations, inspection and burden to *kyosai* that are equal to those imposed on private insurance.

In addition, JA kyosai is supervised by the same regulatory standards as that in the Insurance Business Law, after amendment of Agricultural Cooperative Law in April 2005.
2. Education Services

Under the current system, preferential tax treatments are provided to those juridical persons who comply with certain prescribed regulation(s) and organize universities, special training colleges and other institutions established and managed under such laws as School Education Law. Tax privilege can be given equally to the establishers of foreign universities in Japan on the condition that they comply with the above mentioned regulations. The current system therefore by no means gives any unequal treatment to the establishers of foreign universities in Japan, compared to their Japanese counterparts.

**INVESTMENT BARRIERS**

In order to promote foreign direct investment in Japan, the Government of Japan held the Japan Investment Council chaired by the Prime Minister and composed of all the cabinet members on March 9, 2006, and decided that it aims to double the GDP ratio of foreign direct investment (stock) in Japan to around 5% by 2010.

**ANTICOMPETITIVE PRACTICES**

(1) The Act against Unjustified Premiums and Misleading Representations (the Act) just prohibits misrepresentations and unjustified premium offers which cannot be considered as fair competitive measures and does not impose excessive restriction on sales promotion techniques.

(2) The fair competition codes operated by the fair trade associations are entrepreneurs’ voluntary rules intended to eliminate misrepresentations and unjustified premium offers, as part of the system to promote compliance with the Act in accordance with the Act. Moreover, JFTC certifies only those codes which are in accordance with the requirements of the Act, such as those are appropriate for the purpose of preventing unjustified invitation of customers and securing fair competition. 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 inappropriate.

**OTHER BARRIERS**

1. Aerospace

In procuring defense equipment, the general rule in deciding the equipment model to be procured and its procurement method (by domestic production, licensing of U.S. technology for production in Japan, or import) demands a cost-benefit analysis of the equipment's performance compared to its life-cycle cost, including costs for education and training as well as for maintenance and repair into the future. Thus, the description "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 not appropriate.
2. Civil Aviation

It is regrettable that although the U.S. and Japanese aviation issues have been discussed, the U.S. Government described their one-sided view in this Report.

It should be noted that the U.S. carriers have kept the considerably large share of the slots at Narita as a grandfather right, which has resulted from longstanding inequality of the Air Transport Agreement. The number of the slots used at Narita by the U.S. carriers is double of that for the Japanese carriers for passenger services and is larger than that for Japanese carriers by 50% 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 the 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 informal air transport consultations did not reach an agreement is considered that the U.S. Government did not make any efforts to realize the level playing field for the U.S. and Japanese carriers at Narita, which is the greatest interest for the Government of Japan.

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 landing fee is offset by the other fee changes.

3. Transport/Ports

The sanction that the Federal Maritime Organization (FMC) unilaterally imposed upon Japanese carriers in 1997 violates the Treaty of Friendship, Commerce and Navigation between Japan and 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 provides 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 revision of the Port Transport Business Law will be put into force in May 2006 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.

The FMC introduced a new order that requires carriers to submit a report of improved situation of the ports in Japan. The order includes requirements that are beyond the extent deemed appropriate to impose upon carriers and thus it has been causing unfair and excessive burdens on carriers. If it is the case that the FMC will utilize this report in order to judge whether or not it should impose unilateral sanction that is in violation of the Treaty, it will be recognized as a serious abuse of FMC’s mandates. The Government of Japan therefore strongly urges the U.S. Government to withdraw the order which provides a basis for the reporting requirement.
Other Factual Errors

In addition to those mentioned above, the Report includes the following factual errors:

1. “Japan in 2005 began to allow private financial institutions…to engage in securities business” (p. 345)

- The Registered Financial Institutions (RFIs), the financial institutions with registrations complied with the Article 65-2 of the Securities and Exchange Law (SEL), had been allowed to engage in part of securities business even before 2005 (i.e., selling Japanese Government Bonds at their branches since 1983, and selling investment trusts since 1998). In addition, RFIs have also been allowed to act as agents for securities companies since December 2004. Even other companies and individuals with registrations, based on the Article 66-2 of the SEL, have also been allowed to engage in the agency business for securities companies since April 2004.

2. “SEL amendments...include...revisions of the law governing paperless stock transactions” (p.345)

- Paperless stock transactions are going to be introduced by the amendment of the Law concerning Book-entry Transfer of Corporate Bonds and other securities, not the SEL. These transactions are going to be realized by June 2009. The concrete date of realizing will be designated by a related cabinet ordinance.

3. “Japan Post in 2005 chose three private financial firms to produce mutual funds for sale at 550 of its 24,700 post offices in its first phase of mutual fund sale.” (p.345)

- The number of post offices which sell mutual funds in its first phase of sales in Japan Post is 575, not 550.

4. “The number of zones grew by 224 over the past year, bringing the total to 548 by the end of 2005” (p.349)

- 709 Special Zones for Structural Reform have been approved in total by the end of 2005.

5. “In 1991, Japan liberalized treatment of footwear imports, setting a footwear quota of 2.4 million pairs per year;” (p.357)

- The Government of Japan introduced the tariff quota system on leather shoes in 1986, not 1991.

6. “…the new Corporate Code takes effect in April 2006.” (p. 373)

- The Corporate Code will take effect on May 1, 2006.

7. “Invest Seminars were held… in New York and San Jose in December 2005” ( p. 373 )

- The seminars were held in these cities in November 2005.

8. “…the ”quasi-zenith” system, with the first launch scheduled for 2008” ( p. 374 )

- The first launch has been decided to be scheduled for 2009.

9. “…the Mid-Term Defense Program (JFY2005-2009), which began in April 2004” ( p. 374 )

- The program began in April 2005.