

**Trade Policy Review Body
31 January and 2 February 2007**

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TRADE POLICY REVIEW

JAPAN

Minutes of Meeting

Addendum

Chairperson: H.E. Ms. Claudia Uribe (Colombia)

This document contains the advance written questions, and replies provided by Japan.¹

**Organe d'examen des politiques commerciales
31 janvier et 2 février 2007**

EXAMEN DES POLITIQUES COMMERCIALES

JAPON

Compte rendu de la réunion

Addendum

Présidente: S.E. Mme Claudia Uribe (Colombia)

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par le Japon.¹

**Órgano de Examen de las Políticas Comerciales
31 de enero y 2 de febrero de 2007**

EXAMEN DE LAS POLÍTICAS COMERCIALES

JAPÓN

Acta de la reunión

Addendum

Presidente: Excma. Sra. Claudia Uribe (Colombia)

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por el Japón.¹

¹ In English only./En anglais seulement./En inglés solamente.

WRITTEN QUESTIONS BY MEMBERS

QUESTIONS BY SINGAPORE

Goods - Tariffs

We commend Japan for its generally liberal tariff regime, particularly in non-agricultural products. We note that Japan has bound 98.8% of all of its tariff lines. The average bound MFN tariff was 6.5% which is identical to the average applied MFN tariff, hence giving a high degree of predictability in Japan's tariff system. However, we would appreciate Japan's comments as to how it plans to address or liberalise the following weaknesses or distortions in its otherwise liberal tariff regime: -

- Re para 23 (page 36) of the Secretariat Report, we note that tariff escalation from semi-processed to final goods is present in some sectors, notably textiles, petroleum refineries, and non-electrical machinery. Escalation from primary to semi-processed and final products is evident for industrial chemicals and rubber. Tariff escalation results in a bias against imports of more processed goods. Further to the distortions that that tariff escalation creates in Japan's tariff system, this may also hamper the exports of Members (including developing countries) which may desire to export more processed or more value-added goods. We would appreciate if Japan could indicate when and how it plans to address this distortion in its tariff system.
- Para 18 (page 34) of the Secretariat Report notes that 6.6% of Japan's tariff lines are subject to non-*ad valorem* rates in sectors such as fats and oils, footwear, prepared foods, live animals and animal products, textiles and clothing, vegetables and mineral products. 2.3 % of tariff lines are specific; 3.3% alternate and 0.6% are compound rates and 0.4% have differential duties and sliding duties. As it is generally recognised, non-*ad valorem* rates tend to conceal relatively high tariff rates.
- Para 20 (page 35) - Some 1.7% of all of Japan's tariff lines are subject to tariff rate quotas. While 100% of the in-quota rates are *ad valorem*, only 25.3% of out of quota rates are *ad valorem*. There is also a significant difference between average rates: the in quota rates average 18.8% while out of quota rates average 98.5%.

Services

In para 6 (page 3) of the Secretariat Report, it is stated that while services' share of employment increased from 69.2% in 2003 to 69.8% in 2004, the share of services in GDP decreased slightly from 70.2% in 2003 to 69.6% in 2004. The report adds that decreases were mainly in the shares of construction services, financial services, and insurance services.

- Though the decrease from 70.2% to 69.6% is relatively small in percentage terms, this is obviously quite significant in absolute terms given the size of the Japanese economy. It would be useful if Japan could elaborate the reasons for the decrease in the shares of the said sectors.

Financial Services

Re para 44 (page 77) of the Secretariat Report, regarding the Investment Services Law,

- We hope to clarify with Japan that with the establishment of Investment Services Law from 2007, all foreign securities firms wishing to offer their services to Japanese investors via a commercial presence in Japan or via cross-border mode of supply would only need to refer to the regulations and guidelines as set forth under the Investment Services Law.

- We would also wish to check with Japan if there would be an English version of this new Investment Services Law.
- In addition to this Investment Services Law and where relevant, other Japanese legislations, would there be other regulatory guidelines or industry practices which foreign securities would need to comply with?

ADDITIONAL QUESTIONS BY SINGAPORE

We note Japan's effort for revising its Japan Agricultural Standards Law in March 2006 with the view of ensure relevance to public needs and to align them with international standards. As our exporters still experience difficulties knowing what the requirements are, we would like to enquire if Japan may have plans to (i) introduce improve transparency on what these requirements are; and (ii) if legislation for overseas certifying bodies to conduct grading and append JAS symbols could be done in English.

QUESTIONS BY BRAZIL

AGRICULTURAL SECTOR

- 1) WT/TPR/S/175, Chapter IV, paragraph 9 (Non ad-valorem duties)

According to WT/TPR/S/175 (Chapter IV, paragraph 9) "(...) 17,4% of duties applied to agricultural goods are non-ad valorem".

More specifically, 59,6% (Table IV.1) of sugar and sugar confectionery are subject to non ad-valorem tariffs.

Brazilian exports of sugar have been hindered and reduced due to that restriction. Considering that Japan does not produce substantive amounts of sugar, the main result of applying non-ad valorem duties is an unnecessary burden on consumers' prices.

Another main loser from the non ad valorem duties are sugar producers coming from underdeveloped countries, whose competitiveness is artificially leveled to other non competitive producers. These poorest producers have to compete for the Japanese market with exporters benefiting from export subsidies prevailing in richer countries.

The situation is analogous on the case of soy and soy by-products. On soy grains or soy tart (SHs 120100, 12010010, 12010090, 12081000, 230400) there are no tariffs (SGP).

However, on soy oil (SH 15071000, 150790) the non ad-valorem range from 10,9 to 13,2 yens/kilo (from 9 to 11 cents/kilo).

Even though the duties might seem negligible, the effect on Brazilian exports is eloquent: in 2006, soy grains where the 13th product Brazil exported to Japan, and soy tart was the 26th. In spite of that, Brazilian exports of soy oil are not rated among the 100 more important, even though Japanese authorities acknowledge that soy is mainly imported for the production of soy oil.

It might be interesting to know whether the Japanese government envisages a reform on the non ad-valorem duties imposed on agricultural imports.

- 2) WT/TPR/S/175, Table IV.1

According to the document of the Secretariat (WT/TPR/S/175, Table IV.1)), 24,2% of lines of agricultural products are subject to tariff peaks. Furthermore, there are products subject to high tariffs, even though

those tariffs fall short of being technically considered as "tariff peaks" or "tariff escalation". Coffee is one outstanding example.

If, on the one hand, coffee (SHs 0901.11-000 e 0901.12-000) benefits from tariff exemption; on the other hand other by-products (SHs 0901.21-000, 0901.22-000, 2101.11-100, 2101.11-210, 2101.12-110, 2101.12-121, 2101.12-122) are submitted to taxation, that goes from (to Brazil/SGP), 8,8 to 15%. Since Japan does not produce coffee, a major burden is imposed on consumers' prices.

Overall, for non-agricultural products, the level of tariff protection in Japan is low. However, for products where developing countries have a competitive edge, like processed food, the protection remains high, including through tariff peaks.

How does Japan intend to tackle this situation in the WTO negotiations?

3) WT/TPR/S/175, Chapter IV, paragraph 10 (Quotas)

According to the document of the Secretariat (WT/TPR/S/175, Chapter IV, paragraph 10), "tariff quotas apply mainly to agricultural products". Moreover, the document also points out that "eligibility for quota allocations may require prior approval by the MAFF and tends to be intricate(...)".

Exports of fish products are particularly affected by those impositions. Brazilian producers, new on that market, are facing difficulties concerning the quota allocations procedures. Those difficulties seem to originate from some lack of transparency in the allocation of quotas. Also, the system of quota allocations in Japan tends to favor incumbents that have already benefited from the system and create additional burdens to the access of new competitors.

Japanese government had been arguing that "the import quota plays an important role in the conservation and management of fish resources in Japanese territorial seas and waters adjacent to Japan" (WT/TPR/M/142/Add.1, question 3). However, those concerns seem to have scarce application for Brazilian exporters, since they either fish mainly on Brazilian territorial waters, or export fish/shrimps originating from sustainable fish farming.

Given the above, we would like to know whether Japan has any plans to liberalize the quotas applying to fish.

SANITARY AND PHYTOSANITARY MEASURES

4) WT/TPR/S/175, Chapter III, paragraph 55 (beef and poultry)

According to WT/TPR/S/175, Chapter III, paragraph 55, "Japan currently imposes import prohibitions on beef and poultry from various countries due to BSE and avian flu".

Japan has banned meat imports from Brazil due to food and mouth disease (FMD) cases. Japanese government states that it accepts OIE's (Organization Internationale des Epizooties) principle of regionalization. However, the Japanese interpretation is that the principle should only be applicable when the country can prove that there are regions free from FMD without vaccination. On October 2006, Brazilian sanitary authorities formally communicated their Japanese counterparts that the State of Santa Catarina might receive that status on the next OIE meeting, due this semester. A Brazilian invitation to the Japanese authorities to visit the state is still pending an answer.

It might be convenient to ask for further clarification on the estimated time frame between the official recognition of the State as free from FMD without vaccination and the first visit of authorities to certify specific plants.

5) Fruits

When applying to export fruit to Japan, exporters must provide experimental results of quarantine treatment for each different variety of the same fruit. Moreover, the audit conducted by the importing country's inspector for the validation is not applied as a permanent measure. Japan's requirement has placed a very heavy burden on the industry of exporting countries.

The importance of those measures 'to prevent a possible invasion of pests and host plants' (as answered to the Taiwanese delegation on the last review - WT/TPR/M/142/Add.1, question 7) is understandable - as far as fruits in general are concerned. However, the actual need of analyzing varieties of the same fruit remains debatable.

It is also undisputable that those measures 'are applied to all countries who intend to export plants to Japan' (WT/TPR/M/142/Add.1, question 7).

However, the burden is considerably heavier on those exporters from developing countries, whose resources are less abundant. Also, small and medium exporters face an obvious disadvantage. As it is, the system favors, in practice, either exporters from richer countries, or large companies exports.

In the Brazilian case, reports for the approval of mangoes of two varieties (Haden e Palmer) are still pending.

Would the Japanese government consider measures that – even though maintaining the necessary phytosanitary restrictions - lead to a level playing field among exporters? Would Japan consider relaxing quarantine requirements on new varieties of fruits that have already been approved?"

MANUFACTURING

6) WT/TPR/S/175, Chapter IV, paragraph 19

According to the document prepared by the Secretariat (WT/TPR/S/175, Chapter IV, paragraph 19), "simple average tariffs are relatively higher for footwear (...)". On the other hand, Japanese imports of leather are freer from restrictions. As a consequence, Brazilian exports of leather have been increasing, but Brazilian producers of footwear's access to the Japanese market have stalled.

Would the Japanese government inform whether it envisages any reform on the non-ad valorem duties on footwear?

7) QUOTAS

Footwear - particularly leather footwear - are also subject to quotas. Exporters have pointed out difficulties in accessing the intricate procedures of being benefited from quotas.

It would be interesting to have as much detail as possible on the procedures applied for quota allocation approval on this sector. Some practical examples might also be very helpful as they might constitute a guide for the submission of applications by exporters.

ENERGY AND UTILITIES

8) WT/TPR/S/175, Chapter IV, paragraph 19

According to the document prepared by the Secretariat (WT/TPR/S/175, Chapter IV, paragraph 25) authorities appear to have placed more emphasis on seeking 'the right balance' of various policy objectives, including a stable energy supply, economic efficiency, and environmental concerns".

In light of such concerns, the document (Chapter III, paragraph 19) acknowledges that 'Japan unilaterally reduced applied MFN tariffs on petroleum and petroleum products and industrial alcohol; for example, the applied MFN rates are zero (...) for crude oil, and 23,8% (...) for industrial alcohol'.

Enacted on May 2006, the Japanese new policy on Energy allows the use of up to 3% of ethanol on gasoline. However, the greater duties imposed on alcohol reduce significantly its competitiveness regarding fossil fuels.

Considering the importance it attaches to fulfilling the Kyoto Protocol obligations, it might be interesting to know whether the Japanese government intends to accelerate the chronogram of reduction of tariffs on ethanol imports.

FOREIGN DIRECT INVESTMENT

9) WT/TPR/S/175, Chapter I, paragraph 27

According to WT/TPR/S/175, Chapter I, paragraph 27, "inward FDI into Japan remains substantially lower than outward FDI(...)".

The document of the Secretariat also notes that (WT/TPR/S/175, chapter 4, paragraph 25) "a stable energy supply has been one of the main objectives of Japan's energy policy".

Considering the above, is there any specific regulation on the participation of foreign companies in the segment of oil/refineries? What are the limitations, if any, on the structure of capital of companies on that sector? Are there any foreign petroleum companies with foreign capital operating in the sector in Japan?

JAPAN'S BILATERAL ACTIVITIES

10) WT/TPR/G/175, pages 13-14

The document prepared by the Japanese government lists

(WT/TPR/G/175, pages 13-14) 8 countries with which EPAS (Economic Partnership agreements) negotiations have been/are being held. It would be interesting to have an update of the Japanese delegation regarding experiences in the negotiations so far. It might be also interesting to know what have been Japan's priorities in selecting bilateral free-trade partners. Do bilateral agreements include provisions on agriculture, as well as on sanitary and phytosanitary measures facilitation.

QUESTIONS BY PAKISTAN

Agriculture:

1. Has Japan taken any measures for improvement in Tariff Rate Quota administration for agricultural imports since the last review? The complex documentation process and strict requirements have proven to put the developing country exporters at a disadvantage over the other.

2. Would Japan like to highlight its policy on Rice? On the one hand, it is one of the most protected commodities through domestic subsidies and very high tariffs; and on the other, it is exported as food aid.

3. The Japan Agricultural Standards (JAS) have introduced packaging and labeling requirements for many products including horticulture. Is there any plan to consider technical assistance for developing countries for meeting such requirements?

NAMA:

4. Japan's tariff has ad valorem duty on about 6.6 % of the tariff lines, mostly on items like footwear, textile and clothing, and prepared food etc. Similarly about 1.7 % of tariff lines are subject to Tariff Rate Quotas. While 100 % of the in-quota rates are ad valorem, only 25 % of the out-quota rates are ad valorem. Such a tariff structure is cumbersome for exporters. Does Japan plan to simplify these rates in ad valorem terms in future in order to make these more transparent? We, very much respect and value the sovereign right of Japan to structure its tariffs as it deems fit.

Services:

5. The mandatory requirements in Japan for providing professional services call for obtaining local qualification along with membership of a professional association to be able to practice as a certified public accountant, doctor, nurse etc. Recently, the government has removed some restrictions on foreign doctors and nurses with Japanese medical licenses working in Japan. Would Japan clarify if there were any equivalence establishing system in place, which recognizes education and skills obtained from abroad at par with that in Japan? Is there any additional training requirement, for example, for the doctors and nurses to the extent of learning language etc; or do they have to undergo whole medical or nursing education in Japan in order to qualify for a professional license in that field?

QUESTIONS BY SWITZERLAND

Report by the Secretariat

I. Economic Environment

(1) Main Economic Developments

In **para. 5**, the Secretariat's report suggests that the level of inward FDI remains low compared with other developed economies. Could the Japanese authorities indicate the reasons for this situation and, possibly, the measures they are contemplating to adopt to improve this state of affairs ?

(2) Macroeconomic Policies

(i) Monetary and exchange rate policy

In **para. 7**, the Secretariat's report indicates that the understanding among BOJ's policy board members of price stability in the medium-term to long run is that inflation should remain in a range between zero and 2%. At the same time, it notes that the BOJ intends to review this range annually. By reviewing annually the range it considers as price stability, is the BOJ not running the risk that markets become unsure about the future course of monetary policy ? Would it not be better from a longer term perspective that the BOJ commits to maintain future inflation in a fixed range in order to stabilize inflationary expectations ? Could the Japanese authorities explain why they deem it necessary to have such an annual review of the range ?

(ii) Fiscal policy

In **para. 9**, the Secretariat's report indicates that Japan's objective in fiscal policy is to achieve a surplus in the primary balance of the central and local governments combined by FY 2011. In view of the extremely high level of both the fiscal deficit (5.2% of GDP in 2006) and the public debt (172.1% of GDP), is such an objective not too modest given that, as stated in **para. 6 of Japan's Government Report**, the foundation for economic recovery is now firmly in place with notable improvements in macroeconomic conditions in recent years ? Should the authorities not target rather an outright surplus for the consolidated public sector by FY 2011?

- (3) Structural Policies**
- (iv) Regulatory reform**

In **para. 18**, the Secretariat's report indicates that under the Special Zone for Structural Reform Act about 500 special zones have been established to allow relaxation or elimination of specific regulation. Could the Japanese authorities explain why they seem to privilege regulatory reform in certain zones and apparently not in the country as a whole ? What are the benefits of such a piecemeal approach to regulatory reform as compared to a more general approach to regulatory reform that would be valid for the entire country ? Also, could the authorities provide examples of the zones benefiting from measures of regulatory reform by zone ?

II. Trade Policy Regime: Framework and Objectives

- (4) Trade agreements and arrangements**
- (iv) Preferential treatment**

Para. 44: Could the Japanese authorities indicate which criteria are being used to graduate beneficiary countries from the GSP ?

Para. 46: Could the Japanese authorities indicate which criteria are being used to fix the overall ceilings per tariff line ?

III. Trade policies and practices by measures

- (2) Measures directly affecting imports**
- (i) Customs clearance procedures**

Para. 14: Are there other conditions than those specified in para. 14 which need to be fulfilled in order to benefit from the "instant import permission system upon arrival" ? Is this system equivalent to the "specific export declaration system" mentioned in para. 65 ?

Para. 15: Under which conditions can foreign institutions (banks, chambers of commerce, insurers) be part of JAMMO?

- (iii) Non-tariff border measures**

In **para. 32** the Secretariat's report indicates that import quotas are imposed on various items, among others on certain organic chemicals and on pharmaceuticals. Could the Japanese authorities indicate for which organic chemicals and pharmaceuticals such import quotas are imposed ? Is it for all of them and what are the intended aim and reasons of such measures ?

- (v) Government procurement**

Para. 38 of the Secretariat's report provides a comprehensive overview of the various procuring entities involved in government procurement on central, subterritorial and sectoral levels. It would be of interest to have also a picture of the relative importance of these three levels in Japan's total procurement activities. Could the Japanese authorities therefore provide some information regarding the respective shares, in per cent, of the procurement made at the central, subterritorial and sectoral levels ? Are the procuring entities operating in the three levels connected to a single electronic point of access ? If not, through which channels are foreign suppliers being informed about the procurement to be carried out at the different levels ?

Para. 41 provides figures regarding the share of the procurement made according to the three procedures available for tendering above the thresholds specified in the GPA (open, selective and limited tendering). These figures show a decrease in open tendering (from 63 to 54 per cent), a relative stability at a low level

for selective tendering (1.7 instead of 1.5 per cent) and an increase - from 35 to 44 per cent - for limited tendering. Switzerland also took note of the explanations given in the footnote regarding the reasons of the shift, between 2002 to 2004, from open to limited tendering. Do the Japanese authorities consider that this major shift is due to specific circumstances which occurred only in the period under review ? Or are the Japanese authorities of the view that the changes observed are due to structural problems and that the phenomena observed is rather mirroring a long-term trend ? What is the importance, in value and per cent of the total procurement, of the public works contracts (or "works concessions" or "BOTS") ?

Para. 43 informs about the two bodies in charge of government procurement reviews. Is it correct that the mandate of the Government Procurement Review (OGPR) is limited to the complaints regarding the procedures and that it is not an independent Court but an office, integrated in the administration at a central level ? Does the mandate of the independent Government Procurement Review Board (GPRB) also cover complaints regarding decisions taken by the procuring entities operating at subterritorial (prefectures, cities, etc.) and sectoral levels ?

- (3) **Measures Directly Affecting Exports**
(iii) **Export prohibitions, restrictions, and licensing, (b) *Export cartels***

and

- (4) **Measures Affecting Production and Trade**
(vi) **Competition policy, (b) *Exemptions from the AMA prohibition of cartels***

Para. 69 and **para. 91**: Could the Japanese authorities explain the rationale for the large number of exceptions (21 types of cartels) to the general prohibition of cartels under the Anti-monopoly Act ? Are there plans to reduce the number of these exceptions in a foreseeable future ?

IV. Trade Policies by Sector

- (5) **Services**
(ii) **Financial services (c) securities**

Para. 42: This paragraph mentions that only registered joint-stock corporations may engage in securities' business in Japan. Additionally, it is stated that under the Law of Foreign Securities Firms, the main office in Japan of a foreign securities' firm must be registered to operate securities' business in Japan. Are there any other limitations applicable to foreigners to operate securities' business in Japan?

- (v) Professional services

Para. 66: Is membership of a professional organisation open to foreign citizens in all cases?

QUESTIONS BY BOLIVIA

Informe del Japón WT/TPR/G/175

Punto 6. Actividades bilaterales del Japón, inciso 2) Otras actividades estratégicas del Japón.

Pregunta

En el documento presentado por Japón, se menciona las actividades bilaterales sostenidas con países de diversos continentes, así como los avances logrados en estos últimos años. Sin embargo, en lo que concierne a latinoamérica sólo se hace mención al MERCOSUR. De igual manera, se ha podido constatar que no se presentan estadísticas comerciales con la región antes mencionada. En este sentido, interesaría conocer la política comercial establecida con otros bloques de integración latinoamericanos, especialmente con la Comunidad Andina. ¿Japón pretende continuar sus relaciones comerciales con el bloque andino a

través del instrumento del Sistema Generalizado de Preferencias o tiene previsto, lograr acuerdos comerciales más profundos?

Documento de la Secretaría de la OMC (WT/TPR/S/175)

Observaciones Recapitulativas

Inciso 16. Ramas de Actividad, se menciona que los servicios financieros y los seguros, representaban la participación más importante y que aumentaron vigorosamente al igual que las telecomunicaciones y el transporte

Pregunta

¿Cuáles fueron los factores que permitieron este crecimiento?

¿Cómo incide este crecimiento en el aporte al PIB, es significativa su participación en función al resto de las actividades económicas?

Cabe aclarar que se encuentra sólo información de texto del sector y no así su participación porcentual ni económica, por lo que no se identifica el crecimiento señalado, ni el periodo representativo del mismo.

Documento de la Secretaría de la OMC (WT/TPR/S/175)

IV Políticas Comerciales por Sectores

2) Agricultura

i) Visión general

Párrafo 6 El Gobierno anunció en mayo de 2005 su intención de reemplazar el sostenimiento de los precios por el sostenimiento de los ingresos; el Gobierno apunta a beneficiar a los llamados "agricultores principales" facilitando el uso del actual sistema de "agricultores certificados"

Pregunta ¿Bajo que parámetros se definirá el sostenimiento de ingresos, y que características debe cumplir un agricultor para ser considerado "agricultor principal"?

Párrafo 6 Indica: la agricultura ha seguido recibiendo una considerable ayuda del Gobierno: según estimaciones provisionales de la OCDE, las transferencias totales a la agricultura (ayuda total estimada) equivalían al 1,3 por ciento del PIB en 2004, lo cual representa una pequeña disminución con respecto al 1.4 por ciento de 2002

Pregunta ¿Cuáles son los mecanismos y procedimientos que aplica el Gobierno del Japón para otorgar la ayuda y transferencias al sector agrícola?

Párrafo 13 El 1° de septiembre de 2005 entró en vigor la Ley de Fortalecimiento de la Gestión Agrícola, revisada.

Pregunta ¿Cuáles son los beneficios que reciben las zonas especiales de reforma estructural y como se reflejan estos en los Agricultores Principales?

QUESTIONS BY CHINESE TAIPEI

A. WTO Secretariat Report WT/TPR/S/175

I. ECONOMIC ENVIRONMENT

(3) Structural Policies

(iii) Pension reform

(page 9, paragraph 17)

As indicated in the report, the Japanese government has been discussing the subject of pension reform and this has been established as a priority.

Could Japan please describe the main goals and scope of the pension reform plan, and confirm whether pension fund governance and management are included?

(iv) Regulatory reform

(page 9, paragraph 18 and page 83, paragraph 71)

The Special Zone for Structural Reform Act allows relaxation or elimination of specific regulations within a particular zone, which includes extending the period that foreign researchers and foreign nurses may stay or work in Japan. (page 83)

It would be appreciated if Japan could elaborate further on the provisions regarding category, length of stay and work requirements for foreigners under the Act, and identify for us the differences between these provisions and normal existing regulations.

II. TRADE POLICIES REGIME: FRAMEWORK AND OBJECTIVES

(2) TRADE POLICY OBJECTIVES

(page 15, paragraph 6)

The Report states that Japan supports the “open regionalism” approach of the Asia Pacific Economic Cooperation (APEC) forum.

In light of the proliferation in FTAs/RTAs signed between APEC member economies as well as with other countries in the Asia-Pacific region, a trend which clearly conflicts with the open regionalism espoused by APEC, could Japan please describe the measures and actions that it has adopted in support of APEC’s framework in response to the above-mentioned proliferation?

(3) Trade Policy Formulation and Evaluation

(ii) Trade policy evaluation

(page 17, paragraphs 8 and 9)

With a view to improving transparency and thus public accountability, Japan’s Government Policy Evaluations Act (GPEA) came into force in April 2002, requiring the Cabinet Office and ministries to evaluate their own policies before and after implementation, and to publish the results of their evaluations.

The Basic Guidelines for Implementing Policy Evaluation were adopted by the Cabinet in December 2001. In addition to self evaluation, the GPEA obliges the Ministry of Internal Affairs and Communications (MIC) to undertake independent assessments of the policies implemented by other ministries.

In 2005, following a government review of its policy evaluation, the Basic Guidelines for Implementing Policy Evaluation were revised and a new set entered into force in December 2005. According to the authorities, some of these policy evaluations involve the analysis of cost-effectiveness.

We would appreciate further information from Japan on this topic as follows:

- (i) *What was the coverage of the review of policy evaluation? Did it include environmental impact analysis or sustainable impact analysis?*
- (ii) *What steps does Japan take if the result of evaluation is negative?*
- (iii) *What is the definition of "important policies"? Could Japan please provide an example by way of explanation?*

II. TRADE POLICIES AND PRACTICES BY MEASURE

(2) Measures Directly Affecting Imports

(vii) Standards, and sanitary and phytosanitary measures

(page 45, paragraph 53)

In 2005 and 2006, Japan amended its list of non-quarantine plant pests to add 46 and 34 pests respectively. However, this policy of publishing a non-quarantine plant pests list instead of a regulated pests list has seriously impeded market access by other WTO Members due to the lack of definite descriptions and the uncertainty surrounding regulated pests, i.e. quarantine pests and regulated non-quarantine pests.

According to the Article VI of the International Plant Protection Convention 1997, WTO Members may require phytosanitary measures for regulated pests under certain conditions, but they shall not require such measures for non-regulated pests. Because the above-mentioned measure adopted by Japan is to release the non-quarantine plant pests from phytosanitary measures only, it leads to a considerable amount of uncertainty regarding regulated pests, and creates difficulties for exporting WTO Members attempting to comply with its requirements.

According to the International Standards for Phytosanitary Measures (ISPM) No. 19, the list of regulated plant pests should be based on risk assessment and follow the definition of ISPM No. 5. In addition, quarantine or emergency actions can only be taken while a regulated pest is intercepted from importing commodities.

We would ask Japan, therefore, to kindly formulate its regulated pests list on the basis of appropriate risk assessments and to revise current requirements in order to adhere to the relevant international standards.

(4) Measures Affecting Production and Trade

(iii) State-owned enterprises, corporatization and privatization

(page 50, paragraph 75)

As of August 2006, the Japan Government held a 50.0% stake in Japan Tobacco Inc.(JT) and a 66.4% stake in Kansai International Airport Co. Ltd. Some shares of commercial bank and railway companies were also held by the government or government-affiliated corporations.

Are there any plans for these State-owned entities to be privatized in the near future? Will any restrictions apply to foreign investors when the shares are offered?

(page 50, paragraph 76)

Based on the Reorganization and Rationalization Plan for Special Public Institutions adopted on 18 December 2001, out of 163 public corporations subject to reform, 136 have already been reformed. Sixteen of these were abolished, 36 were privatized and 39 were transformed into “incorporated administrative agencies”. Five of the remaining corporations are to maintain their current status (e.g. NHK broadcasting), and 22 are to be reformed.

Our questions are as follows:

- (i) Is there any legal basis for the adoption of the Reorganization & Rationalization Plan?*
- (ii) What are “incorporated administrative agencies”? Are they defined and regulated by law? If so, please provide references to the relevant regulations.*
- (iii) Is there a due date for the Reorganization and Rationalization Plan? If so, please inform us of the date.*
- (iv) What are the 22 corporations to be reformed in the future? How are the reforms going to take place?*
- (v) Apart from NHK Broadcasting, what are the four other corporations that have been able to maintain their current status?*
- (vi) Will there be any further schedule for the privatization of special public institutions?*

(iv) Trade-related intellectual property rights

(a) Recent developments

(page 50, paragraph 77)

We recognize that the revised Copyright Law prohibits the parallel importing of sound recordings.

- (i) In this regard, can the Law apply to other forms of work as well, such as movies or books?*
- (ii) Does Japan give authors the exclusive right to authorize or to prohibit the commercial rental to the public of originals and copies of their copyright works, in compliance with Article 11 of the TRIPS Agreement?*

(Pages 50 to 54, paragraphs 77 to 87)

At the December 2005 Ministerial Meeting in Hong Kong, a resolution was reached to insert into the TRIPS Agreement Article 31bis and to implement Paragraph 6 of the Declaration on the TRIPS Agreement and Public Health.

We would be interested in knowing:

- (i) What progress has Japan made in the process of notifying its acceptance of TRIPS 31bis?*
- (ii) Is there any need for Japan to revise its domestic regulations? If so, what is the timetable for such revision?*

(page 51, paragraph 78)

In June 2006, Japan's IP Headquarters announced its Intellectual Property Strategic Program 2006, which specifies the establishment of an infringement verification system at Customs (infringement of IPRs other than trademark and copyright). According to statistics provided by Japan's Customs, since 2003, infringements have been discovered relating to plant variety rights and patent rights.

- (i) *We are interested in knowing how Japan's Customs determines complicated patent infringements? Who makes such judgment?*
- (ii) *How long does the verification process take?*
- (iii) *How are suspected goods handled before infringement is confirmed?*
- (iv) *How is the verification confirmed, and is there an appeal remedy?*

- (vi) Competition policy**
- (a) Recent developments**

(page 54, paragraph 89)

The surcharge amount for cartels and penalties for the contravention of administration orders of the 2006 AMA amendment have been increased.

Could Japan please provide further details of the policy objectives pursued in cases where JFTC imposes high fines on cartels, and in other cases such as punishing violators, denying profit from illegal conduct and deterring future anticompetitive behaviour?

(page 55, paragraph 89, S175, and page 22, paragraph 114, G175)

It is stated in the Report that JFTC introduced a leniency programme in 2006.

We would appreciate receiving details of the effectiveness of Japan's recently enforced leniency programme designed to crack down on hard-core cartels?

- (b) Exemptions from the AMA prohibition of cartels**

(page 55, paragraph 90)

AMA exemptions have not been changed since Japan's previous Trade Policy Review, and there are now provisions authorizing certain cartels which are incorporated under other laws as shown in Table III.8.

We would be interested in knowing whether these authorizations caused any particular market to become less competitive? Furthermore, we would be interested to know what happens if the application of competition policy conflicts with that of the sectoral regulatory authorities or other relevant laws?

- IV. TRADE POLICIES BY SECTOR**
- (4) Energy and Utilities**

(page 70, paragraph 26)

The retail electricity market in Japan was partially liberalized, giving the right to enterprise users to choose suppliers through bilateral contracting and the wheeling system. The WPE and the NSO were established and operated in 2005 to further promote competition in the energy market of Japan. The latter is responsible for formulating rules relating to the system operation and monitoring their implementation.

Does the NSO play the role of an independent system operator (ISO)? Could Japan please describe how the NSO operates to ensure fair use of the network and to maintain the real-time balance of the system?

- (5) Services**
- (i) Financial services**

(page 71, paragraph 30)

We welcome Japan's continued progress on financial services as indicated in the Report, including allowing banks to act as sales agents for securities companies and the further expansion in the scope of insurance products that banks are allowed to sell.

We would appreciate knowing whether, in the interests of attracting foreign financial investment and enhancing the development of its financial services, Japan has plans for further liberalizing its crediting bureau system, reviewing the Defined Contribution Pensions system, improving financial supervisory transparency, removing legal restrictions limiting foreign financial groups, removing barriers to foreign and domestic competition, and revising market efficiency for investment trusts?

- (ii) Telecommunications**

(page 77, paragraph 45)

The Secretariat's Report notes that "The higher TFP growth in telecommunications may be attributed to the recent liberalization of Japan's telecom sector, which intensified competition".

In terms of telecommunication liberalization and fair competition, would Japan please indicate whether it has any plan to amend the NTT Law in order to further relax its foreign ownership restriction on the shares of the NTT?

(page 77, paragraph 47)

It is also noted that Japan's Radio and Broadcast Laws were amended in October 2005, and that such amendments tightened rather than relaxed the foreign ownership restriction of 20% of voting shares in terrestrial broadcasting radio stations by including indirect voting shares.

It would be appreciated if Japan could please provide further specific details of the current regulations and explain its rationale for the tightening of the above-mentioned foreign ownership restriction? In addition, in view of the fact that these latest amendments to the Radio and Broadcast Laws were made in October 2005, could Japan please advise if there are plans for any further amendments to these Laws with the aim of relaxing foreign ownership restrictions.

(page 78, paragraph 51)

Japan's Strategic Headquarters for the Promotion of an Advanced Information and Telecommunications Network Society adopted a new IT Reform Strategy in January 2006. This new strategy contains sets of policies to be implemented by 2010 to tackle a range of problems in the telecoms services sector, and in 2006 the government introduced new tax measures to promote investment to strengthen international competitiveness.

While we welcome this programme, could Japan please elaborate further on whether it will be taking the steps necessary to prevent anti-competitive behaviour by the dominant service providers and to ensure a telecoms environment that can attract innovative technology?

(iii) Transport
(a) Maritime transport

(page 79, paragraph 54)

We understand from the Report that, although the economic needs test was removed according to revisions of the Port Transportation Business Law in May 2006, entry into port transport in all Japan's ports currently requires permission, and port transport charges are subject to prior notification requirement.

Please could Japan elaborate further on whether the Law stipulates the licensing requirement and what elements of it ensure transparency?

(page 80, paragraph 58)

In Japan's revised services offer, maritime cabotage services, international freight forwarding and international shipping services are subject to MFN exemption. The Annex on Article II Exemptions of the GATS stated that in principle MFN exemptions should not exceed a period of 10 years and that period expired at the end of 2005. According to Japan's revised offer, termination of international freight forwarding and international shipping services is dependent upon the outcome of present and subsequent rounds of negotiations for trade liberalization.

We would like to know, therefore, whether, on the completion of the Doha round of negotiations, Japan will consider eliminating the international freight forwarding and international shipping services MFN exemptions?

(vi) Other services

(page 83, paragraph 71)

The Japan Government removed restrictions on foreign doctors and nurses with Japanese medical licences working in medical services in Japan on 30 March 2006, which relaxes limitations on the length and location of services; for example, foreign nurses are permitted to work for up to seven years after gaining their licence (previously four years after completing training). In the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, however, medical services could be provided by persons with medical licences issued by our authorities without any limitations on length and location of services.

Would it be possible for the Japan Government to relax the above-mentioned limitations further?

B. Japan Government Report WT/TPR/G/175

5. Japan's Regional Activities

(1) Asia-Pacific Economic Cooperation (APEC)

(page 11, paragraph 40)

Japan will be hosting the meeting of APEC in 2010, which is the deadline for developed economies to achieve the Bogor Goals aimed at free and open trade and investment.

Could Japan please describe its preparations or actions it plans to implement aimed specifically at achieving the Bogor Goals in the Asia-Pacific region?

6. Japan's Bilateral Activities

(1) FTA/EPAs

(page 13, paragraph 51)

Japan has recently placed more emphasis on its regional or bilateral trade policies and agreements, as a means of complementing the multilateral trading system. It is believed that the Japanese Government has actively prepared for the FTA/EPA negotiations, in terms of ensuring the negotiating principles in the process, and forming proper negotiating standpoints as well as the strategy.

We would be grateful if Japan could please explain the standpoints and attitudes of its energy sector in negotiating the regional and bilateral trade agreements?

(2) Japan's bilateral activities besides FTAs

(page 15, paragraph 72)

As indicated in the Report, Japan and the United States have established the "Japan-US Economic Partnership for Growth" to address a wide variety of issues contributing to the sustainable growth of the world economy. One of the sectors covered by the Regulatory Reform and Competition Policy Initiative is the energy sector.

It would be appreciated if Japan could please provide us with further information on the Reform Initiative with regard to energy-related issues?

(page 15, paragraph 72)

Within the aforementioned 'Japan-US Economic Partnership for Growth', the Investment Initiative covers labour systems, visas, etc.

Could Japan please describe the exact nature of the involvement of the labour system in the Initiative, and how it relates to investment?

QUESTIONS BY CHILE

Políticas Comerciales por Medidas

2) Medidas que afectan directamente a las importaciones

ii) Tarifas

1. En el párrafo 20 se menciona que cerca del 1,7% de los productos están sujetos a contingentes arancelarias. ¿Cómo funcionan? ¿Cuál ha sido el criterio para la aplicación de estos contingentes?

vii) Normas, y medidas sanitarias y fitosanitarias

a) Normas, test y evaluación de la conformidad

2. Agradeceríamos mayores antecedentes acerca del funcionamiento de los procedimientos de evaluación de la conformidad y certificación de los distintos productos. Quisiéramos saber si estos se aplican previamente a la Aduana o al momento de ingresar al mercado? Asimismo, si existen varios procedimientos, agradeceríamos una explicación de su funcionamiento junto a los productos correspondientes.

2. En relación a los Acuerdos de Reconocimiento Mutuo vigentes con las Comunidades Europeas y con Singapur, que se mencionan en el párrafo 52, ¿cómo ha sido la experiencia de esos acuerdos? ¿Son

costosos de implementar? ¿Cómo se administran los incumplimientos? ¿Qué productos están cubiertos por estos acuerdos? ¿Existe la posibilidad de que terceros países puedan incorporarse?

3. ¿Existe algún sitio web dónde esté disponible toda la reglamentación técnica de productos?
4. ¿Existe algún mecanismo de coordinación interna entre las instituciones que elaboran reglamentos técnicos y/o procedimientos de evaluación de la conformidad y los que coordinan y administran el Acuerdo de Obstáculos Técnicos al Comercio?

QUESTIONS BY CANADA

Report by the Secretariat (WT/TPR/S/175)

Part III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (ii) Tariffs, (b) MFN applied tariff, page 36, paragraph 22:

The Secretariat report states that *ad valorem* equivalents (AVEs) for 2005 were provided by the authorities for approximately 77.1% of the non-*ad valorem* rates. Footnote 12 states that, "According to the authorities, AVEs for the remaining non-*ad valorem* tariff lines were not available due to lack of imports of an unspecified number of these items, which suggests that the tariffs involved may be prohibitive, or because the unit for duty did not correspond to that used for trade statistics".

1. Could Japan explain why AVEs were provided for only 77.1% of the non-*ad valorem* rates?
2. Could Japan specify the items (and their number) for which non-*ad valorem* tariff lines were unavailable due to lack of imports?
3. How does Japan intend to address the issue of units for duty that do not correspond to those used for trade statistics?
4. The Secretariat Report notes that "93 out of the top 100 tariffs had non-*ad valorem* rates". Could Japan explain the meaning of the term "top 100 tariffs" (e.g. highest rates, etc?) and to which products do they refer?

Part III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (vii) Standards, and sanitary and phytosanitary measures, (a) Standards, testing, and conformity assessment, page 42, paragraph 45:

The Secretariat Report states on page 42, paragraph 45, that Japan has continued its efforts towards international harmonization of its standards and technical regulations, including in sanitary and phytosanitary policies. Canada commends Japan on these efforts.

5. Will Japan be moving shortly to harmonize their domestic policies with respect to the BSE chapter in the OIE Terrestrial Animal Health Code, in particular for unrestricted trade in meat from cattle under 30 months of age?

Part III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (vii) Standards, and sanitary and phytosanitary measures, (a) Standards, testing, and conformity assessment, page 42, paragraph 45, Table III.4:

6. Could Japan please advise as to how it distinguishes between "corresponding to an international standard", defined as "primary aspects sharing a common scope", and "equivalent to international standards" in Table III.4 – Major standards and technical regulations in Japan, 2005?

Part III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (vii) Standards, and sanitary and phytosanitary measures, (a) Standards, testing, and conformity assessment, page 44, paragraph 48:

The Secretariat Report makes no reference to Japan Industrial Standards (JIS) Registered Overseas Certifying Bodies (ROCBs).

7. Could Japan advise as to whether there are any ROCBs and, if yes, also identify them?
8. Is ISO/IEC Guide 65 utilized under JIS as registration criteria for certifying bodies?

Part III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (vii) Standards, and sanitary and phytosanitary measures, (a) Standards, testing, and conformity assessment, page 44, paragraph 48:

The Secretariat Report notes that about 500 foreign firms in 21 economies have been certified to affix JIS marks.

9. Could Japan advise as to whether these results are in line with Japan's expected outcomes related to the revision of the Industrial Standardization Law in June 2004?

Part III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (vii) Standards, and sanitary and phytosanitary measures, (a) Standards, testing, and conformity assessment, page 44, paragraph 48:

10. Could Japan please identify the nine (9) Registered Overseas Certifying Bodies (ROCBs) under Japan Agricultural Standards (JAS)?

Part III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (vii) Standards, and sanitary and phytosanitary measures, (a) Standards, testing, and conformity assessment, Mandatory technical regulations, page 44, paragraph 49:

In June 2006, Japan is reported to have made commitments to the United States to further improve its still highly burdensome and inefficient regulatory and reimbursement processes for medical devices. The measures were reportedly outlined in a joint report on deregulation presented to the US President and Japanese Prime Minister. The goal of the measures is reportedly to promote smoother introduction of new medical technologies, increased consumer choice, and expanded access for US companies in the Japanese market.

11. Could Japan provide full details of its June 2006 commitments to the United States to improve its reimbursement and regulatory practices for medical devices, and indicate whether the measures are applicable to medical device imports from any country or are they only applicable to products manufactured by US companies and/or approved by the US Food and Drug Administration (FDA)?

Part III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (vii) Standards, and sanitary and phytosanitary measures, (a) Standards, testing, and conformity assessment, Mandatory technical regulations, page 44, paragraph 50:

The Secretariat Report states that data provided by the authorities indicate that there are fewer automotive standards which are based on international standards than in 2003.

12. Could Japan provide further information on why there are fewer automotive standards based on international standards than in 2003?

Part III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (vii) Standards, and sanitary and phytosanitary measures, (a) Standards, testing, and conformity assessment, Mandatory technical regulations, page 44, paragraph 51:

The Secretariat Report says that METI has designated 23 inspection bodies, six of which are foreign, for testing based on the major standards and certification systems under METI's jurisdiction.

13. Could Japan please identify the six (6) foreign inspection bodies designated by METI?

Part III. Trade Policies and Practices by Measure, (4) Measures Affecting Production and Trade, (iv) Trade-related intellectual property right,(a) Recent developments, pages 50 and 51, paragraphs 77 and 78:

Canada notes that according to the Secretariat Report "in 2004 the Patent Law was amended to, inter alia, allow the private sector to conduct prior art searches on behalf of the Japan Patent Office ". The Secretariat Report also indicates that the Intellectual Property Strategic Program 2006 "stipulated, inter alia, that Japan would speed up the examination of the patent applications through measures such as partial outsourcing of examination procedures".

14. Could Japan provide further information regarding private sector participation in the patent examination and approval process?

Part III. Trade Policies and Practices by Measure, (4) Measures Affecting Production and Trade, (iv) Trade-related intellectual property rights,(a) Recent developments, page 51, paragraph 77, footnote 49:

Footnote 49 to paragraph 77 of the Secretariat Report states that "the place of origin, domestic or foreign, must be designated by the Commissioner of the National Tax Agency to receive protection. To date, one region has been designated."

15. Could Japan explain on what basis does the Commissioner designate the place of origin in foreign jurisdictions?

Part III. Trade Policies and Practices by Measure, (4) Measures Affecting Production and Trade; (iv) Trade-related intellectual property rights, (a) Recent developments, page 51, paragraph 77 and footnote 49:

According to the Secretariat Report "the standard in relation to geographical indication, which stipulates the protection of geographical indications (GIs) in Japan, was amended in 2005 ". Footnote 49 states that "the place of origin, domestic or foreign, must be designated by the Commissioner of the National Tax Agency to receive protection".

16. Could Japan please provide further information regarding the amendments made in 2005 as well as an indication as to how the Commissioner of the National Tax Agency determines designations and in particular foreign designations?

Part IV. Trade Policies by Sector, (5) Services, (ii) Financial services, (a) Banking, page 74, paragraph 36:

Paragraph 36 of the Secretariat Report states that a number of government financial institutions are to be either abolished, fully privatized or be merged and consolidated into a corporation by FY 2008.

17. Could Japan please specify whether foreign financial institutions will be allowed to participate in the acquisition of the privatized public financial institutions?

18. Will the other public Financial Institutions be merged or consolidated into a public or a private corporation? If they are to be merged into a private corporation, will foreign financial institutions acquisition or participation be allowed?

Part IV. Trade Policies by Sector, (5) Services, (ii) Financial services, (b) Insurance, page 75, paragraph 38:

Paragraph 38 of the Secretariat Report says that in the insurance sector a licence from the Prime Minister is required to conduct insurance business in Japan, and that new insurance products and modifications of existing products require an approval.

19. Could Japan please provide further details on the required process to offer a new or a modified insurance product? Are foreign insurers granted national treatment regarding these approvals?

20. Are the requirements similar for new or modified banking and securities services?

Part IV. Trade Policies by Sector, (5) Services, (ii) Financial Services, (c) Securities, page 76, paragraph 42:

Paragraph 42 indicates that only joint-stock corporations may engage in securities business in Japan, that the main office in Japan of a foreign securities firm must be registered in Japan (registration only granted if engaged in the same type of business for no less than three years). It also states that there are no foreign ownership restrictions and that national treatment is granted to foreign securities firms (branches and subsidiaries).

21. Could Japan clarify the meaning of a “joint-stock corporation”?

22. Would a foreign securities firm wishing to establish an office in Japan need to be engaged in securities trading for no less than three years in its domestic jurisdiction?

23. Could Japan confirm that qualifying foreign securities firms establishing in Japan or acquiring domestic securities firms receive national treatment?

Part IV. Trade Policies by Sector, (5) Services, (ii) Financial Services, (c) Securities, page 76, paragraph 43:

Paragraph 43 indicates that foreign listed stocks are traded in the same market as domestic stocks.

24. Could Japan clarify what is meant by “foreign listed stocks”?

25. Does Japan allow cross-border securities trading (e.g., do Japan investors have access to stocks listed on foreign exchanges)? If yes, could Japan elaborate on the mechanisms through which Japanese investors would access stocks listed on foreign exchanges?

ADDITIONAL QUESTION BY CANADA

Report by the Secretariat (WT/TPR/S/175)

Part III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (v) Government Procurement, Table III.3 Procurement by product and by origin, 2002 and 2004, page 41:

Japan has demonstrated leadership in the areas of government procurement and sustainability with the development of policies such as the new Basic Policy on Promoting Green Purchasing.

1. Does Japan expect the foreign share of procurement of “wood and articles of wood; paper and paperboard and articles thereof”, as well as “furniture and parts thereof” to increase after the implementation of these policies?

QUESTIONS BY AUSTRALIA

Trade agreements and arrangements

Japan’s Council for Economic and Fiscal Policy announced in November 2006 a plan to triple the number of Economic Partnership Agreements Japan has in place within two years.

- What measures is Japan taking to realise this goal?

The Council for Economic and Fiscal Policy (CEFP) agreed on 11 December 2006 to set up an “Expert Committee on Reforms Addressing Globalisation.” The Committee is scheduled to submit an interim report to the CEFP in the northern spring, 2007.

- What areas of reform will the committee examine to enable Japan to promote greater liberalisation through Economic Partnership Agreements?

We note that Japan’s EPAs sometimes include separate chapters on investment and intellectual property rights.

- What are Japan’s objectives for coverage of investment and intellectual property rights in EPAs/FTAs?

Agriculture

In 2004, Japan’s total transfers to agriculture amounted to 1.3 per cent of GDP, which was almost equal to agriculture’s share of GDP (1.4 per cent). (Secretariat report, page 62, para 2) This overall level of assistance for agriculture is well above the OECD average and therefore further detail regarding such assistance is important to the WTO membership in terms of both transparency and members’ obligations. Japan has not made a domestic support notification for the FY 2003, 2004, 2005 and 2006.

- Could Japan advise its domestic support levels for 2005-06 consistent with the WTO format?
- When will Japan provide WTO members with an opportunity to review its domestic support notification for these years?

Non-ad valorem duties

Non-ad valorem duties are a common feature of Japan’s tariff schedule accounting for 17.4 per cent of duties applied to agricultural goods. The report by the Secretariat (page 63, para 9) indicates that in the FY 2006, Japan’s simple average applied MFN tariff was 6.5 per cent, up from 6.3 per cent in FY 2004, reflecting an increase in the ad valorem equivalent (AVE’s) of non-ad valorem duties. From 2004 to 2005 there was also an increase in Japan’s simple average applied rate for WTO agricultural products.

- Can Japan please explain why there has been an increase in AVE’s?

An increase in AVE’s may occur even where non-ad valorem duties remain unchanged. Australia encourages all member countries to employ ad valorem tariffs to increase the transparency and predictability of markets.

- Is Japan considering converting any of its agricultural tariffs to ad valorem tariffs, and if so, which ones and when?

Government Procurement

Japan's expenditure on government procurement for agriculture and food processing products increased to nearly 200 million Yen in 2004 (Secretariat report, page 41, Table III.3). The foreign share of this procurement was 49.5 per cent up from zero per cent in 2002.

- Can Japan please inform Australia of the types of agriculture and food processing goods the government is procuring, including a breakdown of the value and type of goods sourced domestically and from other countries?

Standards

In 2005, voluntary standards comprised 215 Japan Agricultural Standards (JAS) (Secretariat report, page 43, para 46). Between April 2005 and March 2006, 34 JAS items were revised, 15 withdrawn and five newly established.

- Can Japan please outline the process of review of JAS?
- What are the reasons for withdrawing the 15 items and what is the expected impact?
- Did Japan undertake any analytical work to assess the effect of withdrawing JAS items and introducing new JAS items?
- What was the basis for the establishment of five new standards?
- Are these new standards likely to affect trade?

Maximum Residue Limits

Japan is commended for the transparent process employed to implement the positive list system for maximum residue limits (MRLs) for agricultural foods (Secretariat report, page 45, para 53).

- Will a similar process, involving input from countries where scientific risk assessments are used to assess agricultural chemicals, be used to develop additional MRLs as part of the Enforcement Ordinance of the Standards of Feed and Feed Additives?

Food additives

Japan's approach to approving food additives is time consuming and costly. Many food additives that are not approved in Japan are approved in other countries and are commonly used. Prevention of trade in food products containing food additives that are safe and are in common use elsewhere, but not approved by Japan, amounts to a non-tariff barrier.

- Can Japan advise why it has not moved more quickly to approve food additives and why the process is so time consuming and costly?
- Is a review of the approval process under consideration?

Structural reform

In March 2004, Japan adopted the Three-Year Programme for Promoting Regulatory Reform (TPPRR). The Secretariat's report (page 53-54, para 85) notes that according to authorities, the March 2006 revised TPPRR is a compilation of measures to further accelerate structural reform of the Japanese economy and society, with agriculture among the main sectors and issues covered. Can Japan indicate to what extent the revisions to the TPPRR will affect the agriculture sector and imports?

Australia understands that, under the Special Zone for Structural Reform Act (Secretariat report, page 54, para 87), approved “special zones” are exempt from certain regulations.

- Can Japan please detail the criteria on which “special zones” are classified?
- Can Japan provide Australia with a map of these zones including what zones are exempt from what policies, key agricultural enterprises operating in these zones and the reasons for the exemption?
- Has Japan undertaken any analytical work to assess the impact that “special zones” will have on Japan’s agricultural policies?
- Are there any additional programmes/policies operating in these areas with the aim of removing the “special zone” classification?

The revised Agricultural Management Reinforcement Law (Secretariat report, page 66, para 13) allows “general corporations” to lease farmland, effectively expanding nationwide the relevant measures adopted under the Special Zones for Structural Reform.

- Can Japan please detail the criteria on which “general corporations” are classified?

Income support for farmers

The Basic Law on Food, Agriculture and Rural Areas provides the framework and policy direction for agriculture in Japan (Secretariat report, page 63, para 8). As part of this policy, Japan is aiming to achieve a higher food self-sufficiency ratio, ensure food safety and shift away from price support towards income support.

- Could Japan please provide more detail on policy measures formulated under the Basic Law on Food, Agriculture and Rural Areas including to what extent the revisions to the Basic Plan adopted in 2005 have shifted Japan’s support measures away from trade distorting instruments such as market price support to non-trade distorting forms?
- Are the new income measures designed to be consistent with Annex 2, paragraph 6 of the Agreement on Agriculture?
- How will the amount of income support provided to farmers be determined?
- The plan aims to target “principal farmers” as the main beneficiaries of the Government’s support. Could Japan please detail the criteria on which “principal farmers” are classified?
- In moving to a system of direct payment with a stronger focus on principal farmers, has there been an increase in productivity from individual farms and an increase in the efficiency of farming at an aggregate level?
- Has Japan undertaken any analytical work to assess the likely impact of these changes?
- Has the implementation of the Review of the Basic Plan led to a lowering of retail prices for domestic agricultural goods? If so, would Japan consider a commensurate reduction in corresponding trade barriers to encourage competition with imported products?

Agricultural cooperatives

One of the measures adopted to promote competition among agricultural cooperatives was a review of the Agricultural Cooperative Law in April 2005 (Secretariat report, page 66, para 14).

- What were the findings of the review and subsequent actions arising from those findings?
- Does Japan expect the outcomes of the review to lead to significant changes in the way agricultural policies and programmes are implemented?

Dairy

- Could Japan please provide details of Government support aimed at increasing Japan's cheese manufacturing capacity by 2008, including what incentives are being offered to manufacturers to build the new capacity and what is the anticipated up-take of these incentives?
- Could Japan please provide details on the measures the Japanese Government is taking (including direct subsidies to farmers and price controls) to ensure that sufficient low cost milk will be available to facilitate an increase in capacity?

Wagyu Beef Labelling

On 10 January 2007, Japan released for public comment a guideline that restricts the labelling of wagyu beef to beef produced from wagyu cattle born and raised in Japan.

- Could Japan explain why this measure has been proposed, given that wagyu is a generic term for several breeds and cross-breeds of cattle that also exist outside Japan?
- If the measure is designed to improve transparency and to provide consumers with accurate and easily understood information about the origin of wagyu beef, how is this measure more effective than the existing requirement under the JAS Law for country of origin labelling for imported beef?
- Could Japan explain how the measure complies with Articles 8 and 22 of the TRIPs Agreement, Article 2.2 of the TBT Agreement and the national treatment provisions of GATT Article III?
- Could Japan explain why the proposed measure is to be introduced as a guideline rather than a regulation or legislation?

Non-agricultural products

Fish

The Secretariat report (page 24, para 32) indicates that Japan imposes import prohibitions and quantitative import restrictions on certain fisheries products

- Could Japan please provide details of which fish products (including species) are controlled by import quotas? Could Japan please explain in detail how the import quota application and allocation system for fish products operates?

Forestry

- With regards to forestry products, does Japan have any domestic legislation in place to prohibit secondary boycotts of products by organisations, companies or individuals?
- If there is legislation in place, are there any exemptions to the legislation? If legislation is not in place, does Japan have any intention to introduce law to prevent secondary boycotts?

Competition Policy

Anti-Monopoly Act

Amendments to Japan's Anti-Monopoly Act came into force in January 2006 (Secretariat report, page 54, para 89).

- Australia would welcome a status report on Japan's experience with the revised Act, including experience with voluntary cooperation with the Fair Trade Commission and the effect of surcharges imposed for violations of the Act.

Cartels

- What are the criteria to be met by cartel members to obtain the immunity/leniency mentioned in the Secretariat report (page 55, para 90)?

Authorisations

- Does Japanese competition law or its administration permit conduct that would otherwise breach the competition laws to be exempt on application by a company, for example on public interest grounds?
- If so, are the exemptions limited to certain kinds of anti-competitive conduct?
- What criteria must be met to obtain the exemption?
- How often are such exemptions granted?

Mergers

- Does the competition legislation provide for strict time limits for decision-making by the regulator in relation to proposed mergers?
- How long does it normally take for a merger or acquisition proposal to be scrutinised by the regulator?
- What legal rights of appeal exist in relation to a decision by the regulator to permit or prohibit a merger or acquisition?

Other

- How is privatisation of Japan Post proceeding, are there other areas of reform proposed that will ensure that state owned services are operating in a competitive environment?
- What future initiatives are being developed to ensure that competition and consumer protection enforcement are both undertaken with the same goals and focus?

Intellectual Property

Article 61 of the TRIPS Agreement provides Members with the discretion to provide criminal procedures and penalties in cases other than those specifically mentioned

- Does Japan have any proceeds of crime remedies in relation to intellectual property offences?

Article 49 of the TRIPS Agreement provides Members with the discretion to implement administrative procedures

- Can Japan advise whether its intellectual property laws provide for administrative penalties to be issued for intellectual property infringements?

Financial Services

- Could Japan provide a status report on the progress toward reform of Japan's Postal Savings and Postal Life Insurance, particularly concerning ensuring a level playing field between these institutions and private sector financial institutions?

Australia has noted that Japan recently introduced measures to reduce the maximum interest rate on certain lending to consumers

- Could Japan provide information on the objective of the measures and the expected effect on the number of foreign financial institutions operating in the consumer finance market?

Legal Services

Australia welcomes Japan's continuing removal of restrictive barriers in legal services and looks forward to this continuing. Nevertheless, Australia has a number of concerns with Japan's regulation of foreign lawyers.

Experience requirement

Japan requires foreign lawyers who wish to register as foreign legal consultants (*Gaikoku-Ho-Jimu-Bengoshi*) providing legal services pertaining to their home jurisdiction's law to have a minimum period of three years professional experience practising that law.

Japan said, in response to Australia's questions on this matter during the 2005 Trade Policy Review, that the experience requirement was to protect Japanese consumers by securing foreign lawyers' competence and ensuring high quality advice. It is important to properly protect the interests of all legal consumers, but Australia would argue the competence of lawyers to practice their home country law is best determined by the relevant authority in their home country, not their host country.

Japan's experience requirement does not work to protect legal consumers by securing the competence of foreign lawyers. Rather, it works as an unnecessary and costly impediment to trade.

- Noting that Australia does not have such a criterion, would Japan consider removing or reducing this requirement?

Residency and Commercial Presence Requirements

Under its Uruguay Round schedule, Japan has a minimum 180-day residency requirement and a commercial presence (eg: establishment of a branch office) requirement for foreign lawyers providing foreign legal services through the following modes of service supply:

- (a) cross-border supply (mode one) - where an Australian lawyer would provide legal services on Australian law to a client in Japan where only the service 'moves' using telecommunications technology with both the supplier and consumer of the service remaining in Australian and Japan respectively
- (b) consumption abroad (mode two) - where a Japanese client would obtain legal services on Australian law in Australia from an Australian lawyer

- (c) presence of natural persons (mode four) - where an Australian lawyer would fly-in to Japan to provide legal services on Australian law to a client and fly out after a short period of time.
- We note, based on proposed amendments tabled in Japan's June 2005 revised Doha Round GATS offer, that this restriction may no longer apply in relation to Mode 2 or Mode 4. We would welcome this change and congratulate Japan for its proposed amendments. We would also appreciate confirmation that these changes to Japan's regulatory regime are already operative in Japan.
 - Please explain whether foreign lawyers are permitted to come to Japan for short periods (i.e., on a "fly in - fly out" basis) to provide legal advice (in relation to the law of the jurisdiction in which they are qualified), without having to become registered as a "gaiben"?
 - How does Japan justify its 180-day residency requirement and commercial presence requirement for foreign lawyers providing foreign legal services for Mode 1 of legal service supply? Australia understands that Mode 1 and Mode 3 are generally mutually exclusive, in that Mode 1 is intended to allow foreign lawyers to supply advice to Japanese clients (in relation to the law of the jurisdiction in which they are qualified), without having to come to Japan or become registered there as a "gaiben".

Establishment of Legal Corporations

Australia understands that the establishment of legal profession corporations was allowed in Japan in April 2002. However, foreign lawyers are currently not allowed to incorporate their organisations. Australia understands that Japan needs to examine whether it is appropriate to extend this provision to allow foreign lawyers to incorporate in Japan.

- How is the review on extending the establishment of legal profession corporations to include foreign lawyers progressing?
- Could Japan provide details as to who is undertaking the review?
- What is the timeframe of the review?

Telecommunications

Since 1997, Japan has made significant progress in regulatory reform leading to greater market access for new market entrants, through successive revisions of the *Telecommunications Business Law 1984*. Australia welcomes Japan's ongoing reforms to the telecommunications market, on interconnection, frequency allocation and the establishment of a new framework to evaluate competitiveness. However, Japan could do more to adopt policies that increase competition, remove unnecessary regulatory barriers and increase transparency.

The present regulatory environment does not provide adequate pro-competitive measures to new entrants in the Japanese telecommunications market. Anti-competitive behaviour by the incumbent (Nippon Telegraph and Telephone Corporation - NTT) prevents the growth of competition in Japan's telecommunications market. *The Telecommunications Business Law 1984* was aimed at encouraging new business carriers to enter the market and promote business competition.

- Have revisions to the *Telecommunications Business Law 1984* resulted in new business carriers entering the market?

- How does Japan's telecommunications regulator, the Ministry of Internal Affairs and Communications (MIC) determine levels of competition in Japan's telecommunications market in Japan?

Spectrum

The recent allocation of 3G spectrum in Japan was made on the basis of presentations by applicants, not by auction. In that context, it is not clear how the mobile licence/3G spectrum returned by Softbank when it took over Vodafone Japan will be allocated.

- Will this licence/spectrum be offered to other carriers wishing to enter the Japanese Mobile telecommunications market?
- Would Japan consider implementing a spectrum trading model to ensure the efficient allocation of spectrum?
- Would Japan provide detail on the method of allocation proposed for the mobile licence/3G spectrum returned by Softbank?

Foreign Investment

Recent reforms have encouraged foreign investment into Japan's telecommunications industry. However, foreign investment in Japanese telecommunications remains modest in comparison to other developed countries. The lack of foreign investment in Japan's telecommunications markets indicates Japan is not as open to foreign participation as is the case in other developed countries.

- Is the Japanese Government concerned by the level of foreign investment in telecommunications services in Japan in comparison to other countries?
- Could Japan provide information on the aggregate level of foreign investment in the Japanese telecommunications services market (following the departure of Vodafone) and on what measures, if any, are planned with a view to increasing foreign participation?
- How does Japan measure the openness of its telecommunications market to foreign investment?
- Has Japan undertaken any analysis of the openness of its telecommunications markets relative to that in other major markets and, if so, could the results be provided?

Mobile Number Portability

Mobile Number Portability (MNP) offers consumers the ability to change between operators without significant cost or inconvenience and leads to greater competition as operators compete for product market share. MNP also encourages greater innovation and product development. Australia welcomes Japan's introduction of MNP in 2006.

While Japan has implemented MNP, it is not clear whether carriers bear the cost of MNP, or if they recover the cost of MNP through having their customers meet the cost of switching between carriers. Many developed nations, including Australia, have adopted the principle that each carrier should bear its own MNP costs, as this enhances the pro-competitive impacts of MNP.

- Will Japan follow the generally accepted principle that each carrier should bear its own costs in relation to implementing MNP so as to ensure that competition in mobile services is enhanced?

- Could Japan outline the impact of MNP since its implementation?

Access to essential facilities/wholesale services

- Will Japan put in place measures that ensure there is no discrimination in the non-price aspects (such as level of technical and operational quality) of wholesale services provided by NTT to its competitors as compared to when it provides these services to itself?

Independent Regulation

In Japan, both the policy and regulatory functions for telecommunications are the responsibility of MIC. Although recent reforms have opened the Japanese market to some extent, MIC still tightly controls the domestic telecommunications market, indirectly enabling the incumbent carriers NTT (East and West), KDDI, Japan Telecom and DoCoMo to maintain a dominant market presence. Most OECD nations now recognise that an institutionally independent regulatory authority is the most effective means of providing and ensuring a competitive telecommunications sector.

Japan has accepted the need for independence in most of its regulatory institutions, and yet appears to stand alone among developed nations in maintaining direct ministerial control over telecommunications regulation.

- Could Japan provide detail of the measures it has in place to ensure its regulatory authority responsible for telecommunications is legally and structurally independent?

Investment

The Council for Economic and Fiscal Policy's "Strategy in the Globalizing Economy" of 18 May 2006 noted the Japanese Government's goal of doubling inward foreign direct investment to around 5 per cent of GDP in 2010.

- What measures is Japan putting in place to make investment in Japan more attractive for overseas investors?

Energy

- Could Japan provide an update on progress in its program to deregulate Japanese energy markets?

Labour markets

Japan's "Strategy in the Globalizing Economy" released by the Council for Economic and Fiscal Policy on 18 May 2006 outlines a policy to increase the use of skilled labour from other countries.

- Could Japan provide an explanation of the specific measures which it is putting in place to realise this goal, including extensions of eligible visa periods and increasing the range of professionals granted permission to work in Japan?

QUESTIONS BY NEW ZEALAND

Section I: Economic Environment

Public debt

Japan's economic recovery and continued growth is welcome news. The structural reforms in such areas as non-performing loans and the improvement in other key indicators such as the reduction in

unemployment have been cited as important components in this recovery (WT/TPR/S/175, paras I.1-2 refer). The Secretariat report notes, however, that public debt has increased from its already high levels in 2004 to 172% of GDP in 2005. Against this background:

Question 1:

We would be interested in a further explanation of the Government of Japan's plans to address the public debt issue and over what timeframe.

Structural reform

The Secretariat report notes that Japan's medium and long term growth prospects will depend on its continued efforts to implement an effective mix of monetary and fiscal policies, together with structural reforms, including further trade liberalisation, particularly in agriculture.

New Zealand commends the Government of Japan's intention to intensify such reforms and notes the importance of reform to an enhanced medium term outlook (WT/TPR/S/175 paras I.29 refers). Para IV.2 notes that Japan's agriculture sector remains relatively protected from foreign competition. It also indicates that the overall assistance for agriculture at 1.3% of GDP is almost equal to the share of agriculture in Japan's GDP (1.4%) and that Japan's agricultural assistance (as measured by producer and consumer support estimates, for example) is well above the OECD average. The agriculture sector's substantially lower productivity than the national average has also been remarked on. Given this, we would like to ask:

Question 2:

Over what time frame does Japan expect that its current measures for agricultural reform (eg Secretariat report para IV.6) will begin to demonstrate significant effect?

Question 3:

What efforts is Japan making to intensify agriculture sector reform and what effects does it anticipate these will have on agriculture sector productivity and agricultural trade liberalisation?

Question 4:

How does Japan intend to "...create the political momentum to liberalize trade..." as stated in para 70 of its report (WT/TPR/G/175)?

Section II: Trade Policy Regime: Framework and Objectives

Free trade agreements

The Secretariat report notes that Japan considers regional and bilateral free-trade agreements complement trade liberalisation at the multilateral level (WT/TPR/S/175 paras II.1 and II.6). Paras 26 to 34 of the same document outline a range of such agreements that the Government of Japan has concluded, or is negotiating or considering. In this context New Zealand would be interested in the following:

Question 5:

The Japanese Government has recently indicated its intention to intensify its negotiation of bilateral FTA/EPAs as part of its strategy to foster economic growth through encouraging greater openness and innovation. What specific plans does Japan have to pursue an intensified programme of bilateral FTA/EPA negotiations and what place does Japan see for wider, plurilateral arrangements (such as the FTAAP, CEPEA) in this strategy?

Inward foreign direct investment (FDI)

The Secretariat report outlines a range of measures Japan has taken to encourage inward FDI into Japan such as the Japan Investment Council's "Program for the Promotion of Foreign Direct Investment in Japan" (2003) and "Program for the Acceleration of Foreign Direct Investment in Japan" (2006) (paras 102-105 of WT/TPR/G/175 refer), the removal of tax impediments to FDI (para I.12 of WT/TPR/S/175 refers) and the new Corporation Code which has the potential to facilitate inward FDI by merger and acquisition (para III.85 of WT/TPR/S/175 refers). However, Japan's inward FDI decreased markedly in 2005 and the level of inward FDI remains low compared with other developed countries (para I.5 and Table AI.6 of WT/TPR/S/175 refer). Against this background New Zealand would like to ask:

Question 6:

To what factors does the Government of Japan attribute this decrease in the level of inward FDI, in spite of the measures to encourage inward FDI that have been put in place? How does Japan propose to meet the goal stated in former Prime Minister Koizumi's General Policy Speech in January 2006 to double the amount of inward FDI in 2006?

Question 7:

What level of inward FDI has been evident in the agricultural and food processing sectors and what trends are apparent in inward FDI in these sectors? How does this level and trend compare with inward FDI directed to other sectors of Japan's economy?

Question 8:

What steps is Japan taking to examine factors, other than the regulatory regime, which may account for low levels of inward FDI and how would the Government of Japan propose to address these factors?

Question 9:

What are the policy reasons underpinning the maintenance of the requirement of prior notification (to Minister of Finance and Minister in charge of industry involved) for inward FDI in industries recognised in the OECD Code of Liberalisation of Capital Movements? (para II.51 WT/TPR/S/175)

Section III : Trade Policies and Practices by Measure

Non-Tariff Measures

Para III.3 of the Secretariat report notes that among the few non-tariff border measures Japan retains are some quantitative import restrictions on fish products.

Question 10:

Could Japan please indicate what other products, apart from fish, are subject to quantitative import restrictions? Could Japan please provide a breakdown of import trends in the past five years in those individual fish product lines subject to quantitative import restrictions?

JAS Registered Overseas Certifying Bodies (ROCBs) approval process

Para III.47 of the Secretariat report notes the amendment to the JAS Law (the Law Concerning Standardisation and Proper Labelling of Agriculture and Forestry Products). New Zealand commends moves towards making the registration system under the JAS law more transparent. In this regard:

Question 11:

Can the Government of Japan advise whether it has any plans to streamline the ROCB registration process by, for example, making it less costly and less complex?

Positive list

Japan revised its maximum residue limits (MRLs) for agricultural chemicals under a positive list system for chemicals in foods in May 2006 (para III.53 of WT/TPR/S/175 refers). In this regard, New Zealand has the following questions:

Question 12:

Is there any programme proposed or underway to educate consumers and industry about the positive list system and appropriate weighting to be given to the actual health risks involved behind such a system? (For example, how is the Government of Japan explaining to consumers that there are cases in which some residue detection above a low default MRL poses no health risk.)

Question 13:

Can the Government of Japan provide figures on the number of residue detections above MRLs that have occurred domestically, as well as the number of other such detections that have occurred since the positive list came into force on 29 May last year? In addition can Japan express those numbers as a percentage of total production or total imports (as the case may be) for the period in question?

Question 14:

Can Japan please explain what expedited processes it plans to put in place to enable speedy resolution of issues which may arise as a result of teething problems in the transition to the new system?

Question 15:

Following on from Japan's response to New Zealand's question 10 at Japan's previous Trade Policy Review, can Japan please advise on progress towards ensuring that regulators recognise the test results from officially accredited domestic and overseas laboratories? What scope is envisaged for recognition by the Government of Japan of results from tests carried out in officially accredited laboratories overseas for compliance with MRLs?

Non-Quarantine Pest List

Question 16:

New Zealand welcomes Japan's recent additions to the Non-Quarantine Pest List including the most recent implementation in accordance with SPS Notification G/SPS/JPN/161 last year. We would appreciate Japan providing an indicative timeline for its review of further pests to include on the Non-Quarantine Pest List.

Special zones for structural reform

New Zealand welcomes the expansion in the number of special zones since the Special Zones for Structural Reform Act entered into force in April 2003 (para III.87 of WT/TPR/S/175 refers).

Question 17:

What steps will the Government of Japan be taking to apply the experience of these zones to benefit structural reform nationwide? What timetable will apply to any such steps?

Section IV: Trade Policies by Sector

Agriculture: Basic Plan

The Secretariat report notes that the new Basic Plan under the Basic Law on Food, Agriculture and Rural Areas was adopted in March 2005 (para IV.6 of WT/TPR/S/175 refers). In relation to the Basic Plan:

Question 18:

We would appreciate an update on progress towards implementation. In particular, could you please indicate, with quantitative data, the extent to which the Basic Plan has shifted Japan's support measures away from trade-distorting instruments such as market price support to non-trade distorting forms?

Question 19:

Please explain the criteria for determining a "business unit" and "core farmer" for the purposes of the Basic Plan and provide examples of core farmers and business units formed pursuant to it.

Agriculture: Dairy

Para IV.10 of the Secretariat report refers to Japan's complex and inefficient quota system. It states that the "eligibility for quota allocations may require prior approval by the MAFF and tends to be intricate". It also notes that low quota-fill rates (lower than 50%) occur. In the light of these comments:

Question 20:

How does Japan plan to simplify its import quota procedures in the future? Please describe measures which might be taken and an indicative timeframe.

Question 21:

How does Japan plan to introduce greater flexibility in its quota reallocation mechanisms to more efficiently meet Japanese consumer and producer demand?

Question 22:

Para IV.12 of the Secretariat report refers to measures to impose restrictions on the production of raw milk. How will Japan deal with any excess raw milk production if it occurs in 2007 or subsequent years?

Agriculture: Beef

With the resumption of North American beef exports to Japan following a lengthy period of lower total beef imports, there is potential for the safeguard referred to in para IV.15 of the Secretariat report to be triggered again.

Question 23:

Given that domestic producers now have a larger market share than before the discovery of BSE in Japan, what agricultural trade policy objectives would be served by imposing the safeguard, if triggered, in these circumstances?

Agriculture: Japan's exports

One of the "Basic Policies for Economic and Fiscal Management and Structural Reform 2006" (para 97 of Japan's report (WT/TPR/G/175) refers) is "Enhancing the growth potential and international competitiveness" of Japan. Para 113 of Japan's report states the strategy "to cultivate foreign markets for high-quality Japanese agricultural food and products". In this regard:

Question 24:

What objectives or targets have been set for growth in Japan's agricultural exports and improving Japan's international competitiveness in agricultural exports? What strategies does the Government of Japan intend to use to promote Japan's export competitiveness? What particular products or countries have been targeted for export and what policies and programmes are in place to this end?

Agriculture: International cooperation and investment in Japan

Question 25:

How does the Government of Japan envisage cooperation with, and investment by, foreign entities assisting with goals identified in para 113 of Japan's report (WT/TPR/G/175) of ensuring "sustainable development of agriculture and a stable supply of food", "reduc[ing] costs in the entire food system" and "mak[ing] use of more technologies"?

Maritime Transport Services

Further to Japan's response to New Zealand question 30 in Japan's 2005 Trade Policy Review, we note that the Government of Japan has removed the "economic needs test" requirement for port transport licensing (Secretariat report IV.5 (iv), para 54), but that entry into port transport in all ports currently requires permission.

Question 26:

What does the requirement for permission to engage in port transport services entail? Are there discriminatory elements in the approval process which would restrict access by foreign services suppliers?

Question 27:

Can Japan please explain the reasons for listing an MFN exemption on international freight forwarding in its 25 June 2005 revised services offer and detail the circumstances under which Japan would expect to remove this?

Air Transport

Para IV.60 of the Secretariat report notes that there have been no changes in Japan's international air transport regulations since 2004.

Question 28:

In the light of the importance the Government of Japan places on infrastructural services as a determinant of business competitiveness, we would be interested to know what plans the Government of Japan has to review the regulatory environment for air transport services to seek enhanced efficiency and competitiveness.

Legal Services

In an amendment to the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers that entered into force in August 2005 (Secretariat report IV.5 (v) (a) para 67) joint enterprises between a foreign lawyer qualified under Japanese law and a lawyer qualified under Japanese law were permitted.

Question 29:

Can Japan please provide details on the number of such joint enterprises established since this amended regulation was introduced in August 2005, as well as information on the scope of business covered by such enterprises? Can Japan please indicate any further amendments planned to the regulations concerning the handling of legal business by foreign lawyers?

Other Services: Education

The Secretariat notes at para IV.70 that Japanese universities receive favourable treatment with regard to corporate tax that branches of foreign universities do not receive.

Question 30:

Can Japan please explain any measures it proposes to take to address the differential tax treatment referred to above?

Question 31:

In his inaugural policy speech to the Diet on 29 September 2006 Prime Minister Abe stated his goal to "...channel in new vitality to the Japanese economy through the power of innovation and openness." In that same speech he also placed emphasis on rebuilding Japan's education sector. Can Japan explain how it proposes to encourage innovation and openness in its reform of the education sector? In particular, can Japan explain how it proposes to encourage the contribution foreign educational services can make to Japan's innovation and openness?

Question 32:

Can Japan update on the outcome of its discussions with UNESCO/OECD on online education services and advise how it intends to treat recognition of such services?

QUESTIONS BY TURKEY

WT/TPR/S/175

I. ECONOMIC ENVIRONMENT

(4) DEVELOPMENTS IN TRADE AND FOREIGN DIRECT INVESTMENT

(i) Tax reform, Para 12

(iv) Foreign Direct Investment, Para 27

Secretariat Report reads that inward FDI into Japan remains substantially lower than outward FDI compared to the level of other developed countries.

It is understood from para 12 of the Secretariat Report that Japan is taking some measures within the overall tax reform to remove tax impediments to inward FDI.

In light of the above mentioned information, we will be pleased if Japanese Delegation could inform us

1. on the reasons of the fact that inward FDI into Japan is low compared to developed countries,
2. if there are any other planned and/or implemented measures to increase the level of inward FDI flow besides tax related reforms,
3. if measures taken within the tax reform so far, approved to be effective to increase the inward FDI into Japan.

WT/TPR/S/175

III. TRADE POLICIES AND PRACTICES BY MEASURE

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(vii) Standards and sanitary and phytosanitary measures, Para 53,

It is noted in the Secretariat Report that Japan revised its maximum residue limits for agricultural chemicals.

We appreciate information by Japanese Delegation to clarify the criteria according to which upper limits for residues in agricultural chemicals were set and if the relevant notification to the WTO SPS Committee was made.

WT/TPR/S/175

III. TRADE POLICIES AND PRACTICES BY MEASURE

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(vii) Standards and sanitary and phytosanitary measures, Para 55,

On the basis of the information given at para 55 of the Secretariat report, we would like to learn if Japan has notified her import prohibitions on beef and poultry for purposes of BSE and avian flu to the relevant committees of the WTO.

WT/TPR/S/175

IV. TRADE POLICIES BY SECTOR
(1) INTRODUCTION, Para 2
(2) AGRICULTURE
(i) Overview, Para 6

Secretariat report mentions that despite the level of overall government assistance for agriculture which is well above the OECD average, labour productivity has remained substantially lower than the national average.

Could Japanese Delegation explain if there are any researches made in order to bring into light the reasons of low labour productivity in agricultural sector in Japan?

We would also appreciate the further comments of esteemed Japanese Delegation on the explanation made at the para 6 of the Secretariat Report that the low level of labour productivity in agriculture may be stemming from relatively high border protection and support in this sector compared with other sectors.

WT/TPR/S/175

IV. TRADE POLICIES BY SECTOR
(2) AGRICULTURE, Para 7, 8

Secretariat Report mentions that Japan's food self sufficiency ratio has remained unchanged since 1998 despite efforts to raise it.

We understand from para 8 of the Report that as the main framework for agriculture in Japan, the Basic Law on Food, Agriculture and Rural Areas envisages to achieve higher food self sufficiency ratio among others.

Could Japanese Delegation explain what types of measures are in effect within this law to achieve higher food self sufficiency ratio?

QUESTIONS BY THAILAND

WTO Secretariat Report (WT/TPR/S/175)

III TRADE POLICIES AND PRACTICES BY MEASURES
(2) MEASURES DIRECTLY AFFECTING IMPORTS
(iii) Non-tariff border measures

Para 30: According to the Secretariat report, Japan has introduced import prohibitions on certain chemicals, certain narcotics, rough diamonds from Cote d'Ivoire, and gems likely to be used for bio-terrorism. Are there any other products that Japan currently subjects to import prohibitions, specifically agricultural products? If yes, please identify.

(vii) (a) Standards, testing, and conformity assessment: Mandatory technical regulations

Para 49: The Secretariat report states that "According to the authorities, Japan's mandatory technical regulations under the Electricity Utilities Industry Law and the Electrical Appliance and Material Safety Law *are aligned with international standards*" (emphasis added). However, in Table III.4 (page 42) which sets out major standards and technical regulations for 2005, no mandatory technical regulations under the mentioned laws are listed as corresponding to international standards. We would appreciate it if Japan could clarify this discrepancy.

(vii) (b) Sanitary and phytosanitary measures

Para 53: In May 2006, the Ministry of Health, Labor and Welfare (MHLW) revised the positive list system for agricultural chemical residues in foods. Could Japan please provide detailed information on its reasons and scientific grounds for applying this system?

Please also verify whether the following information is correct:

- With regard to the revision, the number of agricultural chemicals to which the Residual Agricultural Chemicals Standard (RACS) will be applied has increased from 229 to 700 items.
- The Japanese Government will permit the distribution of foods in its domestic market if all levels of RACS are less than the standard level determined by MHLW.
- Regarding rice imports, the number of products on which RACS will be applied has increased from approximately 200 to 500 items. In addition, the safety inspection has become more stringent as the new system consists of 3 inspection processes including pre-shipment sample inspection, loading sample inspection and regulatory monitoring.

IV TRADE POLICIES BY SECTORS

(2) AGRICULTURE

(i) Overview

Para 8: The Secretariat report states that the Basic Law on Food, Agriculture and Rural Areas aims to achieve a higher food self-sufficiency ratio, and shift away from price support to import support. How has Japan notified this support (direct payment) to the WTO, i.e., under which category of domestic support?

Para 11: The amount of the subsidies provided for rice was not available to the secretariat as the year 2002 was the latest year for which information was available. Could Japan please provide updated figures and details of its current rice subsidies?

The Secretariat report also notes that Japan exports rice as food aid, with the Japanese government providing US\$ 91.3 million for the purchase of grains as food aid to LDCs and net-food importing developing countries between June 2002 – 2003. Could Japan provide details on the origins of these rice purchases, i.e., whether they were purchased from domestic or international sources? If applicable, have any of the food aid rice exports been categorized as re-exports?

Para 12: According to the Secretariat report, the Japanese government implements a volume cap for agricultural products such as rice and milk through the Production Adjustment Programme budget. How does Japan notify this support (direct payment) to the WTO, i.e., under which category of domestic support? Please also confirm whether the budget allocated to the Production Adjustment Programme for FY 2006 amounted to ¥165.7 billion, and please indicate how much of the budget was utilized.

Additional Questions

- The Ministry of Agriculture, Forestry and Fisheries (MAFF) requires imported beef and poultry to come from factories certified by MAFF agencies. In practice, MAFF must send officers to exporting countries and the process can be very time-consuming. Please indicate whether Japan intends to allow government authorities of the exporting country to certify these factories instead of MAFF agencies?
- We understand that Japan currently imposes an import levy and surcharge on sugar at the level of approximately US\$700 – 800/mt. Could Japan please provide precise figures on its sugar import levy and surcharge?

(5) SERVICES
(vi) Other services

Para 71: According to the Secretariat report, the Japanese government removed restrictions on foreign doctors and nurses with Japanese medical licenses in March 2006. Could Japan please clarify these deregulations on medical service providers?

Moreover, in light of Japan's advancing aging society, does the government have any plans to further relax the criteria for applying for medical licenses or work permits in medical services? If so, please elaborate.

ADDITIONAL QUESTIONS BY THAILAND

1. We understand that certain amendments by the Ministry of Economy, Trade and Industry (METI) to Japan's Law for the Promotion of the Effective Utilization of Resources have been in force since 1 July 2006. These amendments require manufacturers and importers of home appliances, such as computers, air conditioners, and televisions to provide additional information about the use of particular chemicals, i.e., lead, mercury, PBB, etc, that are greater than permitted levels. As a result, manufacturers and importers must identify the level of listed chemicals utilized in the appliance on the appliance itself and in a product catalogue. In addition, manufacturers and importers must publish information about utilized listed chemicals on their websites.

- As this issue does not appear in detail in the TPR reports, could Japan please identify all products covered by this law, as well as provide details about any relevant standards, testing, and conformity assessments that Japan uses to establish permitted levels?

2. We understand that on 29 May 2006, the Ministry of Health, Labour and Welfare (MHLW) introduced a positive list system for provisional maximum residue limits (MRLs) and uniform limits for over 800 types of chemical residues. As a result, several agricultural and food products must undergo additional pre-shipment inspection procedures. The extensive list of chemicals also means that each product can be subject to extensive testing for several types of chemicals. This creates additional costs for importers in the form of deposits for testing procedures, resulting in a correspondence increase in the price for such products in Japan. Rice, for example, is subject to inspection for over 500 types of chemical residues.

- Could Japan please provide details on how the money deposits for testing procedures are established and whether they are commensurate with the approximate cost of services rendered?
- As mentioned, the list of subject chemicals is extensive, covering over 800 types of residues, resulting in additional testing costs for traders. Does Japan intend to revise its system in the near future to reduce the amount of subject chemicals and the required level of deposits? Thailand would encourage such revisions to further facilitate trade.

QUESTIONS BY INDIA

Q 1. Indian exports to Japan are affected by a number of issues, which include SPS/TBT measures, and high transaction costs. The inspections conducted by the Japanese authorities with regard to the place of origin labeling in case of fruits, vegetables, fish, meat etc is a very strong non-tariff barrier. The rules governing imports of fruits and vegetables into Japan are excessively restrictive and at times stricter than those applicable in other developed nations. In case of processed food items, the presence of additives used for preservation or enhancing the product quality and life and otherwise considered safe are objected to by authorities in Japan. Meat and meat products exports to Japan face difficulties on account of stipulations that ban use of natural and synthetic hormones in livestock production. The distribution channels in Japan are extremely complex and highly regulated. As a result transportation and distribution costs for certain products like rice are excessive and make the same exporting to Japan extremely difficult. Respecting

Japan's decision to protect its farm sector and reminding Japan of its obligations under the WTO, can Japan tell us how it proposes to permit developing countries like India to begin exporting to Japan in an effective manner?

Q 2. Japan imported yen 383 billion worth of fruits in 2005. Import of fruits from India was, however, only worth yen 4.3 billion or just over 1% of its total imports of fruits. Although Japanese market for mango imports from India has been opened up as of last year, yet it is subject to VHT treatment, which is applicable exclusively for Japanese market. Moreover, as per Japanese regulations, mango imports will be totally suspended from the country, even if a single fruit fly is detected in the exported mango. We would request Japan to simplify the procedure for import of other fruits instead of seeking separate approvals.

Q 3. Japan imported 396 billion yen worth of vegetables in 2005. India's share was negligible at 0.143 billion yen i.e. just 0.036%. The chief reason for this appears to be the import control regime of Japan in this area. We request Japan to provide details of all these requirements clearly in one document in order that India may be able to fulfill the same and start exporting to Japan.

Q 4. The import of poultry meat and poultry products from India was banned immediately after outbreak of bird flu in the country in Feb, 2006. Although India notified OIE in mid-August last year that the country has become avian influenza free, Japan has its own set of procedures for lifting ban including asking for detailed report and its examination to verify that the country is avian influenza free. It is very time-consuming process and we request Japan to take steps to streamline it. In view of the recent occurrence of incidents of bird flu on the poultry farms in Japan, we would request Japan to inform the changes if any the regulations concerning import of poultry and meat products from India and how they fare with regulations concerning domestic sourcing.

Q 5. It has been reported that strict quotas are imposed in Japan for import of items like squid, seaweed, mackerel, sardine, herring etc including from India. In the interest of promotion of trade from a developing country like India, we request that the Government of Japan should consider either to completely lift them or be substantially revised upwards.

Q 6. Indian producers of essential oils and fragrances have also reported strong resistance in the Japanese market due to strict approval requirements for chemical imports. We request Japan to simplify these requirements to facilitate trade.

Q 7. Indian exporters face a number of difficulties while exporting "Generic Formulations". Indian manufacturers reported difficulties in product registration in Japan largely because the product registration guidelines are reported to be available only in Japanese language.

Q 8. Producers of paper, paper products and paperboard have reported difficulties in accessing the Japanese market. The regulations in place in Japan with regard to quarantine procedures are extremely tough to comply with by Indian exporters. We request Japan to simplify these requirements to promote exports from India of these products.

Q 9. We request Japan to review its visa policy for overseas employees to do on-site work in Japan as problems have been reported especially by the Indian companies operating in the IT sector.

QUESTIONS BY HONG KONG, CHINA

Banking Services

(WT/TPR/S/175, P. 72, Para. 34)

1. We note that foreign banks may enter the Japanese market by establishing branches or subsidiaries after obtaining the relevant license. While this reflects Japan's banking regime in terms of the commercial presence mode of supply (mode 3), would Japan brief us about its regime for the provision of banking services via the cross border mode of supply (modes 1 and 2)? If cross border supply of banking services

is also allowed, would Japan consider undertaking mode 1 and 2 commitments for banking services in this round of services negotiations so as to increase the predictability of the regime?

Securities

(WT/TPR/S/175, P. 76, Para. 42)

2. We note that only registered joint-stock corporations may engage in securities business in Japan. However, this requirement has not been inscribed in Japan's existing GATS schedule. As it is stipulated in GATS Article XVI(e) that measures which restrict or require specific types of legal entity through which a service supplier may supply a service are subject to scheduling, would Japan advise on the compatibility of the subject requirement with its existing services commitments?

Maritime Transport Services

(WT/TPR/S/175, P. 79 - 80, Paras. 54 & 58)

3. We note that Japan has introduced MFN exemptions for three sub-sectors in maritime transport services (cabotage services; international freight forwarding; and international shipping services). For the latter two sub-sectors, market access and national treatment will be granted on a reciprocal basis. Japan indicates that the exemption of these services from the MFN obligation is for historical reasons. We would appreciate if Japan could elaborate on what these historical reasons are, whether such historical reasons have become obsolete with the lapse of time and whether Japan has any plan to lift these MFN exemptions.

4. We note that the licensing requirement for an 'economic needs test' for entry into port transport and the permission requirement for establishing charges were removed for all ports in Japan in May 2006. We would like to invite Japan to illustrate to which port transport services these removal of requirement is applicable.

5. We note that Japan has limited the number of licenses conferred to maritime cargo handling and container station and depot services suppliers in ports designated by the Government until end of May 2006. We would like to know if Japan has extended this limitation after May 2006 and if not, whether there are any plans to remove this limitation in the future offer(s).

6. We note that office registration is required for maritime freight forwarding services suppliers operating under mode 1 in Japan and Japan also maintains market access and national treatment limitations on the same services under mode 1 and 3 by granting operation permit or governmental registration on a reciprocal basis. We would appreciate Japan's explanation on how these requirements constitute market access / national treatment limitations.

Air transport

(WT/TPR/S/175, P. 81, Para. 62)

7. Japan has ascribed the comparatively high landing fees for three major international airports to costs associated with environmental protection. We would appreciate Japan's further elaboration on the details of these environmental protection costs.

Road Transport Services

8. We understand that Japan has currently maintained market access limitations for its mode 3 commitments in road freight transport services (CPC 7123). According to Japan's revised offer submitted in June 2005, limitations may be applied on the number of service suppliers, on the number of service operations or on the quantity of service output on a temporary and non-discriminatory basis. We would like to know under which conditions could Japan trigger such temporary limitations, and how frequent have such temporary limitations been imposed in the past few years.

QUESTIONS BY NORWAY

1. Para 54 and footnote 60 on page 79 of the Secretariat's report contains information on revision of the "Port Transportation Business Law". We appreciate that the economic needs test is removed. We would appreciate information on the activity covered by this law, and in particular how the term "port transport" is defined in the law. Furthermore we would appreciate an explanation of what is considered "designated ports" and how the licencing system is operated, in particular with respect to the criteria that applies for new entrants to this activity.

2. Japan is among the most important markets for Norwegian fish and fishery products, and trade between Japan and Norway in this sector has grown greatly during the last decade. As Japan currently is not self-sufficient with regard to fish, there should be a further potential for developing trade relations in this sector. With this in mind, we have noted that Japan has liberalised its system of import quotas for some seafood products. What further plans does Japan have with regard to liberalisation of its import regulations in this sector?

QUESTIONS BY THE UNITED STATES

I. ECONOMIC ENVIRONMENT

Main Economic Developments

1. Referring to paragraph 3 on page 1 of the Secretariat's report, the Japanese Government is introducing an *ex ante* regulatory impact analysis.

Can Japan provide further details on its plans for introducing this analysis, and explain how these analyses are to be used to bring about additional regulatory reform?

2. With respect to page 2 (box 1.1) regarding the privatization of Japan Post, the Secretariat's report notes that the new Japan Post entities "are, as a rule, to be subject to the same obligation to pay taxes as the private sector from the beginning of the transition period."

Will Japan also hold the new Japan Post delivery company's express mail service to the same customs obligations as private sector companies?

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

Trade Policy Formulation and Evaluation

3. Referring to paragraph 10 on page 18 of the Secretariat's report, a revision of the Administrative Procedures Law took effect from April 2006 that requires ministries and agencies to publish draft regulations for public comment. With respect to this revised procedure:

A) What is the degree of compliance of ministries and agencies with the minimum 30-day (in principle) comment period rule, both in terms of performance by each ministry/agency as well as across the government?

B) What steps is the government taking or plan to take to ensure strict compliance with the revised Public Comment Procedure's minimum 30-day rule? Is the government encouraging ministries and agencies to, whenever possible, open draft regulations to public comment for longer than 30 days?

C) How is the government measuring the overall impact of this new Procedure? To what degree are ministries and agencies taking public comments into full consideration and changing draft regulations, to the extent appropriate, to improve the regulatory process?

- D) Government-appointed advisory groups often have a role in recommending policies and regulatory approaches that are often reflected in draft regulations. What steps is the government taking to ensure reliable access to such groups for all interested parties to express views and be informed of their deliberations before recommendations are made?

Trade Agreements and Arrangements – Regional Trade Agreements

4. In paragraph 18 on page 20 of the Secretariat's report, Japan explains that it holds regular meetings with China and the Republic of Korea under the ASEAN + 3 framework of cooperation.

Could Japan please explain what is meant by "framework of cooperation" and how it operates?

5. In paragraph 19 on pages 20-21 of the Secretariat's report, Japan refers to negotiations with ASEAN on a Japan-ASEAN CEP.

- A) Could Japan please update the Membership on the status of these negotiations, and provide information on the date this agreement is expected to be signed?
- B) What is the relationship between these CEP negotiations and the discussions under the ASEAN+3 framework?

Trade Agreements and Arrangements – Other Agreements and Arrangements

6. As noted in paragraphs 26, 28, 30 and 31 on pages 22-23 of the Secretariat's report, Japan has signed EPAs with four countries – Singapore, Mexico, Malaysia and Philippines. In each of these agreements, to varying degrees, Japan has not eliminated tariffs on generally the same types of agricultural commodity products: beef, offal, many types of edible fish, most dairy products, many fresh vegetables, wheat, rice, and certain edible oils.

How does Japan's exclusion, from duty elimination under these Agreements, of significant categories of agricultural commodities broadly traded in world markets operate to "facilitate trade" as set out in Art. XXIV:4 of the GATT 1994?

7. According to paragraph 34 on pages 23-24 of the Secretariat's report, Japan is negotiating, or considering negotiating an EPA with Indonesia, Chile, Brunei, and Viet Nam.

- A) Please describe the status of each of these negotiations, and provide a timeframe for when Japan envisions completing each of these negotiations.
- B) Will rice, wheat and the other agricultural products normally excluded by Japan from these types of Agreements be excluded from EPAs with these countries as well?

Foreign Investment Regime – Investment Promotion Measures

8. Referring to the Secretariat's report, paragraph 55 on pages 28-29, Japan is implementing programs to "assist local governments in attracting foreign investment by...facilitating the use of the special zones for structural reform."

- A) How many of these zones have been created and in which sectors and how many applications for special zones were rejected?
- B) Have these special zones been effective in prompting inward foreign direct investment?

9. Referring to paragraphs 53-58 (pages 27-29), the Secretariat's report raises measures Japan is taking to promote foreign direct investment. UNCTAD recently (9 Jan 07) announced its estimates for

foreign direct investment (FDI) inflows for 2006. Of 30 countries studied, only Japan experienced a negative inflow of FDI. In light of this dramatic slowdown in FDI to Japan:

- A) Does Japan intend to accelerate or change Japan's current FDI promotion efforts, and if so, in what ways?
- B) Japan is implementing a tool to facilitate cross-border triangular mergers to help promote FDI. Is it Japan's intention to implement related tax deferral provisions for such mergers in a way that will make this tool useful and reliable for all potential foreign investors, including companies seeking new investments in Japan?
- C) Article 821 of Japan's recently revised Commercial Code has created uncertainty about the legality of the corporate form of certain branches of foreign enterprises in Japan. As a result, some foreign branches have felt compelled to take the time and expense to incorporate in Japan to remove perceived legal risk. Does Japan intend to revise Article 821 to remove this uncertainty for such enterprises as well as for new enterprises that may wish to use the branch model to establish commercial presence in Japan?

III. TRADE POLICIES AND PRACTICES BY MEASURE

Measures Directly Affecting Imports - Tariffs – MFN Applied Tariffs

10. Paragraph 18 on page 34 of the Secretariat's report notes that non-*ad valorem* rates of duty apply to footwear. The report also notes that that preferential rates of tariff are offered under the GSP to 142 developing countries and 15 territories, including additional preferences for 50 least developed countries (page 37, paragraph 26).

- A) We understand that Japan implements a "Pooled Quota" for imports of certain leather footwear products at a volume of 12,019,000 pairs per year. For imports falling within this quota Japan applies a duty between 21.6 and 24 percent, depending on the item. For imports falling outside the quota, Japan applies a duty of 30 percent or a specific duty of 4,300 yen/pair; whichever is greater (or depending on the item classification, 30 percent or 2,400 yen/pair, whichever is greater). Our industry tells us that Japan consistently applies the specific duty to out of quota imports, which increases the price of leather footwear by approximately \$40 a pair. Is our assessment of the "Pooled Quota" system for leather footwear correct?
- B) We understand Japan exempts Least Developed Countries and certain FTA partners (Mexico, Malaysia, and Thailand) from this system. What duty rate do exports of leather footwear from those countries face when entering Japan?
- C) Could you explain the reasons for the imposition of the tariff rate quota for leather footwear? Does Japan intend to increase the volume of its footwear quota?
- D) The "Pooled Quota" system for imports of leather products (excluding footwear) is also complex. We understand that Japan uses two categories within this system: a. "Pooled Quota – First Category", and b. "Pooled Quota – Second Category". What is this difference between the two categories?
- E) We understand that Japan allows 5 million square meters of certain leather products within the "Pooled Quota". Is this the volume for both categories combined?
- F) We understand that the in-quota rate is bound between 12 and 16 percent, while the out-of-quota rate is bound at 30%. Is this accurate?

Measures Directly Affecting Imports – Government Procurement

11. The Secretariat's Report states in Note 24, page 40 as follows "In order to participate in open or selective tendering procedures, domestic and foreign suppliers are required to apply for qualification to each procuring entity and be included in the list of registered suppliers."

- A) Please explain how a tendering procedure could be considered "open tendering" if suppliers are required to apply for qualification and be included in the list of registered suppliers.
- B) Please describe open tendering and selective tendering.
- C) Please describe how open and selective tendering procedures differ.

12. Paragraph 42 on pages 40-41 of the Secretariat's report outlines measures taken by Japan to address bid-rigging.

- A) How are such measures being applied in practice, including how has the use of open and competitive bidding procedures and the overall greatest value methodology for public works been expanded? When are Japanese entities required to use open and competitive bidding procedures and the overall greatest value methodology in public works? How is the Government of Japan ensuring the expanded use of such methods of procurement in public works? What effect is the use of these methods having on bid-rigging?
- B) What steps is Japan taking to address the conflicts of interest that arise from the system of amakudari?
- C) What steps is Japan taking or planning to take to address the involvement of prefectural and local officials in bid-rigging?

13. The United States requests that Japan provide information on how its Government is addressing, or responding to: 1) the Board of Audit of Japan's (Board) finding in its October 2006 study of central government computer systems that sole source contracts accounted for 96 percent of the total value of all contracts for large (over 3 million yen in value) central government IT procurements in FY2004? What measures is the Government of Japan taking to implement the Board's recommendations in the same report that central government procuring entities work to enhance the competitiveness and transparency of their IT procurements.

Measures Directly Affecting Imports – Standards, and sanitary and phytosanitary measures - Standards, testing, and conformity assessment

14. Pages 42-43 of the Secretariat's report identify some 3,000 "major" technical regulations in Japan in 2005. There were 204 regulations on road vehicles alone, 20 percent of which were aligned to international standards.

- A) During the period of this review, Japan has notified a total of 27 technical regulations.
- B) Could Japan explain why the number of WTO notifications is so different from the number of actual regulations?
- C) With regard to road vehicles, what are Japan's plans for aligning its regulations with international standards?

15. Paragraph 45 on page 42 of the Secretariat's report indicates Japan is continuing its efforts towards international harmonization of its standards and technical regulations. We recognize that Japan has taken some important steps towards harmonizing food-safety measures with international practices.

Can Japan describe what additional steps it will be taking to increase its conformity with international practices and guidelines on BSE established by the World Organization for Animal Health (OIE)?

Measures Directly Affecting Imports – Standards, and sanitary and phytosanitary measures - Sanitary and phytosanitary measures

16. Paragraph 53 on page 45 of the Secretariat's report indicates Japan has revised its maximum residue limits for agricultural chemicals. We have concerns about the enforcement by the Ministry of Health, Labor and Welfare (MHLW) of the new positive list system of maximum residue levels for agricultural chemicals in foods. As we understand it, the enforcement mandates 100% hold and test at the port on an entire country after only two violations of the positive list.

- A) Could Japan explain the scientific justification of this practice and how it conforms to international norms?
- B) Was a risk assessment or other form of risk analysis performed at the time this policy was developed?
- C) Does Japan impose a 50 or 100 percent testing to the whole country after one or two MRL violations to domestically-produced foods as well? What specific actions or penalties have been imposed so far on domestic producers or shippers for the first 10 domestic violations of the positive list?
- D) Does Japan have an appeal process for suppliers (domestic or foreign) in the event a violation of an MRL standard is found? If so, could Japan provide a copy of the appealing procedures?
- E) Has Japan considered less trade restrictive alternatives? For example, sanctioning only the particular companies directly involved with MRL violations and not the entire country, as it is the common practice?

17. Referring to paragraph 54 on page 45 of the Secretariat Report regarding Japan's Food Safety Commission (FSC) and safety assessments on food additives, could Japan describe its approval process for new food additives?

- A) Does Japan have policies outlining an appropriate timeframe for the FSC to respond to approval applications? If not, how long does it usually take for the FSC to render a final decision?
- B) Does the FSC have transparent procedures and guidelines in designating domestic use for a food additive? If so, could Japan provide a copy?

18. In paragraph 55 on page 45, the Secretariat's report advises that Japan has imposed import prohibitions on poultry from various suppliers due to avian influenza (AI). Despite the international recommendations set by the World Animal Health Organization (OIE), Japan's restrictions on poultry and poultry products are imposed nationwide without regard for zoning, when there is a report of highly pathogenic notifiable avian influenza (HPNAI).

Is Japan considering less trade-restrictive measures that will avoid unnecessary disruptions to trade and provide the appropriate level of protection?

Measures Directly Affecting Imports – Standards –Labeling and Packaging requirements

19. In paragraph 58, page 45, the Secretariat report outlines Japan's labeling standards for food and beverages. We understand that Japan's Ministry of Agriculture, Fisheries, and Forestry (MAFF) has created a committee to explore policies allowing only domestic cattle to be labeled as "wagyu".

- A) Did Japan considered less trade restrictive alternatives, and if so, what were they and what was Japan's rationale for rejecting them?
- B) The characteristics of the term "wagyu", such as its quality and flavor, are based on genetics and animal husbandry practices and are not based on where the animal was born or raised. In addition, most "wagyu" cattle raised in Japan is raised using imported feed. Can Japan explain how the proposed "wagyu" labeling guidelines would be in accordance with the TRIPs Agreement?

Measures Affecting Production and Trade - Subsidies and other financial assistance

20. It is our understanding that Japan administers several programs that provide special tax treatment to companies in designated rural areas. These include federal programs such as the Underdeveloped Area Industrialization Act, the Peninsula Development Promotion Act, and the Industrial Relocation Promotion Act, as well as programs at the sub-federal level such as tax incentives from the Akita and Mie prefectures.

- A) We would appreciate a clarification as to whether these programs have been notified to the WTO, according to terms of Article 25 of the WTO Subsidies Agreement.
- B) If not, could the representative of Japan explain why Japan feels these programs should not be subject to WTO notification requirements.

21. Paragraph 74 on page 50 of the Secretariat's report notes that Japan gives subsidies to fisheries infrastructure in coastal communities.

Could Japan provide greater detail on the specific types of programs?

22. Does Japan give subsidies to its "research" whaling activities, and if so, could Japan describe those programs?

Trade-related intellectual property rights

23. We request that Japan please explain whether parties can obtain registrations of regionally based collective marks if the marks denote geographic areas outside of Japan.

We would be grateful if Japan could provide information about Japan's database of well-known trademarks. In particular, we wish to inquire about the following:

- A) What evidence, if any, is provided to establish that a mark is well known?
- B) Are third parties informed of requests to enter marks into the list, and are such third parties provided an opportunity to oppose the entry of a mark on the list?
- C) May third parties request that a mark be removed from the list?
- D) Once a mark has been entered on the list, is the owner required to make periodic showings that the mark continues to be well known?

Trade-related intellectual property rights - Enforcement

24. Paragraph 82 on page 52 of the Secretariat's report provides information on the establishment of the new IP High Court on 1 April 2005.

We would be interested in learning more about the entity, and what benefits have resulted from the establishment of the special branch. In your opinion or analysis, has it improved the enforcement of intellectual property rights in Japan?

IV. TRADE POLICIES BY SECTOR

Services – Energy and Utilities

25. Paragraph 25 on page 70 of the Secretariat's report mentions that Japan's electricity and natural gas prices remain high, even after implementing domestic market liberalization measures.

- A) What is Japan's evaluation of the effectiveness of its energy market liberalization measures to date on prices, competition, and new market entry? Is Japan planning to accelerate or otherwise broaden reforms in light of these findings?
- B) When is Japan planning to further liberalize competition in its domestic electricity and natural gas markets, including down to the residential retail level?

Services – Financial Services – Insurance

26. The Secretariat's report, in Paragraph 41 on page 76, mentions that it remains unclear whether Japan will achieve a level-playing field in the insurance sector with respect to its reforms to Japan Post.

- A) Does Japan intend to implement postal privatization in a manner way that is consistent with its obligations under the General Agreement of Trade in Services (GATS) and its Postal Privatization Law principle to establish "equal competitive conditions" between the postal entities and "other companies engaged in like business operations"?
- B) Will the new Postal Insurance Corporation (PIC) be required to meet all of the same requirements as other private-sector insurance companies, including licensing, disclosure, and tax requirements, before it is permitted to expand its underwriting activities? What specific measures (e.g. monitoring methodologies, supervision, or institutions) will the Government of Japan establish to prevent the privatized postal entities' abuse of market power or cross-subsidization?
- C) Will Japan take measures to ensure that access to the government-owned post office network will select private sector products to be distributed in an open and transparent manner?
- D) What measures will Japan take to ensure that transactions between the PIC and the Public Successor Corporation, including their reinsurance contracts, will be executed on an arms-length basis to prevent cross-subsidization? Will the Financial Services Agency's Supervisory Guidelines fully apply to the PIC-Public Successor Corporation reinsurance contracts, segregating old *Kampo* accounts from new PIC accounts?
- E) Given the fact that the Japanese authorities, including members of the Privatization Commission, have emphasized the importance of successful postal privatization, what measures will Japan implement to ensure that perceptions of implicit government guarantees of its products are eliminated?

27. Regarding paragraph 40, page 75, of the Secretariat's report, Japan has undertaken reforms to bring unregulated kyosai (insurance cooperatives) under the scope of the Insurance Business Law.

With respect to regulated kyosai, what are Japan's plans or measures to ensure a level playing field is established by bringing these kyosai regulated by various Japanese ministries under the same obligations and supervision as private sector companies?

28. The Secretariat's report, in paragraph 39 on page 75, mentions that Japan has "broadened the scope of insurance products that banks are allowed to sell."

Does Japan intend to meet its Financial System Council's recommendation to fully liberalize the sales of insurance products through banks no later than the end of 2007?

Services – Transport - Maritime transport

29. Paragraph 53 on page 79 of the Secretariat's report reads, in pertinent part: "The authorities maintain that there are no discriminatory measures affecting foreign participation in international maritime services and that Japan's bilateral agreements on passenger or cargo shipping provide national treatment to partners on a reciprocal basis." However, as far as we know, there is still a "close ties" requirement for providing MTO and stevedoring services which effectively precludes non-Japanese firms from entering into this business.

A) Has this requirement been eliminated? Which flag carriers and companies are considered to have fulfilled Japan's "close ties" or partner requirement?

B) Please explain how foreign participation in international maritime services is not discriminated against when national treatment is only granted under a limited number of bilateral treaties?

30. Paragraph 54 on page 79 of the Secretariat's report reads, "In port transport, the licensing requirement for an "economic needs test" for entry into port transport and the permission requirement for establishing (or changing) charges were removed for all ports on 15 May 2006..." Japan states that the "economic needs test" has been eliminated.

A) Please specify how the new Port Transportation Law addresses the license procedure for companies wishing to set up stevedoring or general contracting firms. Has the Port Transportation Law eliminated the specific labor requirements for the larger minimum number of workers and/or stevedoring equipment that new firms must employ as compared to existing firms?

B) Can Japan provide an official English translation of the Port Transportation Business law? Again, has the "close ties" requirement mentioned above been eliminated?

C) How has the Port Transportation Law eliminated the Japan Harbour Transport Association's ability to deter new entrants into the port transportation /stevedoring market in Japan and how many foreign companies have applied for port transportation and /or stevedoring licenses since 1997? Have any foreign companies been granted such licenses?

31. Paragraph 56 on page 79 of the Secretariat's report, in pertinent part, "According to the authorities, no exclusive rights or subsidies are given to Japanese flag-carriers; there are no discriminatory measures preventing foreign participation in the supply of auxiliary services." It is our understanding that the Super Core Port Initiative has awarded significant funding to Japanese-owned terminal operators for the development of infrastructure.

Have any foreign companies been awarded contracts? Can Japan provide details on the Super Core Ports program, with special regard to whom the funds have been awarded and the amounts?

32. Paragraph 58 on page 80 of the Secretariat's report reads, "In Japan's revised services offer, maritime cabotage services, international freight forwarding, and international shipping services are subject to MFN exemption. According to the authorities, Japan wishes to exempt these services from MFN for historical reasons, as in the case of maritime cabotage; it would allow the other two services on reciprocal basis."

Can Japan provide details (citations to domestic law, regulations, etc.) with respect to the non-MFN restrictions placed upon international freight forwarding and international shipping services?

Services – Transport - Air transport

33. Page 81, paragraph 62 of the Secretariat's report explains that while landing fees at Narita were lowered, other charges, such as for the use of the jetway, were raised or imposed for the first time, mitigating the overall savings substantially.

We request that Japan please provide further information on the changes in costs associated with using Narita. Please include information on whether real savings are achieved?

34. Page 81, paragraph 62, footnote 69 states that "The authorities consider that landing charges in Narita, Kansai, and Chubu airports reflect costs associated with environmental protection", attributing landing charges at the named airports to "environmental protection." Landing charges normally are levied to support operational and maintenance costs associated with operating an airport.

We request that the exact nature of these charges be explained, and that specific charges related to "environmental protection" be further clarified to note exactly what this entails (e.g. whether it is related to airport-area environmental, as opposed to broader environmental impacts outside of the airport).

35. "Chubu" airport is referenced several times in the Secretariat's report. Chubu is known more properly as Centrair (for Central Japan International Airport). Centrair/Chubu opened on February 17, 2005, after Japan's last review. This should be noted.

We request clarification, in relation to Footnote 66, of whether the statistics cited for 2005 include, for Centrair/Chubu, the full 10 and 1/2 months of operation as well as the first 1 and 1/2 months of 2005 at Nagoya/Komaki Airport, which Centrair/Chubu replaced for purposes of all international and most domestic flights, or just for Centrair/Chubu alone.

Services - Other services

36. Page 82, paragraph 70 of the Secretariat's report states that "While Japanese universities (excluding those established by stock companies in certain Special Zones for Structural Reform) receive favourable treatment with regard to corporate tax, branches of foreign universities do not receive such treatment."

- A) Please explain the process, including time and costs of compliance with official requirements, for setting up a branch of a foreign college or university.
- B) How do these requirements for branches of foreign universities compare to the requirements and costs that a Japanese university will experience in setting up a branch university?

ADDITIONAL QUESTIONS BY THE UNITED STATES

Trade Agreements and Arrangements – Other Agreements and Arrangements

6. RTA Follow-up Questions

Regarding Japan's response to US Question 6 concerning its negotiations with ASEAN, Japan indicates that it hopes to finish the negotiations on the Japan-ASEAN CEP by April 2007. Are the negotiations on track to be completed by that date? When would Japan expect the agreement to enter into force?

[N.B. – The following question is optional, up to Geneva Delegate discretion.]

Regarding Japan's policy "Protect what should be protected, while conceding what should be conceded", articulated in response to US Question 6, how does this policy support the goals of GATT Article XXIV, the WTO, and the DDA in particular, to reduce trade barriers so as to expand global economic growth, development and opportunity.

Measures Directly Affecting Imports – Standards, and sanitary and phytosanitary measures - Sanitary and phytosanitary measures

Q16. MRL Follow-up Questions

Thank you for your replies to Question 16. We are pleased to inform you that the U.S. Government submitted a response to MHLW's request for more information through the U.S. Embassy in Tokyo about the U.S. system on January 26. We hope that this, combined with our good compliance history, will be enough to show MHLW that such excessive measures currently under use are unnecessary in the case of the United States, considering the responsible management of the use of agricultural chemicals in the United States.

- 16 A) Could you tell us more specifically what criteria MHLW uses to determine whether imported food is considered to have a "high probability of violating the Food Sanitation Law" and also, how these specific criteria are related to either CODEX guidelines, monitoring test results of importers, and control measures of agricultural chemicals used in the exporting country.
- 16 B) In the past year, of the 16 cases of continued violations after an inspection order was issued, were these all for MRL violations or does this include other kinds of violations? Of the MRL violations that continued even after the initial first 2 violations occurred, was there any consideration for whether or not the subsequent violations represented a significant portion of the industry from the exporting country as opposed to just one grower or exporter?
- 16 E) It is unclear to us what specifically is required by the exporting country in order to allow MHLW to recognize that it takes "sufficient control measures against chemicals in foods". Are there specific measures or guidelines for what would constitute sufficient control measures?
- 16 D) Could you tell us if an exporter or agent of various exporters who may be penalized by an adverse decision is also able to use this process or is it strictly limited to the importer in this case? Could you also tell us which specific office or administrative agency the application should be submitted? Also would Article 3, paragraph 1)xiii of the general Provisions in Chapter one of the Administrative Procedure Act that you referred to exclude an application in this situation due to fact that this situation would involve decisions on behalf of the public health?

Q17. Food Additives Follow-up Questions

Are there goals or guidelines that the Food Safety Commission follows with regards to the time it takes them to make a final determination on the safety of food additives for which an application has been submitted? Similarly, are there goals or guidelines that MHLW follows with regards to the amount of time it will take for them to request a review by the Food Safety Commission once an application has been submitted?

Do products that are considered to be processing aids need to be approved as food additives? If so, should they follow the guidelines referred to in part B of your answer and what is Japan's definition of a processing aid?

Measures Directly Affecting Imports – Standards –Labeling and Packaging requirements

Q19. Follow-Up Questions

1. What is the basis for Japan's assertion that it is never possible to establish that non-Japanese beef is pure Wagyu or a crossbreed of Wagyu? (It is noted that there appear to be entities in the United States that may be in the business of certifying Wagyu beef.)

2. If our understanding is correct, the proposed guidelines are voluntary: only members of the Meat Fair Trade Council are subject to the guidelines.

- i. Is that correct?
- ii. What percentage of meat dealers belong to the Meat Fair Trade Council?
- iii. If the guidelines are voluntary, what are the consequences of a failure to abide by the guidelines? Can the Meat Fair Trade Association fine members who do not abide by the guidelines? Can any entity that does not abide by the guidelines- - whether or not it is a member of the Meat Fair Trade Association - - be prosecuted for engaging in an unfair trading practice?

3. If the guidelines were to take effect, how would retailers label beef that: (i) is imported into Japan and (ii) is WAGYU within the meaning of Section VI 1 (1) ((1)) of the guidelines?

4. Does Japan expect to promulgate other regulations that would provide that terms other than WAGYU may only be affixed to Japanese products? If so, which terms does Japan expect to so regulate, and in connection with which products?

Trade-related intellectual property rights - Enforcement

Q24. IP High Court Follow-up Questions

Will the IP High Court have any powers to provide guidance to other courts on sentencing practices for IPR crimes?

Q37. IPR Enforcement Follow-up Questions

37 B) Please elaborate further as to the process currently underway to illuminate how the conclusion will be reached in FY 2007 (including appropriate timelines, availability of public comment periods, and factors under consideration).

37 C) We appreciate your answer with respect to criminal indictment, and would appreciate if you could clarify and describe the scope of ex officio for border enforcement measures.

QUESTIONS BY CHINA

CHAPTER 2: TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) Trade Agreement and Arrangement

Question: (p.19 para.11-12)

1. According to the Secretariat Report, Japan has fulfilled its major obligations regarding transparency in the review period. However, in some areas, China has the following concerns: a. comparing to most other WTO members, Japan provides much domestic Agricultural support while in the recent domestic support notification, Japan does not provide any information regarding DS:2. b. China notes that there is a considerably large gap between the number of notified laws and regulations regarding trade remedy with the ones in other areas. c. in other areas such as import licensing procedures and investment measures, Japan fails to provide a set of complete notifications, such as notifications under Article 5.3 of the *Agreement on Import Licensing Procedures* and Article 5.1 of the *TRIMs Agreement*.

Could the Japanese government give detailed clarification to the issues mentioned above?

Question: (p.23-26 para.23-48)

2. Japan tends to initiate a much more active pursuit of bilateral trade partnership agreement and regional trade agreement. Therefore, would Japan elaborate on how to ensure a complementary approach when applying to both the multilateral system of the WTO and its regional and bilateral initiatives to lessen the effect of capacity depletion, discrimination creation and trade diversion by those arrangements?

3. As an important economic power in APEC and northern Asia regions, what strategy and measures does Japan take to enhance the cooperation and policy synergy of members in these regions?

CHAPTER 3: TRADE POLICIES AND PRACTICES BY MEASURE

(1) Tariff

Question: (p.33-35 para.17-21)

4. Japan applies a 17% basic tariff rate to imported green tea and wulong tea while 2.5% rate for bulk red tea. China believes such a classification not only effects negatively green tea and Wulong tea export enterprises, but also impairs the welfare of Japanese consumers. China hereby urges Japan to reduce the tariff rate for green tea and wulong tea.

5. Could Japan provide the rationale for maintaining non-ad valorem rates of duty on fats and oils, footwear, prepared foods, live animals and animal products, textiles and clothing, vegetables, and mineral products?

(2) Government Procurement

Question: (p.39-42 para.38-43)

6. Pursuant to the *GPA*, transactions by entities with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale does not fall into the category of government procurement. Could Japan define “commercial sale and resale” in its own domestic legislation?

7. In Appendix I of the *GPA*, other entities refer to those where government has control or influence. Could Japan clarify whether it has carried out standards for “having control or influence”? If not, why?

8. Does the Japanese government include Build-Operate-Transfer (BOT) and other franchising project items, telecommunication service, transport service and project items in its GPA list?

(3) Industrial Standards**Question: (p.42-44 para.45-48)**

9. According to statistics by some research institutes, about 10% of national standards of Japan is not in conformity with international standards, especially those in agriculture sector where national standards are more restrictive. Although the establishment and modification of standards are conducted by government agencies with participation of the business sector, which guarantees a timely change in standards, the process of establishing or modifying a standard is opaque, which makes it very difficult for foreign vendors to have a clear picture about the technical requirements of Japan, and thus to export their products to Japan. METI is responsible for conformity assessment of industrial products and about 90% of industrial products assessment is carried out by organizations authorized by METI. According to METI rules, assessment for electrical products, LPG equipment and coal gas equipment can either be compulsory or voluntary. Those that must pass compulsory assessment and acquire JIS assessment certificate is included in the list published by METI in the form of laws or legislations.

In practice, METI's assessment for imported electrical and electronic products is time consuming, costly and complicated, and thus constitutes de facto trade barriers for foreign home appliances to enter Japanese market. Could Japan elaborate on its plans, if any, to improve this situation?

10. As reported by many Chinese enterprises, Japan applies a SONY standard to electronic equipment and parts from China, which is more restrictive than the EU ROHS. For example, ROHS stipulates 6 hazardous substances while SONY includes more; for CR 6+ substance, ROHS standard is 1000 ppm while the SONY standard is zero tolerance; for Cd substance, ROHS standard is 100 ppm while SONY standard is 5ppm. China would like to know what is the scientific basis and rationale to apply such restrictive standards. If there is scientific basis, please identify.

(4) Positive List System**General Comments and Questions****Question: (p.45 para.53-61)**

11. **TRANSPARENCY:** The Japanese positive list system has been in force since May 29 2006. At present, the Ministry of Health, Labor and Welfare (MHLW) is able to timely publish annual control and inspection plan and information regarding imports that fail to meet SPS standards. However, China notices that:

- a. Compared to import inspection, publication of control and inspection plan of residue of domestic products and related enforcement information is not only opaque, but also incomplete and often delayed
- b. Frequency and scope of inspection for imported products is far greater than that for domestic products, while mandatory inspection only applies to imported products.
- c. According the SPS agreement, SPS measures should not be applied to imported products in a way more restrictive than those apply to domestic products and thus not constitute barriers or restrictions to international trade. In the previous bilateral exchange of views, Japan explained that due to the administration of SPS measures by different competent authorities, there is differential treatment between imported and domestic products. China urges Japan to unify the methods it applies to the publication of relevant information of imported and domestic products. Could Japan explain how it can guarantee transparency and non-discrimination principle when implementing the positive list system?

12. **TRADE FACILITATION:** Under the positive list system, the average testing items for residue tolerance regarding agricultural products is 200, while for some, the number is shockingly 400. After the system is in place, inspection items are estimated to be quintupled, for example, items for pork is increased from 25 to 428, tea is from 89 to 276 and rice from 428 to 579. The system has already affected trade in

agricultural products in many ways: a. longer customs clearance that affects freshness of vegetables. b. higher inspection fee that raises export cost of enterprises. c. increased uncertainty for agricultural trade which hampers enterprises' confidence. Would Japan please clarify:

- a. How does Japan ensure that the new positive list system will not constitute trade barriers and restrictions for agricultural products from developing countries?
- b. What measures will be introduced to avoid great increase of export cost and prolonged customs clearance time?
- c. China urges Japan to, in the course of implementing the positive list system, take into account of the chronicle gap between production cycle of agricultural products and implementation period of the system and thus the Japanese government could take steps to publish its implementation plan and the list of major imports subject to inspection.
- d. For the purpose of enhancing inspection efficiency and reducing inspection cost, Could the inspection and quarantine authorities of the Japanese government study seriously the possibility to accept the testing result of Chinese inspection and quarantine bodies?

13. **RISK ASSESSMENT:** It seems that most "temporary standards" are established on the basis of average standards of USA, EU and other 3 countries. We believe that this practice is not fully consistent with Article 5 of SPS. We urge Japan to set up temporary standards on the basis of risk analysis. Could Japan take into account the standards of major exporters of agricultural products when establishing limit standards for residues of agricultural chemicals?

14. **DUE OBLIGATION:** We would like to know whether Japan has any plan to provide technical assistance to developing members in accordance with Article 9.2 of the *SPS Agreement* by way of publishing its testing methods, providing developing exporting members with corresponding testing equipment, developing bilateral technical training and cooperation programs?

Specific Trade Concerns:

15. **EEL:** Japan is the largest consumer for eel and eel products. Over 50% of eel production of Guangdong Province of China is exported to Japan. At present, breeding area for eel exceeds 60,000 mu (400 hectares), with annual production of nearly 60,000 tons and export volume of nearly 0.7 billion USD. However, since entry into force of the positive list system, Japan starts to implement a full-scale inspection on eel import from China, with more than 116 chemicals that need testing and testing items rising from 25 to 112. All these requirements have raised production costs to a great extent and brought heavy loss to eel breeding and exporting enterprises:

- a. The positive list system covers almost all agricultural products. The system stipulates maximum residue tolerance for some chemicals, and when the tolerance level is absent, a uniform 0.01 ppm is applied. Besides, Japan can resort to technical measures without advance notice. With the redundant testing requirements and restrictive tolerance levels, the Chinese export of eel to Japan will further shrink.
- b. The maximum residue tolerance level in the positive list system is arbitrary in many cases. For example, the initial limit standard for Enrofloxacin is 50 ppb, it became 100 ppb in December 2006. Furthermore, it is reported that the limit standard will be modified again in May 2007. China urges Japan to abolish such arbitrary and discretionary administrative measures in the future.
- c. In the positive list system, Japan adopts extremely high standards for eel as compared to other aqua products, for example, the residue standard for Endosulfan in eel is 4 ppb while for the same chemical in other aqua product is 1000 ppb, which we believes is not

justifiable. Such measures constitutes disguised and unjustified trade protection to Japan's domestic eel industry.

- d. On June 25 2003, Japan announced that it would implement mandatory inspection over roasted eel and the measure would be in force on July 3 2003. Obviously, Japan did not leave any transitional period for both exporters and importers. China would like to know why Japan failed to leave sufficient time for enterprises to adapt themselves to the new system at the time.

16. **LAVES:** Through the efforts both by China and Japan, laver export from China to Japan was resumed in 2006 and the annual quota granted by Japan was 0.23 billion pieces, a 91.7% increase compared to 2005. However, after the positive list system was in place, laver export from China decreased to a large extent due to excessively strict and restrictive standards and inspection procedures, as well as the unnecessary fees collected by Japanese laver associations from importers. Export volume from January to November 2006 was only 0.0544 billion pieces, reaching a mere 23% of the annual quota. It should be mentioned that the fill rate of 2005 was 100%. China believes that failure in identifying specific residue standard for laver is the key factor that causes severe damage to laver exporters. Since the current standard applied by Japan for testing of chemical residues in laver product lacks scientific basis, when the Japanese government could apply the base residue number which was agreed by both Chinese and Japanese laver associations?

17. **OTHER PRODUCTS:** Besides eel and laver, other agricultural products are also affected. For example, edible fungus export to Japan from January to November 2006 was 0.377 million tons, a 13.7% decrease compared with 2005. It should also be noted that from January to May 2006, edible fungus export to Japan reached 0.38 billion USD, with a 19.9% increase compared to the same period in 2005, while from June to November (i.e., after the positive list system was in place, export reached only 0.37 billion USD, a DECREASE of 7.2% as compared to the same period in 2005. Moreover, at present, once a batch of import fails to meet the Cdx residue tolerance level, imports of the same product from all enterprises in the export country will be affected, which greatly increases the risk and production cost of the enterprises in the exporting country.

- a. When could Japan relax its over restrictive standard?
- b. Could Japan reduce to scope of enterprises that are affected by the system?

(5) SPS (Other than Positive List System)

18. Besides the positive list system, the SPS regime of Japan is, in general, complex and opaque, with time-consuming and over-costly inspection procedures. In the current mandatory inspection system, SPS and customs officials seem to deliberately complicate the laboratory experiment and inspection procedures to the detriment of the interest of vegetable and fruit exporters. Moreover, over 30 categories of products from China are subject to case by case inspection while the list of batch to batch inspection published by relevant Japanese authorities covers only 119 categories of products. When could Japan abolish these measures which exert unnecessary and discriminatory burden to exports from China as compared to other countries?

19. Without consultation with members of interest, Japan extends the scope of agricultural products subject to chemical residue tolerance system. At present, vegetable exports from China has to go through over 70 items of inspections and suffers from much more frequent sampling than exports from other countries into Japan, which leads to an artificial high cost for customs clearance (1000-1500 USD for each batch of product). Moreover, average customs clearance takes 4 days, which affects the freshness of fruits and vegetables and impairs the competitiveness of these products. Does Japan have any plans to remove these trade barriers? If no, why?

20. China's agricultural exports have been a victim ever since the mandatory inspection system was in place. Since March 2006, MHLW began to apply mandatory inspection to green Chinese onion, wulong tea, black agaric, white agaric, mushroom, garlic, eel and chili etc. These measures caused heavy loss to Chinese export enterprises. We believe that these mandatory inspection measures have brought unnecessary burden to exporters and have constituted substantial trade barriers. When could Japan remove and modify these unnecessary restrictive measures?

21. It is reported by many Chinese enterprises that the Chinese Good Manufacturing Practice (GMP) which is based on relevant international standard is not recognized by the Japanese competent authorities, China would like to ask Japan to clarify why it refuses to recognize China's GMP qualification and urge Japan to recognize the qualification as soon as possible.

(6) Export Restrictions

Question: (p.47-48 para.67-68)

22. Since 2002, quite a number of Chinese enterprises, research institutes and colleges have been included in the list of foreign end-users subject to Catch-All export control. By now, 14 Chinese entities are still remained on the list. China believes that it is not justifiable for the Japanese government to restrict exports to these Chinese entities. Could Japan provide clarifications on why Chinese entities are included in the list? If there is a justifiable explanation, please further provide concerning evidence and statistics. If there is no justifiable explanation, China urges Japan to remove these Chinese entities from the list since there currently exists a bilateral communication framework under which the Japanese government could be fully informed with information concerning end-users for controlled exports from Japan.

(7) Intellectual Property Right

Question: (p.50-51 para.77-79)

23. According to Table II 1 in Page 17 of the Secretariat Report, Japan revised its *Copyright Law* in 2005. Could Japan clarify on any changes in the revision and its legislation purpose as well as policy objective?

24. According to para 77 on page 50 of the Secretariat Report, rules relating parallel import were added to the *Patent Law* in 2004. China would like to ask Japan to provide detailed information regarding the new provisions regarding parallel imports. Have there been any parallel import cases since 2004?

25. In June 2006, Strategic Council on Intellectual Property of Japan published 2006 *Intellectual Property Policy Outline*, mentioning that Japan would aim at concluding an international treaty on fighting against counterfeit and piracy. Besides, the Japanese government said it would establish a counter-infringement system at borders. Please provide any recent developments regarding the above matters.

26. Under Article 8 of the Japanese *Patent Law*, a person who has no domicile nor residence in Japan may not file an application to the Japanese Patent Office except through an agent. Please explain how this requirement could be consistent with Article 3.1 of the TRIPS Agreement on national treatment.

27. Article 62.2 of the TRIPS Agreement stipulates that "Members shall ensure that the procedures for grant or registration", "permit the granting or registration of right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection." How long does the procedure for granting a patent usually take in Japan? Is the time needed the same between a foreigner and a Japanese national?

28. Please elaborate further on the definitions of the "new", "involve an inventive step", "are capable of industrial application" (Article 27.1 of the TRIPS Agreement) in the Japanese *Patent law*

Question: (p.52 para.82-83)

29. Tokyo Intellectual Property High Court was established in 2005, responsible for dealing with patent cases and other intellectual property cases. Please give detailed description of what are the procedures for the High Court to deal with appeals? Can other courts accept intellectual property cases after the High Court is established?

30. Three working groups were established under the Strategic Council of Intellectual Property in 2003, responsible for IP enforcement, feasibility study on application for patent on healing methods and media content. Please give a brief description on the operation and recent development of these three organizations.

31. Could Japan provide statistics on administrative penalties, including by police departments or the Customs since last review, including:

- a. the number of administrative penalty made upon the request of right holders.
- b. the number of cases processed by courts, as well as information regarding the type of cases, the courts which accepted the cases and the final rulings.

32. We would like Japan to briefly explain how the *WIPO Performance and Phonograms Treaty* is implemented in Japan's domestic legislation.

33. In case of circumvention of technical protection, how does the competent authority deal with it? What are the relative domestic legislations? Will criminal punishment be applied?

CHAPTER 4: Trade Policy by Sectors

(1) Market Access for Telecommunication Industry

Question: (p.77 para.45-46)

34. Domestic satellite broadcasting business in Japan is monopolized by JSAT and Superbird. Rental fee for satellite as well as cost of service is extremely high. In order to enter Japanese market, foreign satellite operators have to acquire a landing permit. However, the application procedures are extremely complex and there is virtually no foreign satellite operator which has acquired a permit. Domestic protection for satellite broadcasting market provides a favorable market condition for the development of Japanese satellite communication and aeronautics industry. China would appreciate it if Japan could provide detailed information on the rules and regulations as well as any domestic restrictions for market access in Japanese satellite communication and broadcasting sector.

(In its last Trade Policy Review of Japan, members raised concerns over operation of NTT. Although Japan provided clarification to some of the issues mentioned, China has the following questions regarding information about NTT.)

35. Please provide data regarding NTT's market share, the number of users, share holding structure and type of services provided.

36. Please provide the rationale for strict control over foreign direct or indirect investment in NTT, such as the article that stipulates that foreign shareholding should be less than 1/3.

37. Are the local affiliates of NTT independent legal entities or just a branches that have no independent legal entity status?

38. Could Japan explain why other companies are prohibited from acquiring shares issued by local NTT companies?

39. Could Japan explain why board members and auditing members in NTT Headquarter and local companies must have Japanese nationality?

40. Does Japan have any intention to relax the share holding limit for foreign capital in NTT? Are there any plans to remove the nationality limit for board members and auditing personnel?

41. Could Japan provide statistics on market access for foreign investment in the Japanese telecommunication industry since the foundation of the WTO, including the number of foreign service providers, their respective market shares, total investment, and the types of services provided?

42. It is reported that it is difficult for foreign telecommunication enterprises to get approval for entry into Japanese telecommunication market. Would Japan identify what are the necessary documents that foreign telecommunication operators should provide when submitting their applications?.

43. Could Japan provide a full list of legislations on telecommunication market supervision?

44. Please give a brief description on recent development of Japanese basic telecommunication market, value-added telecommunication market and internet market.

45. Could Japan provide information on necessary network and information security standards and requirements that foreign capital should meet in order to enter Japanese market?

(2) Movement of Natural Persons in Business and Education

46. According to complaints from Chinese enterprises and students in Japan, Japan applies stringent visa requirements to business people or students who need to travel frequently between China and Japan. China believes such strict requirement is more burdensome than necessary and hampers flow of trade in services. Are there any future plans to relax these requirements?

(3) Maritime Transport

47. It is reported by many Chinese enterprises that maritime transport of coal exports from China to Japan is monopolized by Japanese shipping companies. As almost all ships are rented by buyers who have signed long term COA contracts with these Japanese shipping companies, freight fee is extremely opaque. Therefore, Chinese coal export companies are not able to compare their own CIF prices with the ones from other countries to Japan. This practice has an adverse effect on the negotiating status of Chinese coal exporters. Could Japan urge its domestic enterprises to enhance transparency, especially on issues like freight fees?

48. It is also reported that there exist some internal "unwritten" rules by Japan Harbor Transportation Association which stipulate that shipping companies (including Japanese shipping companies) are not allowed to conduct port operations in Japan. Therefore, foreign shipping companies have to contract with Japanese port operation companies in order to unload and load cargoes in harbors of Japan, which increases operation cost for foreign shipping companies and hampers further development of the Japanese market. Could the Japanese government urge its Harbor Transportation Association to remove such restrictions in the spirit of trade facilitation and fair trade within the industry?

(4) Financial Service

Japan does not allow subsidiary bodies of foreign banks to participate in its deposit insurance system. Would Japan clarify whether this is consistent with the national treatment commitment? China would appreciate it if Japan can provide rationale for maintaining such requirement.

QUESTIONS BY THE EUROPEAN COMMUNITIES

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES **2) TRADE POLICY OBJECTIVES**

Sustainable development

- Does the issue of trade and sustainable development fit into Japan's overall trade policy strategies?

Trade and environment

- What mechanisms does Japan have in place to ensure adequate coordination of environmental policy and trade policy?

Trade and social development

The WTO Secretariat's Report (page 10) concludes that Japan's growth prospects will depend on structural reforms, including policies to deal with an ageing population and the associated decline in the labour force. The report also states that the "government appears to believe in the need to intensify such reforms, which would contribute to reducing, if not removing, distortions to competition that impair economic efficiency". Nonetheless, Japan's export competitiveness has apparently increased, as shown in a continuing decline in unit labour costs.

- How have labour costs been reduced, and has this had consequences for working conditions particularly in the manufacturing industry where the labour force has dropped?

4) TRADE AGREEMENTS AND ARRANGEMENTS

WTO Secretariat's Report, page 23, para. 31

- Since the text of the Japan-Thailand EPA was finalised in June 2006, could Japan confirm the expected date for its signature?

Japan's Report, page 14, para 66

The Government of Japan assures that the AJCEP Agreement with ASEAN will be legally consistent with, and mutually complementary to, bilateral EPAs between Japan and ASEAN member countries.

- What additional elements and clauses would the AJCEP add to the already concluded or negotiated EPAs with most of the ASEAN member countries (e.g. Singapore, Malaysia, Philippines, Thailand, Brunei, Indonesia, and Viet Nam)?

WTO Secretariat's Report, page 23, para.33

- Could Japan specify the expected dates for resuming negotiations on the Japan-Korea FTA?

WTO Secretariat's Report, page 25, para.40

There have been reports that the Administration would be in favour of a faster approval procedure of EPAs by the Diet.

- What are the prospects for this to happen?

WTO Secretariat's Report, page 26, para.47

Japan has previously expressed its commitment to introduce a duty- and quota-free preference system for LDCs.

- Will this take place in 2007 as indicated in the report?
- What is the intended coverage – will it be a completely duty- and quota-free?

5) FOREIGN INVESTMENT REGIME
ii) Investment promotion measures

Japan's Report, page 20, para.103

According to Japanese authorities, inward FDI stock rose 1.8 times the 2001 level. However, FDI inflows decreased in 2005 (paragraph 5, p. 3). Also the number of Greenfield FDI projects into Japan declined in 2005 and the value of cross-border M&A (a major source of inward FDI) in Japan declined 4.3 times to US\$ 2,512 million from 2003 to 2005 (UNCTAD World Investment Report 2006). There seems to be some discrepancy in reporting. The Government of Japan has adopted several programmes to increase inward FDI (e.g. Table II.3, p. 28).

- What concrete results are expected from these programmes in the longer term; are there already positive indications for inward FDI increase? For example, did the 'Project to Promote FDI in Selected Areas' (page 29, para. 56) have positive results?

WTO Secretariat's Report, page 27, para.53

The WTO Secretariat's Report states that Japan did not implement new tax measures aimed specifically at FDI promotion. Recently, tax-deferral for cross-border mergers has been discussed. But, it has been decided that only in restrictive cases tax-deferral will apply.

- Why did Japan not create tax incentives in this area, despite the figures and the target set by the JIC to double Japan's inward FDI stock to a level of about 5% of its GDP (page 20, para. 105, Japan's report)?

WTO Secretariat's Report, page 29, para. 57

The Government of Japan has been negotiating various FTA/EPAs which include chapters on investment and the China-Korea-Japan investment agreement is being negotiated currently.

- How does it relate to Japan's policy on promoting FDI? And how will it take shape more concretely?

III. TRADE POLICIES AND PRACTICES BY MEASURE
2) MEASURES DIRECTLY AFFECTING IMPORTS
ii) Tariffs

WTO Secretariat's Report, page 32, para.17

A 1998 European Commission investigation on the management by Japan of the tariff quota system for **leather** and subsidies granted to leather industry came to the conclusion that the implementation of these practices is restricting imports of Community finished leather in Japan. The Japanese tariff quota system for leather appears today as unduly restrictive of trade, in an international context which saw the full elimination of import quotas for textile and clothing on 1 January 2005, and where further liberalisation of non-agricultural Market Access (NAMA) is actively pursued in the framework of the Doha Development

Agenda. Today, the leather footwear quota restriction is 12.019.000 pairs according to the Japan Tariff Association which is exactly the same figure as for 1996.

- Given these facts, the EC would like to know when Japan will dismantle its tariff quotas on leather and leather footwear. The EC would stress that as an industrialised country, Japan is expected to eliminate all TQs on industrialised goods.
- **Ski boots:** The EC would like to know when Japan would be ready to lower its very high tariffs on imported ski boots and align them on the rates of other industrialised members such as the EC.

Confectionery products: Customs duties for sugar confectionery (17.04), sugar free confectionery products (21.06) are usually below 10% in most developing and developed Countries.

In Japan these two sets of products encounter respectively 25% and 15% import duties, which de facto determine a rather closed market (only 2.8% of sugar confectionery products in Japan are imported). However, the EC notes that the Government of Japan has recently reduced the duties on chocolate products (chocolate and chocolate based confectionery products (18.06), from 25% to 10%.

- Given the above and considering the clear similarities between the chocolate product market and the sugar and sugar free confectionery market, the EC would like to know whether Japan intends to lower significantly its import duties on sugar and sugar free confectionery products, thus aligning with the level of duties imposed on average by developed and developing countries (i.e. below 10%)

iii) Non-tariff border measures

WTO Secretariat's Report, page 38, para.32

Concerning import quotas on certain products, including fish, we would appreciate clarification from Japan on the following points:

- the objective of the quotas, their compatibility with Japan's obligations under the multilateral trading system, the manner in which they are implemented and their intended duration.
- Could Japan indicate whether it has taken measures to restrict the importation of plasma derived medical products during the reported period? If so, under which conditions?

v) Government procurement

The Government of Japan revised the Guidelines on Promotion of Proper Tendering and Contracting for Public Works on 23 May 2006 in order to step up measures against persisting bid-riggings and to enhance transparency, efficiency and competition in public works. The revision of the guidelines is certainly a step forward but, as they are non-binding guidelines, it is doubtful whether real improvement for foreign companies can be expected in the area of public works at the non-central government level, as prefectures and municipalities are fully exempt from the lowering of the threshold for public works subject to open competitive bidding.

- Does Japan plan to make these guidelines binding?

WTO Secretariat's Report, page 40, para.41

The GoJ lowered the threshold of public works subject to open bidding (i.e. not "designated bidding" system) from 720 million yen (i.e. the GPA threshold) to 200 million yen in fiscal 2006. However, this is

only mandatory for central government projects (approximately Yen 7 trillion) and does not affect local projects of prefectures or municipalities (approximately Yen 16 trillion).

- Will Japan consider to also make it mandatory for local authorities to use the open bidding system?

The percentage of tenders won by foreign companies continues to be very low. There also seems to be a slightly decreasing trend. Furthermore the share of single and selective tendering rose.

- Could Japan raise any comments regarding this trend?

vii) Standards, and sanitary and phytosanitary measures

WTO Secretariat's Report, page 43, para.46

- Of the 513 revised and the 267 JIS items newly established how many were aligned with international standards?

WTO Secretariat's Report, page 44, para.48

- Of the 500 foreign factories certified how many are in the EU? In a normal case, how long does it take to attain certification and what are the costs involved?

WTO Secretariat's Report, page 44, para.50

- The figures above would indicate that the ratio of standard aligned to international ones is decreasing? If so, what is the reason?

WTO Secretariat's Report, page 45, para.51

- Are any of the six foreign bodies placed in the EU?
- In any sector, is Japan using, or considering using, Suppliers' Declaration of Conformity, in the following sense?: The supplier himself declares conformity of his product with the requirements of the applicable legislation without any mandatory third party intervention – neither in the design phase nor the production phase of the manufacturing process – that would involve product tests according to the relevant legislation. The Suppliers' DoC is based on an assessment or test performed by the manufacturer himself or any other party.

WTO Secretariat's Report, page 45, para.53,55

Many food additives, whose safety is globally confirmed and that are widely used outside Japan, are not allowed in Japan. These substances had already been evaluated by the Joint FAO/WHO Expert Committee on Food Additives and Contaminants (JECFA), and are therefore approved and used in many countries, Japan has started to approve 46 food additives, and four additives and twelve flavouring agents have been approved. However, the process has slowed down during the past year.

- Could Japan explain whether there are any plans to speed up the process of screening the listed substances and to adapt a more flexible approach towards administrative obstacles?

Japan currently imposes import prohibitions on beef and poultry from various countries. According to the WTO Secretariat's Report, these restrictions are due to BSE and avian flue.

- Can Japan explain supported by science why it does not align its legislation with OIE guidelines on trade in beef and lamb and establish fair, non-discriminatory and transparent rules for the import of bovine and ovine meat?
- With regards to Avian influenza, can Japan explain why it uses serology as the main laboratory testing , while OIE terrestrial Animal health Code in line with current scientific opinion recommends also virology and a combination of serology and virology in case of the use of vaccination?
- In this respect, can Japan explain supported by science why it does not accept vaccinated products from countries free from Avian Influenza?

4) MEASURES DIRECTLY AFFECTING PRODUCTION AND TRADE

iv) Trade-related intellectual property rights

WTO Secretariat's Report, page 52, para.81

Access to Design protection should be simplified for industries that create a lot of models for “short cycle” products. A possible way of improving the situation could be to provide that a Design is also eligible for protection under the law of copyright or to create, besides the Registered Design system, an Unregistered Design with a shorter protection term and more limited rights conferred.

- Does Japan implement any such system?

WTO Secretariat's Report, page 5, para.77

- As regards last amendment in 2005 of the standard in relation to geographical indication, could Japan clarify whether foreign geographical indications may be designated by the Commission of the National Tax Agency to receive protection and, if so, how many foreign GIs have been designated to date?

WTO Secretariat's Report, page 53, para.83

- Japan Custom tariff law has been amended recently. Could Japan explain if its legislation provides rules allowing seizure of fakes, not only at import, but also at export and in transit?

v) Regulatory reform

WTO Secretariat's Report, page 53, para.84

The Three-Year Programme for Promoting Regulatory Reform (TPPRR) was introduced in March 2006 replacing a previous three-year programme.

- How many measures targeted under the previous period (2003-2006) have been (i) implemented, (ii) discarded, or (iii) rolled over into the current programme?

IV. TRADE POLICIES BY SECTOR

2) AGRICULTURE

WTO Secretariat's Report, page 64, para.11

- Could Japan provide figures about the amount of subsidies being allocated for rice?

WTO Secretariat's Report,- page 66 para.15

According to WTO Secretariat's Report, Japan used several safeguard measures for agricultural products in fiscal years 2004 to 2006. During recent years, epidemics among animals have caused imports to decrease drastically. When consumer confidence and volumes are back to normal safeguard measures have been triggered due to the huge difference between very low levels of import (during the epidemic) and the normal level. This was the case for pork a couple of years ago.

- Have all measures ended by 2006 or are they still in place?
- Would Japan consider the possibility of taking up such measures again?

Japan's Report, page 21, para.112

Japan states it aims to raise the self-sufficiency rate.

- Could Japan elaborate on its plans?

3) MANUFACTURING

WTO Secretariat's Report, page 69-70, para.18-24

Leather sector

- Could Japan indicate the ratio of its quota compared to domestic consumption of leather and leather footwear since the Uruguay Round?
- Could Japan specify the development in the number of people employed in the leather sector by their social origins?

Pharmaceutical sector

- What steps are being taken to speed up the process under the Pharmaceutical Affairs Law (PAL)? What has it been done in order to facilitate the use of foreign data for approval of pharmaceuticals and medical equipment?
- What instruments, if any, are available to the Government of Japan – including recommendations, fines and termination of business license – to ensure stable demand for PPTs in Japan?
- What guarantees, if any, does the government of Japan provide to companies supplying PPTs that their products will be absorbed on the domestic market?

4) ENERGY AND UTILITIES

WTO Secretariat's Report, page 71, para.27

- Could Japan elaborate on the state of play of the liberalization of gas sales to customers consuming over 100,000 cubic meters per year and the tentative schedule of the liberalization?

WTO Secretariat's Report, page 71, para.28

- Could Japan explain whether there have been any requests for market access from foreign entities?

5) SERVICES

i) Overview

WTO Secretariat's Report, page 82

- Would Japan provide more details on the provisions in Japan's bilateral agreements which deal with temporary movement of natural persons (mode 4) and how they will be implemented in practice in Japan?

ii) Financial services

WTO Secretariat's Report, page 71, para.29

- Could Japan explain in further detail the process of privatization of Japan's Post? Is this going according to plan and how does Japan intend to ensure a level playing field?

WTO Secretariat's Report, page 76, para.41

Postal Life Insurance is exempted from corporate taxes and deposit insurance premiums.

- Would Japan explain how it intends to ensure a level playing field between the Postal Life Insurance, or its planned successor as of October 2007, and private life insurance providers?

iii) Telecommunications

We are aware of the "New Competition Promotion Programme 2010" which aims to review comprehensively the legal framework including telecommunications and broadcasting with the view to establishing new fair competition rules in the IP based network era.

- Could further information be provided regarding the abovementioned Programme?
- Could Japan provide further details regarding the "Review of the Universal Service System"?

WTO Secretariat's Report, page 77, para. 45

Even though Japan's telecommunication sector has recently pursued a liberalization of the sector, the JFTC considers that Japanese market for fixed and mobile telecom services is still oligopolistic.

- Could Japan comment on this?

Japan still suffers from high international communication charges.

- Does Japan expect that these charges will decrease in the near future?

iv) Transport

WTO Secretariat's Report, page 79, para.55

Shipping companies are required by Japan to undertake prior consultation with the Japan Harbour Transportation Association for approval of any changes to their operations.

- What measures are in place or are envisaged to ensure that the prior consultation procedures are transparently, equitably and swiftly executed?

WTO Secretariat's Report, page 79, para.57

The cost of using Japanese ports is high when compared to the international market. Reducing costs would stimulate international maritime services and business for the Japanese economy.

- Does Japan identify a need to improve the competitiveness of its ports? If so, which initiatives are envisaged to do so?
- Given that foreign shipping companies carry over 60% of Japan's inward and outward international container trade, would Japan engage international actors in discussions on specific development initiatives concerning its ports and if so, how?

WTO Secretariat's Report, page 81, para.62

The reduction of landing fees at Narita Airport has been partly compensated by an increase of other fees such as baggage handling. The total net reduction is rather in the region of 10%. Japan claims that high landing charges are linked with environmental protection (page 81, footnote 69).

Could Japan provide further information regarding the environmental measures taken or planned?

QUESTIONS BY THE REPUBLIC OF KOREA

I. Trade Policies and Practices by measure

1. Trade related intellectual property rights (WT/TPR/S/175 p.53 para.83): The suspension of release by the Customs with regard to infringement of patents

Korea appreciates the Japanese Customs' efforts to fight counterfeit trademarks and pirated copyrights. With regard to patents, however, we consider the suspension of release by your Customs is not in full accordance with the relevant WTO agreement.

Article 51 of the WTO TRIPS agreement allows the suspension of release by customs authorities only in cases in which there is a 'prima facie' infringement of the right-holder's intellectual property. In regard to alleged infringement of patents, Article 21(4) of the Customs and Tariff Law ("CTL") of Japan mandates that as part of Verification Procedures, the Customs Office should hear the opinion of the Patent Office, which is the competent authority. It is our opinion that unlike counterfeit trademarks or pirated copyrights, patents cannot be subject to a prima facie infringement. We understand that Customs may be assisted by the pertinent authorities, such as the Patent Office, but we would like to know exactly how Customs can prove that a prima facie infringement exists in the stages of customs clearance.

As far as we understand, the Japanese Patent Office only takes into account whether the applicant is qualified, and not whether actual infringements were made. We believe the Patent Office tends to submit only positive opinions and Customs accepts the patent right-holder's application for suspension in most cases.

- (1) Please provide further information on the suspension of release by Customs regarding patents, including the name of applicants and dependants, the country of origin and a description of suspended goods.
- (2) Please provide data on how many applications have been made and what percentage of them have been accepted by Customs. We would also like to know how many suspensions, if any, have afterwards been denied by the Japanese Courts.
- (3) Please provide English version of the detailed Verification Procedure.
- (4) We hope the Japanese government will exempt patents from the items subject to the Verification Procedure under article 21(4) of the CTL. Please provide Japan's view on this issue.

2. Standards (WT/TPR/S/175 p.43~45 para.46~51)

(1) Complicated JIS mark acquisition procedure

The JIS mark scheme is a high hurdle for foreign products looking to enter the Japanese market as foreign firms have to go through a fastidious process to acquire the JIS mark. Therefore, Korea requests the Japanese government to provide more accessible information to foreign firms regarding the JIS acquisition process, to mitigate the process itself and to implement programs to support foreign firms in acquiring JIS marks in certain cases. Does Japan have a plan set out to improve this process?

(2) The safety certification procedures

Road vehicles, electricity, gas and chemical products are required to undergo a safety test in Japan even if they are currently sold in the U.S. and Korea after passing the international safety test. We have noted that Japanese certification procedures have placed a heavy burden on foreign manufacturers. Korea is not opposed to Japan's safety regulations, but considering the long time frames (3~5 years) and huge expense required to acquire a safety certification in some cases, the regulations are considered to act as an import barrier. For example, Japan's mandatory regulations under the Electricity Utilities Industry Law for DVRs (Digital Video Recorders) are not aligned with international standards. The Japanese government does not recognize other certificates like the UL in the United States or the TUV in Germany, thus resulting in double testing. As there are only 3 agencies in charge of conformity assessment in Japan, exporters have difficulty in obtaining required certification. Moreover, the process is time-consuming and prohibitive.

Please explain whether Japan has plans to allow imported products to be exempt from certification procedures in Japan if they have undergone similar strict procedures in the country of origin?

(3) Continuation Inspection System for Automobiles

Almost 80% of Japanese automobile owners use private inspection offices for continuation inspections. In the case of regular inspections conducted by private Japanese inspection bodies, the inspection fee charged for imported cars is far higher than that for Japanese cars. In addition, expenditure breakdowns for inspections are open to the public in the case of Japanese cars but not for imported cars. Due to such practices, Japanese consumers prefer Japanese vehicles over imported cars. The aforementioned practices of private inspection bodies in Japan are regarded as remnants of import restrictions imposed in the past. In this regard, we hope that such unfair practices in vehicle inspection will be changed. Please provide your view on this issue.

(4) Mandatory Recycling System for Home Appliances

Recycling fees, which are paid by the consumer to either the manufacturer or the importer, depend solely on the category under which the product falls, not the price and energy efficiency. This is burdensome to

some home appliance manufacturers who export small-sized products with relatively high energy efficiency. Has Japan considered revising of the Recycling System for Home Appliances, including changing the calculation basis of the Recycling fees from the category to a product's energy efficiency?

(5) Major Standards and technical regulations

Please confirm whether Table III.4 on page 43 of the Secretariat's report deals with all standards which are designated in Japanese legislation as mandatory technical regulations.

Korea would like to know the methods that have been used to derive figures in the columns 'Corresponding to international standards' and 'Equivalent to international standards'.

According to paragraph 51, about 1800 standards, which are approximately 20% of all JIS, are designated in Japanese legislation. Table III.4, however, shows that about 20% were aligned with international standards only in Safety Regulations for Road Vehicles. This explanation does not seem to correspond with the argument that about 93% of JIS were aligned with international standards. Korea would welcome an explanation for these ambiguities.

In addition, Korea would like to request the supporting documents that prove 20% of the JIS is designated in the Japanese legislation and a list of JIS in each law.

With regard to paragraph 50, we would like to know the reason why the road safety standards aligned with international standards have been reduced to 20% in 2005 from 24% in 2003.

3. Standards, and sanitary and phytosanitary measures

(WT/TPR/S/175 p.43~45 para.46~54)

(1) Prompt determination of Approval Standards on GM Foods

A general revision in approval standards on GM foods is in progress and FSC Japan is conducting safety assessments on all GM food products including those that have already been approved, which we assume will result in a higher level of uncertainty in the export market. Thus Korea hopes for the prompt determination of these standards. When does Japan expect the revision process to be finished by?

(2) Strict Regulations on Food Additives

The Japanese government generally allows traditional Japanese food additives which are not normally produced in foreign countries but bans others such as light mayonnaise, creamy mustard, and figs containing potassium sorbate which are allowed by international standards organizations. What is the reason that Japan's food additive regulations are not aligned with international standards and does Japan have a plan to harmonize the regulations with international standards in the future?

(3) Ban on Polysorbate

The Japanese government bans polysorbate, a common food additive which is generally allowed in other developed countries like the United States and the European Union member countries. In order to export instant noodles to Japan, foreign suppliers must currently adjust their ingredients at additional cost, which has caused foreign countries' exports of instant noodles to Japan to suffer.

Other developed nations like the United States and the European Union member states allow polysorbate levels of up to 1,000ppm/kg and international organizations like the Joint FAO/WHO Expert Committee on Food Additives (JECFA) allow for up to 25mg/kg of a person's weight as the daily recommended allowance. What is the reason that Japan has restricted the use of polysorbate more strictly than other

developed countries? Does Japan have a plan to harmonize its regulations with international standards on polysorbate?

(4) Ban on Potassium Sorbate in Frozen Foods

The Japanese government prohibits the use of potassium sorbate in frozen foods even though the substance has been proven harmless to humans. Therefore, foreign suppliers have to produce a special pickled radish for exports of frozen dumplings to Japan. What is the reason that Japan has prohibited the use of potassium sorbate in frozen foods although the substance has been proven harmless to humans? Does Japan have a plan to harmonize the regulations with international standards on polysorbate?

(5) Simplification of the approval system for new food additives and mutual recognition of test data

Complicated scientific examinations for the approval of new food additives are time-consuming and the Japanese government doesn't recognize test data acquired in Korea, which requires products from Korean suppliers to undergo double testing. In this regard, does Japan have any plan to improve the system, such as simplification of the approval system for new food additives and mutual recognition of test data?

(6) Positive List System for Residues of Agricultural Chemicals

As of May 2006, the Japanese government launched a new inspection system based on a positive list approach. This has resulted in additional costs for cleansing compared to the former negative list system. What is the reason that Japan has revised the inspection system for residues of agricultural chemicals from a negative list to a positive list approach?

(7) Import Approval for New Fruits and Vegetables

The current import approval process for new fruits and vegetables is time-consuming and requires a lot of expenses. In addition, the lack of transparency in the process causes foreign suppliers' exports to Japan to be subject to a high level of uncertainty. Korea hopes the process of import approval for new fruits and vegetables will become more simplified and transparent. Please provide Japan's view on whether it has plans to improve this procedure.

(8) Approval of Nutritional Supplements

The Japanese government places strict regulations on nutritional supplements. These strict regulations make it impossible to advertise a product's beneficial effect(s). The Japanese government also imposes high taxes on nutritional supplements compared to those placed on medicines. What is the reason that Japan regulates nutritional supplements more strictly than international standards would allow for?

4. Measures directly affecting imports

(1) Customs Clearance Procedures: Inefficiency in Unloading Operation (WT/TPR/S/175 p.31 para.12)

Japanese authorities require advance consultation for changes to even simple conditions, which causes unnecessary delays when unloading. We hope the unloading process will become more simplified, thereby further facilitating trade

(2) Customs Clearance Procedures: Classification in the HS-code System (WT/TPR/S/175 p.32 para.15)

While textile products for automobile seats are exempt from tariffs, materials from which the seat is made are not. The tariff rate on products with HS code 9401.90.090 (parts for seats excluding leather products) is

0%, while for products with HS code 001.92.016 (textile products made of polyester), the rate is 8.3%. - The tariff rate applied to automobile seat material is 8.3%, the same rate at which general textile products are taxed, because its usage is not limited to automobile seats only.

If seat material can be proven to have been made for automobile seats, is it allowed to be exempt from tariffs? If so, what is necessary to prove this?

(3) Tariffs: Higher tariff rate on SOJU (WT/TPR/S/175 p.36 para.21)

Japan continues to impose a 16% tariff rate on Korean Soju (Korui-shochu in Japan, HS220890129), although it repealed customs duties on whiskey, vodka, etc. imported from Europe in April 2002. Korea is, therefore, concerned about the loss of competitiveness due to this tariff inequality, since *soju* is a viable substitute for spirits such as whiskey, vodka, etc. in the Japanese market. Please clarify Japan's position on this inequality.

(4) Taxation: Classification of Korean Soju as a Spirit (WT/TPR/S/175 p.48 para.72)

The Japanese government classifies Korean soju (distilled liquor) as a spirit and imposes a higher tax on it compared to Japanese soju. The Japanese government imposes a 200 yen/ℓ tariff on Japanese soju but 300 yen/ℓ on Korean soju. On what grounds does Japan classify Korean soju as a spirit rather than as alcohol? Is there any room to classify Korean soju by its alcohol content?

5. Ban on Certain Advertising Claims

Though certain claims for cosmetics and quasi-drugs are based on verifiable data, it is prohibited to advertise these properties in Japan. If the claims made for certain cosmetics and quasi-drugs are proven to be true, would advertising these claims be allowed?

6. Maximum Limit of the Number of Flora Inspections

There is currently a limitation on the number of times a day flora inspections can be conducted. In some cases, if the product is not inspected in due time, the result is a decrease in the value of the product. Japanese importers are reluctant to import foreign products due to the above reason. Korea hopes that Japan will lighten this limitation and prevent it from working as a non-tariff barrier. Please provide Japan's view on this issue.

7. Commercial Practice in Distribution

Japanese retailers in home appliances, dishes, and clothing require from a supplier low prices, sponsorship, and accountability for returned goods. This commercial practice causes distribution difficulties for foreign exporters. Does the Japanese government recognize the commercial practice mentioned above? And, if so, does Japan have a plan to resolve the problem in a constructive way?

II. Regional and Bilateral Trade Policy

8. Revision of Social Security Agreements (WT/TPR/G/175 p.16 para.75, para.78)

According to the Japanese government's report, it is noted that Japan has recently signed Social Security Agreements with the US (in February 2004), the Kingdom of Belgium and the French Republic (in February 2005). Those agreements include clauses that enable aggregation of a person's social security contribution periods in both countries. Unfortunately the Social Security Agreement signed by the Republic of Korea and Japan in February 2004 has no such clause. What is the position of Japan on amending the Korea-Japan Social Security Agreements to incorporate such clauses?

9. Japan-ASEAN Comprehensive Economic Partnership Agreement (WT/TPR/G/175 p.14 para.64-66)

It is known that in their Comprehensive Economic Partnership Agreement (AJCEP) negotiations, Japan and ASEAN have recently agreed to change the modality of negotiations so that both sides can indicate their hyper-sensitive and sensitive products. What is the reason for this change and how will Japan maintain complementarity between the AJCEP and bilateral FTAs with ASEAN countries?

10. Japan-Australia FTA (WT/TPR/G/175 p.17 para.83-86)

Last December, Japan announced that it would negotiate an FTA with Australia. However, right before the official announcement, Japanese agricultural interests, including the Ministry of Agriculture, Forestry and Fisheries, issued statements raising concerns over the harm that would be inflicted to domestic agricultural production from the proposed FTA and pledged that they would make whatever efforts necessary to protect the domestic market. To what extent is the Japanese government willing to open up its agricultural market to Australia ? And how will Japan harmonize its domestic agricultural reforms with its FTA strategies?

11. Japan-Indonesia, GCC, Brunei and Australia FTA (WT/TPR/G/175 p.14-17 para.63, 69, 83-86)

Japan's late FTA agreement with Indonesia contains clauses regarding Indonesia's secure provision of natural resources to Japan. Likewise, Japan's recent choice of FTA counterparts, i.e. GCC, Brunei and Australia, tends to reflect its energy security point of view. Bilateral FTAs are allowed within the WTO system only because the preferential treatment given to one country can be applied to others through subsequent negotiations, which, at the end of the day, would contribute to reinforcing the multilateral trading system. However, clauses regarding secure provision of natural resources do not seem to be in line with this WTO goal. How will Japan maintain the goal of multilateral openness in its FTA policies while satisfying its future energy and natural resource needs?

QUESTIONS BY INDONESIA

1. On page 30 of the Secretariat Report, (trade policies and practices by measures) Indonesia finds that Japan still maintain certain export controls for the purpose of the national security and public safety and to ensure adequate supplies of certain agricultural and other primary products.

Questions

- Could Japan reconcile this trade measure with the Japan obligation under article XI of the GATT 1994?
- Indonesia understands that export control could be used for national security and to ensure adequate domestic supply. However Indonesia is of the view that export controls could not be reconciled for public safety purpose. Please explain.

2. At the same page (page 30) it is said that 93% of Japan Industrial Standards (JIS) were aligned to their International Counterparts in 2005.

Questions

- Please explain why JIS were aligned to their International Counterparts and not to International Standard.
- Can we assume that Japan imposes different standards to different counterparts or different markets?

- It seems to Indonesia that since the MFN average tariff for industrial products have been low (6.3%), Japan has been using technical regulation to protect its industries. Please explain.

3. The fact is that Japan still maintains certain policies to foster its export through certain policies such as export finance, quarantines and drawback schemes.

Questions

- Could Japan justify these policies with the Japanese obligation under the SCM Agreement in particular Annex I: "Illustrative list of subsidies" SCM?

4. Of 8914 lines (Japan's applied MFN Tariff) in the HS 9 digit, non ad valorem in the amount of 6.6% are applied for certain products such as Footwear, Textiles and Clothing, and vegetables.

Questions

- What is the idea behind the non ad valorem tariff policy for those products which are of the interest of developing countries? See chart III.1 (share of non ad valorem duties, by HS Section FY 2006 page 35 and paragraph 20).

QUESTIONS BY COLOMBIA

Foreign investment regime

The Secretariat's report of Japan's FDI legal framework and promotion measures contained in paragraphs 49 – 58, show that there is a policy and measures directed to increasing FDI in Japan.

Q1: Does Japan also have a policy to promote protection for its investors abroad? If so, does Japan pursue that policy by, *inter alia*, negotiating bilateral investment agreements?

Measures Directly Affecting Imports – Standards and sanitary and phytosanitary measures – Sanitary and phytosanitary measures

Paragraph 56 of the Secretariat's report states that the inspection provided for in the Law on Food Sanitary Conditions may be waived if the merchandise has been inspected by a public laboratory of the export country and the inspection results are attached.

Q2: Could Japan please elaborate on the scope and procedure of such waiver?

QUESTIONS BY PHILIPPINES

TRADE POLICIES AND PRACTICES BY MEASURE

We note the following statement from WT/TPR/S/175, as follow:

(1) Introduction

3. *Japan has few non-tariff border measures. Those currently applied involve some import prohibitions and quantitative import restrictions (for example, on some fish). In addition, imports of some goods are subject to licensing requirements to ensure national security, safeguard consumer health and well-being, or preserve domestic plant and animal life and the environment. Japan abolished import quotas on textiles and clothing (i.e. those related to silk products from China) on 1 January 2005.*

Can Japan identify the specific import prohibitions and quantitative import restrictions imposed on fish, and the reasons for such NTMs?

What agricultural products, if any, are subject to specific import prohibitions and quantitative import restrictions, the specific NTMs and the reasons for the measure/s?

QUESTIONS BY ECUADOR

La Misión Permanente del Ecuador ante la OMC saluda muy atentamente a la Organización Mundial de Comercio – División de Examen de políticas Comerciales- y se permite transmitir de acuerdo al aerograma WTO/AIR/2945, la pregunta que formula la delegación de Ecuador a la delegación de Japón en el marco del Examen de política comercial de ese país.

“De acuerdo a lo establecido en el Acuerdo de Medidas Sanitarias y Fitosanitarias de la OMC, el Ecuador solicita al Gobierno Japonés conocer la justificación científica para la determinación del porcentaje adecuado del químico 2-4D en la almendra de cacao, que ha sido fijado en un límite de 0,01 ppm a pesar de no existir, según las autoridades sanitarias del Japón, estándares internacionales establecidos de límites máximos de residuos para ese producto.”

QUESTIONS BY ARGENTINA

1) SECTOR AGRICOLA:

Con relación al documento WT/TPR/S/175 página 41 de la versión en castellano, podría explicar Japón por qué utilizan el esquema poco transparente de aranceles no *ad valorem* en lugar de aplicar aranceles *ad valorem* como la mayoría de los países en desarrollo?

2) NORMAS Y MEDIDAS SANITARIAS Y FITOSANITARIAS:

Cuál es la justificación dentro del marco del Acuerdo SPS para no reconocer a países libres de aftosa con vacunación?

REPLIES PROVIDED BY JAPAN

SINGAPORE

Question Q1-1

Re para 23 (page 36) of the Secretariat Report, we note that tariff escalation from semi-processed to final goods is present in some sectors, notably textiles, petroleum refineries, and non-electrical machinery. Escalation from primary to semi-processed and final products is evident for industrial chemicals and rubber. Tariff escalation results in a bias against imports of more processed goods. Further to the distortions that that tariff escalation creates in Japan's tariff system, this may also hamper the exports of Members (including developing countries) which may desire to export more processed or more value-added goods. We would appreciate if Japan could indicate when and how it plans to address this distortion in its tariff system.

Answer

Japan sets an appropriate level of tariff rate on each product considering the situations of domestic industries. As the issues including tariff escalation are elements of the agriculture and NAMA negotiations, Japan intends to address such issues in the DDA negotiations.

Question Q1-2

Para 18 (page 34) of the Secretariat Report notes that 6.6% of Japan's tariff lines are subject to non-ad valorem rates in sectors such as fats and oils, footwear, prepared foods, live animals and animal products, textiles and clothing, vegetables and mineral products. 2.3 % of tariff lines are specific; 3.3% alternate and 0.6% are compound rates and 0.4% have differential duties and sliding duties. As it is generally recognized, non-ad valorem rates tend to conceal relatively high tariff rates.

Answer

Japan applies an appropriate type of tariff for each product in accordance with the product's properties, etc. Therefore, there is no intention to use non-ad valorem tariffs as a cover for high tariffs in Japan's tariff policy. In addition, non-ad valorem tariffs in Japan are consistent with WTO Agreements and do not necessarily mean higher tariff rates compared to ad valorem tariff rates. In any circumstances, Japan will continue to set an appropriate type and level of tariff considering the progress and results of the DDA negotiations.

Question Q1-3

Para 20 (page 35) - Some 1.7% of all of Japan's tariff lines are subject to tariff rate quotas. While 100% of the in-quota rates are ad valorem, only 25.3% of out of quota rates are ad valorem. There is also a significant difference between average rates: the in quota rates average 18.8% while out of quota rates average 98.5%.

Answer

The tariff quota system charges a lower duty rate or exempts customs duty on imports of specific products up to a certain quantity in order to ensure consumers inexpensive imported products, while applying a higher duty rate on products exceeding that quantity so as to protect domestic producers of the same or similar products. Under the tariff quota system Japan sets an appropriate level of tariffs on in and out of quotas respectively so that the purpose of the system can be achieved. For example, some agricultural products, which used to adopt the import quota system, were tariffed by means of the tariff quota system based on the result of UR negotiations and, in the tariffication, appropriate levels of tariff rates on in and out of quotas were determined based on the difference between domestic and foreign prices. These tariff rates are bound in Japan's WTO concession.

In any circumstances, the improvement of market access, including the tariff quota system, has been discussed in the DDA negotiations, and Japan intends to address the issue appropriately based on the result of the negotiations.

Question Q2

In para 6 (Page3)of the Secretariat Report , it is stated that while services' share of employment increased from 69.2% in 2003 to 69.8% in2004, the share of services in GDP decreased slightly from 70.2% in 2003 to 69.6% in 2004. The report adds that decreased were mainly in the shares of construction services, financial services, and insurance services.

Though the decrease from 70.2% to 69.6% is relatively small in percentage terms , this is obviously quite significant in absolute terms given the size of the Japanese economy. It would be useful if Japan could elaborate the reasons for the decrease in the shares of the said sectors.

Answer

In 2004, construction services' and financial and insurance services' share of GDP decreased. This is because, although total GDP increased, both services decreased their gross output while intermediate

input increased, so value added decreased, which is calculated by gross output minus intermediate input. However, it is difficult to find any unambiguous economic implications from this marginal change.

Question Q3-1

We hope to clarify with Japan that with the establishment of Investment Services Law from 2007, all foreign securities firms wishing to offer their services to Japanese investors via a commercial presence in Japan or via cross-border mode of supply would only need to refer to the regulations and guidelines as set forth under the Investment Services Law.

Answer

Laws and regulations applicable to foreign securities firms are not limited to the regulations and guidelines as set forth under the Financial Instruments and Exchange Law (the so-called Investment Services Law), and could, depending on the case, include the following:

- *Laws to regulate the composition of vehicles such as the Investment Trust Corporation Law and the Asset Monetization Law;*
- *Laws and regulations relating to financial services such as the Banking Law, the Insurance Business Law, the Trust Banking Law, and the Commodity Exchange Law; and*
- *General laws such as the Civil Code and the Corporate Law.*

Question Q3-2

We would also wish to check with Japan if there would be an English version of this new Investment Services Law.

Answer

The Financial Instruments and Exchange Law has yet to be translated into English. Brief descriptions and a brochure in English are available at the website of the Financial Services Agency at: <http://www.fsa.go.jp/en/policy/fiel/index.html>.

Question Q4

In addition to this Investment Services Law and where relevant, other Japanese legislations, would there be other regulatory guidelines or industry practices which foreign securities would need to comply with?

Answer

The Supervision Guideline for securities companies gives guidance with respect to

- (i) *operations of foreign securities companies having commercial presence in Japan, and*
- (ii) *cross-border securities transactions by foreign securities companies.*

In addition, foreign securities companies located in Japan, as well as domestic securities companies, are required to comply with regulations set by self-regulatory organizations such as Japan Securities Dealers Association.

SINGAPORE (ADDITIONAL REPLIES)

Question

We note Japan's effort for revising its Japan Agricultural Standards Law in March 2006 with a view to ensure relevance to public needs and to align them with international standards. As our exporters still experience difficulties knowing what the requirements are, we would like to enquire if Japan may have plans to (i) introduce improve transparency on what these requirements are; and (ii) if legislation for overseas certifying bodies to conduct grading and append JAS symbols could be done in English.

Answer

1. *Regarding the transparency of requirements under the JAS Law, most of the effective Quality Labeling Standards and the Japanese Agricultural Standards are available in English at the MAFF's website, in order for overseas governments and operators to gain a better understanding about the requirements.*

2. *Japan would like to emphasize that the relevant international standards are taken into account, when Japan establishes, revises or abolishes Quality Labeling Standards and Japanese Agricultural Standards. Japan also notifies the drafts before enactments in accordance with the WTO/TBT Agreement. Stakeholders, irrespective of Japanese or overseas, are provided with opportunities to make comments on the drafts.*

3. *Japan interprets that Singapore's second request is related to "registration," not "legislation." Japan allows applicants to submit certain documents in English for simplifying the procedure, but all the procedures at registration and the services after registration must be conducted in Japanese. For a certifying body's registration under the JAS Law, a) understanding the JAS Law and the JAS Standards; and b) proper response to revisions and notifications, which are primarily made in Japanese, are necessary. Therefore, Japan requests applicants to submit applications and necessary documents in Japanese. On-site visits at registration and audits after registration are conducted by Japanese experts in Japanese.*

BRAZIL

Question Q1

WT/TPR/S/175, Chapter IV, paragraph 9 (Non ad-valorem duties)

According to WT/TPR/S/175 (Chapter IV, paragraph 9) "(...) 17, 4% of duties applied to agricultural goods are non-ad valorem".

More specifically, 59,6%(Table IV.1) of sugar and sugar confectionery are subject to non ad-valorem tariffs.

Brazilian exports of sugar have been hindered and reduced due to that restriction. Considering that Japan does not produce substantive amounts of sugar, the main result of applying non-ad valorem duties is an unnecessary burden on consumers' prices.

Another main loser from the non ad valorem duties are sugar producers coming from underdeveloped countries, whose competitiveness is artificially leveled to other non competitive producers. These poorest producers have to compete for the Japanese market with exporters benefiting from export subsidies prevailing in richer countries.

The situation is analogous on the case of soy and soy by-products. On soy grains or soy tart (SHs 120100, 12010010, 12010090, 12081000, 230400) there are no tariffs (SGP).

However, on soy oil (SH 15071000, 150790) the non ad-valorem range from 10,9 to 13,2 yens/kilo (from 9 to 11 cents/kilo).

Even though the duties might seem negligible, the effect on Brazilian exports is eloquent: in 2006, soy grains were the 13th product Brazil exported to Japan, and soy tart was the 26th. In spite of that, Brazilian exports of soy oil are not rated among the 100 more important, even though Japanese authorities acknowledge that soy is mainly imported for the production of soy oil.

It might be interesting to know whether the Japanese government envisages a reform on the non ad-valorem duties imposed on agricultural imports.

Answer

Japan applies non-ad valorem tariffs on certain agricultural products as committed to in Japan's Goods Schedule. Japan has no plans to abandon the non-ad valorem duties, which have certain advantages; for example, duty amounts can be easily calculated by numbers or weight of imports.

Question Q2

WT/TPR/S/175, Table IV.1

According to the document of the Secretariat (WT/TPR/S/175, Table IV.1), 24,2% of lines of agricultural products are subject to tariff peaks. Furthermore, there are products subject to high tariffs, even though those tariffs fall short of being technically considered as "tariff peaks" or "tariff escalation". Coffee is one outstanding example.

If, on the one hand, coffee (SHs 0901.11-000 e 0901.12-000) benefits from tariff exemption; on the other hand other by-products (SHs 0901.21-000, 0901.22-000, 2101.11-100, 2101.11-210, 2101.12-110, 2101.12-121, 2101.12-122) are submitted to taxation, that goes from (to Brazil/SGP), 8,8 to 15%. Since Japan does not produce coffee, a major burden is imposed on consumers' prices.

Overall, for non-agricultural products, the level of tariff protection in Japan is low. However, for products where developing countries have a competitive edge, like processed food, the protection remains high, including through tariff peaks.

How does Japan intend to tackle this situation in the WTO negotiations?

Answer

Regarding the WTO negotiations on tariffs of agricultural products, the Members have already agreed on the framework of "deeper cuts in higher tariffs". Japan will appropriately address, in line with the agreed framework, "tariff peaks" and other issues through the tariff reduction methodology, the details of which are currently being discussed in the DDA negotiations.

Question Q3

According to the document of the Secretariat (WT/TPR/S/175, Chapter IV, paragraph 10), "tariff quotas apply mainly to agricultural products". Moreover, the document also points out that "eligibility for quota allocations may require prior approval by the MAFF and tends to be intricate(...)".

Exports of fish products are particularly affected by those impositions. Brazilian producers, new on that market, are facing difficulties concerning the quota allocations procedures. Those difficulties seem to originate from some lack of transparency in the allocation of quotas. Also, the system of quota allocations in Japan tends to favor incumbents that have already benefited from the system and create additional burdens to the access of new competitors.

Japanese government had been arguing that “the import quota plays an important role in the conservation and management of fish resources in Japanese territorial seas and waters adjacent to Japan” (WT/TPR/M/142/Add.1, question 3). However, those concerns seem to have scarce application for Brazilian exporters, since they either fish mainly on Brazilian territorial waters, or export fish/shrimps originating from sustainable fish farming.

Given the above, we would like to know whether Japan has any plans to liberalize the quotas applying to fish.

Answer

The IQ system plays an important role in the conservation and management of fish resources in waters adjacent to Japan. From this viewpoint, Japan has handled this system properly. In order to ensure transparency and fairness, detailed information on the operation of the IQ system is announced by the Ministry of Economy, Trade and Industry Official Bulletin, on its homepage, etc. Also, for each of the fish products which are subject to the IQ system, access to the quota allocations is available for newcomers.

Questions Q4

Japan has banned meat imports from Brazil due to foot and mouth disease (FMD) cases. Japanese government states that it accepts OIE's (Organization Internationale des Epizooties) principle of regionalization. However, the Japanese interpretation is that the principle should only be applicable when the country can prove that there are regions free from FMD without vaccination. On October 2006, Brazilian sanitary authorities formally communicated to their Japanese counterparts that the State of Santa Catarina might receive that status at the next OIE meeting, due this semester. A Brazilian invitation to the Japanese authorities to visit the state is still pending an answer.

It might be convenient to ask for further clarification on the estimated time frame between the official recognition of the State as free from FMD without vaccination and the first visit of authorities to certify specific plants.

Answer

With regard to meat imports from the State of Santa Catarina, evaluation by experts in Japan is required taking into account scientific discussion at the OIE. After this, the Government of Japan considers whether a field visit/audit is necessary or not based on the results of risk assessment and discussion at OIE. Therefore, we cannot provide a specific time frame for this as of the present date.

Question Q5

When applying to export fruit to Japan, exporters must provide experimental results of quarantine treatment for each different variety of the same fruit. Moreover, the audit conducted by the importing country's inspector for the validation is not applied as a permanent measure. Japan's requirement has placed a very heavy burden on the industry of exporting countries.

The importance of those measures 'to prevent a possible invasion of pests and host plants'(as answered to the Taiwanese delegation on the last review - WT/TPR/M/142/Add.1, question 7) is understandable - as far as fruits in general are concerned. However, the actual need of analyzing varieties of the same fruit remains debatable.

It is also undisputable that those measures 'are applied to all countries who intend to export plants to Japan' (WT/TPR/M/142/Add.1, question 7).

However, the burden is considerably heavier on those exporters from developing countries, whose resources are less abundant. Also, small and medium exporters face an obvious disadvantage. As it is, the system favors, in practice, either exporters from richer countries, or large companies exports.

In the Brazilian case, reports for the approval of mangoes of two varieties (Hadene Palmer) are still pending.

Would the Japanese government consider measures that - even though maintaining the necessary phytosanitary restrictions - lead to a level playing field among exporters? Would Japan consider relaxing quarantine requirements on new varieties of fruits that have already been approved?"

Answer

The plant quarantine measures of Japan are based on scientific evidence in accordance with the WTO/SPS Agreement. These measures are applied to all countries equally.

Audit by Japanese quarantine officials on phytosanitary measures such as disinfection treatments and inspection is necessary to prevent a possible invasion of pests and host plants such as the Ceratitis capitata into Japan. These measures are applied to all countries which intend to export plants to Japan.

If a protocol, whose effectiveness has been approved for one variety of a fruit, is scientifically proven to also be effective for another variety, it is possible to utilize the same protocol in the procedures to lift the ban. In this case, the scientific data required to prove its effectiveness will be reduced.

Question Q6

According to the document prepared by the Secretariat (WT/TPR/S/175, Chapter IV, paragraph 19), "simple average tariffs are relatively higher for footwear (...)". On the other hand, Japanese imports of leather are freer from restrictions. As a consequence, Brazilian exports of leather have been increasing, but Brazilian producers of footwear's access to the Japanese market have stalled.

Would the Japanese government inform whether it envisages any reform on the non-ad valorem duties on footwear?

Answer

Under the tariff rate quota system for leather and leather footwear in Japan, a quota is allocated not to countries, but to importers. Therefore, importers who get the allocated quota can choose the countries from which they import.

With regard to the non-ad valorem duties on footwear, Japan has no concrete plan to reform the existing duties on footwear due to historical and social difficulty surrounding this sector.

Question Q7

QUOTAS

Footwear - particularly leather footwear - are also subject to quotas. Exporters have pointed out difficulties in accessing the intricate procedures of being benefited from quotas.

It would be interesting to have as much detail as possible on the procedures applied for quota allocation approval on this sector. Some practical examples might also be very helpful as they might constitute a guide for the submission of applications by exporters.

Answer

Since 1986, on leather and leather footwear, the Government of Japan has not implemented any import quota (IQ) systems, but instead tariff quota (TQ) systems in accordance with the publicized notification. Detailed information on application procedure is available at: <http://www.meti.go.jp/policy/tariff/index.html> (Japanese only).

TQ systems charge a lower duty rate or exempt customs duty on imports of specific products up to a certain quantity in order to ensure consumers inexpensive imported products, while applying a higher duty rate on products exceeding that quantity so as to protect domestic producers of the same or similar products. Under TQ systems, the Government of Japan sets an appropriate level of tariffs on in and out of quotas respectively so that the purpose of the systems can be achieved.

Therefore, the Government of Japan does not impose any restrictions on the import amount of leather footwear itself.

With reference to Japanese TQ systems on leather and leather footwear, a general procedure for application is as follows:

- *Each year, application for TQ on leather and leather footwear is accepted in early April. The Ministry of Economy, Trade and Industry (METI) allocates quotas to applicants taking into account each applicant's actual quota usage. In addition, quota is also allocated to new applicants who have no actual usage of quota. In both cases, each applicant is required to have the ability to import these items themselves.*
- *If the total volume of applications for TQ is more than the total allocable volume, the applied quantity will be divided proportionally.*
- *The term of validity for annual allocations is 1 April to 31 March the following year.*

In addition, under Japanese TQ systems on leather and leather footwear, exporters who intend to export these items to Japan are not required to make any applications for TQ to the Government of Japan.

Question Q8

ENERGY AND UTILITIES - WT/TPR/S/175, Chapter IV, paragraph 19

According to the document prepared by the Secretariat (WT/TPR/S/175, Chapter IV, paragraph 25) "authorities appear to have placed more emphasis on seeking 'the right balance' of various policy objectives, including a stable energy supply, economic efficiency, and environmental concerns"

In light of such concerns, the document (Chapter III, paragraph 19) acknowledges that 'Japan unilaterally reduced applied MFN tariffs on petroleum and petroleum products and industrial alcohol; for example, the applied MFN rates are zero (...) for crude oil, and 23,8% (...) for industrial alcohol'.

Enacted on May 2006, the Japanese new policy on Energy allows the use of up to 3% of ethanol on gasoline. However, the greater duties imposed on alcohol reduce significantly its competitiveness regarding fossil fuels.

Considering the importance it attaches to fulfilling the Kyoto Protocol obligations, it might be interesting to know whether the Japanese government intends to accelerate the chronogram of reduction of tariffs on ethanol imports.

Answer

Japan has already decided to gradually reduce the applied MFN tariff on industrial alcohol (2207.10.190) to 10% by 2010, although the report by the Secretariat describes only the fact that Japan unilaterally reduced applied MFN tariffs on industrial alcohol to 23.8% in FY 2006 (Chapter III, paragraph 19) (FY2006.4: 23.8%, FY2007.4: 20.3%, FY2008.4: 16.9%, FY2009.4: 13.4%, FY2010.4: 10%). Hereafter, we plan to follow the above schedule.

Question Q9

According to WT/TPR/S/175, Chapter I, paragraph 27, “inward FDI into Japan remains substantially lower than outward FDI(...)”.

The document of the Secretariat also notes that (WT/TPR/S/175, chapter 4, paragraph 25) “a stable energy supply has been one of the main objectives of Japan's energy policy”.

Considering the above, is there any specific regulation on the participation of foreign companies in the segment of oil/refineries? What are the limitations, if any, on the structure of capital of companies on that sector? Are there any foreign petroleum companies with foreign capital operating in the sector in Japan?

Answer

1. Yes.
- 2.

(1) With regard to inward direct investment to oil sectors (including oil refineries), prior notification to the government authority is required by a foreign investor in the following cases, in accordance with the Foreign Exchange and Foreign Trade Law:

- (i) If a foreign investor is about to proceed with inward investment which will result in the investor having the share of more than 10% of issued stocks of a listed company;*

or

- (ii) If a foreign investor is about to obtain more than 1 stock of an unlisted company.*

(2) Any foreign investors who fall under the above conditions in (1) shall not make an inward direct investment within 30 days from the acceptance of the notification.

(3) Through examination pursuant to the direct investment, etc. in the case of the pertaining to National Security, etc. he/she may recommend a person who has given notification of the investment, to change the content or discontinue the direct investment after hearing opinions of the Council on Customs, Tariff, Foreign Exchange and other Transactions.

(4) Where a person who has received a recommendation pursuant to the provision of the preceding paragraph has given a notice of refusal of the recommendation, the minister of Finance and the minister having jurisdiction over the business may order the person to change the content pertaining to the inward direct investment.

3. *The following are the major oil companies with foreign capital (the both company operate in oil refineries) and the percentage of total common shares outstanding.*

- (1) *Showa Shell Sekiyu K.K. Corporate Head quarters*
- *The Shell Petroleum Co., Ltd. – 33.24 %*
 - *Aramco JAPAN Holdings Company B.V. – 14.96 %*
- (2) *Tonen General Sekiyu K.K.*
- ExxonMobil – 50.2 %*

Question Q10

WT/TPR/G/175, pages 13-14 (1) The document prepared by the Japanese government lists (WT/TPR/G/175, pages 13-14) 8 countries with which EPAs (Economic Partnership agreements) negotiations have been/are being held. It would be interesting to have an update of the Japanese delegation regarding experiences in the negotiations so far. (2) It might be also interesting to know what have been Japan's priorities in selecting bilateral free-trade partners. (3) Do bilateral agreements include provisions on agriculture, as well as on sanitary and phytosanitary measures facilitation.

Answer

A. (1)

- (i) *Singapore: In January 2007, Japan and Singapore agreed in principle on major points of a partial review of the Japan-Singapore Economic Partnership Agreement (EPA).*
- (ii) *The Philippines: In December 2006, the EPA with the Philippines was approved by the Japanese Diet.*
- (iii) *Indonesia and Brunei: Japan reached agreement in principle on major elements of a bilateral EPA with Indonesia in November 2006, and with Brunei in December 2006.*
- (iv) *GCC: The second round of negotiations on the Free Trade Agreement (FTA) between Japan and the Gulf Cooperation Council (GCC) was held in January.*
- (v) *New launch: Japan agreed to start EPA negotiations from 2007 with Vietnam in October 2006, and with Australia and India in December 2006.*

(2) *In identifying countries or regions to negotiate with, Japan has set its priorities based on the Basic Policy towards Further Promotion of EPAs, approved by the Council of Ministers on the Promotion of EPAs. (See the attached file)*

(3) *All EPAs that the Government of Japan has signed cover agricultural goods. Also, some of the EPAs stipulate provisions on matters which are covered by the WTO Agreement on Agriculture, such as export subsidies.*

Some EPAs also stipulate provisions related to sanitary and phytosanitary measures, such as reaffirmation of rights and obligations under the WTO and establishment of a mechanism for information exchange.

BRAZIL (ADDITIONAL REPLIES)

Question Q1

Could the Government of Japan inform us which are the administrative procedure costs of the processing of licenses?

Answer

The application procedure for import licenses under the Foreign Exchange and Foreign Trade Law is provided in the rules which are published. Applicants are required to apply to the authority with given papers. When the application is found to be appropriate based on the review, the Government of Japan issues an import license. With reference to application for an import license, no fee is required.

*Please refer to the website.
<http://www.meti.go.jp/policy/boekikanri/houreisyu.htm>*

Question Q2

Could the Government of Japan inform us if there is any kind of register required from Japanese importers prior to import licensing? If so, which are the requirements and procedures.

Answer

Under the Foreign Exchange and Foreign Trade Law, a register is not required from importers prior to import licensing.

Question Q3

According to the Secretariat's Report, Japan's Copyright Law was amended to prevent sound recordings published and intended to be distributed exclusively outside Japan (which have the same contents as those published and intended to be distributed within Japan) from being re-imported into Japan with a view to taking advantage of price differentials. According to the authorities, this amended law effectively prohibits parallel imports to the extent that the parallel imports meet the aforementioned criterion. Could the Government of Japan explain those statements in detail. Please clarify which exhaustion regime is adopted by Japan, both concerning copyrights and other intellectual property rights.

Answer

The measure to prevent commercial records from flowing back, introduced by the 2004 amendment of the Copyright Law, takes into account the balance between the so-called international exhaustion regime, in which the right to transfer ownership is not granted with regard to work whose ownership has once been lawfully transferred, is a provision that regards an act of importation to be an infringement of right only when a set of certain conditions are fully met.

The conditions are below:

- 1) The imported record is a commercial record for the purpose of distribution solely outside Japan that is identical to a record published for the purpose of distribution within Japan ("Commercial record for distribution in Japan").*
- 2) The importation is conducted with the knowledge of the fact in 1).*
- 3) The importation is for the purpose of distribution within Japan.*
- 4) The distribution of such records causes unreasonable damage to the profit as expected to be gained by the right owner from the publication of the Commercial record for distribution in Japan.*
- 5) A period under 7 years, starting from the day of the first publication of the Record for distribution in Japan as provided by the Cabinet Order(*), has not passed.*

** The current Cabinet Order sets the period to 4 years.*

On the other hand, as to the problem of international exhaustion of industrial property rights, there is no direct provision in the law of industrial property rights and it is judged at the court.

As to a patent right, according to the Supreme Court's view, an import by an import trader and sale act in Japan shall be regarded as infringement of a patent right, only where a patentee has reached an agreement with a buyer that Japan shall be excluded from a place of sale when selling a patent product in a country, and also where the patentee has specified that fact on the patent product. Where there is no such situation, an import by an import trader and sale in Japan shall not be regarded as infringement of a patent right.

In addition, in case of a trademark right as a principle, an import by a person other than an owner of a trademark right, who imports goods with the same trademark as the said registered trademark, shall be regarded as infringement of a trademark right without the consent of the owner of the trademark right. According to the Supreme Court, however, a case is interpreted as the one which lacks substantial illegality when the following conditions are simultaneously fulfilled, and thus an act of parallel importation of genuine goods shall not be regarded as a trademark infringement: (i) where the said trademark is applied to the goods lawfully by the owner of the trademark right, etc. in a foreign country; (ii) where the said trademark shows the same source as that of the registered trademark in Japan by displaying the owner of the trademark right in a foreign country is the identical person as the one who is the owner of the trademark right in Japan; and (iii) where it is evaluated that there is no difference of substantial quality between the imported goods concerned and the goods with the registered trademark applied by the owner of the trademark right in Japan.

Question Q4

According to paragraph 77 of the Secretariat's Report, Japan's Trademark Law was amended in 2005 to introduce a 'regionally-based collective mark'. In that regard:

- a) In what ways is the 'regionally-based collective mark' different from geographical indications, as defined in Article 22 of the TRIPS Agreement?

Answer

According to the definition under the TRIPS Agreement, geographical indications are indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

On the other hand, the system of a regionally-based collective trademark relaxes the requirements for registration of trademarks in terms of a trademark consisting of regional and product(service) names by using the framework of a collective trademark system, and it is not the one which guarantees that the quality and other characteristic are attributable to the geographical origin of the good.

Thus, a regionally-based collective trademark is not the one which aims at protection of geographical indications under the TRIPS Agreement.

- b) Is it possible to protect a geographical name, concerning a specific product both through a 'regionally-based collective mark' and a geographical indication?

Answer

A trademark of a geographical indication may be registered as a regionally-based collective trademark, if it consists only of characters of "a regional name" and "a product(service) name" and also meets the requirements for registration. However, the system of a regionally-based collective trademark is not the one which aims at registration (protection) of geographical indications.

- c) Is it possible to register in Japan a 'regionally-based collective mark' containing a geographical name that corresponds to a locality outside Japan?

Answer

Under the examination for a regionally-based collective trademark in Japan, a trademark containing a regional name outside of Japan can be registered, if it fits the requirements for registration of a regionally-based collective trademark.

For example, the requirements for registration of a regionally-based collective trademark are as follows:

- (a) Organizational Requirements*
 - Must be a legal entity*
 - The legal entity must be a business or other type of cooperative established on the basis of the Special Law*
 - The Special Law must not include a provision that may restrict the participation of qualified individuals without basis, or apply criteria stricter than those required for participation of the existing membership for participation in the organization.*
- (b) A trademark must be comprised of the name of the region and the name of a product or service.*
- (c) Close Relationship of the Region and Product (Service)*
- (d) Degree of recognition*
 - "recognition"*
Wide knowledge among consumers in Japan that the trademark represents the product (service) that the applicant or its members provide.
- (e) Absence of generic terms, etc.*

Question Q5

According to paragraph 78 of the Secretariat's Report, it is stipulated in Japan's Intellectual Property Strategic Program 2006 that, inter alia, Japan would speed up the examination of patent applications through measures such as partial outsourcing of examination procedures. Please provide more details, on those measures, including which examination procedures are planned to be outsourced.

Answer

Japan is making efforts in following measures to speed up the examination or the patent applications.

1. Increasing the Outsourcing of Prior Art Searches

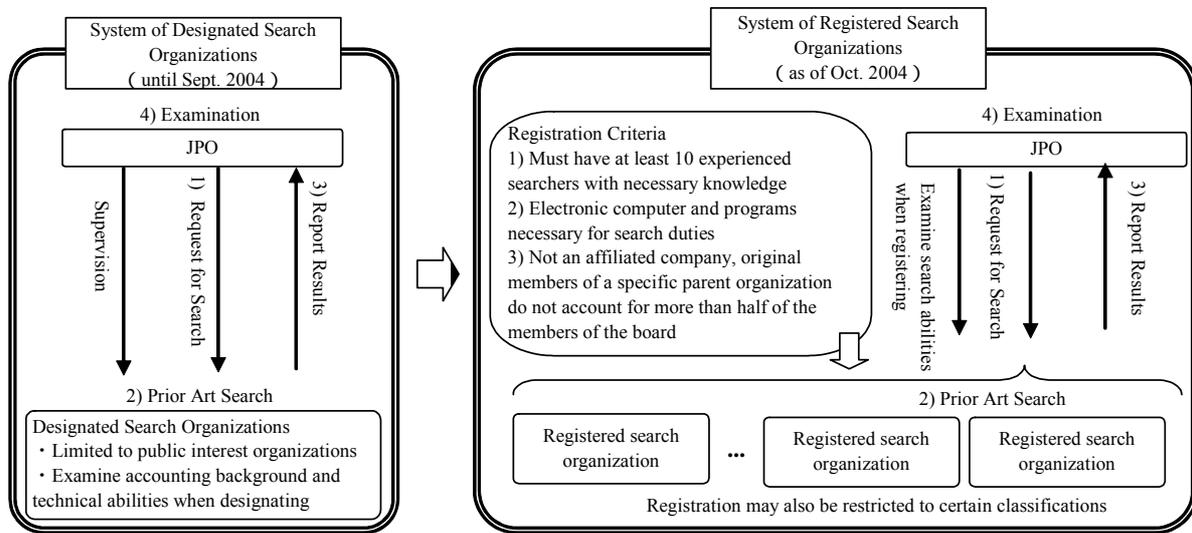
Improved examination efficiency is indispensable for achieving timely and high-quality examinations. Therefore, the JPO has outsourced part of the prior art searches necessary for examination, gradually increasing the number of outsource searches.

In 2004, the JPO took a measure to broaden the range of search organizations by introducing a system to allow organizations that satisfy certain requirements to become registered search organizations. As a result, three organizations, including a private company, were registered as registered search organizations by March 2005 and another private company had registered as a registered search organization in July 2006.

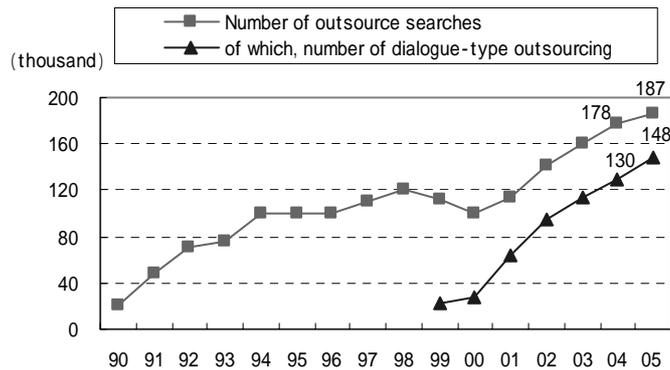
(Please refer to Section 36-39 in the Law Concerning the Special Provisions to the Procedures Relating to an Industrial Property Right)

In 2005 FY, the number of outsource searches was about 187,000, while the number of first actions were about 245,000. The number of outsource searches is increasing. And the JPO will ensure the quality of prior art searches and improve the examination efficiency by further promoting a shift from the "paper-type outsourcing," where the search organization prepares a report of its search result and submits it to the JPO, to the "dialog-type outsourcing," where the person who conducted the search explains the results directly to

examiners and receives advice, such as the need for additional searches, in the face-to-face meeting (percentage of interactive outsourcing in the total outsourced searches: 73% in FY2004 → 79% in FY2005).



[Trends in the Number of Outsource Searches]



2. Increase in the number of examiners

In order to cope with the increasing backlog of patent applications and significantly increase the examination capacity, the JPO will continue to make efforts to sufficiently secure the necessary number of examiners, with a view to hire a total of 500 fixed-term examiners by FY2008 by hiring about 100 fixed-term examiners every year, in addition to increasing the number of regular examiners. In FY2006, the JPO achieved a drastic increase in the number of examiners by a total of 110 regular and fixed-term examiners (fixed-term examiners: 98 persons).

3. Promoting International Cooperation in Patent Examination

When one patent application is filed in several countries, prior art searches and examinations for the same application would be duplicated. Among the Trilateral Offices (JPO, USPTO and EPO), the annual number of such overlapping applications reaches about 210,000, so it has become a shared issue as to how the offices can efficiently examine these applications. From this perspective, the JPO, together with other national patent offices, promotes cooperation in patent examination where the patent offices use the prior art search results and examination results of other patent offices in order to reduce their examination workload.

Question Q6

In the secretariat report, it is stated that sector specific support in Japan includes "... a government grant to the International aircraft Development Fund(IADF) of Japan. This provides financial support to Japanese companies involved in international collaboration in the construction of civil aircraft, such as a project between Boeing company in the Japan Aircraft, such as a project between Boeing company and the Japan Aircraft Development Corporation(JADC)". Could Japan provide us with further information on the grant conceded by the Japanese government to the International Aircraft Development Fund(IADF), including the total amount of funds provided by the Japanese government, as well as the terms and conditions related to the grant. In this connection, could Japan inform us on the terms, conditions and amounts of financial resources effectively provided in support of Japanese companies in the civil aircraft sector, especially those involved in the JADC-Boeing project. According recent news published in the international press, Mitsubishi Heavy Industries(MHI), would be a significant beneficiary of the financial support provide by the Japanese government in the aircraft sector. What are the amounts, terms and conditions of the funds provided to MHI by the Japanese government and/or IADF? Will all the resources to MHI be designated to activities related to commercial aircraft research, development and production? If not, what other activities will also be undertaken with the funds? Are other Japanese companies also benefiting from financial support from IADF? If so, could Japan inform us the name of the companies benefited and the amounts involved.

Answer

Please refer to the Notifications pursuant to Article 25 of the Agreement on Subsidies and Countervailing Measures for the details of the grant to IADF.

Question Q7

In light of the Doha mandate regarding improvements in market access, could the government of Japan explain why the protection in agriculture has not been reduced since the last Review?

Answer

With regard to the market access of agricultural products, Japan has implemented concessions in the schedule in an appropriate manner, and Japan will address further improvement of market access appropriately based on the result of the DDA negotiation.

Question Q8

The report highlights that "The Basic Law on Food, Agriculture and Rural Areas, which entered into force in 1999, continues to provide the framework and policy direction for agriculture in Japan; the new Basic Plan for Food, Agriculture and Rural Areas, adopted in March 2005, implements the Law." Once that law has maintained the sector relatively protected from foreign competition, how can it contribute to "substantial cuts in trade-distorting support", consistently with the Doha mandate?

Answer

It is expected that agricultural reforms based on the new Basic Plan, including the new direct payment system, will contribute to the reduction of trade-distorting support.

PAKISTAN

Question Q1

Has Japan taken any measures for improvement in Tariff Rate Quota administration for agricultural imports since the last review? The complex documentation process and strict requirements have proven to put the developing country exporters at a disadvantage over the other.

Answer

The administration of TRQ for agricultural products has not changed since the last review. This administration is appropriate as it is conducted in a fair and transparent manner, based on the characteristics of each product, and has not been to the disadvantage of exporters of exporting countries including developing countries.

Question Q2

Would Japan like to highlight its policy on Rice? On the one hand, it is one of the most protected commodities through domestic subsidies and very high tariffs; and on the other, it is exported as food aid.

Answer

Japan has provided domestic support on rice in full conformity with the relevant provisions of the Agreement on Agriculture.

In addition, Japan carried out tariffication on rice in 1999, in full conformity with the relevant provisions of the Agreement on Agriculture, including the calculation method of tariff equivalents.

Japan has conducted food aid, responding to the requests from relevant developing countries and international organizations, and in conformity with the WTO agreements and other international disciplines such as the Food Aid Convention (FAC) and the FAO Principle of Surplus Disposal.

Question Q3

The Japan Agricultural Standards (JAS) have introduced packaging and labeling requirements for many products including horticulture. Is there any plan to consider technical assistance for developing countries for meeting such requirements?

Answer

The JAS System consists of the voluntary JAS Standards and the mandatory Quality Labeling Standards. The JAS Standards provide criteria for quality or methods of production or distribution. The Quality Labeling Standards provide criteria for food labeling. The JAS System is consistent with international standardization by taking into account international standards when reviewing the JAS Standards and the Quality Labeling Standards. Therefore, if developing countries' standards are consistent with the international standards, they are likely to meet the JAS Standards and the Quality Labeling Standards without any specific difficulties.

Japan is ready to consider requests made by developing countries on technical assistance such as briefings on the JAS System and providing information.

Question Q4

Japan's tariff has ad valorem duty on about 6.6 % of the tariff lines, mostly on items like footwear, textile and clothing, and prepared food etc. Similarly about 1.7 % of tariff lines are subject to Tariff Rate Quotas.

While 100 % of the in-quota rates are ad valorem, only 25 % of the out-quota rates are ad valorem. Such a tariff structure is cumbersome for exporters. Does Japan plan to simplify these rates in ad valorem terms in future in order to make these more transparent? We, very much respect and value the sovereign right of Japan to structure its tariffs as it deems fit.

Answer

(We understand that “ad valorem” in the first and fifth sentence in Q4 is mistakenly written in place of “non-ad valorem”. The question is answered base on this assumption.) Japan has determined an appropriate type of tariff for each product with due consideration to the product’s properties, etc. In addition, non-ad valorem tariffs in Japan are consistent with WTO Agreements. In any case, Japan will continue to set an appropriate type and level of tariff considering the progress and results of the DDA negotiations.

Question Q5

The mandatory requirements in Japan for providing professional services call for obtaining local qualification along with membership of a professional association to be able to practice as a certified public accountant, doctor, nurse etc. Recently, the government has removed some restrictions on foreign doctors and nurses with Japanese medical licenses working in Japan. Would Japan clarify if there were any equivalence establishing system in place, which recognizes education and skills obtained from abroad at par with that in Japan? Is there any additional training requirement, for example, for the doctors and nurses to the extent of learning language etc; or do they have to undergo whole medical or nursing education in Japan in order to qualify for a professional license in that field?

Basically, there is no mutual recognition system of professional qualifications obtained outside Japan.

Answer

Concerning foreign doctors, a person who has graduated from a foreign medical school or obtained a license to practice medicine as a doctor in a foreign country, and is recognized by the Ministry of Health, Labour and Welfare to be possessing academic qualifications as well as practical skills as a doctor at least equal to the doctors qualified in Japan, is permitted to take the medical practitioners’ examination. In this case, it is not necessary for the foreign candidates to enroll in and graduate from the Japanese university in medicine anew.

Concerning foreign nurses, a person who has graduated from a foreign nurses’ school or obtained a license to practice as a nurse in a foreign country, and is recognized by the Ministry of Health, Labour and Welfare to be possessing academic qualifications as well as practical skills as a nurse at least equal to the nurses qualified in Japan, is permitted to take the nurses’ examination. In this case, it is not necessary for the foreign candidates to enroll and graduate from a nurses’ school in Japan anew.

In order to obtain qualifications as certified public accountants (CPAs) in Japan, all candidates are required, regardless of their nationalities, to satisfy Japanese CPA examination, professional education and practical experience as required by the CPA Law. In addition, all CPAs in Japan need to be members of the Japanese Institute of Certified Public Accountants (JICPA) under the CPA Law. There is hence no equivalence assessment system currently in place which recognizes education and skill obtained abroad on par with that in Japan.

SWITZERLAND

Question Q1

In para. 5, the Secretariat's report suggests that the level of inward FDI remains low compared with other developed economies. Could the Japanese authorities indicate the reasons for this situation and, possibly, the measures they are contemplating to adopt to improve this state of affairs?

Answer

Although there may be various reasons why the level of inward FDI stock in Japan is low compared to other developed countries, in order to promote inward FDI into Japan, the Japan Investment Council (JIC) set up in June 2006 the Program for the Acceleration of Foreign Direct Investment in Japan, which focuses on three key issues: (1) Regional centers for economic growth and improved quality of life; (2) Improvement of an investment environment capable of overcoming global competition; (3) Domestic and international public information activities. For details please refer to the following websites:

"Investment in JAPAN Information Center"

<http://www.investment-japan.go.jp/index.htm>

"White Paper on International Economy and Trade 2006", Chapter 3, Section 2.4: Analysis of the factors causing the low level of direct inward investment in Japan

<http://www.meti.go.jp/english/report/data/gWT2006fe.html>

Question Q2

In para. 7, the Secretariat's report indicates that the understanding among BOJ's policy board members of price stability in the medium-term to long run is that inflation should remain in a range between zero and 2%. At the same time, it notes that BOJ intends to review this range annually. By reviewing annually the range it considers as price stability, is the BOJ not running the risk that markets become unsure about the future course of monetary policy? Would it not be better from a longer term perspective that the BOJ commits to maintain future inflation in a fixed range in order to stabilize inflation expectations? Could the Japanese authorities explain why they deem it necessary to have such an annual review of the range?

Answer

The "understanding of medium- to long-term price stability" indicates the range of our Policy Board members' current understanding of price stability in the medium-to long-term as a whole. When conducting monetary policy, members of the Policy Board assess overall economic activity and price developments and make decisions on monetary policy with due respect to the "understanding of medium-to long-term price stability". This new policy framework is not designed to attain a target rate of inflation within a particular period of time, but it contributes to enhancing the transparency of our policy conduct.

The response of the inflation rate to the economic growth rate is quite weak in the current expansion phase in Japan, compared with past expansion phases. This phenomenon of a weak response of inflation is also seen in overseas economies. In the background lie factors that include the effects of progress in economic globalization and in information and telecommunication technology. In addition, Japan's economy, which is now in the process of attaining a sustainable growth path after a long period of economic stagnation, may be experiencing changes in the price formation mechanism. Although it is difficult to judge at the moment whether such changes are only temporary phenomena or not, there is a possibility that the price formation mechanism will gradually evolve in response to structural changes in the economy. It is thus deemed appropriate to regularly review "the understanding of medium- to long-term price stability."

Question Q3

In para.9, the Secretariat's report indicates the Japan's objective in fiscal policy is to achieve a surplus in the primary balance of the central and local governments combined by FY 2011. In view of the extremely high level of both the fiscal deficit (5.2% of GDP in 2006) and the public debt (172.1% of GDP), is such an objective not too modest given that, as stated in para.6 of Japan's Government Report, the foundation for economic recovery is now firmly in place with notable improvements in macroeconomic conditions in recent years? Should the authorities not target rather an outright surplus for the consolidated public sector by FY2011?

Answer

Thanks to its thorough review of expenditures and an increase in revenues, Japan has improved its current fiscal situation. However, in view of the social security related expenditure increase anticipated with the ageing population, etc., measures to address the falling birthrate, and the enormous debt outstanding, we cannot be unreservedly optimistic about fiscal consolidation in the future.

Therefore, in line with Basic Policies 2006 and other policies, the Government of Japan will continue to pursue the integrated reform of expenditures and revenues to meet the targets of achieving a surplus in the primary balance of the combined budget of the central and local governments by FY 2011 and, after that, reducing the debt-to-GDP ratio in a stable manner by the mid-2010s, while sustaining economic growth.

Question Q4

In para. 18, the Secretariat's report indicates that under the Special Zone for Structural Reform Act about 500 special zones have been established to allow relaxation or elimination of specific regulation, Could the Japanese authorities explain why they seem to privilege regulatory reform in certain zones and apparently not in the country as a whole? What are the benefits of such a piecemeal approach to regulatory reform as compared to a more general approach to regulatory reform that would be valid for the entire country? Also, could the authorities provide examples of the zones benefiting from measures of regulatory reform by zone?

Answer

Under the special zone policy, we designate geographical areas in which regulatory reforms are carried out, and expand the reforms to the whole country after having evaluated their performance for a certain period of time.

In some cases, nationwide regulatory reforms are difficult to be quickly realized, for it is hard to estimate the effect of relaxation. For example, a region has potential for growth by relaxation of the Law Concerning the Measures by Large- Scale Retail Stores for Preservation of Living Environment in a town center. However, at the same time, there is a probability of a bad effect on the living environment, such as traffic jams, noise, and so on. But, the special zone policy makes breakthroughs even in such areas.

Therefore, the special zone policy is considered to be a tool to accelerate nationwide reforms rather than a measure only beneficial to particular zones.

Question Q5

Could the Japanese authorities indicate which criteria are being used to graduate beneficiary countries from the GSP?

Answer

A beneficiary is to be excluded from the list of GSP beneficiaries if it is classified as a high income economy in the World Bank statistics for three consecutive years or, when the World Bank statistics are not applicable, recognized to have an equivalent level of GNP per capita.

When a country or territory excluded from the list of GSP beneficiaries is not classified as a high income economy for three consecutive years, such countries or territories shall be subject to the GSP scheme, if such countries or territories request Japan to apply the GSP beneficiary status to them again.

Question Q6

Could the Japanese authorities indicate which criteria are being used to fix the overall ceilings per tariff line?

Answer

In Japan's GSP, there are ceilings on some industrial products (HS chapters 25-97), although abounding others do not have any ceilings. Currently Japan applies ceilings for 78 product groups (1,192 tariff lines as of FY 2006), and the ceilings are set for each fiscal year by multiplying the ceilings of the previous fiscal year by 1.03, which means Japan increases each ceiling by 3% every year. Japan set the original ceilings in FY 2001 taking into account of previous ceilings before the revision in FY 2001, the needs of developing countries and the situation of domestic industries.

Question Q7

Are there other conditions than those specified in para.14 which need to be fulfilled in order to benefit from the "instant import permission system upon arrival"? Is this system equivalent to the "specific export declaration system" mentioned in para.65?

Answer

Under the current law, the cargo eligible for the use of "instant permission system upon arrival" is the cargo that has been filed preliminary declaration using automated system (the Nippon Automated Cargo Clearance System (NACCS)) and has deemed that it present no law enforcement concern. If these conditions are fulfilled, the preliminary declaration regarded as import declaration, then import permission is issued immediately after the confirmation of the arrival of the cargo, resulting in the reduction of the lead time from cargo arrival to import permission.

"Specific export declaration system (Authorized exporters' declaration system)" is, as described in para.65, Chapter III of Secretariat's Report, the system for export and allows exporters approved by any Director-General of Customs with respectable compliance records to file export declaration and obtain export clearance on exporter's own premises. Therefore, this system is different from "instant permission system upon arrival" for import.

Question Q8

Under which conditions can foreign institutions (banks, chambers of commerce, insurers) be part of JAMMO?

Answer

Because JAMMO is not established by the Government of Japan, the Government of Japan has not grasped the condition of JAMMO.

For your reference, according to its HP, it seems that many foreign institutions in Japan are part of JAMMO. Meanwhile, according to its HP, it seems that when foreign institutions whose commercial presence are not in Japan use JAMMO, they must have a bank account in Japan and make online banking contracts with banks in Japan.

Question Q9

In para. 32 the Secretariat's report indicates that import quotas are imposed on various items, among others on certain organic chemicals and on pharmaceuticals. Could the Japanese authorities indicate for which organic chemicals and pharmaceuticals such import quotas are imposed? Is it for all of them and what are the intended aim and reasons of such measures?

Answer

The import quota products are shown in the public notice "Import Notice" based on the foreign exchange and foreign trade act (See P.8 of "Replies to Questionnaire on Import Licensing Procedures (G/LIC/N/3/JPN/4)). Regarding medicine and chemical products, drugs and chemical products subject to the Stockholm Convention on Persistent Organic Pollutants are identified as quota products. The import quota administration system plays an important role in complying with international treaties, in complimenting conservation, and protecting human life and health, and is consistent with the WTO Agreements.

Question Q10

Para. 38 of the Secretariat's report provides a comprehensive overview of the various procuring entities involved in government procurement on central, subterritorial and sectoral levels. It would be of interest to have also a picture of the relative importance of these three levels in Japan's total procurement activities. Could the Japanese authorities therefore provide some information regarding the respective shares, in per cent, of the procurement made at the central, subterritorial and sectoral levels? Are the procuring entities operating in the three levels connected to a single electronic point of access? If not, through which channels are foreign suppliers being informed about the procurement to be carried out at the different levels?

Answer

Based on the 2003 statistical data submitted to the WTO, the approximate simple ratio of the estimated value of contracts awarded above the threshold value by central government and sub-central governments is 2 to 1, both in terms of value and in terms of number. Appropriate data for the other entities for comparison are not available.

At present, the procuring entities listed in Japan's annex 1 through 3 to the GPA are not connected to a single electronic point of access. Notices of procurement can be found in the publications designated in Appendix II of the GPA. (For entities in annex 1 and 3, Kanpo (including its electronic website), for entities in annex 2, Kenpo, Shiho, or their equivalents.)

Question Q11

Para. 41 provides figures regarding the share of the procurement made according to the three procedures available for tendering above the thresholds specified in the GPA (open, selective and limited tendering). These figures show a decrease in open tendering (from 63 to 54 per cent), a relative stability at a low level for selective tendering (1.7 instead of 1.5 per cent) and an increase – from 35 to 44 per cent – for limited tendering. Switzerland also took note of the explanations given in the footnote regarding the reasons of the shift, between 2002 to 2004, from open to limited tendering. Do the Japanese authorities consider that this major shift is due to specific circumstances which occurred only in the period under review? Or are the Japanese authorities of the view that the changes observed are due to structural problems and that the

phenomena observed is rather mirroring a long-term trend? What is the importance, in value and per cent of the total procurement, of the public works contracts (or “works concessions” or “BOTs”)?

Answer

The share of single tendering remained at the same level in 2002-2003. It rose to 44.1% in 2004.

[The trend in single tendering]

	2002	2003	2004
Procurement Value	35.4%	35.2%	44.1%

In 2004, the share of single tendering cases under Article XV: 1 (a) (i.e. in the absence of tenders in response to an open or selective tender) increased.

[Grounds for use of single tendering procedures]

	2002	2003	2004
Article XV:1(a)	23.5%	22.0%	30.7%
Article XV:1(b)	25.2%	26.1%	24.5%
Article XV:1(d)	46.4%	49.3%	42.1%
Others	4.9%	2.6%	2.7%

(Based on the same statistical data as referenced in para.41 of the Report by the Secretariat.)

Question Q12

Para. 43 informs about the two bodies in charge of government procurement reviews. Is it correct that the mandate of the Government Procurement Review (OGPR) is limited to the complaints regarding the procedures and that it is not an independent Court but an office, integrated in the administration at a central level? Does the mandate of the independent Government Procurement Review Board (GPRB) also cover complaints regarding decisions taken by the procuring entities operating at subterritorial (prefectures, cities, etc.) and sectoral levels?

Answer

The Office of Government Procurement Review (OGPR) is established under the Cabinet Office, and is not an independent Court. The OGPR processes complaints on procurement procedures by the central government and public corporations. Each sub-central government entity has established its respective review system and procedures by following the example of the central government.

Question Q13

Could the Japanese authorities explain the rationale for the large number of exceptions(21 type of cartels)to the general prohibition of cartels under the Anti-monopoly Act ? Are there plans to reduce the number of these exceptions in a foreseeable future?

Answer

The Antimonopoly Act (hereinafter referred to as “the AMA”) prohibits private monopolization, unreasonable restraints to trade and unfair trade practices, etc. However, certain conducts are exempted from the application of the AMA based on relevant laws so as to achieve political purposes other than competition policy.

With regard to the abovementioned exemptions, Japan reviewed all exemptions from the standpoint of abolishing them in principle. As a result of such reviews, exemptions were decreased from 89 systems under 30 laws at the end of 1997 to 21 systems under 15 laws.

On the basis of past reviews, JFTC will continue monitoring how these exemptions are to be implemented and will conduct deliberations as circumstances demand.

Question Q14

Para 42: This paragraph mentions that only registered joint-stock corporations may engage in securities' business in Japan. Additionally, it is stated that under the Law of Foreign Securities Firms, the main office in Japan of a foreign securities' firm must be registered to operate securities' business in Japan. Are there any other limitations applicable to foreigners to operate securities' business in Japan?

Answer

Under the laws and regulations relating to foreign securities firms, prudential requirements are stipulated, including;

- *the amount of capital and net assets are required to be comparable to or more than ¥50 million.*
- *a person who has violated the laws and regulations related to foreign securities firms or other similar foreign laws and regulations, resulting in the imposition of a penalty or fine and where five years have not passed since the day on which the execution of that penalty was completed or its registration was revoked, is not acceptable as an applicant.*
- *board members may not have disqualification causes, such as cases where five years have not passed since the person receiving imprisonment or a stricter penalty.*

Question Q15

Is membership of a professional organisation open to foreign citizens in all cases?

Answer

The general approach is that membership of the professional organizations should be open to foreign nationals as long as the relevant professional qualifications are obtained in Japan by meeting the requirements specified in the relevant Japanese laws. However, please note that professional organizations are self-regulated and that membership eligibility is decided in accordance with the rules of each organization.

For example, membership of the professional organizations of the following professional services is open to foreign nationals as well as to the Japanese nationals: [certified public accountants, administrative scriveners, patent attorneys, licensed tax accountants, certified social insurance, labor consultants, attorneys at law and foreign lawyers registered in Japan etc.].

BOLIVIA

Question Q1

The document submitted by Japan mentions bilateral activities with countries on different continents and the progress achieved over the past years; but when it comes to Latin America, it only mentions MERCOSUR. Nor does it provide any trade statistics for that region. We would be interested in knowing the trade policy that has been established with other Latin American integration blocs, in particular with

the Andean community. Does Japan intend to continue its trade relations with the Andean bloc through the Generalized System of Preferences, or does it plan to conclude more extensive trade agreements.

Answer

The vision "Toward a New Japan-Latin America and Caribbean Partnership", announced by then Prime Minister Koizumi in 2004, articulated Japan's intention to reactivate its economic relationship with the Latin American and Caribbean countries, including the Andean community countries, which are blessed with a wide expanse of land, rich natural resources and excellent young workforce. Japan has extended its GSP scheme to 31 March 2011, and continues to apply the GSP scheme to the Andean community countries classified in the list of beneficiaries of Japan's GSP. The First Japan-Andean Community Consultation Meeting was held in Colombia in December 2002.

Question Q2

What are the factors that explain this growth?

Answer

The reason for the Inward FDI in the Finance & Insurance Sector increasing sharply in FY 2004 is as a result of the increase in FDI from the North America region.

Moreover, in the Telecommunications and Transport Sector, FDI from the Europe region has increased.

The following table shows the amount of the Inward FDI in the following sectors: Finance & Insurance, Telecommunications and Transportation.

Table: Inward FDI (by region)

Finance & Insurance Sector		(JPY 100 million)	
	2003	2004	Rate of Change (%)
North America	913	25,373	2678.3
Latin America	3,826	661	▲82.7
Asia	963	367	▲61.9
Mid & Near East	-	-	-
Europe	2,261	1,349	▲40.3
Africa	-	-	-
Oceania	0	-	-
Japan	2,216	2,018	▲9.0
Total	10,179	29,767	192.4

Telecommunications Sector

	2003	2004	Rate of Change (%)
North America	192	17	▲91.1
Latin America	2	0	▲100.0
Asia	20	0	▲98.5
Mid & Near East	-	-	-
Europe	17	2,437	14254.4
Africa	-	-	-
Oceania	-	-	-
Japan	374	2,208	491.0
Total	604	4,663	671.8

Transportation Sector

	2003	2004	Rate of Change (%)
North America	-	0	-
Latin America	-	-	-
Asia	17	27	58.6
Mid & Near East	-	-	-
Europe	-	2,061	-
Africa	-	-	-
Oceania	-	3	-
Japan	-	2	-
Total	17	2,092	12287.9

Note: The Value is calculated on ex post facto reporting or prior notice basis.

Source:

*The Ministry of Finance, "Outward and Inward Foreign Direct Investment"
(<http://www.mof.go.jp/1c008.htm>)*

Question Q3.

What impact does this growth have on contribution to GDP: is its share significant compared to the other economic activities?

Answer

The share of GDP of financial services and insurance did not change significantly in recent years. In CY 2004, financial services and insurance decreased their share of GDP from the previous year, as listed on Table 1.2, Secretariat report.

Question Q4

What parameters will be used to define income support, and what criteria will a farmer have to fulfill to qualify as a "principal farmers"?

Answer

The amount of income support will be determined by production level in a defined and fixed base period.

Principal farmers in their respective regions will be identified by using the system of "certified farmer", and various policy measures will be targeted at these farmers. In this process, village-based farming managements that are expected to develop into efficient and stable managements in future will also be identified as "principal farmers".

(Under the system "certified farmer" system, local municipalities will prepare, based on the Law for Promoting Strength of Agricultural Management Bases, basic plans which include targets for efficient and stable agricultural managements, taking into consideration the actual conditions of the region. Farmers who want to be "certified" by municipalities have to prepare their "plans on agricultural management reform" to achieve the targets indicated in the basic plan.)

Question Q5

What mechanisms and procedures are applied by the Government of Japan to grant support and allocate transfers to the agricultural sector?

Answer

Mechanisms and procedures under which the Government of Japan grants support and allocates transfers to the agricultural sector are different in each support scheme. For further information, Japan's Subsidy Notification and related documents including G/SCM/N/123/JPN and G/SCM/Q2/JPN/39 would be useful.

Question Q6

What benefits do the Special Zones for Structural Reform receive and how do they affect the principal farmers?

Answer

The designation of Special Zones contributes to reducing and preventing the abandonment of farmland, as well as to securing new farmers in the area.

As areas designated as Special Zones are those where a substantial amount of abandoned farmland exists due to insufficient numbers of principal farmers, the designation does not adversely affect the existing principal farmers.

CHINESE TAIPEI

Question Q1

As indicated in the report, the Japanese government has been discussing the subject of pension reform and this has been established as a priority. Could Japan please describe the main goals and scope of the pension reform plan, and confirm whether pension fund governance and management are included?

Answer

In order to establish a sustainable and assured pension program in an environment in which the population is aging and the declining birthrate is accelerating rapidly, and also to secure inter- and intra-generational fairness mindful of the need to ensure that the working generations of the future are not presented with an excessive burden, the Law to Partially Amend the National Pension Law, etc. came into force in June 2004. The Law is intended to: 1) reduce the future rise of pension premium rates to the minimum level and fix the upper limit of the pension premium burden; 2) adjust the rate of benefits (growth in pension benefits) within the range of pension premium rates; 3) increase the percentage of national subsidies to total basic pensions and 4) utilize reserve funds, thereby preventing the endless reduction of benefits.

In addition, in order to secure stability and fairness of the pension system, and also to raise the trust of the nation in the whole public pension system, on the basis of a Cabinet meeting decision in April 2006 and the Government and ruling party agreement in December 2006, employee pension systems were unified based on an orientation that joined the mutual aid pension systems together in the employees' pension system.

Moreover, as regards the pension reserve fund, Japan has established the Basic Policy of Pension Reserve Funds Management which is common to Employees' Pension Insurance and Mutual Aid Pension. In line with the policy, each management entity will establish its own basic policy of management and investment and will manage pension reserves.

Question Q2

The Special Zone for Structural Reform Act allows relaxation or elimination of specific regulations within a particular zone, which includes extending the period that foreign researchers and foreign nurses may stay or work in Japan. (page 83)

It would be appreciated if Japan could elaborate further on the provisions regarding category, length of stay and work requirements for foreigners under the Act, and identify for us the differences between these provisions and normal existing regulations.

Answer

The government decided to take measures to carry out nationwide programs promoting acceptance of foreign researchers and foreign information processing engineers mainly implemented in the Special Zones for Structural Reform by the end of FY 2005.

Therefore, the amendment of the Immigration Control Act stipulates the following activities as the status of residence of "Designated Activities": (1) designated research activities, (2) designated research business activities, (3) designated dependents' activities concerning (1) or (2), (4) designated information processing activities, and (5) designated dependents' activities concerning (4) and measures equivalent to the above, (6) foreign professors' educational activities and (7) foreign professors' dependents' activities as activities stipulated as preferential measures for the status of residence under the Law on the Special Zones for Structural Reform. The maximum term of residence granted for these activities has been extended from "three years" to "five years". Activities authorized to be engaged in under the relevant status of residence are as follows:

- (a) Activities conducted on the basis of a contract with a public or private organization in Japan (the organization conducting business activities that meet the requirements stipulated by the Ministry of Justice ordinance as contributing to the efficient promotion of research or the development of industries related to specific fields requiring sophisticated expertise and which is an organization specifically designated by the Minister of Justice) for research, guidance of research, or education in such specific fields at the facilities of such organizations (in the case of education, only that which is provided at colleges, equivalent educational institutions or colleges of technology (kotosenmongakko)) or in addition, the self-employment activities of managing a business related to research, guidance of research or education in such specific fields.*
- (b) Activities conducted on the basis of a contract with a public or private organization in Japan (the organization conducting business activities that meet the requirements stipulated by the Ministry of Justice ordinance as contributing to the development of industries related to information processing (information processing as provided for by Article 2, Paragraph 1 of the Law Concerning Promotion of Information Processing (Law No. 90 of 1970); the same hereinafter) and which is an organization specifically designated by the Minister of Justice) of engaging in information-processing-related services which require technology and/or knowledge pertinent to natural science fields or human science fields at an office of such an organization (an office of the other organization in cases where he/she is dispatched to another organization by such an organization as a temporary worker as provided for by Article 2, Item 2 of the Law Concerning Ensuring Proper Operation of the Manpower Dispatching Business and Improvement of Working Conditions of a Temporary Worker (Law No. 88 of 1985)).*
- (c) Daily activities on the part of the spouse or unmarried minor who is supported by the foreign national engaging in the activities described in a. or b.*

Provisions related to this matter in the Law on the Special Zones for Structural Reform were deleted at the time of enforcement of this provision.

This provision was enforced on 24 November 2006.

Regarding foreign nurses, the employment restrictions were relaxed not under the Law on the Special Zones for Structural Reform but within the framework of the revised Three-Year Program for Promoting Regulatory Reform (please refer to Paragraph 71 in the WTO Secretariat Report).

Question Q3

In light of the proliferation in FTAs/RTAs signed between APEC member economies as well as with other countries in the Asia-Pacific region, a trend which clearly conflicts with the open regionalism espoused by APEC, could Japan please describe the measures and actions that it has adopted in support of APEC's framework in response to the above-mentioned proliferation?

Answer

APEC endorsed the Busan Roadmap for the Bogor Goals, which states APEC will continue to contribute to trade and investment liberalization through the pursuit of high quality RTAs/FTAs. It also says, to help maximize the contribution of these agreements to APEC-wide progress towards the Bogor Goals, APEC should develop a more comprehensive workplan on RTAs/FTAs, including work in developing model measures. Japan is drafting the investment chapter, and will continue to contribute to the discussion to develop a wide range of RTA/FTA chapters of the model measures.

Question Q4

We would appreciate further information from Japan on this topic as follows:

- (i) What was the coverage of the review of policy evaluation? Did it include environmental impact analysis or sustainable impact analysis?
- (ii) What steps does Japan take if the result of evaluation is negative?
- (iii) What is the definition of "important policies"? Could Japan please provide an example by way of explanation?

Answer

- (i) *In the review of the policy evaluation in December 2005, neither environmental impact analysis nor sustainable impact analysis was discussed.*
- (ii) *GPEA prescribed that each administrative organ shall appropriately reflect the results of evaluation in the planning and development of policies. The Government of Japan can not state in general whether a policy will be improved/reviewed or abolished/stopped as a result of a negative evaluation.*
- (iii) *"Important policies" means, for example, important Cabinet policies announced in the Prime Minister's policy speeches.*

Question Q5

In 2005 and 2006, Japan amended its list of non-quarantine plant pests to add 46 and 34 pests respectively. However, this policy of publishing a non-quarantine plant pests list instead of a regulated pests list has

seriously impeded market access by other WTO Members due to the lack of definite descriptions and the uncertainty surrounding regulated pests, i.e. quarantine pests and regulated non-quarantine pests.

According to the Article VI of the International Plant Protection Convention 1997, WTO Members may require phytosanitary measures for regulated pests under certain conditions, but they shall not require such measures for non-regulated pests. Because the above-mentioned measure adopted by Japan is to release the non-quarantine plant pests from phytosanitary measures only, it leads to a considerable amount of uncertainty regarding regulated pests, and creates difficulties for exporting WTO Members attempting to comply with its requirements.

According to the International Standards for Phytosanitary Measures (ISPM) No. 19, the list of regulated plant pests should be based on risk assessment and follow the definition of ISPM No. 5. In addition, quarantine or emergency actions can only be taken while a regulated pest is intercepted from importing commodities.

We would ask Japan, therefore, to kindly formulate its regulated pests list on the basis of appropriate risk assessments and to revise current requirements in order to adhere to the relevant international standards.

Answer

Japan submitted the WTO/SPS notification (G/SPS/N/JPN/175 -11 January 2007) concerning the revision of the plant quarantine measures, which adds certain pests to the non-quarantine pests list. We will continue to take appropriate quarantine measures based on PRA with necessary reviews of the current plant quarantine system, including further expansion of the list.

Question Q6

As of August 2006, the Japan Government held a 50.0% stake in Japan Tobacco inc.(JT) and a 66.4% stake in Kansai International Airport Co. Ltd. Some shares of commercial bank and railway companies were also held by the government or government-affiliated corporations.

Are there any plans for these State-owned entities to be privatized in the near future? Will any restrictions apply to foreign investors when the shares are offered?

Answer

(1) *(JT) The Japan Tobacco Inc. Law, as amended in April 2002, stipulates that the Government of Japan shall hold one-half or more of the total number of shares of JT, which had been transferred to the Government gratuitously at the time of establishment of JT, and more than one-third of the total number of outstanding shares (Before the said amendment, the Government was required to hold more than two-thirds of the total number of outstanding shares). The Government has already sold off the maximum number of state-owned shares pursuant to the Japan Tobacco Inc. Law. The Government has no further plans to sell the rest of the state-owned shares.*

(2) *(Kansai International Airport) Kansai International Airport Co. Ltd., is currently engaged in management improvement, aiming at complete privatization in the future. However, the schedule and the method for privatization have not yet been decided.*

(3) *(Railways) JR East, JR Central and JR West have already been fully privatized both in terms of law and of shareholding. With regard to JR Hokkaido, JR Shikoku, JR Kyushu and JR Freight, their privatization at the earliest opportunity has been decided by Cabinet decision. The Government of Japan is working on improving the business environment to stabilize and strengthen their management bases. These four companies, on their side, are making efforts to increase revenue and to cut operating costs. There will be no restrictions to foreign investors when the shares are offered.*

(4) (Banks) Japan has plans to privatize the Development Bank of Japan and Shoko-Chukin Bank. Concrete measures for privatization, including the method of disposal of shares, are under discussion. With regard to commercial banks, in cases where the Government of Japan holds shares of commercial banks, this is not for nationalization. (In exceptional circumstances, commercial banks could be nationalized temporarily for prudential reasons such as the maintaining of the financial system.) Thus, the sell-off of commercial banks' shares owned by the Government does not fall under the case of privatization. At the same time, however, when the Government sells shares it owned in commercial banks, there is no restriction on acquisition of these shares by foreign investors.

Question Q7(i)

Is there any legal basis for the adoption of the Reorganization & Rationalization Plan?

Answer

The legal basis for the Reorganization & Rationalization Plan for Special Public Institutions is The Basic Law on Special Public Institutions Reform established in June 2001.

Question Q7(ii)

What are "incorporated administrative agencies"? Are they defined and regulated by law? If so, please provide references to the relevant regulations.

Answer

Incorporated Administrative Agencies (IAAs) are corporate bodies that are established for the efficient and effective implementation of services and programs when: (1) the secure administration of such services and programs are indispensable from the point of view of the public (i.e. for the stability of people's lives, the society and the economy), but do not have to be state-run; (2) there are risks that the services and programs might not be sufficiently well operated if left to the private sector, or (3) it is deemed necessary to let one actor monopolize the implementation of a service/program.

The Act on General Rules for Incorporated Administrative Agencies provides the framework of the IAA system, and the details needed to establish and operate each IAA, such as the name, purpose, and scope of services, are provided in each individual act.

In April 2001, 57 IAAs were established, by cutting out government agencies such as national research institutions and, as of January 2007, there are 104 IAAs.

Question Q7(iii)

Is there a due date for the Reorganization and Rationalization Plan? If so, please inform us of the date.

Answer

It was decided in Article 6 of the Basic Law on Special Public Institutions Reform to take proper steps to carry out the Reorganization & Rationalization Plan for Special Public Institutions, while the term of Concentrated Reform (the end of 2005) and the Important Policy of Administrative Reform (Cabinet Decision of 24 December 2005) have solidified the plan for the reform of the 22 corporations to be reformed in the future.

Question Q7(iv)

What are the 22 corporations to be reformed in the future? How are the reforms going to take place?

Answer

The 22 corporations to be reformed in the future

Regarding the eight financial policy institutions: Japan will make steady progress toward the new structure in accordance with the administrative reform promotion bill, which includes a basic policy of integration and full privatization and so on.

The five corporations are the Japan Racing Association, the National Association of Racing, the Japan Keirin Association, the Japan Motorcycle Racing organization, the Nippon Foundation, and the National Institute for Research Advancement. Japan will continue to take steps for reform in accordance with the Important Policy of Administrative Reform.

Under the measures of the Reorganization & Rationalization Plan for Special Public Institutions, Kansai International Airport Co.,Ltd., three NTT companies, and four JR companies will go on steadily reforming, aiming for an early completion.

Question Q8

We recognize that the revised Copyright Law prohibits the parallel importing of sound recordings.

- (i) In this regard, can the Law apply to other forms of work as well, such as movies or books?

Answer

The provision introduced by the 2004 amendment of the Copyright Law prevents commercial records published outside Japan from flowing back to Japan for the purpose of distribution, when they are identical to records published in Japan and they are published outside Japan under the condition that distribution within Japan is prohibited. Copyrighted works that do not fulfill this criterion are not subject to this provision.

**“Commercial records” means copies of the fixation of sounds on phonographic discs, recording tapes and other material forms (excluding those intended for use exclusively with images), which are made for commercial purposes (Copyright Law, Article 2, Section 1, Paragraph 5 and 7).*

Question Q8(ii)

Does Japan give authors the exclusive right to authorize or to prohibit the commercial rental to the public of originals and copies of their copyright works, in compliance with Article 11 of the TRIPS Agreement?

Answer

The author has the exclusive right to offer his/her work (excluding cinematographic works) to the public by lending copies of the work (Copyright Law, Article 26ter). The commercial rental right of computer programs, required under Article 11 of the TRIPS Agreement, is protected through this article.

With regard to the commercial rental right of cinematographic works, also required under Article 11 of the TRIPS Agreement, the right of distribution is granted for cinematographic works (Copyright Law, Article 26). Because distribution includes lending, the same type of right for lending that is granted for other types of works is in effect granted for cinematographic works (Copyright Law, Article 26).

The Copyright Law, when it was originally enacted, contained a supplementary provision which provided that the right of lending does not apply to books and magazines. However, this supplementary provision was repealed in 2004. Today, the right to offer one's work to the public by lending copies of the work applies to books and magazines as well.

Question Q9

At the December 2005 Ministerial Meeting in Hong Kong, a resolution was reached to insert into the TRIPS Agreement Article 31bis and to implement Paragraph 6 of the Declaration on the TRIPS Agreement and Public Health.

We would be interested in knowing:

- (i) What progress has Japan made in the process of notifying its acceptance of TRIPS 31bis?
- (ii) Is there any need for Japan to revise its domestic regulations? If so, what is the timetable for such revision?

Answer

Japan considers the issue of public health in developing countries an extremely important issue and finds the acceptance of the Protocol Amending the TRIPS Agreement meaningful. The Government of Japan, through consultations amongst its ministries, is working hard to seek Diet approval so that the Protocol may be accepted. In this regard, Japan is also reviewing the possible necessity of amending our Patent Law.

Question Q10(i)

In June 2006, Japan's IP Headquarters announced its Intellectual Property Strategic Program 2006, which specifies the establishment of an infringement verification system at Customs (infringement of IPRs other than trademark and copyright). According to statistics provided by Japan's Customs, since 2003, infringements have been discovered relating to plant variety rights and patent rights.

We are interested in knowing how Japan's Customs determines complicated patent infringements? Who makes such judgment?

Answer

In principle, Japan Customs determines patent infringements, considering the evidence and/or statements submitted by the right-holder and importer during the identification (verification) procedures. In order to determine the infringement of complicated patent issues, Japan Customs can seek the advice of the Japan Patent Office and the opinions of IPR experts.

Question Q10(ii)

How long does the verification process take?

Answer

Regarding patent infringements, the average period of time taken for the identification (verification) process in FY 2005 was approximately three weeks.

Question Q10(iii)

How are suspected goods handled before infringement is confirmed?

Answer

During the identification process, suspected goods are detained at Customs areas. However, the importer can take voluntary disposal, such as the destruction of the goods and the abandonment of the ownership, during the identification process.

Question Q10(iv)

How is the verification confirmed, and is there an appeal remedy?

Answer

Based on the evidence and/or statements which the right-holders and importers submitted, Japan Customs decides whether the suspected goods infringe IPRs or not and notifies the right-holders and importers of its decisions. If the right-holders or importers are not satisfied with the Customs' decisions, they can file a protest to the Customs. In addition, they can file an administrative suit.

Question Q11

Could Japan please provide further details of the policy objectives pursued in cases where JFTC imposes high fines on cartels, and in other cases such as punishing violators, denying profit from illegal conduct and deterring future anticompetitive behaviour?

Answer

In cases where JFTC finds the Antimonopoly Act (hereinafter referred to as "the AMA") infringements such as cartels or private monopolization (control type), JFTC is supposed to issue a surcharge payment order to violator(s). There is no discretion in JFTC's calculation process for the surcharge, since it is automatically calculated by multiplying the relevant turnover by a certain ratio that is fixed by the statute. Under the AMA, other than surcharge payment orders, criminal punishment is another measure for deterring AMA infringements. JFTC files a criminal accusation in line with the "Fair Trade Commission's Policy on Criminal Accusation and Compulsory Investigation of Criminal Cases regarding Antimonopoly Violations". For details of this policy, please see the following URL. http://www.jftc.go.jp/e-page/legislation/ama/policy_on_criminalaccusation.pdf

Question Q12

We would appreciate receiving details of the effectiveness of Japan's recently enforced leniency programme designed to crack down on hard-core cartels?

Answer

Regarding the leniency application, the JFTC received 26 cases during the three months from the effective date of the amendments in January to March 2006. The first case that the JFTC applied the newly introduced leniency program to was the bid-rigging which occurred over the tunnel ventilation construction procured by the Metropolitan Expressway Public Corporation in FY 2004. In this case, the JFTC issued surcharge payment orders to four companies that had committed the bid-rigging, while three companies were granted immunity from or reduction of the surcharge based on the leniency program. For details of this case, please see the following URL. <http://www.jftc.go.jp/e-page/pressreleases/2006/September/060908.pdf>

At present, the leniency program is evaluated to have the following two positive aspects. The first aspect is that the leniency program makes it easier to detect cartels. The first case that the JFTC applied the leniency program to was made public only nine months after the introduction of the new program, and it can be said that the program contributes to detecting cartels and shortening investigation periods. The second aspect is that the program encourages businesses to conduct compliance activities. The fact that Japan's leading companies applied for leniency by properly conducting their own in-house investigations may prove that the leniency program contributes to motivating companies to initiate compliance activities.

Question Q13

We would be interested in knowing whether these authorizations caused any particular market to become less competitive? Furthermore, we would be interested to know what happens if the application of competition policy conflicts with that of the sectoral regulatory authorities or other relevant laws?

Answer

The Antimonopoly Act (hereinafter referred to as "the AMA") has certain exemptions which aim to achieve political purposes other than competition policy. However, JFTC considers that exemptions might restrain entrepreneurs from promoting efficiency in business activities. For this reason, JFTC will continue monitoring how these exemptions are to be implemented and will conduct deliberations as circumstances demand.

The JFTC coordinates with relevant administrative bodies when they take administrative measures based on specific policy requirements, in order to prevent such measures from causing problems concerning the AMA and competition policy.

Question Q14

Does the NSO play the role of an independent system operator (ISO)? Could Japan please describe how the NSO operates to ensure fair use of the network and to maintain the real-time balance of the system?

Answer

No, the NSO does not play the role of the ISO. In Japan, the general power utilities are responsible for load adjustment and system operation, etc. The NSO is responsible for making the fundamental rules for constructing transmission and distribution system planning, network access, network operation and information disclosure, which ensure the transparency and fairness of transmission and distribution services.

Question 15

We welcome Japan's continued progress on financial services as indicated in the Report, including allowing banks to act as sales agents for securities companies and the further expansion in the scope of insurance products that banks are allowed to sell.

We would appreciate knowing whether, in the interests of attracting foreign financial investment and enhancing the development of its financial services, Japan has plans for further liberalizing its crediting bureau system, reviewing the Defined Contribution Pensions system, improving financial supervisory transparency, removing legal restrictions limiting foreign financial groups, removing barriers to foreign and domestic competition, and revising market efficiency for investment trusts?

Answer

There are no limitations in the relevant laws and regulations for doing the business of collecting and providing personal credit information. In addition, the law relating to the consumer credit business was amended recently to curb excessive lending through introducing a system of designating credit information agencies that appropriately manage credit information. The amended law requires credit information agencies to exchange credit information among themselves so that they can know the borrower's total debt balance.

Regarding to Defined- Contribution Pensions, in October 2006, five years had passed since the Defined-Contribution Pension Law was established. In accordance with this, a committee with academic backgrounds was established to study corporate pensions composed of members. The committee reviews

the execution status of the Defined-Contribution Pension system and discusses the necessity and the direction of revision at the present.

Finally, regarding improving financial supervisory transparency, removing legal restrictions limiting foreign financial groups, removing barriers to foreign and domestic competition, and revising market efficiency for investment trusts, Japan has contributed to improving its regulatory framework for financial services in response to a wide range of new developments such as the globalization of financial markets, and the emergence of new forms of transactions and products and to establishing a reliable financial administration through improving the transparency and predictability of the financial administration based on the Program for Further Financial Reform and others. Details of the Program are available on the website of the Financial Services Agency at: <http://www.fsa.go.jp/en/index.html>

Question Q16

(page 77, paragraph 45)

The Secretariat's Report notes that "The higher TFP growth in telecommunications may be attributed to the recent liberalization of Japan's telecom sector, which intensified competition".

In terms of telecommunication liberalization and fair competition, would Japan please indicate whether it has any plan to amend the NTT Law in order to further relax its foreign ownership restriction on the shares of the NTT?

Answer

NTT East and NTT West retain the paramount telecommunication network which is essential for securing the national way of life and indispensable for assuring stable security-related communication. Almost all security-related communication is transmitted through the network. Accordingly, the foreign capital restrictions are essential to prevent the NTT holding company, which owns all NTT East and NTT West shares, from being dominated by a foreign investor. The Government of Japan has therefore no plans to relax the foreign capital restrictions at this stage.

Question Q17

(page 77, paragraph 47)

It is also noted that Japan's Radio and Broadcast Laws were amended in October 2005, and that such amendments tightened rather than relaxed the foreign ownership restriction of 20% of voting shares in terrestrial broadcasting radio stations by including indirect voting shares.

It would be appreciated if Japan could please provide further specific details of the current regulations and explain its rationale for the tightening of the above-mentioned foreign ownership restriction? In addition, in view of the fact that these latest amendments to the Radio and Broadcast Laws were made in October 2005, could Japan please advise if there are plans for any further amendments to these Laws with the aim of relaxing foreign ownership restrictions.

Answer

The restriction on foreign investment in broadcasting radio stations is stipulated for the reasons that radio frequencies should be preferentially available for use by their own nations due to their scarcity, and that broadcasting services have the potential for great impact on the culture and society of Japan. Although only direct investment from foreigners and foreign companies was previously covered, we enforced the amendment to the Radio and Broadcast Laws required to ensure the main aims of foreign ownership restrictions by covering indirect investment to ensure that terrestrial broadcasting exercises its role adequately.

Japan continues to review on a constant basis the restrictions on foreign investment, taking into consideration the various relevant conditions including changes arising in the internal market environment.

In addition, as Japan has not committed its broadcasting services at all as most other WTO members have, we therefore consider that any amendments made concerning restrictions on foreign investment in broadcasting services are consistent with our commitment.

Question Q18

(page 78, paragraph 51)

Japan's Strategic Headquarters for the Promotion of an Advanced Information and Telecommunications Network Society adopted a new IT Reform Strategy in January 2006. This new strategy contains sets of policies to be implemented by 2010 to tackle a range of problems in the telecoms services sector, and in 2006 the government introduced new tax measures to promote investment to strengthen international competitiveness.

While we welcome this program, could Japan please elaborate further on whether it will be taking the steps necessary to prevent anti-competitive behavior by the dominant service providers and to ensure a telecoms environment that can attract innovative technology?

Answer

Concerning the prevention of anti-competitive behavior by the dominant service providers, Japan has already implemented interconnection rules for the carriers which own the bottleneck facilities to open up their networks. In addition, the dominant service providers are prohibited from acting in an anticompetitive manner which unfairly discriminates against other service suppliers. Furthermore, Japan has already implemented cessation/correction measures to correct or eliminate such anti-competitive acts when it is deemed that there is a violation.

On September 2006, MIC announced "New Competition Promotion Program 2010". Based on changes in the market environment caused by the transition to IP-based networks and broadbandization, this program raises wide-ranging issues as the comprehensive pro-competitive policies to be implemented by the early 2010s including a review of dominance regulations, and a study concerning the framework for network neutrality and the schedules and items to be studied for each issue are being clarified.

Also, Japan to date has worked on realizing a telecommunication environment that can attract innovative technology. As a result, FTTH services for mass users have been expanding and people in Japan can enjoy the most advanced broadband services in the world. Japan continues to ensure a telecommunications environment that can attract innovative technology.

Question Q19

Please could Japan elaborate further on whether the Law stipulates the licensing requirement and what elements of it ensure transparency?

Answer

The licensing requirement is stipulated in Article 6.1 in the Port Transport Business Law as follows:

- To require adequate facilities and workers at each port and port transport business.*
- To require appropriate plans to implement port transport business.*
- To require the scope of responsibility of the management system to be specified.*
- To ensure the accounting foundation of the business.*

The Minister of Land, Infrastructure and Transport must permit the operation of port business transport when an application meets the abovementioned requirements.

Question Q20

We would like to know, therefore, whether, on the completion of the Doha round of negotiations, Japan will consider eliminating the international freight forwarding and international shipping services MFN exemptions?

Answer

The reason why Japan has listed the international freight forwarding services in its MFN exemption list is to ensure fair business activities in this sector where there are a variety of regulations in other WTO members, and to grant an operation permission or registration on a reciprocal basis.

With regard to the elimination of this MFN exemption, this will depend on the outcome of this round of negotiations.

The reason why Japan maintains such a measure concerning international shipping services is that Japanese shipping companies suffered an unreasonable loss through a unilateral sanction in the past and there still remains the risk of such a unilateral sanction.

With regard to the elimination of this MFN exemption, this will depend on the outcome of this round of negotiations.

Question Q21

The Japan Government removed restrictions on foreign doctors and nurses with Japanese medical licenses working in medical services in Japan on 30 March 2006, which relaxes limitations on the length and location of services; for example, foreign nurses are permitted to work for up to seven years after gaining their license (previously four years after completing training). In the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu, however, medical services could be provided by persons with medical licenses issued by our authorities without any limitations on length and location of services.

Would it be possible for the Japan Government to relax the above-mentioned limitations further?

Answer

Japan removed restrictions on foreign doctors and nurses with Japanese medical licenses working in medical services in Japan on 30 March 2006, which relaxes limitations on the length and location of services; for example, foreign nurses are permitted to work for up to seven years after gaining their license (previously four years after completing training), and we do not have any plans to relax the limitations further for the moment.

Question Q22

Could Japan please describe its preparations or actions it plans to implement aimed specifically at achieving the Bogor Goals in the Asia-Pacific region?

Answer

APEC drew up a roadmap towards the Bogor Goals (Busan Roadmap) in 2005 and forged an action plan aimed at implementing the roadmap (Hanoi Action Plan) in 2006. Among the areas put forward in the roadmap and action plan to achieve the Bogor Goals, Japan attaches particular importance to "behind-the-border issues" such as structural reform, intellectual property rights protection, and investment

promotion. For example, Japan successfully finished the IAP Peer Review Session in 2007, and will continue to complete IAP and CAP every year.

Question Q23

We would be grateful if Japan could please explain the standpoints and attitudes of its energy sector in negotiating the regional and bilateral trade agreements?

Answer

Since Japan depends on foreign countries for most of its energy resources, securing energy resources is important to maintain stable economic activities. According to the Basic Policy for Promotion of the Economic Partnership, decided in December 2004, one of the criteria for identifying the countries/regions to negotiate FTA/EPAs with is the contribution to the stable import of resources such as energy resources, and the diversification of countries from which Japan can import these resources.

In September 2006, Japan started FTA negotiation with the Gulf Cooperation Council (GCC) whose member states are extremely important partners for Japan's import of crude oil and natural gas. Moreover, Japan has been negotiating EPAs with such countries as Indonesia and Brunei that are also important countries for Japan from the viewpoint of securing a stable supply of energy resources.

Question Q24

It would be appreciated if Japan could please provide us with further information on the Reform Initiative with regard to energy-related issues?

Answer

During the first to fourth year's dialogue on the Regulatory Reform and Competition Policy Initiative, constructive discussions were conducted on energy-related issues, including expansion of the scope of retail liberalization in the Japanese electricity and gas market, reinforcement of measures to recover the trust of the public in the U.S. energy market, and improvement of the two-layer structure of federal and state regulations and reduction of disparity among states in the U.S.

In recent years, Japan and the United States have not exchanged recommendations and discussed on energy-related issues under the Reform Initiative (the fifth and sixth years of dialogue on the Reform Initiative) since the dialogue in previous years had led progress being made in the energy sector both in Japan and in the United States.

Question Q25

Could Japan please describe the exact nature of the involvement of the labour system in the Initiative, and how it relates to investment?

Answer

As the labor/employment issue is one of the determining factors for investment, Japan and the U.S. have discussions to create a proper investment climate in each country under the Japan-U.S. Investment Initiative.

CHILE

Question Q1

According to paragraph 20, approximately 1.7 per cent of products are subject to tariff rate quotas. How do they operate? On the basis of what criteria are these quotas applied?

Answer

The administration of TRQ in Japan is appropriate, as it is conducted in a fair and transparent manner, based on the characteristics of each product.

Regarding the administration of TRQ for each agricultural product, Japan submitted MAI notifications to the Committee of Agriculture of WTO.

With regard to Japanese TQ systems on non agricultural products as leather and leather footwear, the general procedure for application is as follows:

- *Each year, the application for TQ for leather and leather footwear is accepted in early April. The Ministry of Economy, Trade and Industry (METI) allocates quotas to applicants taking account of the actual usage of the quota by each applicant. In addition, quotas are also allocated to new applicants who have no actual usage of quotas. In both cases, each applicant is required to have the ability to import these items by himself/herself.*
- *If the total volume of applications for TQ is greater than the total volume of the allocable quantity, the applied quantity will be divided proportionally.*
- *Term of validities for annual allocation is 1 April to 31 March 31 of next year.*

The volume of applications for each TQ product, based on the bound volume at the UR, is determined in view of conditions including the volume of estimated domestic demand and world market conditions.

Question Q2

We would be grateful for more background information on how conformity assessment and certification procedures operate for the different products. We would like to know if they are applied prior to customs or when they enter the market? Also, if there are various different procedures, we would appreciate an explanation of how they operate and of the products involved.

Answer

There is no general procedure applied to all technical regulations and standards in Japan. It is decided in each mandatory or voluntary scheme for technical regulations/standards.

In the case of Japanese Industrial Standards (JIS), Japan describes in detail the JIS mark system on its website (<http://www.jisc.go.jp/eng/jis-act/index.html>). Details of the JAS (Japanese Agricultural Standards) mark system can be found on its website in the same manner (http://www.maff.go.jp/soshiki/syokuhin/hinshitu/e_label/JAS.htm).

With regard to necessary procedures other than the above-mentioned JIS and JAS, please ask about specific procedures for concrete areas, products and/or laws.

Question Q3

Regarding the mutual recognition agreements with the European Communities and Singapore mentioned in paragraph 52, what is your experience with these agreements? (1) Are they costly to implement?

- (2) How are cases of non-compliance dealt with? (3) What products are covered by these agreements?
(4) Can third countries join?

Answer

Regarding the agreement with Singapore, Japan has not concluded a mutual recognition agreement as such, but an economic partnership agreement (its official title is the “Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership”, hereinafter referred to as JSEPA) which includes a chapter on mutual recognition.

(1) To implement both the Agreement on Mutual Recognition between Japan and the European Community (hereinafter referred to as “Japan-EC MRA”) and the chapter on mutual recognition of JSEPA, in the field of telecommunications terminal equipment and radio equipment and electrical products, the designating authorities have to understand and apply the other parties’ relevant laws, regulations and administrative provisions.

On the other hand, under Japan-EC MRA, two Japanese CABs and four EC’s CABs are registered in the field of telecommunications terminal equipment and radio equipment, and two Japanese CABs are registered in the field of electrical products. Taking advantage of those registered CABs, the Japan-EC MRA facilitates trade between Japan and the EC by cutting the cost and time it takes to acquire certifications and to put products on the market of the other party.

(2) According to Article 7.3 and 7.5 of the Japan-EC MRA and Article 51 of JSEPA, each party may contest the compliance. As to the fields of telecommunications terminal equipment and radio equipment and electrical products of both agreements, the registration of the contested conformity assessment body (CAB) shall be suspended. As to the fields of good laboratory practice (GLP) for chemicals and good manufacturing practice (GMP) for medicinal products, the contesting party shall not be obliged to accept the confirmation of the contested facility and the data generated by the contested facility under the Japan-EC MRA.

(3) The Japan-EC MRA covers four areas; telecommunications terminal equipment and radio equipment, electrical products, good laboratory practice (GLP) for chemicals, and good manufacturing practice (GMP) for medicinal products. The chapter on mutual recognition of JSEPA covers two areas: telecommunications terminal equipment and radio equipment, and electrical products.

(4) The Japan-EC MRA is an agreement of a bilateral nature, and there is no provision in the JSEPA for a third country to join. However, in the Joint Statement announced at the signing of the JSEPA, the two Prime Ministers noted the possibility of associating other economies with the JSEPA. They affirmed that the terms of such an association could be negotiated between the parties to the JSEPA and the economy seeking this association, taking into account the individual circumstances of that economy.

Question Q4

Is there a web site somewhere that provides all of the technical regulations for products?

Answer

There is not a website which exhaustively provides all of the technical regulations for products, however, each of the relevant authorities responsible for the technical regulations for products provides information regarding technical regulations on its website. In addition, major technical regulations are also available from the JETRO (Japan External Trade Organization) website.

Question Q5

Is there any internal coordination mechanism between the institutions developing technical regulations and/or conformity assessment procedures and those that coordinate and administer the Agreement on Technical Barriers to Trade.

Answer

The Enquiry Point and National Notification Authority have contact with officials of the relevant Ministries, which are responsible for developing technical regulations and/or conformity assessment procedures, almost every day as part of their day-to-day operations. They consult with them about implementation of the TBT Agreement including TBT notification, other Members' comments and questions, and Japan's comments on other Members' TBT notifications.

CANADA

Question Q1

The Secretariat report states that *ad valorem* equivalents (AVEs) for 2005 were provided by the authorities for approximately 77.1% of the non-*ad valorem* rates. Footnote 12 states that, "According to the authorities, AVEs for the remaining non-*ad valorem* tariff lines were not available due to lack of imports of an unspecified number of these items, which suggests that the tariffs involved may be prohibitive, or because the unit for duty did not correspond to that used for trade statistics".

Could Japan explain why AVEs were provided for only 77.1% of the non-*ad valorem* rates?

Answer

*As described in Footnote 12, the reason that Japan could not provide AVEs for a part of non-*ad valorem* rates is due to the lack of or negligible imports (AVEs provided by Japan are based on import value and volume for 2005), or because the unit for duty did not correspond to that used for trade statistics.*

Question Q2

The Secretariat report states that *ad valorem* equivalents (AVEs) for 2005 were provided by the authorities for approximately 77.1% of the non-*ad valorem* rates. Footnote 12 states that, "According to the authorities, AVEs for the remaining non-*ad valorem* tariff lines were not available due to lack of imports of an unspecified number of these items, which suggests that the tariffs involved may be prohibitive, or because the unit for duty did not correspond to that used for trade statistics".

Could Japan specify the items (and their number) for which non-*ad valorem* tariff lines were unavailable due to lack of imports?

Answer

*The items for which non-*ad valorem* tariff lines could not be provided due to lack of or negligible imports include: footwear, prepared foods, live animals and animal products, textiles and clothing, vegetables, and mineral products (items described in para.18, Chapter 3 of the Secretariat's Report). They number approximately 130 in total.*

*The Secretariat report states that *ad valorem* equivalents (AVEs) for 2005 were provided by the authorities for approximately 77.1% of the non-*ad valorem* rates. Footnote 12 states that, "According to the authorities, AVEs for the remaining non-*ad valorem* tariff lines were not available due to lack of imports of an unspecified number of these items, which suggests that the tariffs involved may be prohibitive, or because the unit for duty did not correspond to that used for trade statistics".*

Question Q3

How does Japan intend to address the issue of units for duty that do not correspond to those used for trade statistics?

Answer

The issue of products (only two exists) whose units for duty do not correspond to those used for trade statistics results from the difference of the units (yen/kg and £), and Japan is considering a way to estimate the ad valorem equivalent for these products.

Question Q4

The Secretariat report states that *ad valorem* equivalents (AVEs) for 2005 were provided by the authorities for approximately 77.1% of the non-*ad valorem* rates. Footnote 12 states that, "According to the authorities, AVEs for the remaining non-*ad valorem* tariff lines were not available due to lack of imports of an unspecified number of these items, which suggests that the tariffs involved may be prohibitive, or because the unit for duty did not correspond to that used for trade statistics".

The Secretariat Report notes that "93 out of the top 100 tariffs had non-*ad valorem* rates". Could Japan explain the meaning of the term "top 100 tariffs" (e.g. highest rates, etc?) and to which products do they refer?

Answer

*The accurate meaning of the "top 100 tariffs" used by Secretariat is not clear, so Japan can not identify the products covered by it. Judging from the context of the Secretariat Report, it probably means the top 100 highest tariffs for products indicated in the Secretariat Report. Although the share of non-*ad valorem* tariff in the top 100 tariffs possibly is high, as the Secretariat Report indicated, products which have high tariffs cannot be specified since AVEs vary depending on both the values and volumes of imports each year.*

Question Q5

The Secretariat Report states on page 42, paragraph 45, that Japan has continued its efforts towards international harmonization of its standards and technical regulations, including in sanitary and phytosanitary policies. Canada commends Japan on these efforts.

Will Japan be moving shortly to harmonize their domestic policies with respect to the BSE chapter in the OIE Terrestrial Animal Health Code, in particular for unrestricted trade in meat from cattle under 30 months of age?

Answer

Taking account of the OIE code, the Government of Japan set the current import requirements for the Canada beef based on the risk assessment.

Question Q6

Could Japan please advise as to how it distinguishes between "corresponding to an international standard", defined as "primary aspects sharing a common scope", and "equivalent to international standards" in Table III.4 – Major standards and technical regulations in Japan, 2005?

Answer

The “corresponding to an international standard” column shows the percentage of the domestic standards that have corresponding international standards, which have a common scope with the domestic standards. This term is explained by “primary aspects sharing a common scope” in the Secretariat report. The column, “equivalent to international standards” shows the percentages of the domestic standards which are aligned with corresponding international standards.

For the safety regulations for road vehicles, the column, “corresponding to an international standard” shows the percentages of domestic regulations which have aligned with international standards (UN/ECE regulations) out of total domestic regulations.

Question Q7

The Secretariat Report makes no reference to Japan Industrial Standards (JIS) Registered Overseas Certifying Bodies (ROCBs).

Could Japan advise as to whether there are any ROCBs and, if yes, also identify them?

Answer

At present, there is one foreign accredited certification body, Korean Standards Association, under the new JIS marking scheme.

Question Q8

Is ISO/IEC Guide 65 utilized under JIS as registration criteria for certifying bodies?

Answer

Certification bodies can be accredited under the new JIS marking scheme after necessary evaluation if they meet all the accreditation criteria, which are based on ISO/IEC Guide 65.

Question Q9

Could Japan advise as to whether these results are in line with Japan's expected outcomes related to the revision of the Industrial Standardization Law in June 2004?

Answer

There are approximately 650 JIS-certified enterprises as of December 2005 under the new JIS marking scheme.

Question Q10

Could Japan please identify the nine (9) Registered Overseas Certifying Bodies (ROCBs) under Japan Agricultural Standards (JAS)?

Answer

The number of Registered Overseas Certifying Bodies was nine as of September 2006, as stated in para. 48 of the WT/TPR/S/175. The five ROCBs for organic products are:

- Australian Certified Organic;
- CS Oeko-Garantie GmbH;

- *Control Union Certifications;*
- *CERES, CERTification of Environmental Standards, Gmbh; and*
- *Institute for Marketocology, IMO.*

The four ROCBs for forestry products are:

- *Pt. Mutuagung Lestari;*
- *Norsk Treteknisk Institutt;*
- *Timberco, Inc, dba TECO; and*
- *APA- Engineered Wood Association.*

Japan would like to provide the latest update here. In addition to the nine above, two for organic products and three for forestry products have been registered between September 2006 and January 2007.

The two for organic products are:

- *ICEA (ISTITUTO PER LA CERTIFICAZIONE ETICA E AMBIENTALE); and*
- *CCPB (Consorzio per il Controllo dei Prodotti Biologici).*

The three for forestry products are:

- *Engineered Wood Products Association Pty Ltd (EWPA);*
- *Canadian Mill Services Association (CMSA); and*
- *Certiwood Technical Centre.*

Question Q11

Could Japan provide full details of its June 2006 commitments to the United States to improve its reimbursement and regulatory practices for medical devices, and indicate whether the measures are applicable to medical device imports from any country or are they only applicable to products manufactured by US companies and/or approved by the US Food and Drug Administration (FDA)?

Answer

Please refer to the June 2006 commitments regarding improvements of the regulatory practices and reimbursement for medical devices to the United States on the USTR homepage.

Those measures are, as a general rule, applicable to medical devices imported from any countries including Canada.

Question Q12

Could Japan provide further information on why there are fewer automotive standards based on international standards than in 2003?

Answer

Until the 2003 report, Japan had calculated the column "corresponding to an international standard" by dividing the number of UN/ECE regulations Japan had adopted by the total number of UN/ECE regulations. However, this may not indicate the ratio of harmonized regulations (for example, the denominator includes the regulations whose scope is not included in Japanese regulations); therefore, Japan has changed the calculation method since the 2005 report, by dividing the number of domestic regulations which Japan has aligned with UN/ECE regulations, by the total number of domestic regulations. Thus the number in the 2003 report and that in the 2005 report have different connotations.

By using the new calculation method, the percentage in 2003 is 18%, which shows that there are more harmonized regulations in 2005 (20%) than in 2003.

Question Q13

Could Japan please identify the six (6) foreign inspection bodies designated by METI?

Answer

Foreign designated inspection bodies are:

*Korea Inspection Center for Electric and Electronics Products
Korea Testing and Research Institute for Chemical Industry
Korea Institute of Industrial Technology Evaluation & Planning
Korea Environment & Merchandise Testing Institute
Thai Industrial Standards Institute, Ministry of Industry
Korea Standards Association*

Question Q14

Could Japan provide further information regarding private sector participation in the patent examination and approval process?

Answer

Improved examination efficiency is indispensable for achieving timely and high-quality examinations. Therefore, the Japan Patent Office (JPO) has outsourced part of the prior art searches necessary for examination, gradually increasing the number of outsource searches.

In 2004, the JPO took a measure to broaden the range of search organizations by introducing a system to allow organizations that satisfy certain requirements to become registered search organizations. As a result, three organizations, including a private company, were registered as registered search organizations by March 2005 and another private company registered as a registered search organization in July 2006.

(Please refer to Section 36-39 in the Law Concerning the Special Provisions to the Procedures Relating to an Industrial Property Right)

In FY 2005, the number of outsource searches was about 187,000, while the number of first actions was about 245,000. The number of outsource searches is increasing. The JPO will ensure the quality of prior art searches and improve the examination efficiency by further promoting a shift from the “paper-type outsourcing”, where the search organization prepares a report of its search result and submits it to the JPO, to the “dialog-type outsourcing”, where the person who conducted the search explains the results directly to examiners and receives advice, such as the need for additional searches, in the face-to-face meeting (interactive outsourcing as a percentage of total outsourced searches: 73% in FY 2004 → 79% in FY 2005).

Question Q15

Footnote 49 to paragraph 77 of the Secretariat Report states that “the place of origin, domestic or foreign, must be designated by the Commissioner of the National Tax Agency to receive protection. To date, one region has been designated.”

Could Japan explain on what basis does the Commissioner designate the place of origin in foreign jurisdictions?

Answer

The place of origin of sake in a member of the World Trade Organization other than Japan shall meet the following requirements, in order to be designated by the Commissioner of the National Tax Agency:

- (1) The geographical indication that indicates the respective place of origin shall meet the definition of geographical indications prescribed in Paragraph 1, Article 22 of the TRIPS Agreement.*
- (2) The respective place of origin shall be protected as a geographical indication in that member country.*

Question Q16

According to the Secretariat Report “the standard in relation to geographical indication, which stipulates the protection of geographical indications (GIs) in Japan, was amended in 2005“, Footnote 49 states that “the place of origin, domestic or foreign, must be designated by the Commissioner of the National Tax Agency to receive protection”.

Could Japan please provide further information regarding the amendments made in 2005 as well as an indication as to how the Commissioner of the National Tax Agency determines designations and in particular foreign designations?

Answer

(Amendment to “Standard for Indication in Relation to Geographical Indications” made in 2005)

Geographical indications for sake were added into the protected geographical indications that used to be those for wines and spirits.

(Designation of the place of origin of geographical indication)

The criteria to designate the place of origin of sake are explained in the answer for Q15.

In terms of designation of place of origin of geographical indications for wines and spirits, the Commissioner of the National Tax Agency may designate the place of origin only in Japan. Although we do not have a designation system for the place of origin of foreign geographical indications, any geographical indications for wines and spirits in a member of the World Trade Organization shall be protected according to the provisions in Article 23 of the TRIPS Agreement.

Question Q17

Could Japan please specify whether foreign financial institutions will be allowed to participate in the acquisition of the privatized public financial institutions?

Answer

Based on the Law about Promotion of Administrative Reform to Realize a Simple yet Efficient Government, the public financial institutions which will be privatized are Shoko Chukin Bank and Development Bank of Japan. The Shoko Chukin Bank will be privatized with requirements for being eligible to acquire stock in 2008. Under the requirements, only small and medium enterprises will be eligible for acquiring the stock, so that the Bank maintains its characteristic of being a financial institution for SMEs.

The Development Bank of Japan will be reorganized into a new company and the Law of Administrative and Fiscal Reform states that all the stocks of the new company that are owned by the Government of Japan at the beginning of the transition period will be sold within almost 5 to 7 years, considering market trends.

Meanwhile, the System Designed for Reforming Policy-based Finance announced on 27 June 2006 that the Government of Japan will consider the way to sell the new company's stocks in order to establish the operating base of the new company which is required to properly supply mid- and long-term loans and investments. Hence, the Government of Japan believes that the way to sell the new company's stocks should be carefully considered.

Question Q18

Will the other public Financial Institutions be merged or consolidated into a public or a private corporation? If they are to be merged into a private corporation, will foreign financial institutions acquisition or participation be allowed?

Answer

Along the lines of the law about promotion of administrative reform to realize a simple yet efficient government, and the System Designed for Reforming Policy-based Finance, the Government of Japan puts forward the reform of policy-based finance by government financial institutions. There are eight public financial institutions indicated in the aforementioned Basic Policy as follows: Development Bank of Japan, Shoko-Chukin Bank, Japan Bank for International Cooperation, National Life Finance Corporation, Agriculture, Forestry and Fisheries Finance Corporation, Japan Finance Corporation for Small and Medium Enterprise, Japan Finance Corporation for Municipal Enterprise, and Okinawa Development Finance Corporation.

Development Bank of Japan and Shoko-Chukin Bank will be fully privatized but the others will not be privatized.

Meanwhile, in FY 2008, Japan Finance Corporation for Municipal Enterprise will be abolished, and a new corporation invested in by local governments will be established.

Five public financial institutions, Japan Bank for International Cooperation, National Life Finance Corporation, Agriculture, Forestry and Fisheries Finance Corporation, Japan Finance Corporation for Small and Medium Enterprise, and Okinawa Development Finance Corporation, will be consolidated and become a new policy financial institution (Okinawa Development Finance Corporation will be consolidated after FY 2012).

Question Q19-1

Could Japan please provide further details on the required process to offer a new or a modified insurance product?

Answer

To provide new insurance products or modify existing insurance products, it is required to obtain approval (or submit notice for some insurance products) under the Insurance Business Law.

Question Q19-2

Are foreign insurers granted national treatment regarding these approvals?

Answer

Code of Conduct established by the Financial Services Agency ensure equal treatment principle of domestic and foreign financial institutions. It also ensures in the approval of insurance products under the Insurance Business Law.

Question Q20

Are the requirements similar for new or modified banking and securities services?

Answer

It is required to obtain approval (or submit notice for some insurance products) under the Insurance Business Law to provide new insurance product and to modify existing insurance products in insurance sector. On the other hand, these provisions are not required to financial products and services in banking and securities sector.

Question Q21

Could Japan clarify the meaning of a “joint-stock corporation”?

Answer

Joint-stock corporation is the same type of corporation as a corporation establishment board of directors in accordance with the Japanese Corporate Law.

Question Q22

Would a foreign securities firm wishing to establish an office in Japan need to be engaged in securities trading for no less than three years in its domestic jurisdiction?

Answer

It is required to engage in the same type of business for no less than three years in accordance with the local laws and regulations of the country it is located in (not limited to its domestic country).

Question Q23

Could Japan confirm that qualifying foreign securities firms establishing in Japan or acquiring domestic securities firms receive national treatment?

Answer

They receive equal treatment to Japanese securities companies if they obtain the registration to engage in the securities business in accordance with the Securities and Exchange Law of Japan.

Question Q24

Could Japan clarify what is meant by “foreign listed stocks”?

Answer

“Foreign listed stocks” mentioned in Paragraph 43 means stocks issued by foreign companies and listed on the Tokyo Stock Exchange.

Question Q25

Does Japan allow cross-border securities trading (e.g., do Japan investors have access to stocks listed on foreign exchanges)? If yes, could Japan elaborate on the mechanisms through which Japanese investors would access stocks listed on foreign exchanges?

Answer

When Japanese investors conduct cross-border trading, the following cases are allowed:

1. *Japanese investors buy stocks listed on foreign exchanges through securities companies in Japan.*
2. *Financial institutions in Japan buy stocks listed on foreign exchanges through foreign securities companies.*
3. *Japanese retail investors buy stocks listed on foreign exchanges through foreign securities companies without their solicitation.*

CANADA – ADDITIONAL REPLIES

Question

Does Japan expect the foreign share of procurement of “wood and articles of wood; paper and paperboard and articles thereof”, as well as “furniture and parts thereof” to increase after the implementation of these policies?

Answer

As is committed in the "JAPAN'S CLIMATE INITIATIVE" and based on the principle that “illegally harvested timber should not be used” for governments procurement, the Government of Japan has introduced a measure to restrict timber for government procurement to those legitimately verified. The verification is conducted on the basis of Forest Agency’s Guideline Concerning the Certification of Legality and Sustainability of Wood and Wood Products (February 15, 2006). The guideline was established to aim at eliminating timber and timber products considered to be illegally logged, and to procure both appropriately managed timber and timber products made of timber which are procured from domestic and international markets.

AUSTRALIA

Question Q1

Japan’s Council for Economic and Fiscal Policy announced in November 2006 a plan to triple the number of Economic Partnership Agreements Japan has in place within two years.

What measures is Japan taking to realize this goal?

Answer

1. *The Japanese government has taken the following measures:*
 - (1) *to refer to models of EPA provisions. Those models are based on the actual provisions of the EPAs which Japan has concluded or signed so far.*
 - (2) *to consider the possibility of pursuing Free Trade Agreements (FTAs) or Investment Treaties, rather than EPAs which contain various fields, depending on economic relations with the countries under consideration.*
2. *These efforts enabled Japan to make progress in many negotiations such as the following:*
 - *The Japan-Malaysia EPA, which has entered into force in July 2006.*
 - *The leaders of Japan and the Philippines signed an EPA in September 2006.*

-- Japan reached agreement in principle on major elements with Chile in September 2006, with Indonesia in November 2006 and with Brunei in December 2006.

3. *With regard to this, in the new medium-term policy for the economic and fiscal management which was drawn up this January, the Government of Japan endorsed the following:*

- (1) to strengthen efforts on EPA negotiations while taking into account its impact on the agriculture, forestry and fisheries industries and the progress of the structural reform in these industries. As a result it is expected that the number of EPA partners would increase at least three times (12 countries or more) in the coming two years.*
- (2) to revise the EPA timetable by this spring for the purpose of conducting EPA negotiations in a strategic and effective manner, while putting Japan's top priority on the WTO negotiations.*

Question Q2

The Council for Economic and Fiscal Policy (CEFP) agreed on 11 December 2006 to set up an "Expert Committee on Reforms Addressing Globalisation." The Committee is scheduled to submit an interim report to the CEFP in the northern spring, 2007.

What areas of reform will the committee examine to enable Japan to promote greater liberalization through Economic Partnership Agreements?

Answer

"The Expert Committee on Reforms Addressing Globalisation" which was set up under the CEFP, will examine concretely Japan's mid-term and long-term strategy on EPAs while referring to experts' opinions. The specific subjects of the reform are still under consideration, and thus can not be disclosed at the moment.

Question Q3

What are Japan's objectives for coverage of investment and intellectual property rights in EPAs/FTAs?

Answer

The objectives of Japan's EPAs include facilitation, promotion and liberalization of a wide of range of economic activities between Japan and the EPA partner, as well as the enhancement of a stable and predictable investment climate. Thus, Japan's EPAs covers not only the free trade in goods and services but also other important aspects of economic activities, such as investment and intellectual property.

In the course of negotiation for EPA investment chapter, Japan seeks provisions so as to ensure a liberalized investment climate as well as high level of protection for investors and their investments.

As for the liberalization of investment climate, Japan seeks to include into its EPAs such important principles as "National Treatment", "Most-Favored Nation Treatment" on both pre- and post-establishment phase, and TRIMs-plus "Prohibition of Performance Requirements". Regarding the protection of investors and their investments, such provisions as "general treatment" (including fair and equitable treatment), "expropriation and compensation", "access to the courts of justice", "transfer", and "investor-state dispute settlement" are to be pursued.

Japan believes that in order to promote bilateral trade and investment through EPAs/FTAs it is indispensable to ensure the effective implementation of an intellectual property protection system. Therefore, Japan includes a separate chapter on intellectual property in its EPAs/FTAs, in which Japan and its partners commit to improve the intellectual property protection system and ensure against its

infringement through adequate and effective enforcement of intellectual property rights. For the same purpose, Japan pursues to include a bilateral dialogue mechanism on intellectual property in this chapter.

Question Q4

Could Japan advise its domestic support levels for 2005-06 consistent with the WTO format? When will Japan provide WTO members with an opportunity to review its domestic support notification for these years?

Answer

Japan is currently preparing for the domestic support notification for FY2005 as well as for FY2003 and FY2004.

Question Q5

Non-ad valorem duties are a common feature of Japan's tariff schedule accounting for 17.4 per cent of duties applied to agricultural goods. The report by the Secretariat (page 63, para 9) indicates that in the FY 2006, Japan's simple average applied MFN tariff was 6.5 per cent, up from 6.3 per cent in FY 2004, reflecting an increase in the ad valorem equivalent (AVE's) of non-ad valorem duties. From 2004 to 2005 there was also an increase in Japan's simple average applied rate for WTO agricultural products. Can Japan please explain why there has been an increase in AVE's?

Answer

The yearly changes in average applied MFN tariff are due to the yearly fluctuation of import data which are used for AVE's calculation.

Question Q6

An increase in AVE's may occur even where non-ad valorem duties remain unchanged. Australia encourages all member countries to employ ad valorem tariffs to increase the transparency and predictability of markets.

Is Japan considering converting any of its agricultural tariffs to ad valorem tariffs, and if so, which ones and when?

Answer

Japan applies non-ad valorem tariffs on certain agricultural products as committed in Japan's Goods Schedule. Japan has no plan to abandon the non ad valorem duties, which have certain advantages; for example, duty amounts can be easily calculated with numbers or weight of imports.

Question Q7

Japan's expenditure on government procurement for agriculture and food processing products increased to nearly 200 million Yen in 2004 (Secretariat report, page 41, Table III.3). The foreign share of this procurement was 49.5 per cent up from zero per cent in 2002.

Can Japan please inform Australia of the types of agriculture and food processing goods the government is procuring, including a breakdown of the value and type of goods sourced domestically and from other countries?

Answer

After tracing back the data, it turned out that incorrect data was reported regarding 2004 procurement by central government and other entities. In fact, the procurement of the products counted as the foreign share (49.5%) fell under a different product category. Therefore, the value for procurement of agricultural and food processing products amounted to approximately ¥95 million in 2004. The types of goods procured were fertilized salmon eggs, dry food for rearing salmon, and emergency provisions, and were procured from domestic suppliers.

Question Q8- 1

Can Japan please outline the process of review of JAS?

Answer

All the JAS Standards are subject to reviews within every five years of establishment or revision. The procedure is provided below:

Step 1: The Ministry of Agriculture, Forestry and Fisheries (hereinafter referred to as "MAFF") notifies of commencement of the review.

Step 2: The MAFF hears views from stakeholders such as producers, consumers or users.

Step 3: The MAFF conducts a survey on production transaction, consumption and use for the items in question.

Step 4: The Subcommittee of the JAS Council, a body comprised of consumers, producers, academic experts and other members, discusses the draft taking into account the current conditions and future prospects of production transaction, consumption and use for the items in question, and trends in international standardization.

Step 5: The MAFF invites public comments and publishes a notice in a publication pursuant to the WTO/TBT Agreement.

Step 6: The revision is notified of in a government gazette after the resolution by the General Assembly of JAS Council.

Question Q8-2

What are the reasons for withdrawing the 15 items and what is the expected impact?

Answer

The reason for their abolishment is primarily to respond to changes of social needs. For addressing this, Japan considers: the current conditions and future prospects of quality, production, transaction, consumption, and use for the items in question, as well as trends in international standardization. Japan also takes into account views from stakeholders so as not to discriminate against any effected person.

Japan considers that the impact of the abolishment to both the domestic market and international trade is limited because there was little necessity for those standards, and the grading ratios, which showed how the relevant standards were utilized by operators, were low.

Question Q8-3

Did Japan undertake any analytical work to assess the effect of withdrawing JAS items and introducing new JAS items?

Answer

When JAS Standards are reviewed, as indicated in the answer to question Q8-1, Japan conducts a survey on production, transaction, use and consumption for the items in question, hears views from stakeholders

such as consumers, producers and actual users so that Japan can analyze the potential impact of the reviews.

Question Q8-4

What was the basis for the establishment of five new standards?

Answer

The newly established JAS Standards are those for: organic livestock products, organic feeds, pork with production information, agricultural products with production information, and Japanese dried hand-made noodles.

The reasons for establishing the JAS Standards for organic livestock products are:

- a) The definition for organic livestock products was added to the Codex Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods; and*
- b) There have been producers interested in producing organic livestock products and consumers interested in consuming them.*

The JAS Standard for organic feeds was established at the same time.

The JAS Standards for pork and agricultural products with production information were established, taking into account the demands of both producers and consumers, and the fact that the standard for beef with production information already existed.

The JAS Standard for Japanese dried hand-made noodle with characteristic manufacturing process was established, taking into account the demands of both producers and consumers.

Question Q8-5

Are these new standards likely to affect trade?

Answer

The establishment of the JAS Standards for organic livestock products and organic feeds are likely to positively impact organic trade, because they were established by taking into account the international trend on organic foods and are in line with the Codex Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods.

Japan expects that pork and agricultural products with production information may be produced overseas and imported into Japan, as beef with production information is actually produced by certified overseas operators and imported into Japan. The import of pork and agricultural products from overseas will not be disrupted, because these Standards are voluntary and Japanese and overseas operators are equally able to attach JAS marks if certified under the JAS Law.

Japan also expects that the possibility of importing Japanese dried hand-made noodles from overseas is low, because they are manufactured by the traditional process and consumed in Japan.

Question Q9

Will a similar process, involving input from countries where scientific risk assessments are used to assess agricultural chemicals, be used to develop additional MRLs as part of the Enforcement Ordinance of the Standards of Feed and Feed Additives?

Answer

Japan has established the MRLs for 60 agricultural chemicals for feed. These MRLs for feed were set taking into account the data obtained through animal feeding studies and the MRLs of other countries, as well as international standards.

Japan may set additional MRLs for agricultural chemicals for feed, if necessary. Japan welcomes Australia to provide data including animal feeding studies, which may be necessary for our reviewing process.

Question Q10

Japan's approach to approving food additives is time consuming and costly. Many food additives that are not approved in Japan are approved in other countries and are commonly used. Prevention of trade in food products containing food additives that are safe and are in common use elsewhere, but not approved by Japan, amounts to a non-tariff barrier.

Can Japan advise why it has not moved more quickly to approve food additives and why the process is so time consuming and costly?

Is a review of the approval process under consideration?

Answer

In Japan food additives are not permitted for use unless they are designated by the Minister of Health, Labour and Welfare under the Food Sanitation Law as substances which are unlikely to cause adverse health effects. In addition, the Food Safety Basic Law requires the Minister to hear the opinion of the Food Safety Commission (FSC) in the process of authorizing food additives.

Japan recognizes that not only Japan but also almost all other countries, such as Australia, the EU, and the United States, permit the use of food additives only when they are authorized by their own food health authorities (whether or not these additives are used globally).

Separately from the ordinary authorizing process, the Government of Japan (GOJ) is proceeding with a review with the intent to authorize the 46 food additives and flavorings, that have been proven safe by the JECFA (Joint Expert Committee on Food Additives) and that are widely used globally. The Ministry of Health, Labour and Welfare of Japan, on a priority basis, has the FSC carry out risk evaluation of these additives and flavoring agents. However, the GOJ would like the Australian Government to understand that if the FSC requests additional information as needed in the scientific evaluation, it will take more time to conduct additional studies to gain the information.

Question Q11

Can Japan indicate to that extent the revisions to the TPPRR will affect the agriculture sector and imports?

Answer

It is difficult to indicate the effect of the TPPRR, because it covers many fields of the agricultural sector.

Question Q11-1

Can Japan please detail the criteria on which "special zones" are classified?

Answer

Under the Special Zone Policy, the Government of Japan does not unilaterally "classify" the zones. Rather, it is the local governments who submit applications for approval by the Government of Japan, as advanced areas which tackle regulatory reform in advance.

Criteria for approval include:

- *Whether the area satisfies a variety of natural, economic or social conditions which are set according to the nature of the regulation. (The conditions are called "regional characteristics". For example, regional characteristics are stipulated that, "Certain amounts of abandoned farmland exist in the area", for the special measure of general corporation entry to farm management. The Government's decision whether an area satisfies this condition attaches importance to the mayor's own judgment. The measure has already been extended to the whole country.)*
- *Whether the project is sure to be carried out.*

Question Q11-2

Can Japan provide Australia with a map of these zones including what zones are exempt from what policies, key agricultural enterprises operating in these zones and the reasons for the exemption? Has Japan undertaken any analytical work to assess the impact that "special zones" will have on Japan's agricultural policies?

Answer

Providing a map is difficult.

This is because a total of 910 zones have been established throughout Japan (as of December 2006), each with its own distinctive character (More than 100 zones are related to agriculture).

Illustrative special measures related to agriculture are as follows:

- (1) *The approval of farm management by the general corporations which rent farmland from owners.
Number authorized: 71 (Number of corporations involved: 147).*
- (2) *The expansion of the number of people allowed to have allotments.
Number authorized: 53 (Number of people who have started an allotments: 174).*
- (3) *The relaxation of the lower limit of the size of the agricultural land after the acquisition of agricultural land.
Number authorized: 52.*

** (1)-(3): The special measures above have already been extended to the whole country.*

- (4) *The relaxation of the requirements for getting a license to manufacture the unrefined sake "doburoku".
Number authorized: 69.*

Exceptions to regulations are restrictively applied to areas that are designated as "special zones" for structural reform. If it is confirmed that deregulation would not bring about problems, through evaluation of actual performance in "special zones" after a certain period of time, then exceptions to regulations will be extended to the whole country.

Question Q11-3

Are there any additional programmes/policies operating in these areas with the aim of removing the “special zone” classification?

Answer

Regional characteristics are generally set in the light of the purpose of the regulations, rather than level of development. So, being a special zone does not have a negative connotation because it does not mean that the area is inferior or behind. Rather, it means that it is an advanced area which tackles regulatory reform in advance of other areas. Therefore, the Government of Japan does not “aim to remove special zone classification”. However an area ceases to be a special zone when the exceptions to the regulation are extended to the whole country, as explained in the answer to the previous question.

Question Q12

Can Japan please detail the criteria on which “general corporations” are classified?

Answer

“General corporations” are corporations which are not agricultural production legal persons. That is to say, all legal persons that do not fulfill the criteria for classification as agricultural production legal persons are able to lease farmland under the Agricultural Management Reinforcement Law. In order to lease farmland, general corporations must conclude an agreement with the local authorities, and one or more board members must be engaged in agriculture in the leased farmland. On the criteria for agricultural production legal persons, please refer to footnote 13 of Chapter IV of the Secretariat Report.

Question Q13-1

The Basic Law on Food, Agriculture and Rural Areas provides the framework and policy direction for agriculture in Japan (Secretariat report, page 63, para 8). As part of this policy, Japan is aiming to achieve a higher food self-sufficiency ratio, ensure food safety and shift away from price support towards income support.

Could Japan please provide more detail on policy measures formulated under the Basic Law on Food, Agriculture and Rural Areas including to what extent the revisions to the Basic Plan adopted in 2005 have shifted Japan’s support measures away from trade distorting instruments such as market price support to non-trade distorting forms?

Answer

In October 2005, the Government of Japan decided to introduce a new direct payment measure in October 2005, including a payment system based on the production level of a defined and fixed base period. Although a detailed quantitative analysis has not been conducted thus far as the new measures are to be implemented from April 2007, the measures reflect a shift of support system in the major crop sector, from production-linked payment to decoupled payment.

Question Q13-2

Are the new income measures designed to be consistent with Annex 2, paragraph 6 of the Agreement on Agriculture?

Answer

These measures are designed to be consistent with Annex 2, Paragraph 6 of the Agreement.

Question Q13-3

How will the amount of income support provided to farmers be determined?

The plan aims to target “principal farmers” as the main beneficiaries of the Government’s support. Could Japan please detail the criteria on which “principal farmers” are classified?

Answer

The amount of income support will be determined by the production level in a defined and fixed base period.

Principal farmers in their respective regions will be identified by using the system of “certified farmers”, and various policy measures will be targeted for these farmers. In this process, village-based farming management organizations that are expected to develop to be efficient and stable management organizations in the future will be also identified as principal farmers.

(Under the system of “certified farmers”, local municipalities will prepare, based on the Law for Promoting Strength of Agricultural Management Bases, basic plans which include targets of efficient and stable agricultural management taking into consideration the actual conditions of the region. Farmers who wish to be “certified” by municipalities must prepare “plans on agricultural management reform” for certification to achieve the targets indicated in the basic plan.)

Question Q13-4

In moving to a system of direct payment with a stronger focus on principal farmers, has there been an increase in productivity from individual farms and an increase in the efficiency of farming at an aggregate level?

Answer

The system of direct payments for principal farmers will be introduced from FY 2007. As the new policy is to be implemented from April 2007, it is difficult to indicate policy measures with quantitative data at the present time. For your information, please see the following table for the past data of productivity in agriculture.

	Rice (per 10a)		Wheat (per 10a)	
	Yield (kg)	Laboring hours (hr)	Yield (kg)	Laboring hours (hr)
1990	494 (100.0)	45.6 (100.00)	348 (100.0)	8.6 (100.0)
1995	501 (101.4)	39.1 (85.7)	379 (108.9)	6.5 (75.6)
1998	507 (102.6)	36.1 (79.2)	375 (107.89)	6.1 (70.9)
1999	512 (103.6)	35.1 (77.0)	377 (108.3)	6.5 (75.6)
2000	518 (104.9)	34.2 (75.0)	377 (108.3)	6.1 (70.9)
2001	518 (104.9)	33.8 (74.1)	374 (107.5)	6.0 (69.8)
2002	522 (105.7)	32.4 (71.1)	371 (106.6)	5.9 (68.6)
2003	524 (106.1)	31.6 (69.3)	370 (106.3)	5.9 (68.6)
2004	525 (106.3)	31.0 (68.0)	372 (106.9)	5.7 (66.3)
2005	527 (106.7)	30.0 (65.8)	378 (108.6)	5.6 (65.1)

Source: “Statistics on Crop” and “Report of Statistical Survey on Farm Management and Economy (Production Cost of Rice, Wheat and Barley)”, Statistics Department, Ministry of Agriculture, Forestry and Fisheries.

Question Q13-5

Has Japan undertaken any analytical work to assess the likely impact of these changes?

Answer

While no quantitative analysis has been undertaken as of yet, Japan expects the structural reform in the agricultural sector to advance as a result, taking into account the various policy discussions so far.

Question Q13-6

Has the implementation of the Review of the Basic Plan led to a lowering of retail prices for domestic agricultural goods? If so, would Japan consider a commensurate reduction in corresponding trade barriers to encourage competition with imported products?

Answer

Japan has been implementing reform-oriented agricultural measures based on the new Basic Plan. These measures are designed to achieve further efficiency and stability in agricultural management as well as to improve productivity in the agricultural sector. However, the revision of the Basic Plan will not necessarily bring about the reduction of retail prices of farm products, because those prices are determined by the market.

Question Q14

What were the finding of the review and subsequent action arising from those findings? Does Japan expect the outcomes of the review to lead to significant changes in the way agricultural policies and programmes are implemented?

Answer

After reviewing the Agricultural Cooperative Law, Japan decided to revise the law to ensure the solidity of the mutual insurance business conducted by agricultural cooperatives, and put the law into operation in April 2005.

Agricultural cooperatives are private and independent associations organized by farmers. It is assumed that they abide by the law and pursue appropriate management of business.

Question Q15

Could Japan please provide details of Government support aimed at increasing Japan's cheese manufacturing capacity by 2008, including what incentives are being offered to manufacturers to build the new capacity and what is the anticipated up-take of these incentives?

Could Japan please provide details on the measures the Japanese Government is taking (including direct subsidies to farmers and price controls) to ensure that sufficient low cost milk will be available to facilitate an increase in capacity?

Answer

The Government of Japan understands that three new or additional cheese plants are scheduled to be set up in Hokkaido by 2008. These facilities will be constructed without receiving any subsidies from the Government.

The Government of Japan has been providing subsidies for a proportion of the raw milk supplied to cheese processors for the purpose of stabilizing dairy farm management. (The level of subsidies is 10-12 yen/kg in FY 2006.)

Question Q16

On 10 January 2007, Japan released for public comment a guideline that restricts the labeling

- A) Could Japan explain why this measure has been proposed, given that wagyu is a generic term for several breeds and cross-breeds of cattle that also exist outside Japan?
- B) If the measure is designed to improve transparency and to provide consumers with accurate and easily understood information about the origin of wagyu beef, how is this measure more effective than the existing requirement under the JAS Law for country of origin labelling for imported beef?
- C) Could Japan explain how the measure complies with Articles 8 and 22 of the TRIPs Agreement, Article 2.2 of the TBT Agreement and the national treatment provisions of GATT Article III?
- D) Could Japan explain why the proposed measure is to be introduced as a guideline rather than a regulation or legislation?

Answer

A) In Japan, the meat retail industry has established an independent and voluntary rule that the meat of four breeds which are established in Japan and the hybrids between two of these four can be labeled "WAGYU".

In recent years, beef cattle in which the genes of WAGYU have been introduced have been produced not only in Japan but also outside the country.

Under these circumstances, the meat of hybrids with other breeds is also labeled as "WAGYU" overseas. When such beef is labeled and circulated as "WAGYU" in Japan, there is a possibility that misconceptions among consumers with regard to quality could result.

However, at present, since the method of proving that meat is WAGYU is not clear, it is necessary to clarify a method which proves and confirms definitely that the meat comes from the breed of WAGYU.

B) This guideline does not aim to provide information about the geographical origin of beef, but aims to clarify a method which proves and confirms definitely that the meat comes from the breed of WAGYU.

Through measures taken by businesses along the lines of these guidelines, the method of these guidelines proves and confirms the breed, and it is possible to prevent misconceptions among consumers with regard to quality.

C) These guidelines are considered in order to clarify how to prove and confirm the breed of the beef labeled as "WAGYU", not to set up intellectual property rights for "WAGYU" labelling nor to limit the country of origin on the grounds that quality can be attributed to the geographical origin.

At present, the guidelines are based on the actual condition that only WAGYU born and raised in Japan can be proven and confirmed correctly to be pure WAGYU or a crossbreed of WAGYU, and Japan thinks that this does not restrict trade unfairly.

These guidelines promote independent and voluntary measures by businesses, and Japan thinks that it does not fall into the technical regulation, the observance of which is obligatory, mentioned in Article 2.2 of the TBT Agreement.

Beef exported to Japan cannot be proven and confirmed definitely to be pure WAGYU or a crossbreed of WAGYU under the present conditions. Since proof and confirmation of the breed needs to be asked of WAGYU beef produced in Japan under these guidelines, Japan does not give disadvantageous treatment to beef from overseas.

This guideline should be examined depending on any change to the situation in the future, and if foreign beef is proven correctly to be pure WAGYU or a crossbreed of WAGYU, Japan will address the issue.

D) With regard to the "WAGYU" labeling, since the meat retail industry has established independent and voluntary rules and has improved them, these measures should be respected, and aim at promoting entrepreneurs' independent measures.

Question Q17

Could Japan provide details of which fish products (including species) are controlled by import quotas? Could Japan please explain in detail how the import quota application and allocation system for fish products operates?

Answer

Detailed information on the operation of the IQ system including species shall be announced in the Ministry of Economy, Trade and Industry Official Bulletin, on its homepage, etc.

Question Q18

With regards to forestry products, does Japan have any domestic legislation in place to prohibit secondary boycotts of products by organizations, companies or individuals?

If there is legislation in place, are there any exemptions to the legislation? If legislation is not in place, does Japan have any intention to introduce law to prevent secondary boycotts?

Answer

In general, the Antimonopoly Act prohibits any activity which impedes fair competition in Japan. Secondary boycotts are among such prohibited activities. The law does not exempt forestry products from such a rule, and Japan has no intention to introduce such an exemption clause.

Question Q19

Australia would welcome a status report on Japan's experience with the revised Act, including experience with voluntary cooperation with the Fair Trade Commission and the effect of surcharges imposed for violations of the Act.

Answer

Regarding the leniency application, the Japan Fair Trade Commission (JFTC) received 26 cases during the three months from the effective date of the amendments in January to March 2006.

The first case that the JFTC applied the newly introduced leniency program to was the bid-rigging which occurred over the tunnel ventilation construction procured by the Metropolitan Expressway Public Corporation in FY 2004. In this case, the JFTC issued surcharge payment orders to four companies that

had committed the bid-rigging, while three companies were granted immunity from or reduction of the surcharge based on the leniency program. For details of this case, see: <http://www.jftc.go.jp/e-page/pressreleases/2006/September/060908.pdf>

At present, the leniency program is evaluated to have the following two positive aspects. The first aspect is that the leniency program makes it easier to detect cartels. The first case that the JFTC applied the leniency program to was made public only nine months after the introduction of the new program, and it can be said that the program contributes to detecting cartels and shortening investigation periods. The second aspect is that the program encourages businesses to conduct compliance activities. The fact that Japan's leading companies applied for leniency by properly conducting their own in-house investigations may prove that the leniency program contributes to motivating companies to initiate compliance activities.

The criminal investigation power under the revised act enables the JFTC's officials to conduct dawn raids with search warrants issued by a judge if it is necessary to initiate criminal investigation. A bid-rigging case concerning the construction of human waste disposal facilities was the first case where the JFTC used the criminal investigation power introduced by the latest amendments; it accused 11 companies and their sales representatives to the Public Prosecutor General. Following the accusations, Osaka District Public Prosecutors Office investigated the case and prosecuted them.

With regard to the effect of increased surcharges imposed for violations of the revised AMA, the JFTC has not imposed the increased surcharges so far, because the increased surcharge applies to violations of the AMA which have been conducted after 4 January 2006, the date of implementation of the revised AMA.

Question Q20

What are the criteria to be met by cartel members to obtain the immunity/leniency mentioned in the Secretariat report (page 55, para 90)?

Answer

In the newly introduced leniency program, the first leniency applicant before an initiation of the investigation is to be granted 100% immunity from surcharge payment, and 50% reduction of the surcharge is offered to the second applicant and 30% reduction to the third applicant. Even after the initiation of the investigation, 30% reduction is equally available up to the third applicant. In any event, a total of three entrepreneurs can apply for the surcharge immunity or reductions. For details of this see:

<http://www.jftc.go.jp/e-page/legislation/ama/immunity.pdf>

Question Q21

Does Japanese competition law or its administration permit conduct that would otherwise breach the competition laws to be exempt on application by a company, for example on public interest grounds?

- If so, are the exemptions limited to certain kinds of anti-competitive conduct?
- What criteria must be met to obtain the exemption?
- How often are such exemptions granted?

Answer

The Antimonopoly Act (hereinafter referred to as "the AMA") prohibits private monopolization, unreasonable restraint of trade and unfair trade practices, etc. However, certain conducts are exempted from the application of the AMA based on relevant laws so as to achieve political purposes other than competition policy.

Certain cartels are permitted under exceptional circumstances and certain conditions which are stipulated in relevant laws. In order to be exempted from the application of the AMA, each cartel's conduct shall be permitted with the approval by the competent minister based on individual laws after consultation with the JFTC or notification to it.

For exemptions to be approved based on these legislative schemes, it is typically required to satisfy the conditions that the exemption is necessary to achieve the legislative purpose and is not unjustly discriminatory, etc.

With regard to the frequency of cartel exemption, for example, the number of transportation cartels based on the marine transportation law and the aviation law, the number granted in 2006 is 584 cases for the marine transportation law, and 269 cases for the aviation law.

Question Q22

Does the competition legislation provide for strict time limits for decision-making by the regulator in relation to proposed mergers?

How long does it normally take for a merger or acquisition proposal to be scrutinised by the regulator?

What legal rights of appeal exist in relation to a decision by the regulator to permit or prohibit a merger or acquisition?

Answer

Parties which are above certain scale thresholds must notify the Japan Fair Trade Commission (JFTC) if they plan to conduct mergers and acquisitions (Article 15 etc. of the Antimonopoly Act).

The JFTC would review the case within 30 days of the date of acceptance of the notification. If the JFTC requires the parties to submit necessary reports within 30 days of the notification, the JFTC would review the case within 120 days of the date of acceptance of the notification or 90 days of the date of acceptance of all necessary reports, whichever is later.

In practice, the JFTC has reviewed almost all the cases within 30 days of the notification.

If the notified mergers and acquisitions are in violation of the Antimonopoly Act, the JFTC may order the parties to take measures necessary to eliminate violating conduct (Section 17-2 of the Antimonopoly Act).

If the parties are dissatisfied with the order issued by the JFTC, the parties may request the JFTC to initiate hearing procedures on the said order (Section 49-6 of the Antimonopoly Act).

If the parties are dissatisfied with a decision of the hearing procedures by the JFTC, the parties may appeal to the Tokyo High Court to quash the decision (Section 77).

Question Q23-1

How is privatization of Japan Post proceeding? Are there other areas of reform proposed that will ensure that state owned services are operating in a competitive environment?

Answer

The privatization of the Postal Services is proceeding on schedule for its start on 1 October 2007 in accordance with the laws related to the Privatization of the Postal Services. The Government of Japan is making its best efforts to supply its services in an appropriate competitive environment. For your reference, please see Q6 of The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

Question Q23-2

What future initiatives are being developed to ensure that competition and consumer protection enforcement are both undertaken with the same goals and focus?

Answer

The ultimate aim of competition policies is to secure the interests of consumers by realizing a free and fair rule of competition in the market. While the rule of competition should be obeyed by entrepreneurs, it is necessary to secure chances for consumers to select commodities freely and rationally so that the fair and free competition works effectively, since entrepreneurs compete to obtain the consumers' choices.

Therefore, it is necessary to address competition policies together with consumer protection enforcement which helps consumers to be independent so that they can select commodities freely and rationally in order to secure and increase their interests. This idea is also declared in the Consumer Basic Act revised in 2004.

Japan Fair Trade Commission (JFTC), the competition authority in Japan, promotes and will promote consumer policies through enforcing the Act against Unjustifiable and Misleading Representations as well as promoting competition policies, mainly through enforcing the Antimonopoly Act.

Question Q24

Does Japan have any proceeds of crime remedies in relation to intellectual property offences?

Answer

The Law for Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters has a provision on confiscation of the crime proceeds produced by, or obtained through the infringement of patent rights, trademark rights and copyrights.

Question Q25

Article 49 of the TRIPS Agreement provides Members with the discretion to implement administrative procedures

Can Japan advise whether its intellectual property laws provide for administrative penalties to be issued for intellectual property infringements?

Answer

According to the Customs Law, Japan Customs has the authority to impose administrative penalties such as fines for the import/export of infringing goods.

As for geographical indication infringements, administrative penalties such as directions, announcements, orders and fines shall be imposed according to the Law Concerning Liquor Business Associations and Measures for Securing Revenue from Liquor Tax. In addition, once the holder of a liquor manufacturing/sales license is fined, the respective license shall be revoked in accordance with the Liquor Tax Law.

Question Q26

Could Japan provide a status report on the progress toward reform of Japan's Postal Savings and Postal Life Insurance, particularly concerning ensuring a level playing field between these institutions and private sector financial institutions?

Answer

The Japan Postal Services Holding Company, which is in charge of the preparation and planning of privatization, is planning to submit an implementation plan which describes details concerning its succession as a business to the Japan Post to the Prime Minister and the Minister of Internal Affairs and Communications by end-April 2007. The Prime Minister and the Minister of Internal Affairs and Communications are required to hear opinions from the Postal Services Privatization Committee (PSPC) (a third-party organization comprised of experts) prior to the approval of the implementation plan.

Regarding the future business scope of the Postal Savings Bank and Postal Insurance Company, the PSPC publicly released the "View of Postal Services Privatization Committee concerning its study and discussion on the future business scope of Postal Savings Bank and Postal Insurance Company" on 20 December 2006, which compiled the PSPC's basic recognition and principles in its study and discussion concerning the future business scope of the Postal Savings Bank and the Postal Insurance Company (<http://www.yuseimineika.go.jp/iinkai/pub/syoken.pdf>). The PSPC is now inviting the public to offer their opinions about its view (due date: 31 January 2007).

With respect to individual businesses, the Government of Japan will assess the appropriateness of these businesses when the two financial companies actually apply to the government for approval while hearing opinions of the PSPC. The PSPC will study and discuss from the viewpoint of fair conditions of competition and the business conditions of the two financial companies, based on the attitude described in the "View" and the situation at that time.

The progress of the privatization of postal services is released on the website of relevant authorities including the Office for the Promotion of Postal Services and Ministry of Internal Affairs and Communications, and updated in a timely manner.

Question Q27

Australia has noted that Japan recently introduced measures to reduce the maximum interest rate on certain lending to consumers.

Could Japan provide information on the objective of the measures and the expected effect on the number of foreign financial institutions operating in the consumer finance market?

Answer

Reduction of the interest rate cap is included in the amendment of the law related to consumer credit business as one of the most important measures to resolve multiple debt problems. Regarding the effects on the number of consumer credit companies, this remains to be seen at this time because this amendment has not been enforced yet.

Question Q28

Noting that Australia does not have such a criterion, would Japan consider removing or reducing this requirement?

Answer

The system of GJB in Japan means that foreign lawyers are able to provide legal services everywhere in Japan pertaining to their home jurisdiction laws without taking any special examinations.

Japan believes that the three years experience requirement for practicing home jurisdiction law is appropriate from the viewpoint of protecting any clients.

Therefore, no consideration is being given to removing or reducing the above mentioned requirement.

Question Q29

How does Japan justify its 180-day residency requirement and commercial presence requirement for foreign lawyers providing foreign legal services for modes of legal service supply (mode one – cross border supply; mode two – consumption abroad and mode four – presence of natural persons) that are intended to be mutually exclusive with having a commercial presence (mode three)?

Could Japan explain how and why the 180-day residency requirement applies to cross-border trade?

Answer

A minimum 180-day residency and a commercial presence are requirements for GJB. GJB who meet those requirements may provide legal services pertaining to their home jurisdiction's law where the person is qualified as a lawyer to a client in Japan through cross-border trade (mode one). Japan believes this requirement is appropriate to protect clients.

Therefore, there is a rationale behind imposing a minimum 180-day residency requirement and a commercial presence requirement for these modes.

In addition, with regard to consumption abroad (mode two) and presence of natural persons (mode four), the minimum 180-day residency requirement and the commercial presence requirement are not described in the specific commitments of the revised offer from Japan.

Question Q30

How is the review on extending the establishment of legal profession corporations to include foreign lawyers progressing?

Could Japan provide details as to who is undertaking the review?
What is the timeframe of the review?

Answer

Ministry of Justice (MOJ) has been studying whether GJB should be permitted to form legal professional corporations on the same basis and with the same benefits as bengoshi (attorney at law) professional corporations. Since 2005, MOJ has had several meetings with Nichibenren and GJB in order to examine these issues. However, MOJ has not reached any conclusions at present, and continues to study these issues in the light of the actual operation of foreign law joint enterprises and bengoshi professional corporations, and consistency with other laws and regulations in Japan.

Question Q31

Since 1997, Japan has made significant progress in regulatory reform leading to greater market access for new market entrants, through successive revisions of the *Telecommunications Business Law 1984*. Australia welcomes Japan's ongoing reforms to the telecommunications market, on interconnection, frequency allocation and the establishment of a new framework to evaluate competitiveness. However, Japan could do more to adopt policies that increase competition, remove unnecessary regulatory barriers and increase transparency.

The present regulatory environment does not provide adequate pro-competitive measures to new entrants in the Japanese telecommunications market. Anti-competitive behaviors by the incumbent (Nippon Telegraph and Telephone Corporation - NTT) prevents the growth of competition in Japan's

telecommunications market. *The Telecommunications Business Law 1984* was aimed at encouraging new business carriers to enter the market and promote business competition.

Have revisions to the *Telecommunications Business Law 1984* resulted in new business carriers entering the market?

How does Japan's telecommunications regulator, the Ministry of Internal Affairs and Communications (MIC) determine levels of competition in Japan's telecommunications market in Japan?

Answer

Although we cannot fully understand what "Anti-competitive behavior by the incumbent (Nippon Telegraph and Telephone Corporation)" as pointed out by Australia means exactly, Japan has realized a competitive environment through implementing interconnection policies and dominance regulations including competitive safeguards against major service suppliers that have control over essential facilities.

As of December 2006, there are 14,158 telecommunications carriers operating in Japan's competitive market environment. Although the Telecommunications Business Law has been amended 18 times, counting only major amendments since its establishment in 1984, the number of new entries has increased consistently from 87 in 1984 when the law was established. Compared to the figure of 12,518 carriers as of December 2003 (the previous year when the last major revision was conducted), the number has shown an increase of 13%. We therefore consider that the last revision to the law has led to a steady increase in new entries.

In order to adequately reflect changes in the telecommunications market in policy making, we have been conducting analyses and evaluations of the competition in each service market since 2003. From the viewpoint of ensuring fair and transparent analysis and evaluation, we solicit public comments on the methods of analysis and evaluation, and also release the results to the public on our web site:

http://www.soumu.go.jp/joho_tsusin/kyousouhyouka/index.html

Question Q32

The recent allocation of 3G spectrum in Japan was made on the basis of presentations by applicants, not by auction. In that context, it is not clear how the mobile licence/3G spectrum returned by Softbank when it took over Vodafone Japan will be allocated.

Will this licence/spectrum be offered to other carriers wishing to enter the Japanese Mobile telecommunications market?

Would Japan consider implementing a spectrum trading model to ensure the efficient allocation of spectrum?

Would Japan provide detail on the method of allocation proposed for the mobile licence/3G spectrum returned by Softbank?

Answer

The modus on the allocation of 1.7GHz band frequency for 3G mobile telephones has already been stipulated and is being implemented. Though Japan has no plans for a new application for a license at present, Japan may amend the establishment guidelines and start application for a license, considering the availability of frequency in this band and competition in the mobile telephone market.

A "study group on an efficient and optimal policy radio framework" has been examined from all angles of a frequency trading model and a final report compiled. This report was negative about the introduction of a frequency trading system for three major reasons. First of all, a frequency trading system tends to steeply drive up the contract price of frequency. In the short term, there is a considerable delay in starting

a new service and many negative effects are brought about by the increase in the price of the frequency license fee. This not only devitalizes the vigor and competitiveness of the ICT industry, which is one of the most competitive, high value-added, and leading industries in Japan, but also reduces tax revenues from many industries in Japan and drives Japan's government, industries and national life downhill. Moreover, the frequency trading system, which tends to be a long-term license, gives licensees a constant incentive to prevent the government from amending and modifying policies in a timely manners in order to protect the vested interests of their licenses. This will have a harmful influence on the establishment of an optimal, fair and timely allocation framework of frequency, and industries in Japan have a negative view of a frequency trading system.

For the same reasons, there are concerns that frequency allocation for licensee resale would bring about adverse effects by encouraging aggressive speculative trading and tardiness in the starting of services.

Question Q33

Recent reforms have encouraged foreign investment into Japan's telecommunications industry. However, foreign investment in Japanese telecommunications remains modest in comparison to other developed countries. The lack of foreign investment in Japan's telecommunications markets indicates Japan is not as open to foreign participation as is the case in other developed countries.

Is the Japanese Government concerned by the level of foreign investment in telecommunications services in Japan in comparison to other countries?

Could Japan provide information on the aggregate level of foreign investment in the Japanese telecommunications services market (following the departure of Vodaphone) and on what measures, if any, are planned with a view to increasing foreign participation?

How does Japan measure the openness of its telecommunications market to foreign investment?

Has Japan undertaken any analysis of the openness of its telecommunications markets relative to that in other major markets and, if so, could the results be provided?

Answer

Though we do not understand to which country Australia is making a comparison, we enable operators from both inside and outside Japan to enter the telecommunications industry, and we are open. Thus there is no discrimination against foreign operators. Since 1999 we have created and posted on the Internet an English document describing entry into and expansion of the business, and have updated this since then. Many foreign telecommunication operators have entered the market so far. Paying attention only to investment by operators over a certain scale, the direct investment to Japan in 2004 amounted to approximately ¥466.3 billion (these are not precise figures, as exact statistics have not been obtained). Therefore we have no concerns about the level of foreign investment.

As stated above, we enable operators from both inside and outside Japan to enter the telecommunications industry freely, and this openness ensures that there is no discrimination against foreign operators. Since 1999, we have created and posted an English document describing entry into and expansion of the business, and have updated this since then (As we do not put any limitation on the entry of foreign operators, there is no comprehensive data on investment abroad). Furthermore, we do not have any policy for increasing entry which focuses on foreign operators. Please refer to the website below for precise information in English:

http://www.soumu.go.jp/joho_tsusin/eng/regulatoryguidance.html

As we do not understand the contents of the question clearly, because there is no explanation of "Openness", as stated above, we enable operators from inside and outside Japan to enter in the

telecommunications industry freely and are sufficiently open not to discriminate against foreign operators. So, naturally, we do not have any measures to evaluate the level of "Openness".

We enable operators from both inside and outside Japan to enter the telecommunications industry freely and are sufficiently open not to discriminate against foreign operators. Therefore, we have not performed any analysis on "Openness".

Question Q34

Mobile Number Portability (MNP) offers consumers the ability to change between operators without significant cost or inconvenience and leads to greater competition as operators compete for product market share. MNP also encourages greater innovation and product development. Australia welcomes Japan's introduction of MNP in 2006.

While Japan has implemented MNP, it is not clear whether carriers bear the cost of MNP, or if they recover the cost of MNP through having their customers meet the cost of switching between carriers. Many developed nations, including Australia, have adopted the principle that each carrier should bear its own MNP costs, as this enhances the pro-competitive impacts of MNP.

Will Japan follow the generally accepted principle that each carrier should bear its own costs in relation to implementing MNP so as to ensure that competition in mobile services is enhanced?

Could Japan outline the impact of MNP since its implementation?

Answer

Charging for Mobile Number Portability (MNP) is outside the area covered by the regulations stipulated in the Telecommunications Business Law. Accordingly, whether the charge for transferring to another service is borne by the telecommunications carriers or the users is left to the judgment of each telecommunications operator.

As only three months have elapsed since establishing the system, MIC considers that it is still premature at this stage to explain the effect of the introduction of MNP. However, MIC believes that MNP not only enhances user convenience, but also promotes healthy competition between telecommunications carriers. Moreover, we expect that this will lead to more attractive services being provided in the Japanese telecom market, and be to the benefit of all users.

Question Q35

Will Japan put in place measures that ensure there is no discrimination in the non-price aspects (such as level of technical and operational quality) of wholesale services provided by NTT to its competitors as compared to when it provides these services to itself?

Answer

As regards the issues pointed out by Australia, Japan has already implemented the appropriate measures described below.

- *In providing telecommunications services, NTT East and West are prohibited from showing unduly unfavorable treatment or acting disadvantageously toward specified telecommunication carriers based on Article 30 Paragraph(3) of the Telecommunications Business Law.*
- *Based on Article 33 Paragraph(4) of the Telecommunications Business Law, the following items shall be ensured in NTT East and West's interconnection tariffs concerning bottleneck facilities.*

- 1) *The terms and conditions of interconnections shall be no less favorable than those applicable when NTT East and West accomplish interconnection between the bottleneck facilities and the telecommunications facility which they themselves possess.*
- 2) *They shall not be unduly discriminatory against specified telecommunications carriers.*

Question Q36

Independent Regulation

In Japan, both the policy and regulatory functions for telecommunications are the responsibility of MIC. Although recent reforms have opened the Japanese market to some extent, MIC still tightly controls the domestic telecommunications market, indirectly enabling the incumbent carriers NTT (East and West), KDDI, Japan Telecom and DoCoMo to maintain a dominant market presence. Most OECD nations now recognise that an institutionally independent regulatory authority is the most effective means of providing and ensuring a competitive telecommunications sector.

Japan has accepted the need for independence in most of its regulatory institutions, and yet appears to stand alone among developed nations in maintaining direct ministerial control over telecommunications regulation.

- Could Japan provide detail of the measures it has in place to ensure its regulatory authority responsible for telecommunications is legally and structurally independent?

Answer

It is a straightforward fact that the Ministry of Internal Affairs and Communications (MIC) is legally and structurally independent. The MIC is fully independent of and separate from any service suppliers.

As regards the regulatory independence of the telecommunications sector, Article 5 of the Telecommunications Reference Paper of the Fourth Protocol to the GATS stipulates that “the regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services”, and Japan has implemented this.

Question Q37

What measures is Japan putting in place to make investment in Japan more attractive for overseas investors?

Answer

In June 2006, the Japan Investment Council (JIC) set up the Program for the Acceleration of Foreign Direct Investment in Japan, which focuses on three key issues: (1) Regional centers for economic growth and improved quality of life; (2) Improvement of an investment environment capable of overcoming global competition; (3) Domestic and international public information activities. The Government of Japan takes efforts in promoting inward FDI through implementing measures in the program. For the details of the program, please refer to <http://www.investment-japan.go.jp/index.htm>

Question Q38

Could Japan provide an update on progress in its program to deregulate Japanese energy markets?

Answer

The discussion of liberalization of the regulated sector involving household customers in the electricity retail market will start in FY 2007 at the Electricity Industry Committee of the Advisory Committee for Natural Resources and Energy. The "Basic Energy Program" stipulates that consideration must be based on the condition of ensuring that options are available to customers, and the following factors should be discussed at that time with great care: (1) Security of supply reliability, (2) Simultaneous pursuit of energy security and environmental preservation, (3) Security of last resort service and universal service, (4) Risk of long-term investments and long-term contracts, (5) Other practical and technical issues.

Question Q39

Could Japan provide an explanation of the specific measures which it is putting in place to realise this goal, including extensions of eligible visa periods and increasing the range of professionals granted permission to work in Japan?

Answer

The government decided to take measures to carry out, as nationwide programs by the end of FY 2005, those programs promoting acceptance of foreign researchers and foreign information processing engineers mainly implemented in the Special Zones for Structural Reform.

Therefore, the amendment of the Immigration Control Act stipulates the following activities as the status of residence of "Designated Activities": (1) designated research activities, (2) designated research business activities, (3) designated dependents' activities concerning (1) or (2), (4) designated information processing activities, and (5) designated dependents' activities concerning (4) and measures equivalent to the above, (6) foreign professors' educational activities and (7) foreign professors' dependents' activities as activities stipulated as preferential measures for the status of residence under the Law on the Special Zones for Structural Reform. The maximum term of residence granted for these activities has been extended from "three years" to "five years". Authorized activities to be engaged in under the relevant status of residence are as follows:

- a. *Activities conducted on the basis of a contract with a public or private organization in Japan (an organization conducting business activities that meet the requirements stipulated by the Ministry of Justice ordinance for contributing to the efficient promotion of research or the development of industries related to specific fields requiring sophisticated expertise, and which is an organization specifically designated by the Minister of Justice) for research, guidance of research, or education in such specific fields at the facilities of such organizations (in the case of education, only that which is provided at colleges, equivalent educational institutions or colleges of technology (kotosenmongakko)) or in addition, the self-employment activities of managing a business related to research, guidance of research or education in such specific fields.*
- b. *Activities conducted on the basis of a contract with a public or private organization in Japan (the organization conducting business activities that meet requirements stipulated by the Ministry of Justice ordinance for contributing to the development of industries related to information processing (information processing as provided for by Article 2, Paragraph 1 of the Law Concerning Promotion of Information Processing (Law No. 90 of 1970); the same hereinafter) and which is an organization specifically designated by the Minister of Justice) of engaging in information-processing-related services which require technology and/or knowledge pertinent to natural science fields or human science fields at an office of such organization (an office of the other organization in cases where he/she is dispatched to another organization by such an organization as a temporary worker as provided for by Article 2, Item 2 of the Law Concerning Ensuring Proper Operation of the Manpower Dispatching Business and Improvement of Working Conditions of a Temporary Worker (Law No. 88 of 1985)).*

- c. *Daily activities on the part of the spouse or unmarried minor who is supported by the foreign national engaging in the activities described in a. or b.*

Provisions related to this matter in the Law on the Special Zones for Structural Reform were deleted at the time of enforcement of this provision.

This provision was enforced on 24 November 2006.

AUSTRALIA – ADDITIONAL REPLIES

Question Q29-1

We note , based on proposed amendments tabled in Japan’s June 2005 revised Doha Round GATS offer, that this restriction may no longer apply in relation to Mode 2 or Mode 4. We would welcome this change and congratulate Japan for its proposed amendments. We would also appreciate confirmation that these changes to Japan’s regulatory regime are already operative in Japan.

Answer

With respect to legal advisory services on laws of jurisdiction where the service supplier is a qualified lawyer, Japan has confirmed that there are no limitations on both market access and national treatment under Mode 2. On the other hand, descriptions of residency requirement and a commercial presence requirement under Mode 4 were deleted by the reason of technical modification, and Japan has not committed to Mode 4 except as indicated in HORIZONTAL COMMITMENTS.

Question Q29-2

Please explain whether foreign lawyers are Permitted to come to Japan for short periods (i.e. on a “fly in - fly out” basis) to provide legal advice (in relation to the law of the jurisdiction in which they are qualified), without having to become registered as a ”gaiben” ?

Answer

In principle, a person who is not a registered foreign lawyer is not permitted to provide legal advisory services on laws of jurisdiction where the service supplier is a qualified lawyer in a foreign country, even for a short period of time in Japan.

Question Q29-3

How does Japan justify its 180-day residency requirement and commercial presence requirement for foreign lawyers providing foreign legal services for Mode 1 of legal services supply ? Australia understands that Mode 1 and Mode 3 are generally mutually exclusive , in that Mode 1 is intended to allow foreign lawyers to supply advice to Japanese clients (in relation to the law of the jurisdiction in which they are qualified) , without having to come to Japan or become registered there as a “gaiben”.

Answer

A minimum 180-day residency and commercial presence are requirements for registered foreign lawyers (gaiben). Registered foreign lawyers (gaiben) who meet those requirements may provide legal services pertaining to their home jurisdiction’s law where the person is qualified as a lawyer to a client in Japan, through Mode 1. Japan believes this requirement is appropriate to protect clients.

Therefore to impose a minimum 180-day residency requirement and commercial presence requirement have the rationale for Mode 1.

NEW ZEALAND

Question Q.1

Japan's economic recovery and continued growth is welcome news. The structural reforms in such areas as non-performing loans and the improvement in other key indicators such as the reduction in unemployment have been cited as important components in this recovery (WT/TPR/S/175, paras I.1-2 refer). The Secretariat report notes, however, that public debt has increased from its already high levels in 2004 to 172% of GDP in 2005. Against this background:

We would be interested in a further explanation of the Government of Japan's plans to address the public debt issue and over what timeframe.

Answer

In line with the Basic Policies 2006 and other policies, the Government of Japan will continue to pursue the integrated reform of expenditures and revenues to meet the targets of achieving a surplus in the primary balance of the combined budget of the central and local governments by FY 2011 and, after that, reducing the debt-to-GDP ratio in a stable manner by the mid-2010s, while sustaining economic growth.

Question Q2

Over what time frame does Japan expect that its current measures for agricultural reform (eg Secretariat report para IV.6) will begin to demonstrate significant effect?

Answer

It is expected that agricultural reforms based on the new Basic Plan will contribute to the increase in the food self-sufficiency ratio from 40% to 45% by 2015, and the realization of further efficiency and stability in agricultural management.

Question Q3

What efforts is Japan making to intensify agriculture sector reform and what effects does it anticipate these will have on agriculture sector productivity and agricultural trade liberalisation?

Answer

Japan has been implementing reform-oriented agricultural measures based on the new Basic Plan. These measures are designed to achieve further efficiency and stability in agricultural management as well as to improve productivity in the agricultural sector. Japan has also improved market access opportunities and will be actively engaged in WTO and EPA/FTA negotiations to achieve further liberalization of agricultural trade.

Question Q4

How does Japan intend to "...create the political momentum to liberalize trade..." as stated in para70 of its report(WT/TPR/G/175)?

Answer

Japan is currently engaged actively in economic policy dialogue with various countries at the bilateral and multilateral levels, and considers such dialogue to be a way forward in terms of seeking additional means for further trade liberalization. Bilateral working groups or joint studies to enhance economic relations are concrete examples of frameworks for such dialogue.

Question Q5

The Japanese Government has recently indicated its intention to intensify its negotiation of bilateral FTA/EPAs as part of its strategy to foster economic growth through encouraging greater openness and innovation. What specific plans does Japan have to pursue an intensified programme of bilateral FTA/EPA negotiations and what place does Japan see for wider, plurilateral arrangements (such as the FTAAP, CEPEA) in this strategy?

Answer

1. *The Japanese government has taken the following measures:*
 - (1) *to refer to models of EPA provisions. Those models are based on the actual provisions of the EPAs that Japan has concluded or signed so far.*
 - (2) *to consider the possibility of pursuing Free Trade Agreements (FTAs) or Investment Treaties, as well as EPAs that contain various fields, depending on the economic relations with the countries under consideration.*

Question Q6

To what factors does the Government of Japan attribute this decrease in the level of inward FDI, in spite of the measures to encourage inward FDI that have been put in place? How does Japan propose to meet the goal stated in former Prime Minister Koizumi's General Policy Speech in January 2006 to double the amount of inward FDI in 2006?

Answer

Although there may be various reasons why the level of inward FDI stock in Japan is low compared to other developed countries, in order to meet the goal stated in former Prime Minister Koizumi's General Policy Speech in January 2006, the Japan Investment Council (JIC) set up in June 2006 the Program for the Acceleration of Foreign Direct Investment in Japan, which focuses on three key issues: (1) Regional centers for economic growth and improved quality of life; (2) Improvement of an investment environment capable of overcoming global competition; (3) Domestic and international public information activities. The Government of Japan takes efforts in promoting inward FDI through implementing measures in the program. For details please refer to the following websites:

"Investment in JAPAN Information Center"

<http://www.investment-japan.go.jp/index.htm>

"White Paper on International Economy and Trade 2006" Chapter 3, Section 2.4: Analysis of the factors causing the low level of direct inward investment in Japan.

<http://www.meti.go.jp/english/report/data/gWT2006fe.html>

Question Q.7

What level of inward FDI has been evident in the agricultural and food processing sectors and what trends are apparent in inward FDI in these sectors? How does this level and trend compare with inward FDI directed to other sectors of Japan's economy?

Answer

With regard to the position of inward direct investment made by foreign investors¹, in the sectors of agriculture and food industries in Japan as of the end of FY 2005, the portion for the agriculture and forestry sectors was ¥4.2 billion, which accounted for 0.04% of the total amount of inward FDI. That for the food sector was ¥222.3 billion, which accounted for 1.9%. The level of inward FDI in the sectors of agriculture and food industries is quite low.

(See the Bank of Japan “Direct Investment Position by Region and Industry”; <http://www.boj.or.jp/theme/research/stat/bop/bop/index.htm#dip>)

The following table shows the level of inward FDI in the sectors of agriculture and the food industry.

Table: Inward FDI by Industries (JPY100million)

FY	2002		2003		2004	
	Value	Share (%)	Value	Share (%)	Value	Share (%)
Food	82	0.4	507	2.4	34	0.1
Textile	41	0.2	11	0.1	89	0.2
Rubber & Leather	-	-	-	-	-	-
Chemical	4,165	19.0	1,096	5.2	214	0.5
Metal	166	0.8	29	0.1	8	0.0
Machinery	2,706	12.4	2,813	13.3	432	1.1
Petroleum	619	2.8	128	0.6	178	0.4
Glass & Ceramics	4	0.0	8	0.0	-	-
Others	445	2.0	280	1.3	67	0.2
Manufacturing Total	8,227	37.6	4,872	23.0	1,023	2.5
Telecommunication	1,721	7.9	604	2.9	4,663	11.6
Construction	23	0.1	11	0.1	34	0.1
Trading	2,582	11.8	3,691	17.4	1,073	2.7
Finance & Insurance	6,468	29.6	10,179	48.1	29,767	73.9
Service	2,469	11.3	1,079	5.1	1,358	3.4
Transportation	27	0.1	17	0.1	2,092	5.2
Real Estate	291	1.3	689	3.3	229	0.6
others(*)	55	0.3	20	0.1	26	0.1
Non-Manufacturing Total	13,636	62.4	16,289	77.0	39,242	97.5
TOTAL	21,863	100.0	21,161	100.0	40,265	100.0

Note: The Value is calculated on ex post facto reporting or prior notice basis.
*: others including Agriculture

Source: the Ministry of Finance, “Outward and Inward Foreign Direct Investment (FDI) ”² (<http://www.mof.go.jp/1c008.htm>),

¹ The term “foreign investor” is defined as follows (Foreign Exchange and Foreign Trade Law, Article 26):

- i) A natural person who is a non-resident;
- ii) A juridical person or other organization established under foreign legislation, or a juridical person or other organization having its main office in a foreign country;
- iii) A company in Japan in which 50% or more of rights to vote are occupied by i) or ii).
- iv) A corporate body or other body in Japan, in which the majority of executives are i).

² This statistic was abolished in FY 2004.

Question Q8

What steps is Japan taking to examine factors, other than the regulatory regime, which may account for low levels of inward FDI and how would the Government of Japan propose to address these factors?

Answer

In order to promote inward FDI into Japan, the Japan Investment Council (JIC) set up in June 2006 the Program for the Acceleration of Foreign Direct Investment in Japan, which focuses on 3 key issues: (1) Regional centers for economic growth and improved quality of life; (2) Improvement of an investment environment capable of overcoming global competition; (3) Domestic and international public information activities. The Government of Japan takes efforts in promoting inward FDI through implementing measures in the program. For the details of the program, please refer to <http://www.investment-japan.go.jp/index.htm>

Question Q9

What are the policy reason underpinning maintenance of the requirement of prior notification (to Minister of Finance and Minister in charge of industry involved) for Inward FDI in industries recognized in the OECD Code of Liberalization of Capital Movements? (para II.51, WT/TPR/S/175)

Answer

The policy reason is that inward FDI to these sectors might adversely and seriously affect the smooth management of the Japanese economy.

Question Q10

Could Japan please indicate what other products, apart from fish, are subject to quantitative import restrictions? Could Japan please provide a breakdown of import trends in the past five years in those individual fish product lines subject to quantitative import restrictions?

Answer

The items which are subject to import quotas, can be confirmed by checking the publicly available "Import Notice", which is based on the Foreign Exchange and Foreign Trade act. Abstract have been provided in the replies to the WTO Committee on Import Licensing's questionnaire on import licensing procedures.

An import trend in the past five years in fish products subject to IQ system is as follows:

Import trends in fishery products subject to the import quota system (Unit: Mt)

item	2001	2002	2003	2004	2005
Alaska pollock	142,569	130,277	103,149	133,090	119,409
Cod	34,717	33,990	29,310	32,422	31,213
Cod and pollock roe	42,659	35,779	38,564	39,497	44,042
Herring	52,548	49,158	48,841	40,191	43,126
Horse mackerel	64,134	49,096	43,065	52,442	44,391
Mackerel	173,954	149,017	128,592	100,993	95,064
Pacific saury	903	10,429	631	596	619
Sardine	19,738	31,971	38,865	30,455	33,589
Yellow tail	747	744	445	295	787
Cuttle fish and squid excluding Mongo-Ika	48,328	64,759	55,075	65,160	68,797

Scallops	606	468	462	824	870
Adductors of shell-fish	700	791	580	723	780
Edible seaweeds and its food preparations	3,597	3,324	3,752	2,569	3,146

Note: Figures are calculated from the Trade Statistics of Japan, Ministry of Finance

Question Q11

Can the Government of Japan advise whether it has any plans to streamline the ROCB registration process by, for example, making it less costly and less complex?

Answer

The revised JAS Law enacted in March 2006 introduced the ISO/IEC Guide 65 as the objective registration criteria of certifying bodies. The ISO/IEC Guide 65 provides the general requirements for bodies operating product certification systems and is applied by other countries as well. The adoption of the ISO/IEC Guide 65 contributes to making the registration system under the JAS Law more transparent, which facilitates the registration process.

The revised JAS Law requires applicants to pay registration fees, based on actual expenses. Overseas applicants are charged the actual travel expenses for officials conducting on-site inspections, in addition to the registration fees, which include the costs of screening. Domestic applicants are charged the registration fees which include the fixed travel expenses of officials. Therefore, both domestic and overseas certifying bodies are equally treated. With regard to travel expenses, the cost borne by each applicant is minimized as much as possible by competitive tenders of airfares.

Japan has also made efforts to reduce administrative burden by allowing applicants to submit certain documents, such as latest assets inventories or balance sheets, in English.

Question Q12

Is there any programme proposed or underway to educate consumers and industry about the positive list system and appropriate weighting to be given to the actual health risks involved behind such a system?

(For example, how is the Government of Japan explaining to consumers that there are cases in which some residue detection above a low default MRL poses no health risk.)

Answer

The Government of Japan (GOJ) is, with inter-ministerial collaboration, proceeding with a program entitled, "Food Risk Communication". The program is being implemented nationwide to communicate food risk to consumers and food-related businesses and to exchange relevant information and opinions between governmental organizations, consumers, and food industries. The GOJ is actively working to ensure that people know about the new system and have accurate knowledge about health risks. Specifically, the relevant ministries hold symposia under the theme of the positive list system for pesticide residues and human health risks of agricultural chemicals (pesticides, feed additives, and veterinary drugs), and government employees participate in seminars organized by consumer and trade organizations.

Question Q13

Can the Government of Japan provide figures on the number of residue detections above MRLs that have occurred domestically, as well as the number of other such detections that have occurred since the positive list came into force on 29 May last year? In addition can Japan express those numbers as a percentage of total production or total imports (as the case may be) for the period in question?

Answer

Inspection of domestically-produced foods is carried out by prefecture governments. The MHLW collects the inspection results from the prefecture governments every fiscal year. It is also going to collect the results, including number of violations, for FY 2006.

The rate of violation in the total number of inspections of agricultural chemicals residues and veterinary drug residues in imported foods from 29 May to 30 November, 2006 was 0.8%.

Question Q14

Can Japan please explain what expedited processes it plans to put in place to enable speedy resolution of issues which may arise as a result of teething problems in the transition to the new system?

Answer

Japan does not take any special measures to enable speedy resolution of issues which may arise as a result of teething problems in introduction of the positive list system for agricultural chemicals (pesticides, feed additives, and veterinary drugs). However, Japan will conduct risk evaluations for chemicals for which residue standards have been provisionally established in the process of introducing the new system for five years from now and amend provisional standards as needed.

Question Q15

Following on from Japan's response to New Zealand's question 10 at Japan's previous Trade Policy Review, can Japan please advise on progress towards ensuring that regulators recognise the test results from officially accredited domestic and overseas laboratories? What scope is envisaged for recognition by the Government of Japan of results from tests carried out in officially accredited laboratories overseas for compliance with MRLs?

Answer

Japan's previous response to question 10 from New Zealand is specific to the Japan Industrial Standards (JIS). It does not include the recognition of test results about residual agricultural chemicals in food.

Importers are not obligated to attach the test results about residual agricultural chemicals issued in the exporting country when importing food.

Question Q16

New Zealand welcomes Japan's recent additions to the Non-Quarantine Pest List including the most recent implementation in accordance with SPS Notification G/SPS/JPN/161 last year. We would appreciate Japan providing an indicative timeline for its review of further pests to include on the Non-Quarantine Pest List.

Answer

Japan has notified of its intention to revise our plant quarantine measures including additions of certain pests to the non-quarantine pests list (G/SPS/N/JPN/175). This notified proposal will be adopted as soon as possible after the final date for comment. Japan continues to carry out reviews of further pests to include on the non-quarantine pests list. Upon completion of PRA on such pests, Japan will make notifications.

Question Q17

What steps will the Government of Japan be taking to apply the experience of these zones to benefit structural reform nationwide? What timetable will apply to any such steps?

Answer

The Government of Japan has been utilizing its experiences in the zones to promote structural reform nationwide.

Normally, one year after the special measures are adopted, a third party (the Evaluation Committee) evaluates the experiences in the zones, and if there are no significant problems, the Government of Japan changes regulations nationwide. The Evaluation Committee also makes reports periodically.

In addition, there are some cases in which regulating ministries themselves decide whether to expand the regulatory reforms nationwide.

In total, 121 special measures have been expanded to the whole country so far. The Government of Japan is going to continue this effort.

Question Q18

We would appreciate an update on progress towards implementation. In particular, could you please indicate, with quantitative data, the extent to which the Basic Plan has shifted Japan's support measures away from trade-distorting instruments such as market price support to non-trade distorting forms?

Answer

The Government of Japan enacted the new law to implement the new income support measures in June 2006. As the new policy is to be implemented in April 2007, it is difficult to indicate policy measures with quantitative data at the present time.

Question Q19

Please explain the criteria for determining a "business unit" and "core farmer" for the purposes of the Basic Plan and provide examples of core farmers and business units formed pursuant to it.

Answer

Principal farmers in their respective regions will be identified by using the system of "certified farmers", and these farmers will be targeted by various policy measures. In this process, village-based farming management systems that are expected to develop to be efficient and stable management systems in future will be also identified as principal farmers.

(Under the system of the "certified farmer", local municipalities will prepare, based on the Law for Promoting Strength of Agricultural Management Bases, basic plans which include targets of efficient and stable agricultural managements, taking into consideration the actual conditions of the region. Farmers who want to be "certified" by municipalities have to prepare "plans for agricultural management reform" which will achieve the targets included in the basic plan.)

Question Q20

How does Japan plan to simplify its import quota procedures in the future? Please describe measures which might be taken and an indicative timeframe.

Answer

Japan has tariff quota systems for certain dairy products. The procedures of these TRQ are of an appropriate nature, being based on the characteristics of each product and reviewed annually. We do not plan to change the current procedures at present.

Question Q21

How does Japan plan to introduce greater flexibility in its quota reallocation mechanisms to more efficiently meet Japanese consumer and producer demand?

Answer

Japan has already introduced a quota reallocation mechanism for TRQ of all dairy products. The administration of this mechanism is designed to respond to the demand from Japanese consumers and producers in a flexible manner.

Question Q22

Para IV.12 of the Secretariat report refers to measures to impose restrictions on the production of raw milk. How will Japan deal with any excess raw milk production if it occurs in 2007 or subsequent years?

Answer

There is no production restriction system for raw milk in Japan. However, the producer group has been administering the voluntary supply control of raw milk since 1979 in order to ensure stable and orderly supply to meet the demand for dairy products.

They plan to maintain this voluntary supply control and, in the case of raw milk excess, the producer group will decide the way in which to deal with it.

Question Q23

Given that domestic producers now have a larger market share than before the discovery of BSE in Japan, what agricultural trade policy objectives would be served by imposing the safeguard, if triggered, in these circumstances?

Answer

In Japan, since the recent volume of beef imports has been lower than before the outbreaks of BSE both home and abroad, the share of domestic beef production as a portion of total beef supply has relatively increased. However, the volume of domestic beef production itself is on the decrease.

As for the emergency tariff measures for beef, they were introduced as an indispensable compensation for the voluntary tariff reduction below the bound rate based on the result of consultations with exporting countries during the Uruguay Round negotiations.

In response to the decision of the resumption of imports of US and Canadian beef products, with regard to this measure on beef, the Government of Japan revised the base import volume for calculation of the trigger level as a special case for FY 2006, in consideration of the trends in beef price and consumption.

In December 2006, the Council on Customs, Tariff, Foreign Exchange and other Transactions submitted a report to the Government of Japan, recommending it to apply the treatment to FY 2007 in the same way as FY 2006. The recommendation took account of the tentative suspension of import procedures for U.S. beef

from late January to July 2006. Based on the recommendation, related bills will be deliberated in the current Diet session.

Question Q24

What objectives or targets have been set for growth in Japan's agricultural exports and improving Japan's international competitiveness in agricultural exports? What strategies does the Government of Japan intend to use to promote Japan's export competitiveness? What particular products or countries have been targeted for export and what policies and programmes are in place to this end?

Answer

Japan's agricultural exports are growing recently, because Japanese cuisine is gaining popularity in the world and income level in Asian countries is increasing.

Under the Abe administration, the government has set a target of 1 trillion yen for exports of agriculture, forestry and fishery products by 2013 and is carrying out the following measures.

- *Introduction and spread of Japanese food culture to the world, advertisement of attractive Japanese cuisine and agricultural products.*
- *Indirect assistance to entrepreneurs such as in participation in overseas exhibitions, opening of outlets in overseas markets, collection and analysis of information regarding importing systems in foreign countries.*
- *Creation of proper conditions for export, such as effectual control of product varieties developed in Japan to protect Japanese brands, and quarantine negotiations with foreign countries.*

Question Q.25

How does the Government of Japan envisage cooperation with, and investment by, foreign entities assisting with goals identified in para 113 of Japan's report (WT/TPR/G/175) of ensuring "sustainable development of agriculture and a stable supply of food", "reduc[ing] costs in the entire food system" and "mak[ing] use of more technologies"?

Answer

The Ministry of Agriculture, Forestry and Fisheries (MAFF) of Japan has implemented policies which aim to increase foreign direct investment (FDI) in Japan.

Specifically, MAFF conducts required examinations of applications by foreign entities for the FDI in the sectors of agriculture, forestry and fisheries in Japan, in an appropriate manner, under the advance notification system based on the "Foreign Exchange and Foreign Trade Law" (No. 228 of the law in 1949).

The abovementioned advance notification system shortens the time required for examinations of foreign direct investment by foreign entities in the sectors of agriculture, forestry and fisheries in Japan, depending on the details of applications.

Question Q26

What does the requirement for permission to engage in port transport services entail? Are there discriminatory elements in the approval process which would restrict access by foreign services suppliers?

Answer

The licensing requirement is stipulated in Article 6.1 in the Port Transport Business Law as follows:

- *To require adequate facilities and workers at each port and port transport business.*
- *To require appropriate plans to implement port transport business.*
- *To require the scope of responsibility of the management system to be specified.*
- *To ensure the accounting foundation of the business.*

The Minister of Land, Infrastructure and Transport must permit the operation of port transport business when an application meets the above-mentioned requirements. In addition, there is no clause in the Port Transport Business Law which specifies discrimination against foreign services suppliers with regard to their entry into port transport business.

Question Q27

Can Japan please explain the reasons for listing an MFN exemption on international freight forwarding in its 25 June 2005 revised offer and detail the circumstances under which Japan would expect to remove this?

Answer

The reason why Japan has listed the international freight forwarding services in its MFN exemption list is to ensure fair business activities in this sector where there are a variety of regulations in other WTO members and to grant an operation permission or registration on a reciprocal basis.

With regard to the removal of this MFN exemption, this will depend on the outcome of this round of negotiations.

Question Q28

In the light of the importance the Government of Japan places on infrastructural services as a determinant of business competitiveness, we would be interested to know what plans the Government of Japan has to review the regulatory environment for air transport services to seek enhanced efficiency and competitiveness.

Answer

Japan's international air transport regulations are working adequately, and Japan considers that they do not need to be amended at this time.

Question Q29

Can Japan please provide details on the number of such joint enterprises established since this amended regulation was introduced in August 2005, as well as information on the scope of business covered by such enterprises? Can Japan please indicate any further amendments planned to the regulations concerning the handling of legal business by foreign lawyers?

Answer

According to the statistics of the White Paper issued by the Japan Federation of Bar Associations, the number of joint enterprises with Gaikokuho-Jimu-Bengoshi (foreign lawyers qualified under Japanese law) and Bengoshi (lawyers qualified under Japanese law) are 23 cases (31 March 2006). Joint enterprises may provide legal services.

As the amended Special Measures Law Concerning Handling of Legal Business by Foreign Lawyers just entered into force in April 2005, no amendments are planned to the law or the regulations at present.

Question Q30

Can Japan please explain any measures it proposes to take to address the differential tax treatment referred to above?

Answer

Japan does not plan to propose new measures. The difference between the taxation of MEXT-designated foreign universities' branches in Japan and that of the school juridical persons is derived from the difference in the form of establishment; there is no discrimination based on nationality. Any foreigner may establish a school juridical person according to the requirements which are equally applicable to Japanese, in which case they are entitled to the same favorable tax treatment as Japanese universities.

Question Q31

The Secretariat notes at para IV.70 that Japanese universities receive favourable treatment with regard to corporate tax that branches of foreign universities do not receive.

In his inaugural policy speech to the Diet on 29 September 2006 Prime Minister Abe stated his goal to "...channel in new vitality to the Japanese economy through the power of innovation and openness." In that same speech he also placed emphasis on rebuilding Japan's education sector. Can Japan explain how it proposes to encourage innovation and openness in its reform of the education sector? In particular, can Japan explain how it proposes to encourage the contribution foreign educational services can make to Japan's innovation and openness?

Answer

The excerpt quoted in your question regarding the 29 September speech ("...channeling in new vitality to the Japanese economy through the power of innovation and openness") was not directly related to the section on "Rebuilding Japan's Education".

Question Q32

Can Japan update on the outcome of its discussions with UNESCO/OECD on online education services and advise how it intends to treat recognition of such services?

Answer

Japan already had measures prior to the "Guidelines for Quality Provision in Cross-Border Higher Education (UNESCO/OECD)"; for example:

- Japanese universities have the authority to recognize credits from foreign universities that are acquired through correspondence education, such as education via the Internet.
- Japanese universities have the authority to recognize qualifications of a student for admission to graduate schools when a student has completed 16 years of school education of a foreign country in Japan by taking the correspondence education of a foreign university.

TURKEY

Question Q1

Secretariat Report reads that inward FDI into Japan remains substantially lower than outward FDI compared to the level of other developed countries.

It is understood from para 12 of the Secretariat Report that Japan is taking some measures within the overall tax reform to remove tax impediments to inward FDI.

In light of the above mentioned information, we will be pleased if Japanese Delegation could inform us

1. on the reasons of the fact that inward FDI into Japan is low compared to developed countries,

Answer

Although there may be various reasons why the level of inward FDI stock in Japan is low compared to other developed countries, Japan intends to improve its investment environment in order to promote inward FDI into Japan. For details please refer to the following websites:

“Investment in JAPAN Information Center”

<http://www.investment-japan.go.jp/index.htm>

“White Paper on International Economy and Trade 2006”, Chapter 3, Section 2.4: Analysis of the factors causing the low level of direct inward investment in Japan.

<http://www.meti.go.jp/english/report/data/gWT2006fe.html>

Question Q2

In light of the above mentioned information, we will be pleased if Japanese Delegation could inform us if there are any other planned and/or implemented measures to increase the level of inward FDI flow besides tax related reforms,

Answer

In order to promote inward FDI in Japan, the Japan Investment Council (JIC) set up in June 2006, the Program for the Acceleration of Foreign Direct Investment in Japan, which focuses on 3 key issues: (1) Regional centers for economic growth and improved quality of life; (2) Improvement of an investment environment capable of overcoming global competition; (3) Domestic and international public information activities. The Government of Japan takes efforts in promoting inward FDI through implementing measures in the Program. For the details of the program, please refer to <http://www.investment-japan.go.jp/index.htm>

Question Q3

Secretariat Report reads that inward FDI into Japan remains substantially lower than outward FDI compared to the level of other developed countries.

It is understood from para 12 of the Secretariat Report that Japan is taking some measures within the overall tax reform to remove tax impediments to inward FDI.

In light of the above mentioned information, we will be pleased if Japanese Delegation could inform us.

if measures taken within the tax reform so far, approved to be effective to increase the inward FDI into Japan.

Answer

We have been taking measures to establish a conducive environment for inward FDI such as enhancing the business environment, but no new tax measures aiming specifically at FDI promotion were introduced in recent tax reforms.

In the meantime, we have been concluding and revising tax treaties aiming at the promotion of FDI flows, although they are not necessarily reform measures.

Question Q4

We appreciate information by Japanese Delegation to clarify the criteria according to which upper limits for residues in agricultural chemicals were set and if the relevant notification to the WTO SPS Committee was made.

Answer

Japan introduced a “positive list system” for agricultural chemicals (pesticides, feed additives, and veterinary drugs) in foods. This system is based on the Law to Partially Revise the Food Sanitation Law (Law No. 55, 2003). The system took effect on 29 May, 2006. From the viewpoint of protection of public health and smooth implementation of the system, it was necessary to provisionally establish maximum residue limits (MRLs) for agricultural chemicals without MRLs.

Provisional MRLs have been established taking into consideration the following standards:

- i. CODEX standards,*
- ii. Registration withholding limits based on the Agricultural Chemicals Regulation Law (Law No. 82, 1947), limits of determination (LODs) for veterinary drugs at the time when they were authorized based on the Pharmaceutical Affairs Law (Law No. 145, 1960), or LODs for feed additives at the time when they were authorized based on the Law for Safety Assurance and Quality Improvement of Animal Feed (Law No. 35, 1953), and*
- iii. Standards established by other countries where MRLs are assumed to be established based on toxicity study data equivalent in quality to those used in scientific evaluations by JMPR (Joint FAO/WHO Meeting on Pesticide Residues) and JECFA (Joint FAO/WHO Experts Committees on Food Additives). These countries are Australia, Canada, the EU, New Zealand, and the United States.*

In the process of finalizing residue standards, Japan notified the WTO (G/SPS/N/JPN/145) in accordance with the WTO/SPS Agreement, and the comments obtained from member countries were reflected in the final MRLs.

Question Q5

On the basis of the information given at para 55 of the Secretariat report, we would like to learn if Japan has notified her import prohibitions on beef and poultry for purposes of BSE and avian flu to the relevant committees of the WTO.

Answer

Japan has made the following notifications:

For BSE issues:

G/SPS/N/JPN/110, G/SPS/N/JPN/101, G/SPS/N/JPN/97, G/SPS/N/JPN/81, G/SPS/N/JPN/74, and G/SPS/N/JPN/71

For avian influenza issues: G/SPS/N/JPN/147.

Question Q6

Could Japanese Delegation explain if there are any researches made in order to bring into light the reasons of low labour productivity in agricultural sector in Japan?

Question Q7

We would also appreciate the further comments of esteemed Japanese Delegation on the explanation made at the para 6 of the Secretariat Report that the low level of labour productivity in agriculture may be stemming from relatively high border protection and support in this sector compared with other sectors.

Answer

Even though the labor productivity of Japanese agriculture is lower than that of other sectors, we recognize that many countries are in a similar situation.

The Japanese average tariff rate for agricultural products is low compared to other countries. Moreover, both the amount of domestic support for agriculture (AMS) and the proportion of it to gross agricultural output in Japan are much lower than those of the U.S. and the EU.

Question Q8

Could Japanese Delegation explain what types of measures are in effect within this law to achieve higher food self sufficiency ratio?.

Answer

To attain the target of food self-sufficiency, (1) on the consumption side, the government is implementing a nationwide campaign for easy-to-understand and practical “food education”, including spreading and utilizing a “Diet balance guide” for the promotion of a “Japanese-style diet”, and (2) on the production side, the government is encouraging production to cater to consumers’ needs by strengthening ties between the food industry and farmers, and supporting principle farmers who are capable and have a sound sense of business management.

THAILAND

Question Q1

According to the Secretariat report, Japan has introduced import prohibitions on certain chemicals, certain narcotics, rough diamonds from Cote d’Ivoire, and gems likely to be used for bio-terrorism. Are there any other products that Japan currently subjects to import prohibitions, specifically agricultural products? If yes, please identify.

Answer

The importation of certain kinds of chemicals, narcotics, rough diamonds from Cote d’Ivoire, etc., referred to by Thailand is subject to approval by the Minister of Economy, Trade and Industry under the Foreign Exchange and Foreign Trade Control Law. In addition, some products, such as narcotics, weapons, or goods infringing intellectual property rights, are prohibited for import under Article 69-11 of the Customs Law. With regard to agricultural products prohibited for import under the Customs Law, true hemp, opium, poppy straw, and goods which infringe upon the rights of breeders or which are defined in the Article 2.1.1 thorough 2.1.3 of the Unfair Competition Law are included. Furthermore, all imports originating from or loaded in North Korea have been practically prohibited by imposing the obligation to obtain the approval of the Minister of Economy, Trade and Industry under the Foreign Exchange and Foreign Trade Control Law.

Question Q2

The Secretariat report states that “According to the authorities, Japan’s mandatory technical regulations under the Electricity Utilities Industry Law and the Electrical Appliance and Material Safety Law are aligned with international standards” (emphasis added). However, in Table III. 4 (page 42) which sets out

major standards and technical regulations for 2005, no mandatory technical regulations under the mentioned laws are listed as corresponding to international standards. We would appreciate it if Japan could clarify this discrepancy.

Answer

The technical regulations under the Electrical Appliance and Material Safety Law have been adjusted to the IEC standards when there are IEC standards which correspond to these.

However, simple comparison on harmonization between Japanese mandatory regulations and international standards would be difficult because the 450 items in Table III. 4 contain approximately 80 products for which corresponding IEC standards do not yet exist.

Question Q3-1

In May 2006, the Ministry of Health, Labor and Welfare (MHLW) revised the positive list system for agricultural chemical residues in foods. Could Japan please provide detailed information on its reasons and scientific grounds for applying this system?

Answer

The detailed information is available at:

<http://www.mhlw.go.jp/english/topics/foodsafety/positivelist060228/introduction.html>

Question Q3-2

Please also verify whether the following information is correct:

- A) With regard to the revision, the number of agricultural chemicals to which the Residual Agricultural Chemicals Standard (RACS) will be applied has increased from 229 to 700 items.
- B) The Japanese Government will permit the distribution of foods in its domestic market if all levels of RACS are less than the standard level determined by MHLW.
- C) Regarding rice imports, the number of products on which RACS will be applied has increased from approximately 200 to 500 items. In addition, the safety inspection has become more stringent as the new system consists of 3 inspection processes including pre-shipment sample inspection, loading sample inspection and regulatory monitoring.

Answer

- A) *The number of agricultural chemicals (pesticides, feed additives, and veterinary drugs) for which maximum residue limits (MRLs) were established increased from 283 to 799 on May 29, 2006, when the new system took effect. The present number is 803.*
- B) *Japan requests that any food distributed in the domestic market comply with the MRLs or the uniform limit (0.01ppm) established under the Food Sanitation Law (Law No.233 1947).*
- C) *Import inspection based on the Japanese Food Sanitation Law aims at monitoring purposes only. The number of agricultural chemicals (pesticides, feed additives, and veterinary drugs) with MRLs for rice increased from 122 to 364 on 29 May 2006, and is now 366.*

The Ministry of Agriculture, Forestry and Fisheries (MAFF) of Japan imports rice as a State Trading Enterprise. The MAFF is considered to be an importer (an importing enterprise) by the Food Sanitation Law of Japan.

On the issue of the inspection of the residue of agricultural chemicals in imported rice, from the viewpoint of avoiding economic losses to the importer and exporter due to the purchase of rice which contains agricultural chemicals exceeding MRLs, the MAFF as an importing enterprise conducts pre-shipment sample inspections and loading sample inspections in order to correspond to the positive list system. The MAFF examines all the agricultural chemicals on the positive list through both inspections.

The MAFF gave ample explanation to concerned organizations in Thailand before the introduction of the new inspection system; the Rice Exporting Association, the Ministry of Commerce, the Ministry of Agriculture and Cooperatives and the MAFF has gained these organizations' understanding.

Question Q4

The Secretariat report states that the Basic Law on Food, Agriculture and Rural Areas aims to achieve a higher food self-sufficiency ratio, and shift away from price support to import support. How has Japan notified this support (direct payment) to the WTO, i.e., under which category of domestic support?

Answer

Japan will give notification of the necessary information on new or modified domestic support measures in accordance with the formats (G/AG/2) agreed by the Committee on Agriculture.

Question Q5

Para 11: The amount of the subsidies provided for rice was not available to the secretariat as the year 2002 was the latest year for which information was available. Could Japan please provide updated figures and details of its current rice subsidies?

Answer

Japan is eagerly preparing for the domestic support notification for FY 2003.

Question Q6

The Secretariat report also notes that Japan exports rice as food aid, with the Japanese government providing US\$ 91.3 million for the purchase of grains as food aid to LDCs and net-food importing developing countries between June 2002 – 2003. Could Japan provide details on the origins of these rice purchases, i.e., whether they were purchased from domestic or international sources? If applicable, have any of the food aid rice exports been categorized as re-exports?

Answer

Japan has conducted food aid in response to the requests from recipient countries or international organizations. The origin of rice for this is domestic and imported rice. In operating food aid, Japan pays attention in every respect, including the origin of rice, to conformity with the WTO agreements and other international disciplines. Japan conducts food aid in a manner which complies with the Food Aid Convention (FAC), in order to implement international commitments. Specifically, Japan follows the procedures of the FAO Principle of Surplus Disposal, such as advance notification or consultation, in order to prevent food aid provided by Japan from displacing commercial trade flows and from discouraging agricultural production in the recipient countries. As stated above, food aid conducted by Japan is completely different from re-export, which is a concept where a recipient country exports aid goods to a third country.

Question Q7

Para 12: According to the Secretariat report, the Japanese government implements a volume cap for agricultural products such as rice and milk through the Production Adjustment Programme budget. How does Japan notify this support (direct payment) to the WTO, i.e., under which category of domestic support? Please also confirm whether the budget allocated to the Production Adjustment Programme for FY 2006 amounted to ¥165.7 billion, and please indicate how much of the budget was utilized.

Answer

The payment for conversion from rice production is notified to the WTO as a 'green box' measure since it is classified as an environmental programme in accordance with the Agreement on Agriculture. The budget for the payment amounted to ¥165.7 billion in FY 2006, while data on the total of actual payment in FY2006 is not yet available. The payment, however, does not include the direct payments to milk producers described in Paragraph 12 of the Secretariat report.

Question Q8

The Ministry of Agriculture, Forestry and Fisheries (MAFF) requires imported beef and poultry to come from factories certified by MAFF agencies. In practice, MAFF must send officers to exporting countries and the process can be very time-consuming. Please indicate whether Japan intends to allow government authorities of the exporting country to certify these factories instead of MAFF agencies?

Answer

With regard to meat from Thailand, in consideration of foot-and-mouth disease circulation and avian influenza outbreaks in Thailand, Japan requires heat processing of meat. Heat treatment facilities shall be recognized based on the results of on-site visits by officials of Japan, in accordance with the relevant bilateral protocols.

Question Q9

We understand that Japan currently imposes an import levy and surcharge on sugar at the level of approximately US\$700 – 800/mt. Could Japan please provide precise figures on its sugar import levy and surcharge?

Answer

Japan imposes import levies and tariffs on raw and refined sugar within WTO concession limit (¥71.8/kg for raw sugar, ¥103.1/kg for refined sugar). The rate of import levy on raw sugar applied from January to March 2007 is ¥34,937/mt. The rates of import levy and tariff on refined sugar applied in the same period are ¥46,449/mt and ¥21,500/mt, respectively.

Question Q10

According to the Secretariat report, the Japanese government removed restrictions on foreign doctors and nurses with Japanese medical licenses in March 2006. Could Japan please clarify these deregulations on medical service providers?

Answer

Japan removed restrictions on foreign doctors and nurses with Japanese medical licenses working in medical services in Japan on 30 March 2006, which relaxes limitations on the length and location of services; for example, foreign nurses are permitted to work for up to seven years after gaining their license

(previously four years after completing training), and we do not have any plans to relax the limitations further for the moment.

Question Q11

In light of Japan's advancing aging society, does the government have any plans to further relax the criteria for applying for medical licenses or work permits in medical services? If so, please elaborate.

Answer

We do not have any such ideas.

THAILAND - ADDITIONAL REPLIES

Question Q1

As this issue does not appear in detail in the TPR reports, could Japan please identify all products covered by this law, as well as provide details about any relevant standards, testing, and conformity assessments that Japan used to establish permitted levels?

Answer

- (1) *The products which are required to manage and report specified chemical substance by the law revision are as follows;*
- a) *personal computers*
 - b) *unit-type air conditioners*
 - c) *television sets*
 - d) *refrigerators*
 - e) *washing machines*
 - f) *microwave ovens*
 - g) *clothes dryers*

<http://www.meti.go.jp/policy/recycle/main/english/law/promotion.html>

- (2) *The limit of content and the way of information provision are established based on JIS (Japanese Industrial Standards) C0950 which is available on the website of JISC (Japanese Industrial Standards Committee).*

<http://www.jisc.go.jp/app/pager?id=108527>

Question Q2

Could Japan please provide details on how the money deposits for testing procedures are established and whether they are commensurate with the approximate cost of services rendered?

Question Q3

As mentioned, the list of subject chemicals is extensive, covering over 800 types of residues, resulting in additional testing costs for traders. Does Japan intend to revise its system in the near future to reduce the amount of subject chemicals and the required level of deposits? Thailand would encourage such revisions to further facilitate trade.

Answer

In general at import inspections under the Japanese Food Sanitation Law, only monitoring tests are conducted by the Ministry of Health, Labour and Welfare, except for products which have a high probability of violating the Japanese Food Sanitation Law. Monitoring tests don't require any expenses from the importers and exporters.

The Food Department of the Ministry of Agriculture, Forestry and Fisheries, as a State Trading Enterprise, monitors residual levels of agricultural chemicals, of which the Japanese Food Sanitation Law designates the residual levels, of imported rice. This monitoring test is conducted in order to comply with the Food Sanitation Law and to ensure safety of imported rice, as well as to avoid economic losses due to the disposal or return of the imported rice, whose level of residual chemical should exceed the limit provided by the Food Sanitation Law and whose sale is prohibited by the Food Sanitation Law. Therefore, the monitoring tests are indispensable for the importers and exporters of rice.

INDIA

Question Q1

Indian exports to Japan are affected by a number of issues, which include SPS/TBT measures, and high transaction costs. The inspections conducted by the Japanese authorities with regard to the place of origin labeling in case of fruits, vegetables, fish, meat etc is a very strong non-tariff barrier. The rules governing imports of fruits and vegetables into Japan are excessively restrictive and at times stricter than those applicable in other developed nations. In case of processed food items, the presence of additives used for preservation or enhancing the product quality and life and otherwise considered safe are objected to by authorities in Japan. Meat and meat products exports to Japan face difficulties on account of stipulations that ban use of natural and synthetic hormones in livestock production. The distribution channels in Japan are extremely complex and highly regulated. As a result transportation and distribution costs for certain products like rice are excessive and make the same exporting to Japan extremely difficult. Respecting Japan's decision to protect its farm sector and reminding Japan of its obligations under the WTO, can Japan tell us how it proposes to permit developing countries like India to begin exporting to Japan in an effective manner?

Answer

Helping developing countries to maintain and expand market access opportunities for their products is indeed one of the key objectives of the Development Initiative for Trade, announced by Japan in December 2005, and Japan will continue to make efforts for the implementation of this initiative. For example, Japan has provided technical assistance through various channels such as our contributions to the Global Trust Fund and international organizations.

Question Q2

Japan imported yen 383 billion worth of fruits in 2005. Import of fruits from India was, however, only worth yen 4.3 billion or just over 1% of its total imports of fruits. Although Japanese market for mango imports from India has been opened up as of last year, yet it is subject to VHT treatment, which is applicable exclusively for Japanese market. Moreover, as per Japanese regulations, mango imports will be totally suspended from the country, even if a single fruit fly is detected in the exported mango. We would request Japan to simplify the procedure for import of other fruits instead of seeking separate approvals.

Answer

To allow import of mangos from India, disinfestation by vapor treatment was set as a requirement through bilateral technical consultation with India in order to prevent the introduction of pests that have not

occurred in Japan, such as the Bactrocera dorsalis species complex whose introduction could cause serious damage to Japanese crops.

It is necessary to examine the disinfectational effect of each variety of fruit because the effectiveness of disinfection may vary according to the variety.

Question Q3

Japan imported 396 billion yen worth of vegetables in 2005. India's share was negligible at 0.143 billion yen i.e. just 0.036%. The chief reason for this appears to be the import control regime of Japan in this area. We request Japan to provide details of all these requirements clearly in one document in order that India may be able to fulfill the same and start exporting to Japan.

Answer

Japan's import requirements for vegetables from India are as below:

1. SPS Measure (the Plant Protection Law, the Food Sanitation Law)

Import of vegetables to Japan is regulated by the Plant Protection Law and the Food Sanitation Law.

- Plant Protection Law

The relevant information is available in English from the following website.

<http://www.pps.go.jp/english/index.html>

- Food Sanitation Law

The relevant information is available in English from the following website.

<http://www.mhlw.go.jp/english/topics/importedfoods/index.html>

2. TBT Measure (the Law Concerning Standardization and Proper Labelling of Agricultural and Forestry Products (JAS Law))

The JAS Law prescribes mandatory labeling for all foods and beverages, including fresh food, processed food, etc., for mass consumption. With regard to vegetables, labeling of the name and place of origin is required in accordance with the Quality Labeling Standard for Fresh Foods under the JAS Law.

The relevant information on the standard above is available in English from the following website.

- Quality Labeling Standard for Fresh Foods

http://www.maff.go.jp/soshiki/syokuhin/hinshitu/e_label/file/Labeling/QLS_perishable_food.pdf

Question Q4

The import of poultry meat and poultry products from India was banned immediately after outbreak of bird flu in the country in Feb, 2006. Although India notified OIE in mid-August last year that the country has become avian influenza free, Japan has its own set of procedures for lifting ban including asking for detailed report and its examination to verify that the country is avian influenza free. It is very time-consuming process and we request Japan to take steps to streamline it. In view of the recent occurrence of incidents of bird flu on the poultry farms in Japan, we would request Japan to inform the changes if any the regulations concerning import of poultry and meat products from India and how they fare with regulations concerning domestic sourcing.

Answer

In consideration of the relevant OIE guidelines, confirmation of India's avian influenza-free status is necessary in order to lift the suspension. Japan has not amended any regulation regarding the import of poultry and its products from India since July 2005 (refer to G/SPS/N/JPN/147). Japan is implementing necessary measures, including a stamping-out policy for regaining avian influenza-free status, while

Japan requires an avian influenza-free status from exporting countries/regions regarding fresh poultry meat.

Question Q5

It has been reported that strict quotas are imposed in Japan for import of items like squid, seaweed, mackerel, sardine, herring etc including from India. In the interest of promotion of trade from a developing country like India, we request that the Government of Japan should consider either to completely lift them or be substantially revised upwards.

Answer

The IQ system plays an important role in the conservation and management of fishery resources in waters adjacent to Japan. Therefore, from the viewpoint of ensuring sustainable use of the resources, Japan has no plans to lift the system.

Question Q6

Indian producers of essential oils and fragrances have also reported strong resistance in the Japanese market due to strict approval requirements for chemical imports. We request Japan to simplify these requirements to facilitate trade.

Answer

The Government of Japan obliges manufacturers and importers to submit notification before they manufacture or import new chemical substances based on the Chemical Substance Control Law (hereinafter referred to as CSCL) in order to protect human health and environment from chemical substances. The required notification procedure for manufacture and import under the CSCL is exactly the same, which means that importers are not subject to harder regulations. Therefore, this notification procedure is not a problem regarding trade facilitation.

As regards cosmetics including fragrances, when raw materials for cosmetics are imported into Japan they are not regulated by the Pharmaceutical Affairs Law (PAL). Licensed marketing approval holders in Japan which intend to import cosmetics for marketing business must submit a notification of imports, including information regarding the manufacturers in India involved in manufacturing their products, before the cargo passes Customs, as general laws on exportation and importation decree.

Question Q7

Indian exporters face a number of difficulties while exporting “Generic Formulations”.

Indian manufacturers reported difficulties in product registration in Japan largely because the product registration guidelines are reported to be available only in Japanese language.

Answer

In the Pharmaceutical Affairs Act in Japan, marketing approval holders have a obligation to undertake quality control and post-marketing safety management for their products; applications for marketing approval must then be submitted in Japanese.

Because the official language to be used in the public administration processes in Japan is Japanese, any official document, including the marketing approval application, must be in Japanese. Likewise, the official text of the guidelines issued from MHLW is in Japanese. We might consider translating the guidelines in future as a service for the users.

Question Q8

Producers of paper, paper products and paperboard have reported difficulties in accessing the Japanese market. The regulations in place in Japan with regard to quarantine procedures are extremely tough to comply with by Indian exporters. We request Japan to simplify these requirements to promote exports from India of these products.

Answer

Regarding paper, paper products and paperboard, Japan does not impose any quarantine measures.

Question Q9

We request Japan to review its visa policy for overseas employees to do on-site work in Japan as problems have been reported especially by the Indian companies operating in the IT sector.

Answer

Since 2001, Japan has been issuing multiple entry visas, which are valid for 3 years and are for the purpose of short term stays (less than 90 days), to Indian business visitors, like employees of IT companies who live in India. Authorized activities for temporary business visitors are attending business meetings, marketing research, advertising campaign, and after-sales services (such as maintenance of instruments that they installed, etc.) without remuneration for their activities in Japan.

Overseas employees of IT companies, to earn remuneration for their activities in Japan, can also apply for the certificate of eligibility for the status of residence "Engineer" in Japan when applying for a visa beforehand. Foreign nationals who have passed the examinations on information processing skills (IPS) designated by the Ministry of Justice in the Official Gazette (MJ) among those mutually recognized examinations in Japan or in foreign countries, or who have obtained the qualifications on IPS designated by MJ among those mutually recognized foreign qualifications, may enter Japan with a visa valid for the status of residence "Engineer".

HONG KONG, CHINA

Question Q1

Banking Services

We note that foreign banks may enter the Japanese market by establishing branches or subsidiaries after obtaining the relevant license. While this reflects Japan's banking regime in terms of the commercial presence mode of supply (mode 3), would Japan brief us about its regime for the provision of banking services via the cross border mode of supply (modes 1 and 2)? If cross border supply of banking services is also allowed, would Japan consider undertaking mode 1 and 2 commitments for banking services in this round of services negotiations so as to increase the predictability of the regime?

Answer

With respect to cross-border trade in financial services, Japan undertakes commitments in accordance with the Understanding on Commitments in Financial Services, making full commitment for mode 2.

Question Q2

Securities

We note that only registered joint-stock corporations may engage in securities business in Japan. However, this requirement has not been inscribed in Japan's existing GATS schedule. As it is stipulated in GATS Article XVI(e) that measures which restrict or require specific types of legal entity through which a service supplier may supply a service are subject to scheduling, would Japan advise on the compatibility of the subject requirement with its existing services commitments?

Answer

Japan inscribes a reservation in the headnote to its financial services commitments, which reads "Japan shall not be prevented from taking measures such as non-discriminatory limitations on juridical forms of a commercial presence for prudential reasons".

Question Q3

We would appreciate if Japan could elaborate on what these historical reasons are, whether such historical reasons have become obsolete with the lapse of time and whether Japan has any plan to lift these MFN exemptions.

Answer

The reason why Japan has listed the international freight forwarding services in its MFN exemption list is to ensure fair business activities in this sector, where there are a variety of regulations in other WTO members, and to grant an operation permission or registration on a reciprocal basis.

With regard to the removal of this MFN exemption, this will depend on the outcome of this round of negotiations.

The reason why Japan maintains such a measure concerning international shipping services is that Japanese shipping companies suffered an unreasonable loss through a unilateral sanction in the past and there still remains the risk of such a unilateral sanction.

With regard to the removal of this MFN exemption, this will depend on the outcome of this round of negotiations.

Question Q4

We note that the licensing requirement for an 'economic needs test' for entry into port transport and the permission requirement for establishing charges were removed for all ports in Japan in May 2006. We would like to invite Japan to illustrate to which port transport services these removal of requirement is applicable.

Answer

All "economic needs tests" have been eliminated for any port transport businesses.

Question Q5

We note that Japan has limited the number of licenses conferred to maritime cargo handling and container station and depot services suppliers in ports designated by the Government until end of May 2006. We would like to know if Japan has extended this limitation after May 2006 and if not, whether there are any plans to remove this limitation in the future offer(s).

Answer

All “economic needs tests” have been eliminated for any port transport businesses.

Question Q6

We note that office registration is required for maritime freight forwarding services suppliers operating under mode 1 in Japan and Japan also maintains market access and national treatment limitations on the same services under mode 1 and 3 by granting operation permit or governmental registration on a reciprocal basis. We would appreciate Japan’s explanation on how these requirements constitute market access / national treatment limitations.

Answer

The reason why Japan has introduced the reciprocity principle is to ensure fair business activities in this sector, where there are a variety of regulations in foreign countries. Therefore, foreign forwarders are examined based on the principle of reciprocity. If the regulations of the country where the foreign forwarder originates are more rigorous than those of Japan, this will be taken into consideration, and similar restrictions may be imposed on the forwarder depending on conditions.

Question Q7

Japan has ascribed the comparatively high landing fees for three major international airports to costs associated with environmental protection. We would appreciate Japan's further elaboration on the details of these environmental protection costs.

Answer

Narita International Airport Corporation is covering the entire cost that is required to manage Narita Airport, including the execution of environmental measures, by a variety of charges such as the landing fee. Charges which are intended exclusively for the execution of environmental measures are not collected.

With regard to Kansai International Airport Co., Ltd. and Central Japan International Airport Co., Ltd., these are off-shore airports and considered to be environmentally-friendly. They do not charge users (e.g. airlines, passengers and so forth) specifically for environmental issues. The revenues (e.g. landing fees) of these companies alone cover the cost of airport operations and administration.

Question Q8

We understand that Japan has currently maintained market access limitations for its mode 3 commitments in road freight transport services (CPC 7123). According to Japan's revised offer submitted in June 2005, limitations may be applied on the number of service suppliers, on the number of service operations or on the quantity of service output on a temporary and non-discriminatory basis. We would like to know under which conditions could Japan trigger such temporary limitations, and how frequent have such temporary limitations been imposed in the past few years.

Answer

Emergency supply/demand adjustment measures are taken when truck transportation supply greatly exceeds demand in a certain area and it is difficult for the general trucking business operators to continue much of the operation in that area. However, such measures have never been taken to date.

NORWAY

Question Q1

Para 54 and footnote 60 on page 79 of the Secretariat's report contains information on revision of the "Port Transportation Business Law". We appreciate that the economic needs test is removed. We would appreciate information on the activity covered by this law, and in particular how the term "port transport" is defined in the law. Furthermore we would appreciate an explanation of what is considered "designated ports" and how the licensing system is operated, in particular with respect to the criteria that applies for new entrants to this activity.

Answer

1. *"Port Transport" is defined in Article 2 in the Port Transport Business Law, and its main activities are loading and unloading to/from ships at port, carrying in/out sheds for arranging cargos, and temporary deposit, in response to others' demands.*
2. *"Designated port" is designated by taking into account the amount of cargo handling and the influence on neighbouring ports.*
3. *The licensing requirement is stipulated in Article 6.1 in the Port Transport Business Law as follows.*
 - *To require adequate facilities and workers at each port and port transport business.*
 - *To require appropriate plans to implement port transport business.*
 - *To require the scope of responsibility of the management system to be specified.*
 - *To ensure the accounting foundation of the business.*

The Minister of Land, Infrastructure and Transport must permit the operation of port transport business when an application meets the abovementioned requirements.

Question Q2

Japan is among the most important markets for Norwegian fish and fishery products, and trade between Japan and Norway in this sector has grown greatly during the last decade. As Japan currently is not self-sufficient with regard to fish, there should be a further potential for developing trade relations in this sector. With this in mind, we have noted that Japan has liberalised its system of import quotas for some seafood products. What further plans does Japan have with regard to liberalisation of its import regulations in this sector?

Answer

The IQ system plays an important role in the conservation and management of fishery resources in waters adjacent to Japan. Therefore, from the viewpoint of ensuring sustainable use of the resources, it is necessary for Japan to operate the system properly.

UNITED STATES

Question Q1

Referring to paragraph 3 on page 1 of the Secretariat's report, the Japanese Government is introducing an ex ante regulatory impact analysis.

Can Japan provide further details on its plans for introducing this analysis, and explain how these analyses are to be used to bring about additional regulatory reform?

Answer

The Government of Japan has been implementing ex ante regulatory impact analysis (in cases of introduction, modification and abolition of bills, Cabinet orders, and so on) on a trial basis, based on the Three-Year Plan for the Promotion of Regulatory Reform (Cabinet Decision on 19 March, 2004); the Important Policy of Administrative Reform (Cabinet Decision on 24 December, 2005) and the Three-Year Plan for the Promotion of Regulatory Reform (Further Revised Version) (Cabinet Decision on 31 March, 2006), all three of which required the Ministry of Internal Affairs and Communications (MIC) to take the necessary measures to implement RIA as a legal requirement under the framework of the Government Policy Evaluation Act (GPEA) within FY 2006.

The Government of Japan is preparing the necessary measures to introduce legal requirements and is considering a strategy to improve the quality of RIA.

The Government of Japan does not have any plan to apply those analyses to bring about additional regulatory reform.

Question Q2

With respect to page 8 (box 1.1) regarding the privatization of Japan Post, the Secretariat's report notes that the new Japan Post entities "are, as a rule to, to be subject to the same obligation to pay taxes as the private sector from the beginning of the transition period."

Will Japan Post also hold the new Japan Post delivery company 's express mail service to the same customs obligations as private sector companies?

Answer

With regard to customs procedures, the official assessment system (disposition is made by customs) is applied to international postal items (including EMS) handled by Japan Post, while the self-assessment system (a declaration is made by those who import the goods) is applied to general goods.

This difference in customs treatment is due to the nature of general goods and postal items; while general goods are mainly sent commercially, most postal items are sent in small lots, for personal use, and without any notification to addressees in advance. It is understood that, in general, each country has similar customs procedures for international postal items.

Taking account of these factors, the Government of Japan will continue to consider appropriate customs procedures for international postal items.

Question Q3

Referring to paragraph 10 on page 18 of the Secretariat's report, a revision of the Administrative Procedures Law took effect from April 2006 that requires ministries and agencies to publish draft regulations for public comment. With respect to this revised procedure:

- A) What is the degree of compliance of ministries and agencies with the minimum 30-day (in principle) comment period rule, both in terms of performance by each ministry/agency as well as across the government?
- B) What steps is the government taking or plan to take to ensure strict compliance with the revised Public Comment Procedure's minimum 30-day rule? Is the government encouraging ministries and agencies to, whenever possible, open draft regulations to public comment for longer than 30 days?

- C) How is the government measuring the overall impact of this new Procedure? To what degree are ministries and agencies taking public comments into full consideration and changing draft regulations, to the extent appropriate, to improve the regulatory process?

Answer

The Government of Japan will conduct and publish in FY 2007 an annual survey on the FY 2006 implementation of the Public Comment Procedure stipulated by the revised Administrative Procedures Act. The survey will include details of the degree of compliance with the “minimum 30-day (in principle) comment period” rule and changes in draft regulations. “Public Comment Procedure’s minimum 30-day (in principle) rule” is required under the revised Administrative Procedures Act and the Ministries and Agencies must abide by this law.

Question Q3

- D) Government-appointed advisory groups often have a role in recommending policies and regulatory approaches that are often reflected in draft regulations. What steps is the government taking to ensure reliable access to such groups for all interested parties to express views and be informed of their deliberations before recommendations are made?

Answer

Advisory groups are administered by Ministries and Agencies in accordance with their respective establishment laws and regulations, the Cabinet Decision of April 1999 regarding the Basic Plan for the Rationalization of Councils, etc., and other guidelines and regulations according to which these groups, for example, publish meeting minutes and endeavor to provide opportunities to hear the opinions of interested parties.

Question Q4

In paragraph 18 on page 20 of the Secretariat’s report, Japan explains that it holds regular meetings with China and the Republic of Korea under the ASEAN + 3 framework of cooperation.

Could Japan please explain what is meant by “framework of cooperation” and how it operates?

Answer

Since 1997 the Member Countries of ASEAN, Japan, China and the Republic of Korea have been promoting regional cooperation, which covers 20 areas with approximately 50 bodies for cooperation. The “ASEAN+3 framework for cooperation” refers to the collection of these bodies. Most of these bodies convene regular meetings, where the Leaders, relevant Ministers, high level officials and government experts discuss the overall direction of or specific projects for their cooperation.

Question Q5

In paragraph 19 on pages 20-21 of the Secretariat’s report, Japan refers to negotiations with ASEAN on a Japan-ASEAN CEP.

- A) Could Japan please update the Membership on the status of these negotiations, and provide information on the date this agreement is expected to be signed?
- B) What is the relationship between these CEP negotiations and the discussions under the ASEAN+3 framework?

Answer

- A) *Japan and ASEAN members are discussing the modality for trade in goods in the AJCEP Agreement. Japan is making its utmost efforts to conclude the negotiations on the ASEAN-Japan CEP Agreement as soon as possible, within two years after the commencement date in April 2005.*
- B) *Japan puts the highest priority on the ASEAN-Japan Agreement negotiation, while the on-going track-two study will be continued for the ASEAN+3 FTA as one of the options to achieve closer economic ties in the region.*

Question Q6

As noted in paragraphs 26, 28, 30 and 31 on pages 22-23 of the Secretariat's report, Japan has signed EPAs with four countries – Singapore, Mexico, Malaysia and Philippines. In each of these agreements, to varying degrees, Japan has not eliminated tariffs on generally the same types of agricultural commodity products: beef, offal, many types of edible fish, most dairy products, many fresh vegetables, wheat, rice, and certain edible oils.

How does Japan's exclusion, from duty elimination under these Agreements, of significant categories of agricultural commodities broadly traded in world markets operate to "facilitate trade" as set out in Art.XXIV:4 of the GATT 1994?

Answer

1. *Japan considers it important that Japan and the other country in negotiations over EPAs share the intention to achieve a liberalization level that is consistent with the WTO Agreements (GATT Article XXIV). Japan has negotiated and concluded EPAs on the basis of this policy. Some agricultural products that are sensitive and whose tariffs are difficult for Japan to eliminate are excluded from duty elimination under these Agreements. Japan has been, however, negotiating constructively under the policy: "Protect what should be protected, while conceding what should be conceded."*
2. *Japan has provided its utmost efforts in negotiations for EPAs to make as many concessions as possible on agricultural products including sensitive items. Japan's EPAs are meant to facilitate trade between the member countries as stipulated in Art.XXIV:4 of the GATT 1994.*

Question Q7

According to paragraph 34 on pages 23-24 of the Secretariat's report, Japan is negotiating, or considering negotiating an EPA with Indonesia, Chile, Brunei, and Viet Nam.

- A) Please describe the status of each of these negotiations, and provide a timeframe for when Japan envisions completing each of these negotiations.

Answer

- (1) *Indonesia: Japan reached an agreement in principle on the major elements of a bilateral EPA with Indonesia in November 2006. Both sides are committed to working towards the early finalisation of the legal texts and other documents so as to sign the agreement as soon as possible.*
- (2) *Chile: Japan and Chile reached an agreement in principle on the major elements of the EPA with Chile in September 2006. Both sides are committed to working towards the early finalisation of the legal texts and other documents so as to sign the agreement as soon as possible.*

(3) *Brunei: Japan reached an agreement in principle on the major elements of a bilateral EPA with Brunei in December 2006. Both sides are committed to working towards the early finalisation of the legal texts and other documents so as to sign the agreement as soon as possible.*

(4) *Viet Nam: The leaders of Japan and Viet Nam decided to launch negotiations on a bilateral EPA, and the first round of negotiations was held in January 2007. Both sides are committed to working together to reach an agreement in principle on the major elements of the EPA as soon as possible.*

Question Q7

According to paragraph 34 on pages 23-24 of the Secretariat's report, Japan is negotiating, or considering negotiating an EPA with Indonesia, Chile, Brunei, and Viet Nam.

- B) Will rice, wheat and the other agricultural products normally excluded by Japan from these types of Agreements be excluded from EPAs with these countries as well?

Answer

Japan aims at comprehensive and high-level liberalization and rule-making in its EPAs, taking sensitive sectors into consideration:

Japan usually excludes rice, wheat and other agricultural products which are sensitive issues from any commitments in EPA. On the other hand, Japan is committed to eliminating or reducing tariffs on a wide range of agricultural products in each EPA.

Since Japan has only just started negotiations with Viet Nam, the result of the negotiations cannot be prejudged.

Question Q8

Referring to the Secretariat's report, paragraph 55 on pages 28-29, Japan is implementing programs to "assist local governments in attracting foreign investment by facilitating the use of the special zones for structural reform."

- A) How many of these zones have been created and in which sectors and how many applications for special zones were rejected?
- B) Have these special zones been effective in prompting inward foreign direct investment?

Answer

A) The special zone plans utilize a variety of policies, so there are few plans that specialize in promoting FDI. But, the following special measures are the major examples of those that contribute to FDI, so if we count the zones which use one or more of these measures, the number would be 55 (For reference, 910 zones have been approved in total, including those that are not relevant to FDI):

- *Promoting the admission of foreign researchers and IT technicians (extension of the upper limit of the period of stay from three years to five). * This measure has already been extended to the whole country.*
- *Preferential processing of applications for entry or residence-status application. Flexible processing of permission for permanent-stay.*
- *Relaxing of visa status for business people who have come to set up branch offices. * Part of the measure has already been extended to the whole country.*
- *Fee reduction for after-hours operation of the custom houses. * The measure has already been extended to the whole country.*

- *Operation of customs clearance 24 hours a day, 365-days a year. * The measure has already been extended to the whole country.*

In addition, no application has been rejected so far, including those that are not relevant to FDI.

B) Considering the lengthy process of attracting businesses, from introductory presentation to actual investment, we think it will take time to see the full scale of the expected effects. But, we have begun to see the results, for example, in the "International IT Business Communication Zone", Yokohama, or the "International Port Economy Zone", Kobe, thanks to the utilization of the special measures and the local governments' highly valued responsive attitude to the needs of investing companies.

Question Q9A

Does Japan intend to accelerate or change Japan's current FDI promotion efforts, and if so, in what ways?

Answer

In order to promote inward FDI in Japan, the Japan Investment Council (JIC) set in June 2006, the Program for the Acceleration of Foreign Direct Investment in Japan, which focuses on 3 key issues: (1) Regional centers for economic growth and improved quality of life; (2) Improvement of an investment environment capable of overcoming global competition; (3) Domestic and international public information activities. The Government of Japan takes efforts in promoting inward FDI through implementing measures in the Program. For the details of the program, please refer to <http://www.investment-japan.go.jp/index.htm>

Question Q9B

Japan is implementing a tool to facilitate cross-border triangular mergers to help promote FDI. Is it Japan's intention to implement related tax deferral provisions for such mergers in a way that will make this tool useful and reliable for all potential foreign investors, including companies seeking new investments in Japan?

Answer

The Government is committed to taking measures on the tax treatments of triangular mergers in accordance with the decisions made at the end of the last year after the deliberations within the Government and ruling parties for the tax reform proposals. The measures to be taken can be summarized as follows:

- (1) Adopting non-discriminatory treatment as a basic principle, cross-border triangular mergers, just like the mergers between domestic companies, will be qualified for tax deferrals on capital gains from the transfer of corporate assets, subject to certain conditions, such as the "business relationship" requirement for joint business between the merging subsidiary and the target company. Accordingly, in a case where the merging subsidiary is a paper company, tax deferral will be denied, as it will not meet the "business relationship" requirement.*
- (2) To prevent international tax avoidance, tax deferrals might be denied in cases where stocks of paper companies located in tax haven jurisdictions are provided as the considerations of the mergers.*

From the perspective of overall economic policy, including industry and investment policy, the decision has been made that cross-border triangular mergers be treated in the same manner as domestic mergers. The principle of non-discrimination is strictly followed, as any and all triangular mergers, domestic or not,

will be subject to exactly the same requirements for tax deferrals, such as the “business relationship” requirement, as currently required for domestic direct mergers.

Regarding the actual criteria to assess the fulfillment of the “business relationship” requirement, if the merging businesses will be actually operated in an integrated manner, they are treated as meeting the “business relationship” requirement under current application.

Nevertheless, we are aware of the concern that such treatments are not stipulated by ordinance and thus transparency is insufficient for foreign businesses.

To clarify these administrative treatments, the Government will deliberate on the specifics in order to further clarify as much as possible, by governmental or ministerial decrees, the criteria for assessing the qualifications for fulfillment of the requirements, such as the “business relationship” requirement for eligible corporate reorganization.

Question Q9C

Article 821 of Japan’s recently revised Commercial Code has created uncertainty about the legality of the corporate form of certain branches of foreign enterprises in Japan. As a result, some foreign branches have felt compelled to take the time and expense to incorporate in Japan to remove perceived legal risk. Does Japan intend to revise Article 821 to remove this uncertainty for such enterprises as well as for new enterprises that may wish to use the branch model to establish commercial presence in Japan?

Answer

When the Corporate Code bill passed, the House of Councillors adopted a supplementary resolution to the effect that Article 821 of the Corporate Code should be reviewed, if necessary, taking into account any impact of Article 821 on foreign companies after the entry into force of the Corporate Code. Thus, the Government of Japan will continuously watch any impact of Article 821 on foreign companies. However, no amendment is specifically scheduled at this stage with respect to Article 821.

Please be advised that Article 821 of the Corporate Code does not treat quasi-foreign companies and their representatives less favorably than under the previous Commercial Code. Article 482 of the previous Commercial Code provided that quasi-foreign companies must comply with the same provisions as those applicable to companies incorporated in Japan. Under the judicial precedent, “the same provisions” was deemed to include provisions related to incorporation of companies. This means that, under 482 of the previous Commercial Code, (i) quasi-foreign companies could not make any transactions as legal persons because they could not be deemed as legal persons (i.e., no quasi-foreign companies could enjoy rights or owe obligations), and (ii) as a result, if a representative of a quasi-foreign company made transactions, he/she would be responsible for the transactions personally. To the contrary, (i) Article 821 of the Corporate Code qualifies quasi-foreign companies to be legal persons and (ii) the representative of the quasi-foreign company is merely responsible for liabilities arising from the relevant transactions jointly and severally with the quasi-foreign company. From this perspective, Article 821 of the Corporate Code treats quasi-foreign companies and their representatives more favorably than under the previous Commercial Code.

Question Q10

Paragraph 18 on page 34 of the Secretariat’s report notes that non-*ad valorem* rates of duty apply to footwear. The report also notes that that preferential rates of tariff are offered under the GSP to 142 developing countries and 15 territories, including additional preferences for 50 least developed countries (page 37, paragraph 26).

A) We understand that Japan implements a “Pooled Quota” for imports of certain leather footwear products at a volume of 12,019,000 pairs per year. For imports falling within this quota Japan applies a

duty between 21.6 and 24 percent, depending on the item. For imports falling outside the quota, Japan applies a duty of 30 percent or a specific duty of 4,300 yen/pair; whichever is greater (or depending on the item classification, 30 percent or 2,400 yen/pair, whichever is greater). Our industry tells us that Japan consistently applies the specific duty to out of quota imports, which increases the price of leather footwear by approximately \$40 a pair. Is our assessment of the “Pooled Quota” system for leather footwear correct?

Answer

The tariff rate quota (TRQ) system determines a two-stage tariff for certain articles, of which the lower (primary tariff) applies within the range of a certain quantity during a given period.

B) We understand Japan exempts Least Developed Countries and certain FTA partners (Mexico, Malaysia, and Thailand) from this system. What duty rate do exports of leather footwear from those countries face when entering Japan?

Answer

With regard to the leather footwear, LDCs (Least Developed Countries) can enjoy duty-free and quota-free market access under Japan’s GSP. In addition, Japan has introduced the bilateral tariff rate quota (TRQ) system or agreed to gradually abolish tariff rates under some FTAs.

C) Could you explain the reasons for the imposition of the tariff rate quota for leather footwear? Does Japan intend to increase the volume of its footwear quota?

Answer

With regard to tariff rate quotas on leather and leather footwear, Japan has no concrete plans to increase the existing volume due to historical and social difficulty surrounding this sector.

D) The “Pooled Quota” system for imports of leather products (excluding footwear) is also complex. We understand that Japan uses two categories within this system: a. “Pooled Quota –First Category”, and b. “Pooled Quota – Second Category”. What is this difference between the two categories?

Answer

In fact, there are no categories within the tariff rate quota (TRQ) system. The system determines a two-stage tariff for certain articles, of which the lower (primary tariff) applies within the range of a certain quantity during a given period.

E) We understand that Japan allows 5 million square meters of certain leather products within the “Pooled Quota”. Is this the volume for both categories combined?

Answer

In Japan, there is no TRQ for leather products such as bags and wallets.

For your reference, the quantities of the quotas for leather for FY 2006 are as follows:

- (a) Dyed leather of bovine or equine animals: 1,466,000 square meters*
- (b) Undyed leather of bovine or equine animals: 214,000 square meters*
- (c) Dyed leather of goats or sheep: 1,070,000 square meters*

F) We understand that the in-quota rate is bound between 12 and 16 percent, while the out-of-quota rate is bound at 30%. Is this accurate?

Answer

Under the TRQ system for leather in Japan, tariff rates of the quota for FY 2006 are as follows:

- *Primary tariff rates (in-quota rates): 12%, 13.3% or 16% depending on the specification of the item.*
- *Secondary tariff rates (out-of-quota rates): 30%*

Question Q11A

The Secretariat's Report states in Note 24, page 40 as follows "In order to participate in open or selective tendering procedures, domestic and foreign suppliers are required to apply for qualification to each procuring entity and be included in the list of registered suppliers."

Please explain how a tendering procedure could be considered "open tendering" if suppliers are required to apply for qualification and be included in the list of registered suppliers.

Answer

Under the Accounting Law, when interested suppliers apply for qualification to procuring entities on the central government level and become qualified, such qualification remains valid for two years. All interested suppliers who intend to participate in "open and competitive bidding" may apply for such qualification at anytime. Interested suppliers who are not qualified may participate in the bidding provided they are qualified before bid opening. Procuring entities are required to review the applications promptly when they receive an application for qualification. As these procedures enable all interested suppliers to participate in open and competitive bidding, this open and competitive bidding can be considered "open tendering" as specified under the Agreement on Government Procurement of the WTO. On the local level, each local government administers procedures similar to the central government.

Question Q11B

Please describe open tendering and selective tendering.

Answer

In Japan, "open and competitive bidding" falls under "open tendering" and "designated bidding" falls under "selective tendering". In the case of open and competitive bidding by a central government entity subject to the WTO Agreement on Government Procurement, a notice is widely published in "Kanpo" up to 40 days (50 days for goods, etc., under the voluntary measures) before the bid opening day. While interested suppliers may remain qualified for two years with a prior application for qualification to procuring entities, those who are not qualified may submit tenders provided they are qualified before bid opening.

In the case of designated bidding, a procuring entity shall publish a tender notice up to 40 days before bid opening. The procuring entity shall also publish the requirements necessary to be designated.

The procuring entity, after preparing a list of qualified suppliers, designates from among the list those who satisfy the necessary requirements to be designated. The procuring entity also gives notification of necessary information such as items put to tender, and place and date of bidding. The procuring entity may accept tenders from those interested suppliers who are not included in the list provided that they satisfy the necessary requirements to be designated and that they are designated before bid opening.

Open and competitive bidding and designated bidding by local government entities with regard to GPA-covered procurement contracts are implemented pursuant to the "Cabinet Order Stipulating Special Procedures for Government Procurement of Products or Specified Services in Local Government Entities"

and to each local government's own rules. They are implemented in basically the same manner as the central government, except for those cases for the central government covered by the voluntary measures.

Question Q11C

Please describe how open and selective tendering procedures differ.

Answer

Please refer to 11(B) regarding the procedures for open and competitive bidding and designated bidding. In open and competitive bidding, all interested suppliers may participate in bidding. In designated bidding, interested suppliers need to be designated by procuring entities to participate in the bidding.

Question Q12

Paragraph 42 on pages 40-41 of the Secretariat's report outlines measures taken by Japan to address bid-rigging.

A) How are such measures being applied in practice, including how has the use of open and competitive bidding procedures and the overall greatest value methodology for public works been expanded? When are Japanese entities required to use open and competitive bidding procedures and the overall greatest value methodology in public works? How is the Government of Japan ensuring the expanded use of such methods of procurement in public works? What effect is the use of these methods having on bid-rigging?

Answer

In the Conference of Relevant Ministries and Agencies for Proper Public Procurement held in February 2006, the Government of Japan compiled measures which included the requirement that, as from FY 2006, central government agencies would implement in principle the open and competitive bidding procedures for procurement of public works valued at more than ¥200 million and would expand the overall greatest value methodology by presetting the rate of implementation of this methodology. A follow-up is planned to check the state of implementation of these measures. Bid-rigging will be effectively eliminated by expanding the open and competitive bidding procedures that are transparent, objective, and competitive and by the expanding use of the overall greatest value methodology which comprehensively evaluates both price and non-price factors.

Question Q12

Paragraph 42 on pages 40-41 of the Secretariat's report outlines measures taken by Japan to address bid-rigging.

B) What steps is Japan taking to address the conflicts of interest that arise from the system of amakudari?

Answer

The government of Japan is addressing the issue in the overall context of the reform of the public service system.

Question Q12

Paragraph 42 on pages 40-41 of the Secretariat's report outlines measures taken by Japan to address bid-rigging.

C) What steps is Japan taking or planning to take to address the involvement of prefectural and local officials in bid-rigging?

Answer

Under the “Guiding Principles Concerning Measures to Promote Proper Tendering and Contracting for Public Works” (the Guiding Principles), local governments shall endeavor to take measures to eliminate bid-rigging involving officials based on the Act Concerning Elimination and Prevention of Involvement in Bid Rigging. Based on the Guiding Principles, the Ministry of Internal Affairs and Communications has been urging local governments to take measures to eliminate bid-rigging involving local officials in consultation with the Ministry of Land, Infrastructure and Transport. Also, a support plan for proper tendering and contracting is to be arranged within FY 2006.

Question Q13

The United States requests that Japan provide information on how its Government is addressing, or responding to: 1) the Board of Audit of Japan’s (Board) finding in its October 2006 study of central government computer systems that sole source contracts accounted for 96 percent of the total value of all contracts for large (over 3 million yen in value) central government IT procurements in FY2004? What measures is the Government of Japan taking to implement the Board’s recommendations in the same report that central government procuring entities work to enhance the competitiveness and transparency of their IT procurements.

Answer

Each ministry has been working on reducing the case of single tendering for public procurement including computer systems, based on the principle of open tendering as stipulated in the Accounting Law.

*Prior to the publication of the Board of Audit’s study, the Minister of Finance issued a communication entitled “Promoting Proper Public Procurement” (25 August 2006, Ministry of Finance No.2017)^{*1} to the heads of central government ministries in order to consolidate proper public procurement. With regard to procurement of computer systems, this communication specifically states that each ministry shall not make a maintenance contract by single tendering with the supplier who developed the system. Besides this, initiatives have been taken such that each ministry is required to publish on its website^{*2} information concerning single tendering for public procurement (contractor, amount of contract, and reasons for using single tendering, etc.) in order to enhance the transparency of procurement.*

*In addition, based on the “Priority Program 2006” (IT Strategic Headquarters decision, 26 July 2006), the Government of Japan is making efforts to formulate the “Basic Policy for the Public Procurement of Computer Systems (draft)”^{*3} that will further enhance competitiveness and transparency in public procurement of computer systems.*

*1. http://www.mof.go.jp/jouhou/syukei/koukyou_02.htm

*2. <http://www.e-procurement.soumu.go.jp/SmojServletMain> (information on single tendering by Ministry of Internal Affairs and Communications)

*3. http://www.soumu.go.jp/s-news/2006/061222_8.html

Question Q14

Pages 42-43 of the Secretariat’s report identify some 3,000 “major” technical regulations in Japan in 2005. There were 204 regulations on road vehicles alone, 20 percent of which were aligned to international standards.

A) During the period of this review, Japan has notified a total of 27 technical regulations.

- B) Could Japan explain why the number of WTO notifications is so different from the number of actual regulations?
- C) With regard to road vehicles, what are Japan's plans for aligning its regulations with international standards?

Answer

A), B) Japan implemented 27 WTO/TBT notifications and 22 WTO/SPS notifications in 2005, and 32 and 21 respectively in 2006. Japan usually notifies a newly established or amended regulation whenever a relevant international standard does not exist or the content of a proposed regulation is not in accordance with, or is not substantially the same as, the content of relevant international standards and if the regulation may have a significant effect on the trade of other Members, in accordance with the TBT/SPS Agreement. However, Table III.4 on page 43 of the Secretariat's report deals with major standards and technical regulations which were in place as of 2005, in Japan; the numbers do not represent newly established or amended regulations. Therefore, the numbers of them are different from each other.

C) Japan has promoted international harmonization of automotive regulations under the framework of the World Forum for Harmonization of Vehicle Regulations (WP.29) in the UN.

Concerning the 1958 Agreement, Japan will keep working on applying UN/ECE regulations, taking into consideration domestic and international demands for harmonization and its economic effects, while remaining committed to keeping Japan's level of safety and environmental regulations. Japan will also actively propose to amend the UN/ECE regulations if needed.

Also, concerning the 1998 Agreement, Japan will actively continue to take part in establishing global technical regulations.

Question 15

Paragraph 45 on page 42 of the Secretariat's report indicates Japan is continuing its efforts towards international harmonization of its standards and technical regulations. We recognize that Japan has taken some important steps towards harmonizing food-safety measures with international practices.

Can Japan describe what additional steps it will be taking to increase its conformity with international practices and guidelines on BSE established by the World Organization for Animal Health (OIE)?

Answer

Taking account of the OIE code, the GOJ set the current import requirements for the U.S. beef based on the risk assessment.

Under the current circumstances, Japan considers that it is important for both Japan and the U.S. to share evaluation of compliance with the BEV program by the U.S. during the verification period. With regard to review of the BEV program for Japan, Japan recognizes that there is the "Joint Press Statement for the Resumption of Trade in Beef and Beef Products", which was shared with the U.S.

Question 16

Paragraph 53 on page 45 of the Secretariat's report indicates Japan has revised its maximum residue limits for agricultural chemicals. We have concerns about the enforcement by the Ministry of Health, Labor and Welfare (MHLW) of the new positive list system of maximum residue levels for agricultural chemicals in foods. As we understand it, the enforcement mandates 100% hold and test at the port on an entire country after only two violations of the positive list.

- A) Could Japan explain the scientific justification of this practice and how it conforms to international norms?
- B) Was a risk assessment or other form of risk analysis performed at the time this policy developed?
- C) Does Japan impose a 50 or 100 percent testing to the whole country after one or two MRL violations to domestically-produced foods as well? What specific actions or penalties have been imposed so far on domestic producers or shippers for the first 10 domestic violations of the positive list?
- D) Does Japan have an appeal process for suppliers (domestic or foreign) in the event a violation of an MRL standard is found? If so, could Japan provide a copy of the appealing procedures?
- E) Has Japan considered less trade restrictive alternatives? For example, sanctioning only the particular companies directly involved with MRL violations and not the entire country, as it is the common practice?

Answer

A) *The Ministry of Health, Labour and Welfare (MHLW) widely inspects various imported foods and implements monitoring tests in order to review food safety control conditions in export countries and compliance of imported foods with Japanese standards. An inspection order is issued when imported food is considered to have a high probability of violating the Food Sanitation Law due to detection of more than two violations in a year, taking accidental incidents into account.*

The MHLW had already introduced the system of inspection orders before the positive list system went into effect. Inspection order issuance is limited to a necessary and minimum extent and they are only issued when the MHLW recognizes that the imported food in question has a high probability of violating the law, with reference to CODEX guidelines, monitoring test results of imports, and control measures of agricultural chemical residues in the export country. In concrete terms, the strengthened testing is limited to the particular companies directly involved in the violations, not to the entire country, when the MHLW recognizes that the export country takes sufficient control measures against agricultural chemicals in foods based on information submitted by the export country's government (The MHLW asked the U.S. government to submit the relevant information last May; however the U.S. government has not submitted this yet).

B) *The CODEX guidelines do not prescribe a concrete method of risk assessment for planning a monitoring plan. However, with reference to the CODEX "Principles And Guidelines For Imported Food Inspection Based On Risk (Appendix of Guidelines For Food Import Control Systems (CAL/GL 47-2003, REV. 1-2006))" the MHLW reviews compliance history, which means monitoring the test results of imports and the control measures regarding the use and residues of agricultural chemicals in the export country, and then imposes an inspection order.*

For the past year, 16 of 27 cases (59%) have been violated continuously after the implementation of an inspection order. The 27 cases exclude cases where the foods have not been imported after the implementation of an inspection order. Therefore, Japan believes that the policy is reasonable.

C) *With regard to domestic violations, Japan does not apply the same inspection systems as for imported food because control measures regarding the use and residues of agricultural chemicals during production are already in places, and local governments investigate the cause of violations and take corrective action immediately when violations are found.*

For example, there was a case where pumpkins violated the MRLs of agricultural chemical that is now prohibited to use because of environmental contamination in part of Hokkaido. However, investigation has been done throughout Hokkaido and producers' association has carried out testing before shipment.

D) *According to Administrative Procedure Act (Act No. 88 of 1993) the importer can launch an objection to the administrative measure against the violation. This law is available at <http://www.cas.go.jp/jp/seisaku/hourei/data/APA.pdf>*

E) *Whether the inspection order is issued to the entire country or only the particular companies directly involved in the violation depends on the nature of the violation. As described in A), when the MHLW recognizes that the export country takes sufficient control measures against agricultural chemicals in foods based on information submitted by the export country's government, the inspection order is issued only to the particular producers directly involved in the violation, not to the entire country.*

Question Q17

Referring to paragraph 54 on page 45 of the Secretariat Report regarding Japan's Food Safety Commission (FSC) and safety assessments on food additives, could Japan describe its approval process for new food additives?

- A) Does Japan have policies outlining an appropriate timeframe for the FSC to respond to approval applications? If not, how long does it usually take for the FSC to render a final decision?
- B) Does the FSC have transparent procedures and guidelines in designating domestic use for a food additive? If so, could Japan provide a copy?

Answer

A) *In Japan, food additives are not permitted for use unless they are designated by the Minister of Health, Labour and Welfare (MHLW) under the Food Sanitation Law as substances which are unlikely to cause adverse health effects. In addition, the Food Safety Basic Law requires the Minister to hear the opinion of the Food Safety Commission (FSC) in the process of authorizing food additives.*

Separately from the ordinary authorizing process, the Government of Japan (GOJ) is proceeding with a review with the intent to authorize the 46 food additives and flavorings that have been proven safe by the Joint Expert Committee on Food Additives (JECFA) and that are widely used globally. In addition, MHLW of Japan, on a priority basis, has the FSC carry out risk evaluations of these additives and flavoring agents. In March 2005, MHLW published a schedule to request the FSC to conduct evaluation for additives for which evaluation has not been requested yet. The GOJ is working on the authorization procedure, according to the schedule.

The GOJ would like the U.S. Government to understand that if the FSC requests additional information as needed in the scientific evaluation, a considerable period of time is further needed to conduct additional studies to gain the information.

B) *The official guidelines for authorizing the domestic use of food additives are available at the following website:*

<http://www.mhlw.go.jp/topics/bukyoku/iyaku/syokuten/960322/betu.html>

The English translation of it can be found at the following website:

[http://www.ffcr.or.jp/zaidan/FFCRHOME.nsf/pages/PDF/\\$FILE/Guideline.pdf](http://www.ffcr.or.jp/zaidan/FFCRHOME.nsf/pages/PDF/$FILE/Guideline.pdf)

Question Q18

In paragraph 55 on page 45, the Secretariat's report advises that Japan has imposed import prohibitions on poultry from various suppliers due to avian influenza (AI). Despite the international recommendations set by the World Animal Health Organization (OIE), Japan's restrictions on poultry and poultry products are imposed nationwide without regard for zoning, when there is a report of highly pathogenic notifiable avian influenza (HPNAI).

Is Japan considering less trade-restrictive measures that will avoid unnecessary disruptions to trade and provide the appropriate level of protection?

Answer

Japan has made changes to sanitary measures for poultry related to avian influenza to make them less trade-restrictive. With regard to HPNAI, Japan will take into account the fact that HPNAI could potentially have a severe impact on Japanese poultry production once introduced.

Question Q19

In paragraph 58, page 45, the Secretariat report outlines Japan's labeling standards for food and beverages. We understand that Japan's Ministry of Agriculture, Fisheries, and Forestry (MAFF) has created a committee to explore policies allowing only domestic cattle to be labeled as "wagyu".

- A) Did Japan considered less trade restrictive alternatives, and if so, what were they and what was Japan's rationale for rejecting them?
- B) The characteristics of the term "wagyu", such as its quality and flavor, are based on genetics and animal husbandry practices and are not based on where the animal was born or raised. In addition, most "wagyu" cattle raised in Japan is raised using imported feed. Can Japan explain how the proposed "wagyu" labeling guidelines would be in accordance with the TRIPs Agreement?

Answer

A) This guideline is being considered based upon the circumstances that only beef which is born and raised in Japan can be proven and confirmed definitely to be pure wagyu or a crossbreed of wagyu under the current conditions.

This guideline may be examined depending on any change in the situation in the future, and if foreign beef is proven correctly to be pure wagyu or a crossbreed of wagyu, Japan will address the issue. Thus, the guideline does not put any limitations on imports from overseas.

B) This guideline is being considered in terms of being a means of proving and confirming the breed of the beef labeled as "wagyu" and to prevent misconceptions by customers, not to limit the country of origin on the ground that quality can be attributed to the geographical origin.

At present, the guideline is based on the actual situation whereby only wagyu born and raised in Japan can be proven and confirmed correctly to be pure wagyu or a crossbreed of wagyu, and Japan thinks that this does not restrict trade unfairly.

Question Q20

It is our understanding that Japan administers several programs that provide special tax treatment to companies in designated rural areas. These include federal programs such as the Underdeveloped Area Industrialization Act, the Peninsula Development Promotion Act, and the Industrial Relocation Promotion Act, as well as programs at the sub-federal level such as tax incentives from the Akita and Mie prefectures.

- A) We would appreciate a clarification as to whether these programs have been notified to the WTO, according to terms of Article 25 of the WTO Subsidies Agreement.
- B) If not, could the representative of Japan explain why Japan feels these programs should not be subject to WTO notification requirements.

Answer

Japan has not made notification of the Underdeveloped Area Industrialization Act and the Peninsula Development Promotion Act pursuant to Article 25 of the SCM Agreement because the financial measures under these Acts do not limit access to subsidies to enterprises or industries or groups of enterprises or industries, therefore they are not “specific” as defined under Article 2 of the SCM Agreement.

The Industrial Relocation Promotion Act, which was repealed in April 2006, aimed at the balanced development of the country. For that purpose, the Government of Japan supported a wide variety of industrial fields which would create a wide range of economic effects by means of encouraging factories to relocate from the areas where industry had accumulated excessively to areas where the degree of industrial accumulation was low. However, this Act was not designed to promote industrial relocation for certain industries or sectors. Therefore, this Act did not correspond to a “specific subsidy” as defined in Article 2 of the SCM Agreement.

The subsidies (including tax incentives from Akita and Mie Prefectures) which are also referred to in Questions Posed by the United States regarding the New and Full Notification of Japan (G/SCM/Q2/JPN/39), do not explicitly limit access to enterprises or industries or groups of enterprises or industries. The objective criteria or conditions governing the eligibility for and the amount of the subsidies are established by Akita and Mie Prefectures, which spell out the criteria and conditions in their ordinances etc. The eligibility is automatic and the criteria and conditions are strictly adhered to. Therefore, the subsidies are not “specific” as defined under Article 2 and are not subject to the notification requirements under Article 25 of the SCM Agreement.

Question Q21

Paragraph 74 on page 50 of the Secretariat’s report notes that Japan gives subsidies to fisheries infrastructure in coastal communities.

Could Japan provide greater detail on the specific types of programs?

Answer

Japan has programs to support the construction/maintenance of fishing ports or their related facilities, and the conservation/rehabilitation of the marine environment. These programs are part of the development of public infrastructure. These programs are provided to local governments, not directly to fishermen.

Question Q22

Does Japan give subsidies to its “research” whaling activities, and if so, could Japan describe those programs?

Answer

Japan provides financial contributions for scientific research programs on marine species in international waters and within its Exclusive Economic Zone. The whale research program under the special permit, stipulated in Article VIII of the International Convention for the Regulation of Whaling, is one such scientific research program.

Question Q23

We request that Japan please explain whether parties can obtain registrations of regionally based collective marks if the marks denote geographic areas outside of Japan.

Answer

Under the examination for a regionally based collective trademark in Japan, a trademark containing a regional name outside of Japan can be registered, if it fits the requirements for registration of a regionally based collective trademark.

For example, the requirements for registration of a regionally based collective trademark are as follows:

- (a) *Organizational Requirements*
Must be a legal entity.
The legal entity must be a business or other type of cooperative established on the basis of the Special Law.
The Special Law must not include a provision that may restrict the participation of qualified individuals without basis or apply criteria stricter than those required for participation of the existing membership for participation in the organization.
- (b) *Trademark must be comprised of the name of a region and the name of a product or service.*
- (c) *Close Relationship of the Region and Product (Service).*
- (d) *Degree of recognition.*
“recognition”

Wide knowledge among consumers in Japan that the trademark represents the product (service) that the applicant or its members provide.

- (e) *Absence of generic terms. etc.*

Question Q23A

What evidence, if any, is provided to establish that a mark is well known?

Answer

We do not make the database based on evidence provided by, for example, an owner of a trademark. The database is comprised of trademarks that were registered as defensive marks and registered marks that are authorized to be well-known under the decisions made by appeal examiners or court judges etc.

Even if a mark is not listed in this database, the mark can be protected as a well-known trademark.

Question Q23B

Are third parties informed of requests to enter marks into the list, and are such third parties provided an opportunity to oppose the entry of a mark on the list?

Answer

The database is not made by request to enter marks into the list. A mark that is registered as a defensive mark, or a mark that is authorized to be well-known under appeal decision/court decision will be listed in the database.

Question Q23C

May third parties request that a mark be removed from the list?

Answer

There are no formal procedures to remove a trademark from the database.

With regard to defensive marks, however, the interested parties can demand for the invalidation of a defensive mark. If a defensive mark is invalidated by the trial decision for invalidation, it will be removed from the database. If a person is dissatisfied with the appeal/court decision that a mark is well known, the person can appeal to a higher authority (e.g. High Court, Supreme Court).

Question Q23D

Once a mark has been entered on the list, is the owner required to make periodic showings that the mark continues to be well known?

Answer

No, the owner is not required to do so.

With regard to defensive marks, however, whether the marks are still well-known or not will be examined at the time of renewal of duration of defensive trademark right (every 10 years).

Question Q24

Paragraph 82 on page 52 of the Secretariat's report provides information on the establishment of the new IP High Court on 1 April 2005.

We would be interested in learning more about the entity, and what benefits have resulted from the establishment of the special branch. In your opinion or analysis, has it improved the enforcement of intellectual property rights in Japan?

Answer

The Intellectual Property High Court (IP High Court) was established on 1 April 2005, within the Tokyo High Court as a special branch, in accordance with the Law for Establishing the Intellectual Property High Court.

The IP High Court hears appeals from district courts in Japan on patent actions and suits against appeal/trial decisions made by the Japan Patent Office (JPO). It also hears any other cases that the Tokyo High Court deals with whose nature and contents are related to intellectual property.

In other words, the IP High Court is the specialized court handling a wide range of intellectual property cases.

In order to apply its expertise, the IP High Court enjoys independent authority with respect to certain judicial administrative matters that are vital for exercising its special functions, and has its own secretariat.

The IP High Court has solved many cases appropriately and speedily and acquired a good reputation for its great contribution to improvement of the enforcement of intellectual property rights in Japan.

Question Q25

Paragraph 25 on page 70 of the Secretariat's report mentions that Japan's electricity and natural gas prices remain high, even after implementing domestic market liberalization measures.

(A) What is Japan's evaluation of the effectiveness of its energy market liberalization measures to date on prices, competition, and new market entry?

Answer

In the electricity sector, the Subcommittee to Evaluate System Reforms Electricity Industry Committee of the Advisory Committee for Natural Resources and Energy published a report which evaluated the effects of the reform in May 2006.

The report evaluated your particular interests as listed below.

- *Since the liberalization of the retail market in FY 2000, electricity prices in the liberalized sector have been steadily declining (about 30% reduction in the commercial electricity price, and about a 13% reduction in the industrial electricity price the first half of FY2000 to the first half of FY 2005). Electricity prices for household customers, where liberalization has not been introduced, have also decreased (about a 10% reduction from FY2000 to FY2005). It can be judged that with the utilization of competition efficiency improvement has been making steady progress.*
- *Competitive pressure seems to be potentially influencing the industry, through substantial reductions in price disparities among general power utilities (GPUs); although the share of new entrants (Power Produce and Suppliers (PPS)) is still small, PPSs' share is 2.11% of the total electricity demand of the liberalized sector. However, their share is relatively high in a certain segment; for example, it is about 20% of commercial demand at extra- high voltages.*
- *Discussion of further liberalization in the electricity retail market will start in FY 2007, based on the schedule of "Basic Energy Program."*

In the gas sector, after the introduction of partial liberalization of gas retail activities in 1995, the average selling price (selling price per cubic meter of gas has gone down in spite of the rise of LNG import prices. Retail prices have risen in OECD countries in the same period, and thus price differences between Japan and other OECD countries have been reduced. In terms of competition, the share of new entrants in liberalized sector is rising with each year, and it has reached at 8.1% at the fiscal year ended in March 2006. In addition, the scope of liberalization is going to be expanded to consumers with an annual demand of 100,000 cubic meters and above in this April.

Question Q26A

The Secretariat's report, in Paragraph 41 on page 76, mentions that it remains unclear whether Japan will achieve a level-playing field in the insurance sector with respect to its reforms to Japan Post.

A) Does Japan intend to implement postal privatization in a manner way that is consistent with its obligations under the General Agreement of Trade in Services (GATS) and its Postal Privatization Law principle to establish "equal competitive conditions" between the postal entities and "other companies engaged in like business operations"?

Answer

Obviously, every policy/measure taken by the Government of Japan is consistent with its obligations under the GATS.

With respect to ensuring fair competitive conditions between private life-insurance companies and the Postal Insurance Company, the Government of Japan will make appropriate decisions after hearing opinions from the Postal Services Privatization Committee.

Question Q26B

Will the new Postal Insurance Corporation (PIC) be required to meet all of the same requirements as other private-sector insurance companies, including licensing, disclosure, and tax requirements, before it is

permitted to expand its underwriting activities? What specific measures (e.g. monitoring methodologies, supervision, or institutions) will the Government of Japan establish to prevent the privatized postal entities' abuse of market power or cross-subsidization?

Answer

The Postal Insurance Company (PIC) will be supervised by the Financial Services Agency based on the Insurance Business Law, and will be subject to the same accounting and disclosure standards as well as tax obligations as other private life-insurance companies from the beginning of the privatization transition period, regardless of its future business scope.

In addition, regarding the prevention of abuse of market power by the PIC's and cross-subsidization, the PIC will be supervised by relevant authorities based on the same standards/methods as other private companies.

Question Q26C

Will Japan take measures to ensure that access to the government-owned post office network will select private sector products to be distributed in an open and transparent manner?

Answer

It is legally possible for the Post Office Company to make insurance soliciting contracts with private insurance companies other than the Postal Insurance Company and to provide services of those companies under the regulations of the Insurance Business Law. According to the law, it is also possible for the Post Office Company to make agency contracts with private banks other than the Postal Savings Bank and to provide services to those companies under the regulations of the Bank Law.

The contractual coverage will be determined through negotiations between the Post Office Company and the financial companies concerned based on their managerial decisions.

Question Q26D

What measures will Japan take to ensure that transactions between the PIC and the Public Successor Corporation, including their reinsurance contracts, will be executed on an arms-length basis to prevent cross-subsidization? Will the Financial Services Agency's Supervisory Guidelines fully apply to the PIC-Public Successor Corporation reinsurance contracts, segregating old *Kampo* accounts from new PIC accounts?

Answer

The Insurance Business Law and the Financial Services Agency's Supervisory Guidelines based on that law will not be applied to the Public Successor Corporation (PSC), which is an incorporated administrative agency. However, they will be fully applied to the Postal Insurance Company (PIC).

Contracts between the PIC and the PSC, including reinsurance contracts, will be included in the implementation plan (the Japan Postal Services Holding Company is required to submit the implementation plan to the government by end-April 2007 under the Law of the Privatization of the Postal Services). The implementation plan will be checked by the Prime Minister and the Minister of Internal Affairs and Communications in the process of approval. When these two ministers approve the implementation plan, they will be required to hear opinions from the Postal Services Privatization Committee and consult with the Minister of Finance. That is to say, the Law of the Privatization of the Postal Services will ensure the appropriateness of contracts between the PIC and the PSC by establishing a fair and transparent process as described above, which is not in the Insurance Business Law.

Concerning the segregation of old Kampo accounts and new PIC accounts, the PSC will be established independently of the PIC, and old and new accounts will be managed separately by both organizations, in order to clearly separate old accounts with government guarantees from new accounts without government guarantees, and to avoid transferring risks from new accounts to old accounts.

Question Q26E

Given the fact that the Japanese authorities, including members of the Privatization Commission, have emphasized the importance of successful postal privatization, what measures will Japan implement to ensure that perceptions of implicit government guarantees of its products are eliminated?

Answer

The Postal Insurance Company (PIC) will be under the same policyholder protection scheme as that of other private insurance companies and the government will not guarantee the PIC's products. Therefore, the Postal Services Privatization Committee regards the perception of an "implicit government guarantee" as a misunderstanding by stakeholders, including policyholders, and considers that the PIC will certainly explain the nonexistence of government guarantee clearly and the government should also make the utmost effort to eliminate such misunderstanding.

The Government of Japan could also try to fully publicize the fact that insurance products by the privatized PIC are not guaranteed by the government in an appropriate manner. In addition, the Insurance Business Law prohibits the PIC from deceptive business conduct such as claiming the existence of government guarantee. The Government of Japan will ensure that the PIC explains its legal status properly through their compliance with inspection/supervision by the Financial Services Agency.

Question Q27

With respect to regulated kyosai, what are Japan's plans or measures to ensure a level playing field is established by bringing these kyosai regulated by various Japanese ministries under the same obligations and supervision as private sector companies?

Answer

"Kyosai" are operated by organizations for mutual support among people who live in a particular region or have the same occupation. Hence, the Government of Japan believes that imposing the same restrictions on "kyosai" as those for insurance companies is not appropriate. Rather, it is necessary to impose particular restrictions on "kyosai" based on their peculiarities.

Question Q28

The Secretariat's report, in paragraph 39 on page 75, mentions that Japan has "broadened the scope of insurance products that banks are allowed to sell."

Does Japan intend to meet its Financial System Council's recommendation to fully liberalize the sales of insurance products through banks no later than the end of 2007?

Answer

The Financial Services Agency took measures to expand the range of insurance products that financial institutions can sell based on the report of the 2nd Subcommittee of the Financial System Council on March 31, 2006.

Question Q29

Paragraph 53 on page 79 of the Secretariat's report reads, in pertinent part: "The authorities maintain that there are no discriminatory measures affecting foreign participation in international maritime services and that Japan's bilateral agreements on passenger or cargo shipping provide national treatment to partners on a reciprocal basis." However, as far as we know, there is still a "close ties" requirement for providing MTO and stevedoring services which effectively precludes non-Japanese firms from entering into this business.

A) Has this requirement been eliminated? Which flag carriers and companies are considered to have fulfilled Japan's "close ties" or partner requirement?

B) Please explain how foreign participation in international maritime services is not discriminated against when national treatment is only granted under a limited number of bilateral treaties?

Answer

(29-A)

The meaning of "close ties" is not clear. There is no clause which specifies discrimination against foreign services suppliers in the Port Transport Business Law with regard to their entry into the port transport business.

Answer

(29-B)

The provision of national treatment on a reciprocal basis by bilateral agreement mentioned in this paragraph is applicable to maritime cabotage services, and is not applicable to MTO and stevedoring services.

Question Q30-A

Please specify how the new Port Transportation Law addresses the license procedure for companies wishing to set up stevedoring or general contracting firms. Has the Port Transportation Law eliminated the specific labor requirements for the larger minimum number of workers and/or stevedoring equipment that new firms must employ as compared to existing firms?

Answer

The licensing requirement is stipulated in Article 6.1 in the Port Transport Business Law as follows.

- *To require adequate facilities and workers at each port and port transport business.*
- *To require appropriate plans to implement port transport business.*
- *To require the scope of responsibility of the management system to be specified.*
- *To ensure the accounting foundation of the business.*

The Minister of Land, Infrastructure and Transport must permit the operation of port transport business when an application meets the abovementioned requirements.

Tentative measures on the existing firms will become invalid two years after the new Port Transportation Law comes into force.

Question Q30B

Can Japan provide an official English translation of the Port Transportation Business law? Again, has the "close ties" requirement mentioned above been eliminated?

Answer

The Ministry of Land, Infrastructure and Transport does not have an official English translation of the Port Transportation Business Law. For that reason, the Ministry is not able to provide it. The requirements of a license to enter into port transport business are as noted above.

Question Q30C

How has the Port Transportation Law eliminated the Japan Harbour Transport Association's ability to deter new entrants into the port transportation /stevedoring market in Japan and how many foreign companies have applied for port transportation and /or stevedoring licenses since 1997? Have any foreign companies been granted such licenses?

Answer

We recognize that the Japan Harbour Transport Association is an association of private companies and is not a regulatory body.

No foreign company has applied for the port transportation business since 1997.

Question Q31

Paragraph 56 on page 79 of the Secretariat's report, in pertinent part, "According to the authorities, no exclusive rights or subsidies are given to Japanese flag-carriers; there are no discriminatory measures preventing foreign participation in the supply of auxiliary services." It is our understanding that the Super Core Port Initiative has awarded significant funding to Japanese-owned terminal operators for the development of infrastructure.

Answer

In the Super Hub Port Project, whose purpose is to provide lower-cost and better service than the main Asian ports, the integrated and efficient operation of a large-sized container terminal has been proceeded by a single private company (authorized operator).

In addition, an interest-free loan system is set up for the authorized operators (terminal operators) to construct cargo handling facilities, but there are no nationality requirements for the operators.

Question Q32

Can Japan provide details (citations to domestic law, regulations, etc.) with respect to the non-MFN restrictions placed upon international freight forwarding and international shipping services?

Answer

The reason why Japan maintains such a measure is that Japanese shipping companies suffered an unreasonable loss through a unilateral sanction in the past and there still remains the risk of such a unilateral sanction.

This measure is based on Article 4 of the Law on Special Measures against Unfavorable Treatment to Japanese Oceangoing Ship Operators by Foreign Governments and Others.

Question Q33

We request that Japan please provide further information on the changes in costs associated with using Narita. Please include information on whether real savings are achieved?

Answer

A new charge has been applied based on the mutual agreement of Narita International Airport Corporation and IATA since 1 October 2005. Details of the charge revision in 2005 are available in the HP (URL: <http://www.naa.jp/jp/press/index.html>) of Narita International Airport Corporation (Refer to the press release material on 16 September 2005).

The Japanese Government understands that the charge concerning the use of Narita is reduced by the charge revision in 2005 if the charges are viewed as a whole, and this is appreciated by airlines.

Question Q34

We request that the exact nature of these charges be explained, and that specific charges related to "environmental protection" be further clarified to note exactly what this entails (e.g. whether it is related to airport-area environmental, as opposed to broader environmental impacts outside of the airport).

Answer

Narita International Airport Corporation is covering the entire cost that is required to manage Narita Airport, including the execution of environmental measures, by a variety of charges such as the landing fee. Charges which are intended exclusively for the execution of environmental measures are not collected.

With regard to Kansai International Airport Co., Ltd. and Central Japan International Airport Co., Ltd., these are off-shore airports and considered to be environmentally-friendly. They do not charge users (e.g. airlines, passengers and so forth) specifically for environmental measures. The revenues (e.g. landing fees) of these companies alone cover the cost of airport operations and administration.

Question Q35

We request clarification, in relation to Footnote 66, of whether the statistics cited for 2005 include, for Centrair/Chubu, the full 10 and 1/2 months of operation as well as the first 1 and 1/2 months of 2005 at Nagoya/Komaki Airport, which Centrair/Chubu replaced for purposes of all international and most domestic flights, or just for Centrair/Chubu alone.

Answer

In 2005, Japan's three international airports (Narita, Kansai, Chubu) carried 58.4 million passengers and 3.3 million tonnes of freight. The figures for Centrair/Chubu in the statistics cited for 2005 do not include those of Nagoya/Komaki.

Question Q36

Page 82, paragraph 70 of the Secretariat's report states that "While Japanese universities (excluding those established by stock companies in certain Special Zones for Structural Reform) receive favourable treatment with regard to corporate tax, branches of foreign universities do not receive such treatment."

A) Please explain the process, including time and costs of compliance with official requirements, for setting up a branch of a foreign college or university.

B) How do these requirements for branches of foreign universities compare to the requirements and costs that a Japanese university will experience in setting up a branch university?

Answer

Any foreigner may establish a school juridical person according to the requirements which are equally applicable to Japanese, in which case they are entitled to the same favorable tax treatment as Japanese universities; there is no discrimination based on nationality. If foreigner chooses to establish a MEXT-designated foreign university's branch in Japan without becoming a school juridical person, the foreigner does not need to meet these requirements; therefore, the foreigner does not entitled to the favorable tax treatment. When a foreigner wishes to establish a school juridical person, MEXT makes a judgment based on whether or not it meets the requirements stipulated in the laws of Japan. On the other hand, when a foreigner wishes to be designated as a foreign university's branch in Japan, the foreigner only has to go through the following procedure:

A) MEXT requests the embassies and other foreign diplomatic representatives in Japan to confirm the points listed below in writing. Upon receiving the required documentation, MEXT will proceed with the official process for designation of the foreign university's branch in Japan. There is no fee for this.

- *The foreign university's branch in Japan offers courses offered by the main campus of that university in the home country.*
- *The main campus in the home country is recognized as a university in the school education system of the home country.*

MEXT has already explained about the required documentation in detail to the Embassy of the United States in Japan.

B) For the designation, MEXT requests the embassies and other foreign diplomatic representatives in Japan to confirm whether "the foreign university's branch in Japan offers courses offered by the main campus of that university in the home country", and "The main campus in the home country is recognized as a university in the school education system of the home country". When a school juridical person established by meeting all the requirements stipulated in the laws of Japan wishes to establish a private university's branch in Japan, it is necessary to notify the Minister of MEXT.

Question Q37A

In addition to the statistics on border enforcement provided in Table II.7, could Japan provide statistics on internal trademark and copyright enforcement?

Answer

(1) Criminal cases

(a) Number of arrests in cases of violation of the Trademark Law and Copyright Law, 2004-05

(Source: Statistics of the National Police Agency)

Category	2004		2005	
	Number of arrests (cases)	Number of arrests (persons)	Number of arrests (cases)	Number of arrests (persons)
Violation of the Trademark Law	910	479	1138	551
Violation of the Copyright Law	315	159	445	206

(b) *Number of persons newly received by public prosecutors office and number of suspects prosecuted, 2004-05 (Source: Annual Report of Statistics on Prosecution)*

(b-1) *Trademark Law violation cases*

	Number of persons newly received by public prosecutors office	Number of suspects prosecuted
2004	711	563
2005	896	718

(b-2) *Copyright Law violation cases*

	Number of persons newly received by public prosecutors office	Number of suspects prosecuted
2004	234	177
2005	312	252

(2) *Civil cases*

Number of civil cases related to trademark rights and copyrights, 2005 (Source: Information provided by the Japanese authorities)

District courts (2005)

	trademark rights	copyrights
Commenced	90	81
Terminated	102	101

High courts (appellate courts) (2005)

	trademark rights	copyrights
Commenced	15	31
Terminated	16	31

Question Q37B

In regard to the amendment of penalty provisions of IP laws, we understand that Japan is studying the possibility of providing for the award of pre-established damages in copyright cases. Could Japan elaborate on the status of those efforts?

Answer

The review of the entire system of compensation for damages for copyright infringement, including the possibility of the introduction statutory damages, is scheduled to arrive at a certain level of conclusion within FY 2007. At present, what the conclusion will be is still unclear.

Question Q37C

Please describe the scope of Japanese law enforcement authorities' powers to take ex officio action (i.e., without a complaint by a right holder) in cases of copyright infringement.

Answer

Copyright infringement is an offense indictable only on complaint by a right holder. However, the methods and ways of investigation to be taken by Japanese law enforcement authorities in cases of offenses

indictable only on complaint are not at all different from those in cases of offenses indictable without a complaint.

UNITED STATES – ADDITIONAL REPLIES

In paragraph 58, page 45, the Secretariat report outlines Japan's labeling standards for food and beverages. We understand that Japan's Ministry of Agriculture, Fisheries, and Forestry (MAFF) has created a committee to explore policies allowing only domestic cattle to be labeled as "wagyu".

Question Q19-1

Is our understanding correct?

Answer

In Japan, the independent and voluntary rule of the meat selling industry is as follows: Four breeds which are established in Japan and the hybrids between two of these four can be labeled as "WAGYU".

In recent years, beef cattle in which the gene of "WAGYU" has been introduced is produced not only in Japan but also outside the country.

Hybrids with other breeds are also labeled as "WAGYU" overseas. When this beef is labeled and circulated as "WAGYU" in Japan, there is a possibility of causing quality misconception by consumers.

Since the proof method of "WAGYU" is not clear at present, the Ministry of Agriculture, Forestry, and Fisheries established the committee on meat labeling in order to clarify a method which proves and confirms certainly that it is the breed of "WAGYU".

Question Q19-2

If so, what is the status of the committee's deliberations?

Answer

The Committee on meat labeling has considered the method of proving and confirming the breed of WAGYU and meat labeling; the guideline was proposed.

From Jan 10 to Feb 9, Ministry of Agriculture, Forestry, and Fisheries invited public comments on this guideline.

Question Q19-3

Has Japan considered less trade restrictive alternatives, and if so, what were they and what was Japan's rationale for rejecting them?

Answer

This guideline is considered under the circumstances that, at present, it is cattle which are born and raised in Japan that can be proved and confirmed as pure WAGYU or a crossbreed of WAGYU in the present condition.

This guideline is supposed to be examined according to any changes of situation in the future. If foreign beef is proved to be pure WAGYU or crossbreed of WAGYU, Japan will respond taking that into account. Thus, the guideline does not put any limitation on imports from overseas.

Question Q19-4

The characteristics of the term “wagyu”, such as its quality and flavor, are based on genetics and animal husbandry practices and are not based on where the animal was born or raised. In addition, most “wagyu” cattle raised in Japan is raised using imported feed. What would be Japan's objective in adopting such labeling policies? In assessing risks, what scientific and technical information is Japan considering?

Answer

This guideline is considered in order to clarify how to prove and confirm the breed of the beef labeled as "WAGYU" and to prevent misconception by customers, not to limit the country of origin by claiming that quality can be attributed to geographical origin.

Since the proof method of certifying that the cattle is pure WAGYU at gene level is not established yet, cattle registration and traceability systems are essential in order to prove and confirm that it is a breed of pure WAGYU. However, it is only in Japan that these kinds of systems are strictly established. This guideline is considered under these circumstances.

This guideline is not a type of regulation that the government authorizes, but promotes voluntary measures by meat retailers that they deal in beef in which breeds are proved and confirmed by cattle registration and traceability systems.

UNITED STATES – ADDITIONAL REPLIES

Question Q6

RTA Follow-up Questions

Question Q6-1

Regarding Japan's response to US Question 6 concerning its negotiations with ASEAN, Japan indicates that it hopes to finish the negotiations on the Japan-ASEAN CEP by April 2007. Are the negotiations on track to be completed by that date? When would Japan expect the agreement to enter into force?

Answer

Japan is making its utmost effort to conclude the negotiation on the Japan-ASEAN CEP as soon as possible, within two years after the commencement date in April 2005, but we cannot provide specific timing to complete the ongoing negotiations.

Question Q6-2

Regarding Japan's policy “Protect what should be protected, while conceding what should be conceded”, articulated in response to US Question 6, how does this policy support the goals of GATT Article XXIV, the WTO, and the DDA in particular, to reduce trade barriers so as to expand global economic growth, development and opportunity.

Answer

Reforming, strengthening, and developing a stable and free multilateral trading system is indispensable for the expansion of global economic growth, development, and increase of opportunity. The WTO is the main pillar of Japan's external economic policies, and Japan has thus actively taken part in the DDA negotiations. EPAs are meant to complement the WTO system, and it goes without saying that Japan considers it necessary for EPAs to lead to further liberalization in line with GATT Article XXIV. Consideration of different sensitivities in different countries is necessary in both DDA and EPA

negotiations. With that in mind, Japan will make active contributions, including necessary concessions, to realize balanced agreements that are in the interests of all countries.

Japan notes that for developing countries to reap the benefits of the multilateral trading system, merely lowering trade barriers is not enough. Assistance is required in each of the three stages that comprise trade, namely "Produce", "Sell" and "Buy", as Japan intends to provide through its "Development Initiative for Trade".

Question Q16

MRL Follow-up Questions

Thank you for your replies to Question 16. We are pleased to inform you that the U.S. Government submitted a response to MHLW's request for more information through the U.S. Embassy in Tokyo about the U.S. system on January 26. We hope that this, combined with our good compliance history, will be enough to show MHLW that such excessive measures currently under use are unnecessary in the case of the United States, considering the responsible management of the use of agricultural chemicals in the United States.

A) Could you tell us more specifically what criteria MHLW uses to determine whether imported food is considered to have a "high probability of violating the Food Sanitation Law" and also, how these specific criteria are related to either CODEX guidelines, monitoring test results of importers, and control measures of agricultural chemicals used in the exporting country.

B) In the past year, of the 16 cases of continued violations after an inspection order was issued, were these all for MRL violations or does this include other kinds of violations? Of the MRL violations that continued even after the initial first 2 violations occurred, was there any consideration for whether or not the subsequent violations represented a significant portion of the industry from the exporting country as opposed to just one grower or exporter?

E) It is unclear to us what specifically is required by the exporting country in order to allow MHLW to recognize that it takes "sufficient control measures against chemicals in foods". Are there specific measures or guidelines for what would constitute sufficient control measures?

D) Could you tell us if an exporter or agent of various exporters who may be penalized by an adverse decision is also able to use this process or is it strictly limited to the importer in this case? Could you also tell us which specific office or administrative agency the application should be submitted? Also would Article 3, paragraph 1) xiii of the general Provisions in Chapter one of the Administrative Procedure Act that you referred to exclude an application in this situation due to fact that this situation would involve decisions on behalf of the public health?

Answer

We are now examining the information from the U. S. embassy in Tokyo about the U.S. system for regulating agricultural chemical use on food. After we finish the examination of information, with a view of comparison between Japan and U. S. systems, we will submit questions to the U. S. embassy in Tokyo.

A) *The CODEX "Principles and Guidelines for Imported Food Inspection Based on Risk (Appendix of Guidelines for Food Import Control Systems (CAL/GL 47-2003, REV. 1-2006))" is described as follows:*

para 13. "When an importing country does not have prior knowledge of an exporting country's processing controls or of the food itself, that is those items listed in paragraph 6, a compliance history is lacking or such information cannot be readily obtained, an importing country may, until there is such knowledge, initially establish inspections of a more comprehensive nature and of a higher frequency than that which it might assign to the food when such information is available."

We recognize that our enforcement action meets this regulation. The enforcement action taken by us is based on two or more violations which are confirmed in a year, as a result of monitoring inspection and that the export country does not submit any information on usage, residue and control of agricultural chemicals. We consider this imported food to have a high probability of violation and issue an inspection order.

B) Of the 27 cases of inspection orders after two violations, the 16 cases of continuous violations were observed. All of them are related to pesticide or animal drugs residues.

We could not limit the extent of strengthened testing because the export countries did not give any information on usage, residue and control of agricultural chemicals to us.

The 80% of continuous violations, after an issue of inspection order in the 16 cases, were shipped from different exporters and producers.

E) When we evaluate regulations of export countries, the criteria is that the export country has regulations equivalent to Japan and that the regulations work effectively. We refer to The CODEX "Principles and Guidelines for Imported Food Inspection Based on Risk (Appendix of Guidelines for Food Import Control Systems (CAL/GL 47-2003, REV. 1-2006))".

We have two related laws. One is the Agricultural Chemicals Regulation Law, as regulation of productive level, and is controlled by the Ministry of Agriculture, Fishery and Forestry. The other is the Food Sanitation Law, as regulation of residue in foods and is controlled by the Ministry of Health, Labour and Welfare. Each of them is enforced by central and local governments.

D) It is not clear what kind of system is compared to what kind of the U. S. systems. The Administrative Procedure Act, which we mentioned in a previous question, ensures procedures before dispositions for the person who is going to get the disposition. Article 3, paragraph 1) xiii of the general Provisions in Chapter I means that procedures are excluded when the occasion demands appropriate action to ensure public health.

Administrative appeals after dispositions are made based on the Administrative Complaint Investigation Law.

The person who can make administrative appeals is not the person who involves the dispositions.

Question Q17

Food Additives Follow-up Questions

Are there goals or guidelines that the Food Safety Commission follows with regards to the time it takes them to make a final determination on the safety of food additives for which an application has been submitted? Similarly, are there goals or guidelines that MHLW follows with regards to the amount of time it will take for them to request a review by the Food Safety Commission once an application has been submitted?

Answer

The Food Safety Commission conducts risk assessments on food in a scientific, independent, and fair manner based on the requests for assessment from risk management organizations. Regarding a response to the requests for assessment, the FSC has released its administrative plan for FY2006 and described its response in it as follows; "The FSC endeavors to complete risk assessments by March 2007, which were requested by March 2006, except when a case lacks information as needed in the assessment or other specific cases. If additional information is requested, based on the consequence of the FSC expert

committees, the FSC will continue to conduct risk assessment after receiving additional information from risk management organizations.”

The authorization by the Minister of Health, Labour and Welfare of food additives must be done under the Japanese Food Sanitation Law. In addition, the Food Safety Basic Law requires the Minister to hear opinions from the Food Safety Commission (FSC) in the process of approving them. In March 2005 the Ministry of Health, Labour and Welfare (MHLW) published the schedule to request the FSC to conduct assessment, in order to clarify the time frame for authorization of the 46 substances. The time required from the reception of the FSC’s assessment report to the authorization is roughly six to 12 months, including the time required for notification to the WTO. If additional data is requested by the FSC, more time is needed to perform unplanned tests.

Question Q19

Follow-Up Questions

Question Q19-1

What is the basis for Japan’s assertion that it is never possible to establish that non-Japanese beef is pure Wagyu or a crossbreed of Wagyu? (It is noted that there appear to be entities in the United States that may be in the business of certifying Wagyu beef.)

Answer

Since the proof method of certifying that the cattle is pure WAGYU at gene level is not established yet, cattle registration and traceability systems are essential in order to prove and confirm that it is a breed of pure WAGYU. However, it is only in Japan that these kinds of system are strictly established based on its national law. This guideline is considered under these circumstances.

The committee on meat labeling, which was established last August by the Ministry of Agriculture, Forestry and Fisheries, has invited the U.S meat industry in order to understand the situation of ‘WAGYU’ distribution in the U.S. The committee understands that not the pure breed of WAGYU, but rather the hybrid between WAGYU and Angus, is labeled and distributed as ‘WAGYU’ in U.S.

Question Q19-2

If our understanding is correct, the proposed guidelines are voluntary: only members of the Meat Fair Trade Council are subject to the guidelines.

- i) Is that correct?

Answer

Your understanding is correct in that the guideline is voluntary. However, the target of this guideline is to promote independent and voluntary measures by all meat selling dealers. Your understanding is not correct in that all meat dealers, whether he/she is a member of the Meat Fair Trade Council, are within the scope of this guideline.

- ii) What percentage of meat dealers belong to the Meat Fair Trade Council?

Answer

The detail is not clear since the types of meat selling is complicated, however, about two-thirds of meat dealer is considered to belong to the Council.

- iii) If the guidelines are voluntary, what are the consequences of a failure to abide by the guidelines? Can the Meat Fair Trade Association fine members who do not abide by the guidelines? Can any entity that does not abide by the guidelines- - whether or not it is a member of the Meat Fair Trade Association - - be prosecuted for engaging in an unfair trading practice?

Answer

The target of this guideline is to promote voluntary measures by private sector, and it is not the type of regulation that the government authorizes. Those who do not abide by the guideline are fined by the government.

The Meat Fair Trade Association makes Meat Fair Trade Agreement by itself. The Council takes measures, including a fine against the members of the Council, not by this guideline but based on the agreement.

Question Q19-3

If the guidelines were to take effect, how would retailers label beef that: (i) is imported into Japan and (ii) is WAGYU within the meaning of Section VI 1 (1) ((1)) of the guidelines?

Answer

Since this guideline is voluntary, each retailer would judge how they label imported beef independently with relevant laws. The definition of "WAGYU" within the meaning of Section VII(1)1 of the guideline is applied to both domestic and foreign beef. However, this guideline indicates no guidance to the labeling of the foreign beef, which cannot be proved and confirmed strictly through cattle registration and traceability systems.

Question 19-4

Does Japan expect to promulgate other regulations that would provide that terms other than WAGYU may only be affixed to Japanese products? If so, which terms does Japan expect to so regulate, and in connection with which products?

Answer

This guideline does not aim at limiting the use of the term 'WAGYU' to Japanese products, but aims at clarifying the method which proves and confirms that it is the breed of WAGYU in labeling as 'WAGYU'.

At present, the Ministry of Agriculture, Forestry and Fisheries does not take the same kind of consideration in agricultural, forestry and fisheries products other than meat.

Question Q24

IP High Court Follow-up question

Will the IP High Court have any powers to provide guidance to other courts on sentencing practices for IPR crimes?

Answer

The IP High Court handles only civil cases, and each court shall be independent in the exercise of its duties. Therefore, the IP High Court does not have any power to provide such guidance.

B) In regard to the amendment of penalty provisions of IP laws, we understand that Japan is studying the possibility of providing for the award of pre-established damages in copyright cases. Could Japan elaborate on the status of those efforts?

Answer

The review of the entire system of compensation for damages of copyright infringement, including the possibility of the introduction statutory damages, is scheduled to arrive at a certain level of conclusion within the fiscal year of 2007. At present, the outcome of the conclusion is still unclear.

Question Q37-C)

We appreciate your answer with respect to criminal indictment, and would appreciate if you could clarify and describe the scope of ex officio for border enforcement measures.

Answer

The Customs Law prohibits the import of goods which infringe patent right, utility-model right, design right, trademark right, copyright, neighboring right, layout designs right, breeder's right and goods which violate Unfair Competition Prevention Law. With respect to export goods infringing patent right, utility-model right, design right, trademark right, breeder's right and the goods violating of Unfair Competition Prevention Law are prohibited.

Japan Customs has the authority to suspend all of these goods by its own initiative (ex officio).

CHINA

Question Q1-1

Comparing to most other WTO members, Japan provides much domestic Agricultural support while in the recent domestic support notification, Japan does not provide any information regarding DS:2. Could the Japanese government give detailed clarification to the issues mentioned above?

Answer

When there are any new or modified domestic support measures, Japan gives notification of the necessary information in accordance with the formats (G/AG/2) agreed by the Committee on Agriculture.

Question Q1-2

According to the Secretariat Report, Japan has fulfilled its major obligations regarding transparency in the review period. However, in some areas, China has the following concerns: b. China notes that there is a considerably large gap between the number of notified laws and regulations regarding trade remedy with the ones in other areas.

Could the Japanese government give detailed clarification to the issues mentioned above?

Answer

As with other areas, Japan has notified laws and regulations regarding trade remedies, when required.

Question Q1-3

According to the Secretariat Report, Japan has fulfilled its major obligations regarding transparency in the review period. However, in some areas, China has the following concerns: c. in other areas such as

import licensing procedures and investment measures, Japan fails to provide a set of complete notifications, such as notifications under Article 5.3 of the Agreement on Import Licensing Procedures and Article 5.1 of the TRIMs Agreement.

Could the Japanese government give detailed clarification to the issues mentioned above?

Answer

Japan notified the WTO under Article 5.3 of the Agreement on Import Licensing Procedures, most recently in April, 2001 (G/LIC/N/2/JPN/3). Since then, Japan has notified institutions or changes of import licensing procedures in its annual notifications under Article 7.3 of the Agreement.

Japan did not provide any notification under Article 5.1 of the TRIMs Agreement because Japan had no TRIMs that are in conformity with the provisions of the Agreement.

Question Q2

Japan tends to initiate a much more active pursuit of bilateral trade partnership agreement and regional trade agreement. Therefore, would Japan elaborate on how to ensure a complementary approach when applying to both the multilateral system of the WTO and its regional and bilateral initiatives to lessen the effect of capacity depletion, discrimination creation and trade diversion by those arrangements?

Answer

Japan seeks to ensure coherence among its trade agreements and the multilateral system of the WTO by making sure that all bilateral and regional agreements are WTO consistent. Also, Japan aims at making simple, predictable, and transparent rules in bilateral and regional trade agreements.

Question Q3

As an important economic power in APEC and northern Asia regions, what strategy and measures does Japan take to enhance the cooperation and policy synergy of members in these regions?

Answer

With regard to APEC, Japan played a major role in establishing APEC as a founding member, and has continued to provide support to APEC works. Japan has actively contributed to the work of APEC fora/subfora, several of which it has chaired over the years. Moreover, Japan has placed particular emphasis on supporting APEC's work in the areas of intellectual property, competition policy, structural reform, investment, and WTO capacity-building. Furthermore, Japan has played a role as the major provider of funding for APEC projects (voluntary contribution of more than ¥4 billion yen since 1997) and will host APEC in 2010, the target year for developed economies to achieve the Bogor Goals, which reflects Japan's will to enhance the cooperation and policy synergy in the APEC region.

*(Tripartite Cooperation among Japan, the People's Republic of China and the Republic of Korea)
The heads of the government of Japan, the People's Republic of China, and the Republic of Korea reached an agreement to launch a joint research project on economic cooperation among three countries at the ASEAN+3 Summit held in Manila, the Phillipines in November 1999. Based on this agreement, the institutes representing the three countries, the National Institute for Research Advancement (NIRA) for Japan, the Development Research Centre of the State Council (DRC) for China, and the Korean Institute for International Economic Policy (KIEP) for Korea, have undertaken the Trilateral Joint Research Project since 2001 to provide policy recommendations to the three governments.*

Up to the present time, the three institutes have jointly formulated five sets of policy recommendations concerning the promotion of trade and direct investment in the region. From 2001 to 2004, the

recommendations were submitted to the heads of the governments of the three countries at trilateral summit meetings held during ASEAN+3 summit meetings. In 2005, the policy recommendations were submitted to the heads of the governments through the institutes of each country.

The heads of the three countries issued the “Joint Declaration on the Promotion of Tripartite Cooperation among Japan, the People’s Republic of China and the Republic of Korea” in October 2003 and approved the “Action Strategy on Trilateral Cooperation among Japan, the People’s Republic of China and the Republic of Korea” in November 2004.

Question Q4

Japan applies a 17% basic tariff rate to imported green tea and wulong tea while 2.5% rate for bulk red tea. China believes such a classification not only effects negatively green tea and Wulong tea export enterprises, but also impairs the welfare of Japanese consumers. China hereby urges Japan to reduce the tariff rate for green tea and wulong tea.

Answer

Imported green tea and partly-fermented teas such as wulong tea compete with domestic green tea, while in case of red tea (fermented tea), there is no such competition. This is reflected in the difference in the level of custom duty. The tariff rates for agricultural products have been discussed in the DDA negotiations, and Japan intends to address the issue appropriately based on the result of the negotiations.

Question Q5

Could Japan provide the rationale for maintaining non-ad valorem rates of duty on fats and oils, footwear, prepared foods, live animals and animal products, textiles and clothing, vegetables, and mineral products?

Answer

Japan applies an appropriate type of tariff for each product in accordance with the product’s properties, etc. For example, it intends to protect domestic producers against declines of prices due to drastic fluctuations in the international market.

Question Q6

Pursuant to the GPA, transactions by entities with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale does not fall into the category of government procurement. Could Japan define “commercial sale and resale” in its own domestic legislation?

Answer

For central government, Article 3(1)(i) of “ Cabinet Order Stipulating Special Procedures for Government Procurement of Products or Specified Services ” (Cabinet Order No. 300, 18 November 1980), and for local government, Article 3(1)(i) of “ Cabinet Order Stipulating Special Procedures for Government Procurement of Products or Specified Services in Local Government Entities” (Cabinet Order No. 372, 1 November 1995), respectively refer to “[c]ontracts for procurement of products for resale (including resale of the products after processing or repairing the products), or of specified service directly required for such resale (including specified service directly required for processing or repairing those products), or for use in the production of goods for sale, or of specified services directly required for the production of those goods for sale”. (translation)*

Question Q7

In Appendix I of the GPA, other entities refer to those where government has control or influence. Could Japan clarify whether it has carried out standards for “ having control or influence ” ? If not, why?

Answer

As a result of the negotiation of the current GPA, 84 corporations then having special status established directly by law were included in annex 3 of Appendix I. During the negotiations, elements such as the existence and degree of governmental share, of governmental subsidy, and of authority for the government to control the entity were taken into account.

Furthermore, over the course of the implementation of the GPA, as a result of organizational reform of the central government, Japan added into annex 3 more than 50 “Independent Administrative Institutions” created as entities to perform certain previous governmental undertakings.

Japan has notified the Committee on Government Procurement of withdrawal of entities from Appendix I when government control or influence over them has been effectively eliminated.

Question Q8

Does the Japanese government include Build-Operate-Transfer (BOT) and other franchising project items, telecommunication service, transport service and project items in its GPA list?

Answer

In principle, a contract for PFI projects (including BOT) involving public expenditure by GPA-covered entities is awarded in accordance with the GPA, if the core subject of procurement corresponds to any service specified in Japan 's Appendix I and the value is above the threshold. Those services which are covered by the GPA are specified in annex 4 of Japan's Appendix I.

Question Q9

According to statistics by some research institutes, about 10% of national standards of Japan is not in conformity with international standards, especially those in agriculture sector where national standards are more restrictive. Although the establishment and modification of standards are conducted by government agencies with participation of the business sector, which guarantees a timely change in standards, the process of establishing or modifying a standard is opaque, which makes it very difficult for foreign vendors to have a clear picture about the technical requirements of Japan, and thus to export their products to Japan. METI is responsible for conformity assessment of industrial products and about 90% of industrial products assessment is carried out by organizations authorized by METI. According to METI rules, assessment for electrical products, LPG equipment and coal gas equipment can either be compulsory or voluntary. Those that must pass compulsory assessment and acquire JIS assessment certificate is included in the list published by METI in the form of laws or regulations.

In practice, METI's assessment for imported electrical and electronic products is time consuming, costly and complicated, and thus constitute de facto trade barriers for foreign home appliances to enter Japanese market. Could Japan elaborate on its plans, if any, to improve this situation?

Answer

Foreign manufacturers of electric products have been allowed to undergo conformity assessments and certifications done in foreign countries by Foreign Registered Conformity Assessment Bodies under the Electrical Appliance and Material Safety Law. Therefore Chinese producers that export electric products

to Japan have also been given same opportunities for conformity assessments as Japanese domestic producers are given.

Question Q10

As reported by many Chinese enterprises, Japan applies a SONY standard to electronic equipment and parts from China, which is more restrictive than the EU ROHS. For example, ROHS stipulates 6 hazardous substances while SONY includes more; for CR 6+ substance, ROHS standard is 1000 ppm while the SONY standard is zero tolerance; for Cd substance, ROHS standard is 100 ppm while SONY standard is 5ppm. China would like to know what is the scientific basis and rationale to apply such restrictive standards. If there is scientific basis, please identify.

Answer

The Government of Japan (GOJ) does not regulate the use of six hazardous substances stipulated in the EU ROHS as China refers. It is a business matter what standards of procurement private companies apply. The GOJ is not in a position to comment on this issue.

Question Q11

The Japanese positive list system has been in force since May 29 2006. At present, the Ministry of Health, Labor and Welfare (MHLW) is able to timely publish annual control and inspection plan and information regarding imports that fail to meet SPS standards. However, China notices that:

- a. Compared to import inspection, publication of control and inspection plan of residue of domestic products and related enforcement information is not only opaque, but also incomplete and often delayed
- b. Frequency and scope of inspection for imported products is far greater than that for domestic products, while mandatory inspection only applies to imported products.
- c. According the SPS agreement, SPS measures should not be applied to imported products in a way more restrictive than those apply to domestic products and thus not constitute barriers or restrictions to international trade. In the previous bilateral exchange of views, Japan explained that due to the administration of SPS measures by different competent authorities, there is differential treatment between imported and domestic products. China urges Japan to unify the methods it applies to the publication of relevant information of imported and domestic products. Could Japan explain how it can guarantee transparency and non-discrimination principle when implementing the positive list system?

Answer

a The Japanese positive list system applies indiscriminately to products produced in Japan and products imported from other countries in accordance with the SPS agreement. This system applies the same standards to both domestic and import products under the Food Sanitation law from the same date of enforcement and it is prohibited to retail, process and import any food that violates this. The Food Sanitation Law prescribes that local governments shall inspect domestic foods. The details of local inspections are published by each local government on their websites, etc.

b. The MHLW had already introduced the system of inspection order before the positive list system went into effect. Inspection order issuance is limited to a necessary and minimum extent and they are only issued when the MHLW recognizes that imported food in question has a high probability of violating the law, with reference to CODEX guidelines, monitoring test results at the imports, and control measures of agricultural chemicals residues in an exporting country.

As regards to domestic violations, Japan does not apply the same inspection systems for imported foods because control measures regarding the use and residue of agricultural chemicals during production are already in place and local governments investigate the cause of violations and take corrective action immediately when violations are found.

c. Inspection of domestically-produced foods is carried out by prefecture governments. The MHLW collects the inspection results from the prefecture governments every fiscal year. It is also going to collect the results, including number of violations, for FY 2006.

The monitoring plans for imported foods by the MHLW and for domestic foods by local governments are published on their websites, etc., and then implemented by each of them. Moreover the MHLW reviews compliance history, which means monitoring the test results of imports and the control measures regarding the use and residue of agricultural chemicals which the export country submitted, and then imposes an inspection order, ensuring transparency without discrimination between imported and domestic foods.

Question Q12

Under the positive list system, the average testing items for residue tolerance regarding agricultural products is 200, while for some, the number is shockingly 400. After the system is in place, inspection items are estimated to be quintupled, for example, items for pork is increased from 25 to 428, tea is from 89 to 276 and rice from 428 to 579. The system has already affected trade in agricultural products in many ways: a. longer customs clearance that affects freshness of vegetables. b. higher inspection fee that raises export cost of enterprises. c. increased uncertainty for agricultural trade which hampers enterprises' confidence. Would Japan please clarify:

- a. How does Japan ensure that the new positive list system will not constitute trade barriers and restrictions for agricultural products from developing countries?
- b. What measures will be introduced to avoid great increase of export cost and prolonged customs clearance time?
- c. China urges Japan to, in the course of implementing the positive list system, take into account of the chronicle gap between production cycle of agricultural products and implementation period of the system and thus the Japanese government could take steps to publish its implementation plan and the list of major imports subject to inspection.
- d. For the purpose of enhancing inspection efficiency and reducing inspection cost, Could the inspection and quarantine authorities of the Japanese government study seriously the possibility to accept the testing result of Chinese inspection and quarantine bodies?

Answer

(a) Japan has introduced the positive list system to fulfill the national responsibility of the protection of consumer health. The system is based on scientific and technical concepts and is applied to both domestic and imported products. In the process of introducing the system, Japan has as far as possible made its plan public. Specifically, at each stage Japan published the skeleton of the plan together with the residue standards to be applied and sought comments from inside and outside the country. Also, Japan notified the WTO in accordance with the WTO/SPS Agreement, fulfilling the responsibility of Members. Japan gave detailed explanations of the new system to foreign countries before and after the implementation of the system. In the light of the scientific validity of the system and international harmonization of the Japanese standards, Japan does not recognize that the positive list system would create trade barriers.

For some specific products, the export volume to Japan might be temporarily decreasing. However, even in such cases, if each relevant country has taken proper measures to solve problems regarding pesticide residues in foods, in the long term this will help to enhance the quality and safety of crops grown in each country and benefit people in both exporting and importing countries.

Japan will continue to operate the system from a scientific and technical standpoint, while cooperating to gain a better understanding from other countries.

The number of agricultural chemicals (pesticides, feed additives, and veterinary drugs) with maximum residue limits (MRLs) increased from 22 to 438 for pork, from 84 to 288 for tea, and from 122 to 366 for rice.

(b) In general import inspection, only monitoring tests are conducted, except for products which are likely to violate the Japanese standards. The monitoring inspection does not result in prolonged customs clearance time or require any expenses from importers. Therefore, the introduction of the positive list system will not lead to an increase in export costs.

For inspections carried out under the orders of the Minister of Health, Labour and Welfare, the Ministry of Health, Labour and Welfare (MHLW) is working to shorten the time required for examinations. Specifically, the MHLW is holding discussions with accredited private laboratories which actually conduct examinations, so that examinations can be conducted in a speedier manner as far as possible.

(c) Unfortunately, Japan will not be able to provide an additional grace period for the following reasons: 1) The residue standards provisionally established in the process of implementing the new system were based on Codex standards and other legitimate standards, 2) Over the past three years Japan has explained the new system, together with the residue standards to be applied, at home and abroad, 3) Japan has gone through the international procedures through the WTO notification under the WTO/SPS Agreement, and 4) a six-month get-acquainted period was provided after the official announcement of the finalized system.

Japan would like to ask the Chinese Government to instruct producers and distributors to create a system to ensure that crops grown in China can meet the new Japanese standards.

(d) As mentioned in section (b) above, import monitoring inspection does not prolong customs clearance. The expenses of inspection are borne by the Government of Japan. It is conducted regardless of the results obtained in importing countries, and such results are not taken into consideration in the inspection.

There was a case in which Chinese food products were found to violate the Japanese residue standard for a certain agricultural chemical in an import inspection conducted in Japan, even though the products were accompanied by a certificate for these chemicals issued by the Chinese Government. Therefore, it is impossible in practice for the GOJ to accept test certificates from the Chinese Government.

Question Q13

It seems that most “temporary standards” are established on the basis of average standards of USA, EU and other 3 countries. We believe that this practice is not fully consistent with Article 5 of SPS. We urge Japan to set up temporary standards on the basis of risk analysis. Could Japan take into account the standards of major exporters of agricultural products when establishing limit standards for residues of agricultural chemicals (pesticides, veterinary drugs, and feed additives)?

Answer

The residue standards (maximum residue limits: MRLs) which were provisionally established in the process of introducing the positive list system were based on the following standards in descending priority:

- i. Codex standards,*
- ii. Registration withholding limits under the Agricultural Chemicals Regulation Law (Law No.82, 1947), limits of determination (LODs) for veterinary drugs at the time when they were authorized under Pharmaceutical Affairs Law (Law No. 145, 1960), or LODs for feed additives at the time when they were authorized under the Law for Safety Assurance and Quality Improvement of Animal Feed (Law No. 35, 1953), and*
- iii. Standards established by other countries where MRLs are assumed to be established based on toxicity study data equivalent in quality to those used in scientific evaluations by JMPR (Joint FAO/WHO Meeting on Pesticide Residues) and JECFA (Joint FAO/WHO Experts Committees on Food Additives). These countries are Australia, Canada, the EU, New Zealand, and the United States.*

When two or more of these countries had their own standards for a chemical in a product, the average was adopted for that product. This was because: 1) these countries applied their standards indiscriminately to domestic and imported products, 2) these countries were supposed to set the standards by scientific methods based on toxicity and residue studies, and 3) all of their standards are treated as effective ones under the WTO.

These countries willingly responded to a request Japan made in April 2003 to provide the necessary data. Japan understands that China did not respond to our request.

Japan will systematically conduct risk evaluation for chemicals for which MRLs were provisionally established at the introduction of the new system, and will review the MRLs as needed.

Japan would like to ask China to file an application in accordance with the guidelines (see the attachment) if China wishes for the establishment of new MRLs for chemicals which are not authorized in Japan and the review of the existing MRLs.

Attachment

Original: Japanese
Provisional Translation

Guideline for Application for Establishment and Revision of Maximum Residue Limits for Agricultural Chemicals used outside Japan

I. Purpose

This guideline outlines the procedures required to apply for the establishment and revision of maximum residue limits (MRLs) for agricultural chemicals on/in foods, and the scope of required documents. The guideline targets agricultural chemicals — pesticides, veterinary drugs, and feed additives — that are approved in the foreign countries for foods exported to Japan. The foods include agricultural products, animal products, or seafood.

The requirements given in this document notwithstanding, it is not necessarily appropriate to require a uniform set of documents for every chemical. Also, advances in science and technology may bring new analytical and evaluation methods. Therefore, the study results and related documents given in the guideline can be replaced by other documents sufficient to conduct evaluation for establishment and revision of MRLs.

Background

The Food Sanitation Law was amended and promulgated in May 2003. Based on the amended law, the Ministry of Health, Labour and Welfare (MHLW) is going to implement a positive list system for agricultural chemicals on/in food. The system is aimed at prohibiting the distribution of foods that contain agricultural chemicals above a certain level unless MRLs for the chemicals on/in the foods are established. This system will go into effect within three years after the publication of the amended Food Sanitation Law, May 30, 2003.

In the implementation of the positive list system, Japan expects foreign countries to make requests for establishing or revising MRLs for agricultural chemicals when these chemicals are newly approved in the countries for foods exported to Japan.

For agricultural chemicals used in Japan the MHLW establishes MRLs, based on Article 7 Paragraph 1 of the Food Sanitation Law, at the time of the registrations/authorizations of the agricultural by the Ministry of Agriculture, Forestry and Fisheries (MAFF).

II. Procedures for Establishment and Revision of MRLs for Agricultural Chemicals

1. Application

Any person may apply to the Minister of Health, Labor and Welfare with Form 1 or 2 for the establishment or revision of MRLs for an agricultural chemical in the case that the chemical is approved in a country for foods exported to Japan. The Form should be accompanied by required documents on the chemical including data as described in the section III.

If the applicant is abroad, an appropriate contact person in Japan should be identified to handle the application. The Form should be submitted to the Standards and Evaluation Division, the Department of Food Safety, MHLW.

2. Evaluation

The submitted application will first be examined by the secretariat of the Division. Then, the risk assessment on the chemical will be done by the Food Safety Commission, based on Article 24, Paragraph 1, Item 1 of the Food Safety Basic Law. Draft MRLs will be discussed at the Pharmaceutical Affairs and Food Sanitation Council, based on the Commission's assessment.

The Commission and Council may ask for additional documents/data from the applicant if necessary.

In response to the Council's report, the secretariat will take necessary procedures including the WTO notification and prepare for publication on the establishment or revision of MRLs, based on Article 7 Paragraph 1 of the Food Sanitation Law.

III. Required Documents

1. Data Sets and GLP Compliance

A. Data Sets

The data sets required when applying for the establishment and revision of MRLs are given below. Besides them, other data on safety assessment should be submitted if available.

a. Establishment of MRLs
Pesticides

A set of toxicity data and residue data given in “Data Requirements for Supporting Registration of Pesticides” — Director-General, Agricultural Production Bureau, MAFF, Japan, Notification No. 12-Nousan-8147, 24 November, 2000 — (excluding effects of aquatic animals and plants, effects on beneficial creatures other than aquatic animals and plants, and study data on water contamination). The Notice is available in English on <http://www.acis.go.jp/eng/testglp/8147main.pdf>

Feed additives

A set of safety data and residue data given in the “establishment of evaluation standards for feed additives” — Director General, Food Safety and Consumer Affairs Bureau, MAFF, Japan, Notification No. 4-Chiku-A-201, March 16, 1992. These documents can be replaced by documents prepared according to the VICH guideline for safety (VICH: the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Products). The Notice in Japanese is available on <http://www.ffis.go.jp/sub8/obj/newfeed.pdf>

Veterinary drugs

Documents according to the toxicity study guidelines for given in Section 4 of the attachment to the “practices for documents on veterinary drugs,” — Director General, Food Safety and Consumer Affairs Bureau, MAFF, Japan, Notification No. 12-33, March 31, 2000. These documents can be replaced by documents prepared according to the VICH guideline for safety. The Notice in Japanese is available on <http://www.nval.go.jp/hourei/tuti/katyo/Taro11-15-753honbun.pdf>

b. Revision of MRLs

Residue data on target foods — agricultural products, animal products, or seafood. If new findings on safety and residue of the applied chemical have been obtained after MRLs were established for the chemical, documents on the findings should be submitted. The applicant must have toxicity data, but the submission shall be made upon request of the MHLW.

B. GLP Compliance

In principle, studies mentioned the above “A” should comply with the GLP requirements.

If data are quoted from studies not conducted by the applicant, prior permission should be obtained from the study authors unless they have been publicized in scientific journals.

C. Language

The executive summary should be in Japanese. Other accompanying documents, such as study reports may be written in English. Documents in other languages are not acceptable.

2. Additional Data

If the MHLW determines additional study data as necessary in discussion for the establishment or revision of MRLs, the applicant may be requested to submit them.

3. Other Requirements

The following documents should be submitted.

- Information on registration/authorization of the substance in other countries*, including country names, food products for which the substance can be applied, and applicable MRLs.
- The draft MRLs that the applicant proposes to be established, and analytical methods for the chemical residue in foods (e.g., methods to monitor the chemical remaining in marketed foods).

If the chemical residue may be decomposed, migrated, or concentrated in the process of manufacturing or cooking (especially, in cereal grains and oil seeds), the submission of processing data is desirable.

If the registration of the target chemical is revoked overseas or the registration is withdrawn after Japan establishes its MRLs, the applicant should inform them to the MHLW.

Note: Australia, Canada, EU, New Zealand, the US, where the establishment of MRLs is based on toxicity data equivalent to those needed for scientific evaluation by the JMPR or JECFA.

Form 1

Date

Minister of Health and Welfare

Address of applicant
(For a corporation, principal place of business)

Name of applicant
(For a corporation, its name and the representative's name)
Seal

We hereby apply for the establishment of residue standards (MRLs) for the pesticide/veterinary drug/feed additive given below, based on Article 7 of the Food Sanitation Law.

Name of substance

(Notes)

1. Use JIS A4-size paper.
2. Use black ink (or "SUMI"), and write in clear block letters in English or Japanese.
3. Give the contact in Japan, if the applicant lives overseas. The seal may be replaced by the applicant's signature.

Form 2

Date

Minister of Health and Welfare

Address of applicant
(For a corporation, principal place of business)

Name of applicant
(For a corporation, its name and the representative's name)
Seal

We hereby apply for the partial revision of the residue standards (MRLs) for the pesticide/veterinary drug/feed additive given below, based on Article 7 of the Food Sanitation Law.

Name of substance

(Notes)

1. Use JIS A4-size paper.
2. Use black ink (or “ SUMI ”), and write in clear block letters in English or Japanese.
3. Indicate the contact in Japan, if the applicant lives overseas. The seal may be replaced by the applicant's signature.

Question Q14

We would like to know whether Japan has any plan to provide technical assistance to developing members in accordance with Article 9.2 of the SPS Agreement by way of publishing its testing methods, providing developing exporting members with corresponding testing equipment, developing bilateral technical training and cooperation programs?

Answer

Japan has already worked to ensure that the Chinese Government understands the positive list system. Specifically, the Government of Japan (GOJ) has sent Japanese officials to China several times to exchange opinions and information. More recently, the GOJ dispatched administrative officials and technical experts to explain the new system to Chinese regulators at three places (Beijing, Qingdao, and Fuzhou) during the period from 5 November to 11 November 2006.

It is possible to continue to give a certain level of assistance, including the dispatch of appropriate persons for technical information exchange as we have done so far. However, it should be noted that it might be difficult for the GOJ to implement direct supportive activities in individual local provinces in China because China is a vast country. Also, bilateral cooperation through JICA through providing testing equipment could be considered carefully in the light of our technical assistance policy to China, based on requests from the Government of China.

Question Q15

Japan is the largest consumer for eel and eel products. Over 50% of eel production of Guangdong Province of China is exported to Japan. At present, breeding area for eel exceeds 60,000 mu (400 hectares), with annual production of nearly 60,000 tons and export volume of nearly 0.7 billion USD. However, since entry into force of the positive list system, Japan starts to implement a full-scale inspection on eel import from China, with more than 116 chemicals that need testing and testing items rising from 25 to 112. All these requirements have raised production costs to a great extent and brought heavy loss to eel breeding and exporting enterprises:

- a. The positive list system covers almost all agricultural products. The system stipulates maximum residue tolerance for some chemicals, and when the tolerance level is absent, a uniform 0.01 ppm is applied. Besides, Japan can resort to technical measures without advance notice. With the redundant testing requirements and restrictive tolerance levels, the Chinese export of eel to Japan will further shrink.
- b. The maximum residue tolerance level in the positive list system is arbitrary in many cases. For example, the initial limit standard for Enrofloxacin is 50 ppb, it became 100 ppb in December 2006. Furthermore, it is reported that the limit standard will be modified again in May 2007. China urges Japan to abolish such arbitrary and discretionary administrative measures in the future.
- c. In the positive list system, Japan adopts extremely high standards for eel as compared to other aqua products, for example, the residue standard for Endosulfan in eel is 4 ppb while for the same chemical in other aqua product is 1000 ppb, which we believes is not justifiable. Such measures constitutes disguised and unjustified trade protection to Japan's domestic eel industry.
- d. On June 25 2003, Japan announced that it would implement mandatory inspection over roasted eel and the measure would be in force on July 3 2003. Obviously, Japan did not leave any transitional period for both exporters and importers. China would like to know why Japan failed to leave sufficient time for enterprises to adapt themselves to the new system at the time.

Answer

(a) Japan establishes residue standards for agricultural chemicals (pesticides, feed additives, and veterinary drugs) in foods under the Japanese Food Sanitation Law on the basis of scientific evaluation. When finalizing these standards, Japan notifies the WTO in accordance with the WTO/SPS Agreement and seeks comments from Members. It is obvious that Japan observes the international procedures for regulation setting and that the existing Japanese standards are never arbitrary. In the process of introducing the new system, Japan repeatedly gave explanations to China and provided opportunities to exchange opinions. The Japanese residue standards are applied to both domestic and imported products.

The residue standards (maximum residue limits: MRLs) which were provisionally established in the process of introducing the positive list system were based on the following standards:

- i. Codex standards,*
- ii. Registration withholding limits under the Agricultural Chemicals Regulation Law (Law No. 82, 1947), limits of determination (LODs) for veterinary drugs at the time when they were authorized under Pharmaceutical Affairs Law (Law No. 145, 1960), or LODs for feed additives at the time when they were authorized under the Law for Safety Assurance and Quality Improvement of Animal Feed (Law No. 35, 1953), and*
- iii. Standards established by other countries where MRLs are assumed to be established based on toxicity study data equivalent in quality to those used in scientific evaluations by JMPR (Joint FAO/WHO Meeting on Pesticide Residues) and JECFA (Joint FAO/WHO Experts Committees on Food Aditives). These countries are Australia, Canada, the EU, New Zealand, and the United States.*

The uniform limit (0.01 ppm) is applied if any MRL is not established. Notwithstanding this requirement, uniform limit is not applied to antibacterials for which MRLs are not established. Instead, such antibacterials are not permitted to remain in the corresponding food products. This regulation was applied before the introduction of the new system, and continues to be applied.

(b) Before the introduction of the positive system, Enrofloxacin was not permitted to remain in food and the determination limit (LOD) for eel was 50 ppb in the testing method used at that time. At the introduction of the new system, an MRL of 100 ppb was set in accordance with the way mentioned in

above (a). However, the MRL was thereafter withdrawn based on scientific evaluations from some studies, including toxicity studies and residue studies, and use conditions.

(c) For Endosulfan, MRLs are based on the Codex standards for some crops and terrestrial animal products. For eel, a limit of 0.004 ppm (the Codex MRL for some terrestrial animal products) was adopted even though it was below the uniform limit, because there were no Codex MRLs for aquatic animals, including eel.

As already mentioned above, when finalizing these standards for eel, Japan published draft MRLs and went through the international procedures, including WTO notification.

(d) As mentioned above, Japan follows the WTO/SPS Agreement and, in the process of establishing new regulations, provides sufficient period of time to get acquainted with the new regulations. However, in cases where imported products frequently violate the existing Japanese standards, like the violations found in June 2003, Japan steps up the inspection for them for the protection of the public health. Japan has taken this action regardless of the implementation of new system.

Question Q16

Through the efforts both by China and Japan, laver export from China to Japan was resumed in 2006 and the annual quota granted by Japan was 0.23 billion pieces, a 91.7% increase compared to 2005. However, after the positive list system was in place, laver export from China decreased to a large extent due to excessively strict and restrictive standards and inspection procedures, as well as the unnecessary fees collected by Japanese laver associations from importers. Export volume from January to November 2006 was only 0.0544 billion pieces, reaching a mere 23% of the annual quota. It should be mentioned that the fill rate of 2005 was 100%. China believes that failure in identifying specific residue standard for laver is the key factor that causes severe damage to laver exporters. Since the current standard applied by Japan for testing of chemical residues in laver product lacks scientific basis, when the Japanese government could apply the base residue number which was agreed by both Chinese and Japanese laver associations?

Answer

For processed products, like laver, for which individual MRLs are not established, if the ingredients of the product meet the corresponding MRLs, the product is deemed to meet the MRLs. Determination of compliance with MRLs is on a case-by-case basis. Whether a product meets the existing MRLs is judged based on conditions such as the form/state of ingredients and the values of corresponding chemicals detected in the final products.

Laver products are also subject to a case-by-case judgment since the difference in water content of the product and its ingredients may vary by products. Judgment requirements, including testing, are on a scientific basis. The Government of Japan does not know what was agreed between the Chinese and Japanese laver associations.

Question Q17

Besides eel and laver, other agricultural products are also affected. For example, edible fungus export to Japan from January to November 2006 was 0.377 million tons, a 13.7% decrease compared with 2005. It should also be noted that from January to May 2006, edible fungus export to Japan reached 0.38 billion USD, with a 19.9% increase compared to the same period in 2005, while from June to November (i.e., after the positive list system was in place, export reached only 0.37 billion USD, a DEACREASE of 7.2% as compared to the same period in 2005. Moreover, at present, once a batch of import fails to meet the Cdx residue tolerance level, imports of the same product from all enterprises in the export country will be affected, which greatly increases the risk and production cost of the enterprises in the exporting country.

- a. When could Japan relax its over restrictive standard?
- b. Could Japan reduce to scope of enterprises that are affected by the system?

Answer

As an example, Chinese shiitake violated the MRL of agricultural chemicals continuously in August 2006. Therefore, an inspection order was applied to it. The MHLW has asked the Chinese government to investigate the cause and take sufficient preventive measures, but the Chinese government has not responded yet. Moreover, the reason for stepping up inspection for the entire country is not that one batch of import fails to meet the CODEX residue tolerance level.

The MHLW had introduced the system of inspection order before the positive list system went into effect. Inspection orders are issued to a necessary and minimum extent when the MHLW recognizes that the imported foods have a high probability of violating the Food Sanitation Law, based on CODEX guidelines, monitoring test results of imports and the control measures regarding the use and residue in foods of agricultural chemicals which an export country submits.

Whether the inspection order is issued to the entire country or related enterprises depends on the information which the export country submits. If the MHLW recognizes that the export country takes sufficient control measures against the agricultural chemicals in foods, the inspection order is applied only to enterprises involved in the violation.

Question Q18

Besides the positive list system, the SPS regime of Japan is, in general, complex and opaque, with time-consuming and over-costly inspection procedures. In the current mandatory inspection system, SPS and customs officials seem to deliberately complicate the laboratory experiment and inspection procedures to the detriment of the interest of vegetable and fruit exporters. Moreover, over 30 categories of products from China are subject to case by case inspection while the list of batch to batch inspection published by relevant Japanese authorities covers only 119 categories of products. When could Japan abolish these measures which exert unnecessary and discriminatory burden to exports from China as compared to other countries?

Answer

When imported foods are regarded to have a high probability of violating the Food Sanitation Law (for example, if the violations are detected continuously), an inspection order is applied to these foods. There is no difference between the conditions applied to China and those applied to other countries.

There are some cases where part or all of the inspection order for Chinese foods has been abolished after the MHLW acknowledges that the Chinese Government is taking sufficient control measures against use

of and/or residues in foods of agricultural chemicals and that such preventive measures will eliminate the risk of importation of violating foods into Japan.

Question Q19

Without consultation with members of interest, Japan extends the scope of agricultural products subject to chemical residue tolerance system. At present, vegetable exports from China has to go through over 70 items of inspections and suffers from much more frequent sampling than exports from other countries into Japan, which leads to an artificial high cost for customs clearance (1000-1500 USD for each batch of product). Moreover, average customs clearance takes 4 days, which affects the freshness of fruits and vegetables and impairs the competitiveness of these products. Does Japan have any plans to remove these trade barriers? If no, why?

Answer

In general at import inspections, only monitoring tests are conducted, except for products which are likely to violate the Japanese standards. The monitoring inspection does not prolong customs clearance nor require any expenses from importers. Therefore, the Japanese import inspection is not a trade barrier.

Moreover, for a food with high probability of violation, for which frequent violation is found, sufficient control measures against use of and/or residues in foods of agricultural chemicals need to be taken in the export country. These problems will be solved immediately if the Chinese Government constructs safety control systems for foods.

Question Q20

China ' s agricultural exports have been a victim ever since the mandatory inspection system was in place. Since March 2006, MHLW began to apply mandatory inspection to green Chinese onion, wulong tea, black agaric, white agaric, mushroom, garlic, eel and chili etc. These measures caused heavy loss to Chinese export enterprises. We believe that these mandatory inspection measures have brought unnecessary burden to exporters and have constituted substantial trade barriers. When could Japan remove and modify these unnecessary restrictive measures?

Answer

The foods in question are considered to have a high probability of violating the Food Sanitation Law due to violations being detected continuously. Moreover, the violations are detected continuously even after the implementation of the inspection order. Therefore, it is necessary to take these measures to ensure food safety.

Japan can examine relaxation of inspection if the Chinese government investigates the cause of violations and takes sufficient preventive measures, including inspection, immediately.

Question Q21

It is reported by many Chinese enterprises that the Chinese Good Manufacturing Practice (GMP) which is based on relevant international standard is not recognized by the Japanese competent authorities, China would like to ask Japan to clarify why it refuses to recognize China's GMP qualification and urge Japan to recognize the qualification as soon as possible.

Answer

The rules concerning GAP and GMP, and compliancy with them in China, are not clear. For relaxation of inspection, sufficient confirmation and verification are necessary.

Question Q22

Since 2002, quite a number of Chinese enterprises, research institutes and colleges have been included in the list of foreign end-users subject to Catch-All export control. By now, 14 Chinese entities still remain on the list. China believes that it is not justifiable for the Japanese government to restrict exports to these Chinese entities. Could Japan provide clarifications on why Chinese entities are included in the list? If there is a justifiable explanation, please provide further evidence and related statistics. If there is no justifiable explanation, China urges Japan to remove these Chinese entities from the list since there currently exists a bilateral communication framework under which the Japanese government could be fully informed with information concerning end-users for controlled exports from Japan

Answer

Entities that the Government of Japan judges as being a concern with the potential for involvement in WMD programs are on the end-user list, and the entities are selected based on various information that the Government of Japan has gathered. The Government of Japan recognizes that the end-user list is necessary to improve the effectiveness of WMD Catch-All control and that its advantages and disadvantages or which entities should or should not be listed are not matters for negotiation. Also, the end-user list is not an embargo list as exporters can ship goods without applying for an export license if the goods are judged to definitely not be used for WMD programs. Therefore, the end-user list does not harm legitimate trade between P. R. China and Japan.

Question Q23

According to Table II 1 in Page 17 of the Secretariat Report, Japan revised its Copyright Law in 2005. Could Japan clarify on any changes in the revision and its legislation purpose as well as policy objective?

Answer

The 2005 amendment to the Copyright Law (Article 114sexies, Article 112bis) was made to increase the penalty for breaking court orders to keep trade secrets obtained in the course of copyright infringement lawsuits in line with the increase in such penalties set forth in laws including the Unfair Competition Prevention Act. This amendment provides for penalization of acts committed outside the country, an increase of the level of the penalty, and the imposition of imprisonment and fines at the same time. Its purpose is to provide protection for trade secrets through criminal sanctions in response to calls for adequate protection of intellectual property as the source of competitive power.

Question Q24

According to para 77 on page 50 of the Secretariat Report, rules relating parallel import were added to the Patent Law in 2004. China would like to ask Japan to provide detailed information regarding the new provisions regarding parallel imports. Have there been any parallel import cases since 2004?

Answer

The Patent Law does not have provisions prohibiting parallel imports. We believe the question concerns the amendment of the Copyright Law, as written in the Secretariat Report.

- *The Copyright Law, in its 2004 amendment, introduced a provision that prevents commercial records published outside Japan from flowing back to Japan for the purpose of distribution when they are identical to records published in Japan and they are published outside Japan under the condition that distribution within Japan is prohibited. Since the introduction of this measure, there have been two cases of goods suspected of infringement being seized by Customs.*

“Commercial records” means copies of the fixation of sounds on phonographic discs, recording tapes and other material forms (excluding those intended for use exclusively with images), which are made for commercial purposes (Copyright Law, Article 2, Section 1, Paragraph 5 and 7).

Question Q25

In June 2006, Strategic Council on Intellectual Property of Japan published 2006 Intellectual Property Policy Outline, mentioning that Japan would aim at concluding an international treaty on fighting against counterfeit and piracy. Besides, the Japanese government said it would establish a counter-infringement system at borders. Please provide any recent developments regarding the above matters.

Answer

(1) *Regarding a legal framework against counterfeiting and piracy:*

In July 2005 at the G8 Gleneagles Summit, then Prime Minister Koizumi promoted the necessity of establishing a legal framework against counterfeiting and piracy. Interested parties are currently going over possible legal and enforcement framework to prevent manufacturing, proliferation, and consumption of infringing goods.

(2) *Regarding a counter-infringement system of IPRs at the border:*

In April 2006, Japan introduced procedures that enable Customs to seek for the opinions of IPR experts in order to determine complicated IPR infringements more properly.

In 2006, Japan amended the Customs law to introduce system of prohibiting the export of IPR infringing goods. (The prohibition on the export of goods infringing plant breeder's rights went into effect in June 2006 and the prohibition on the export of goods infringing patent rights, utility-model rights, design rights, or trademark rights and goods which violate the Unfair Competition Prevention Law went into effect in January 2007.)

Question Q26

Under Article 8 of the Japanese Patent Law, a person who has no domicile nor residence in Japan may not file an application to the Japanese Patent Office except through an agent. Please explain how this requirement could be consistent with Article 3.1 of the TRIPS Agreement on national treatment.

Answer

Article 3.2 of the TRIPS Agreement provides that “Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade”. Article 8 of the Japanese Patent Law provides for a relevant agency to facilitate procedures with applicants domiciled or residing outside Japan. Therefore, Japan considers this provision to be consistent with the TRIPS Agreement.

Question Q27

Article 62.2 of the TRIPS Agreement stipulates that "Members shall ensure that the procedures for grant or registration", "permit the granting or registration of right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection." How long does the procedure for granting a patent usually take in Japan? Is the time needed the same between a foreigner and a Japanese national?

Answer

In 2005, the average total pendency (waiting period for the final decision) was about 32 months (published in the Trilateral Statistical Report in November 2006) for patent. There is no distinction between a foreigner and a Japanese national regarding order or timing of the start of the first examination.

Question Q28

Please elaborate further on the definitions of the "new", "involve an inventive step", "are capable of industrial application" (Article 27.1 of the TRIPS Agreement) in the Japanese Patent law.

Answer

With regard to "new", Article 29(1) of the Patent Act provides for inventions having no novelty (Art.29(1)(i)-(iii)). Regarding "involve an inventive step", Article 29(2) provides for inventions having no inventive step.

"Publicly" in Article 29 means that the invention is not considered secret. "Prior to the filing of the patent application" in Article 29 is different from "prior to the filing date of the patent application" because the former may be interpreted as "prior to the 'time' of filing".

Regarding "are capable of industrial application", Article 29(1) provides that "An inventor of an invention that is industrially applicable may be entitled to obtain a patent for the said invention...", and there is no definition provided in the Patent Act.

Article 29 Conditions for Patentability

(1) An inventor of an invention that is industrially applicable may be entitled to obtain a patent for the said invention, except for the following:

- (i) inventions that were publicly known in Japan or a foreign country, prior to the filing of the patent application;*
- (ii) inventions that were publicly worked in Japan or a foreign country, prior to the filing of the patent application; or*
- (iii) inventions that were described in a distributed publication, or inventions that were made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the patent application.*

(2) Where, prior to the filing of the patent application, a person ordinarily skilled in the art of the invention would have been able to easily make the invention based on an invention prescribed in any of the items of the preceding paragraph, a patent shall not be granted for such an invention notwithstanding the preceding paragraph.

Question Q29

Tokyo Intellectual Property High Court was established in 2005, responsible for dealing with patent cases and other intellectual property cases. Please give detailed description of what are the procedures for the High Court to deal with appeals? Can other courts accept intellectual property cases after the High Court is established?

Answer

The IP High Court hears appeals from district courts in Japan on patent cases and suits against appeal/trial decisions made by the Japan Patent Office (JPO). It also hears any other cases that the Tokyo High Court deals with whose nature and contents are related to intellectual property.

In other words, the IP High Court is the specialized court handling a wide range of intellectual property cases.

At the IP High Court, a panel of three judges, or the Grand Panel of five judges, which is set up when a case contains important issues and it is appropriate to provide unified opinions of the Court on them without delay, conducts proceedings and renders judgments.

Appeals from district courts in civil cases relating to non-technological matters such as design rights, trademark rights, copyrights (excluding rights of the authors of program works), rights of publication, and other rights come under the jurisdiction of the relevant high court among the eight high courts in Japan depending on where the court of the first instance is located.

Question Q30

Three working groups were established under the Strategic Council of Intellectual Property in 2003, responsible for IP enforcement, feasibility study on application for patent on healing methods and media content. Please give a brief description on the operation and recent development of these three organizations.

Answer

The "Task Force on Strengthening of the Foundation for Right Protection" was established in July 2003. The Task Force assembled 13 times to discuss the establishment of an Intellectual Property High Court, expeditious examination of patent applications, strengthening measures against counterfeits and pirated copies, and how to stimulate SMEs and venture companies to use intellectual property, etc. The discussion was finished in June 2005 and the "Task Force on the Intellectual Creation Cycle" became the previous Task Force's successor. The "Task Force on the Intellectual Creation Cycle" has been discussing the task of developing a benevolent cycle of creation, exploitation, and protection of intellectual property. The Task Force has assembled 8 times.

The "Task Force on the Protection of Patents of Medical-Related Acts" was established in July 2003. The Task Force assembled 11 times to discuss how to deal with acts carried out by doctors in the patent system and the possible impacts from them, and the anxieties over the possible new patent protection rules. The discussion was finished in November 2004.

The "Task Force on Contents" was established in July 2003. The Task Force assembled 8 times to discuss development of contents including movies, music and anime and the "Japan Brand".

Question Q31

Could Japan provide statistics on administrative penalties, including by police departments or the Customs since last review, including:

- a. the number of administrative penalty made upon the request of right holders.
- b. the number of cases processed by courts, as well as information regarding the type of cases, the courts which accepted the cases and the final rulings.

Answer

a. *Japan Customs has the authority to impose administrative penalties on violators of Customs laws. However, these administrative penalties do not require requests from right-holders. The number of administrative penalties imposed by Customs was 76 in 2005, and 84 in 2006.*

b. *The number of cases of violation of Customs laws (the importation of IPR-infringing goods) processed by the courts in 2005 was four. The corresponding number of cases processed from January to October 2006 was 10 (provisional figure).*

Question Q32

We would like Japan to briefly explain how the WIPO Performance and Phonograms Treaty is implemented in Japan's domestic legislation.

Answer

We understand the new requirements introduced in the WIPO Performance and Phonograms Treaty, which are not in other related rights treaties, to be the following four: (1) Moral Rights of Performers, (2) the Right of Making Available of Fixed Performances; the Right of Making Available of Fixed Phonograms; and the Right to Remuneration for their Broadcasting and Communication to the Public, (3) a 50-year term of protection for performers and producers of phonograms, and (4) obligations concerning technological protection and rights management information. With regard to (1), the Copyright Law provides performers with the right to determine the indication of the performer's name (Article 90bis, Section 1) and the right to preserve the integrity of the work (Article 90ter, Section 1). Regarding (2), "the right of making transmittable" is given to performers for making available their performances to the public and to producers for making available to the public their phonograms (Article 92bis and Article 96bis). Furthermore, when broadcasting organizations (including those using wire-telecommunication systems) use commercial phonograms to make broadcasts or wire transmissions, they are required to remunerate both the performers for the use of their performances fixed onto commercial phonograms, and phonogram producers for commercial phonograms (Article 95 and Article 97). This provides for their right of remuneration. (3) is addressed by giving performers and phonograms producers 50 years of protection (Article 101, Section 2, Paragraphs 1 and 2). (4) is addressed through civil remedy (Article 112) as well as penalization of acts such as the transfer to the public of the ownership of devices and programs for the circumvention of technological protection and acts such as alteration of rights management information for commercial purposes (Article 120bis, paragraphs 1 – 3).

Question Q33

In case of circumvention of technical protection, how does the competent authority deal with it? What are the relative domestic legislations? Will criminal punishment be applied?

Answer

The Copyright Law provides for criminal punishment consisting of imprisonment of up to three years or fines of up to ¥3 million, or their simultaneous imposition, for a person who transfers ownership or lends to the public, manufactures, imports or possesses for transfer of ownership or lending to the public, or offers for use by the public, a device having the principal function of the circumvention of technological protection measures or copies of a program having the principal function of circumvention of technological protection measures, or transmits publicly or makes transmittable such a program (Article 120bis).

Under the Unfair Competition Prevention Act of Japan, the following acts are considered to be unfair competition: assigning devices or programs having the sole function of enabling the viewing or hearing of contents, the running of programs, or the recording of contents or programs for which the viewing, hearing, running or recording are restricted by technological measures. Any person or legal entity whose

business interests have been infringed by these acts may seek an injunction or damages through the courts. However, criminal punishment is not applied to these acts.

Question Q34 (p.77 para.45-46)

Domestic satellite broadcasting business in Japan is monopolized by JSAT and Superbird. Rental fee for satellite as well as cost of service is extremely high. In order to enter Japanese market, foreign satellite operators have to acquire a landing permit. However, the application procedures are extremely complex and there is virtually no foreign satellite operator which has acquired a permit. Domestic protection for satellite broadcasting market provides a favorable market condition for the development of Japanese satellite communication and aeronautics industry. China would appreciate it if Japan could provide detailed information on the rules and regulations as well as any domestic restrictions for market access in Japanese satellite communication and broadcasting sector.

Answer

First of all, Japan would like to mention that China 's claim that the " Domestic satellite broadcasting business in Japan is monopolized by JSAT and Super-bird (Space Communication Corporation) " is not based on fact, because there are three other satellite businesses operating in the Japanese market.

Japan makes NO commitment to broadcast business on the GATS. Almost all legislation concerning broadcasting is available in an English version on the MIC website.

http://www.soumu.go.jp/joho_tsusin/eng/laws_dt04.html

Question Q35

Please provide data regarding NTT's market share, the number of users, share holding structure and type of services provided.

Answer

Market share

As of the end of September 2006, the market share of NTT East-West was 90.9% in the fixed-line market (45.2% East, 45.7% West), and 38.8% in the DSL market (20.4% East, 18.4% West).

The number of users

As of the end of September 2006, NTT East-West had a total of 52.13 billion telephone service subscriptions.

Shareholding structure

The total number of shares issued is 15,741,209 and the main stockholders are as follows:

[Main Shareholders as of 30 September 2006]

Shareholders	Number of shares	Percentage
The Finance Minister	5,308,031.26	33.72
Japan Trustee Services Bank, Ltd. (Trust Account)	654,734.00	4.16
The Master Trust Bank of Japan, Ltd. (Trust Account)	528,752.00	3.36
Moxley and Company	471,281.00	2.99
State Street Bank and Trust Company 505103	146,406.00	0.93
NTT Employee Share-holding Association	133,819.22	0.85
The Chase Manhattan Bank, N.A. London	114,167.00	0.73
The Sumitomo Trust & Banking Company, Ltd. (Trust Account B)	110,121.00	0.7
Mellon Bank Treaty Clients Omnibus	108,921.00	0.69
Japan Trustee Services Bank, Ltd. (Trust Account 4)	105,753.00	0.67
Total	7,681,985.48	48.8

The type of services provided

Although we do not understand the exact meaning of “the type of services provided”, NTT East, NTT West, NTT communication and NTT DoCoMo introduce their services on their websites (information in Japanese and English only).

NTT East http://www.ntt-east.co.jp/index_e.html

NTT West http://www.ntt-west.co.jp/index_e.html

NTT Communications <http://www.ntt.com/index-e.html>

NTT DoCoMo <http://www.nttdocomo.co.jp/english/>

Question Q36

Please provide the rationale for strict control over foreign direct or indirect investment in NTT, such as the article that stipulates that foreign shareholding should be less than 1/3.

Answer

The limitation on foreign participation regarding NTT has its basis in Article 6 of the Law Concerning Nippon Telegraph and Telephone Corporation, Etc. (Law No. 85 of 1984).

As NTT East and NTT West retain paramount telecommunications networks which are essential for national security and indispensable to ensuring stable security-related communication, almost all security-related communication is transmitted through their networks. Accordingly, the foreign capital restrictions are essential to prevent NTT Holding Company, which owns all NTT East and NTT West shares, from being dominated by a foreign investor. The Government of Japan has, therefore, no plans to relax the foreign capital restrictions at this stage.

Question Q37

Are the local affiliates of NTT independent legal entities or just a branches that have no independent legal entity status?

Answer

NTT East and West are independent legal entities granted corporate status.

Question Q38

Could Japan explain why other companies are prohibited from acquiring shares issued by local NTT companies?

Answer

The purpose of NTT Holding Company 's holding all of the shares of NTT East-West is to eliminate concerns of a situation arising where there are general stockholders in NTT East and NTT West and a conflict of rights occurring regarding the self-interest of the stockholder and the stockholder's right to achieve the public objectives of NTT Holding Company. The general stockholders would suffer a disadvantage if public objectives are pursued and, conversely public objectives would not be achieved if the advantage of the general stockholders is respected.

Question Q39

Could Japan explain why board members and auditing members in NTT Headquarter and local companies must have Japanese nationality?

Answer

NTT, NTT East and NTT West have public obligations imposed upon them, such as the provision of universal services and the duty to promote and disseminate the results of research and development, and NTT East and NTT West are essential telecommunications carriers supporting the safety and livelihood of the people. Therefore, nationality requirements for board members and auditors are necessary to ensure public obligations are fulfilled, by preventing the influence of any foreign countries in the management of NTT and by ensuring management autonomy.

Question Q40

Does Japan have any intention to relax the share holding limit for foreign capital in NTT? Are there any plans to remove the nationality limit for board members and auditing personnel?

Answer

Based on the answers to Question 36 and 39, Japan has no plans to eliminate the foreign capital restriction and the nationality requirement for board members and auditors.

Question Q41

Could Japan provide statistics on market access for foreign investment in the Japanese telecommunication industry since the foundation of the WTO, including the number of foreign service providers, their respective market shares, total investment, and the types of services provided?

Answer

This is a table showing direct investment by foreign operators over a certain scale in the Japanese telecommunications industry since the foundation of the WTO.

<i>Fiscal Year</i>	<i>Amount (billion Japanese yen),</i>
1996	2.1
1997	3.3
1998	16.8
1999	330.0
2000	750.8
2001	828.6
2002	172.1
2003	60.4
2004	466.3

Concerning the entry into the Japanese telecommunications market, Japan enables operators from both inside and outside Japan to enter the telecommunications industry freely. In addition, the Japanese market is sufficiently open and a considerable number of foreign operators have entered it. As we do not take discriminatory measures against foreign operators, we do not analyze the Japanese market from such a perspective as China has requested.

Question Q42

It is reported that it is difficult for foreign telecommunication enterprises to get approval for entry into Japanese telecommunication market. Would Japan identify what are the necessary documents that foreign telecommunication operators should provide when submitting their applications?

Answer

We are afraid that we cannot understand the reason for difficulty of entry into the Japanese telecommunications sector. Recently, we have not had any cases in which Japan has denied notification and approval from overseas. Furthermore, Japan does not put any particular restrictions on foreign participation in the entry into the Japanese market.

In Japan, any person who intends to enter the Japanese telecommunications market shall obtain registration from the Minister or submit a notification.

The documents to be submitted upon registration:

- 1) *Application form (The matters to be described are as follows)*
 - i) *Name and address of the applicant and, in cases where the applicant is a juridical person, name of the representative*
 - ii) *Service areas*
 - iii) *Outline of telecommunications facilities*
- 2) *Documents to be attached*
 - i) *A document indicating that the applicant does not fall under the reasons for disqualification of registration*
 - ii) *Network diagrams*
 - iii) *Documents concerning telecommunications services to be provided (Form 4)*
 - iv) *Outline of businesses conducted by the applicant other than the telecommunications business*
 - v) *Where the applicant is an existing juridical person:*
 - *A certified copy of the articles of association or of the act of endowment and of the register*
 - *A list of officers and their curricula vitae*
 - vi) *Where the applicant is a person who intends to establish a juridical person:*

- *A certified copy of the articles of association or of the act of endowment*
- *A list of promoters, partners or founders, and their curricula vitae, and documents certifying their names, addresses and dates of birth*
- vii) *Where the applicant is an association other than juridical persons listed in vi):*
 - *A certified copy of the association articles, rules, etc. describing the purpose, organization, operations, etc. of said association*
 - *A list of officers and their curricula vitae, and documents certifying their names, addresses and dates of birth*
- viii) *Where the applicant is an individual:*
 - *A document certifying the person's name, address and date of birth*
 - *A curriculum vitae*

The documents to be submitted upon notification:

- 1) *Notification (The matters to be described are as follows)*
 - i) *Name and address of the applicant and, in cases where the applicant is a juridical person, name of the representative*
 - ii) *Service areas*
 - iii) *Outline of telecommunications facilities (limited to cases where the person installs telecommunications facilities for telecommunications business)*
- 2) *Documents to be attached*
 - i) *Network diagrams*
 - ii) *Documents concerning telecommunications services to be provided*
 - iii) *Where the applicant is an existing juridical person, a certified copy of the articles of association or of the act of endowment and of the register*
 - iv) *Where the applicant is a person who intends to establish a juridical person:*
 - *A certified copy of the articles of association or of the act of endowment*
 - *A list of promoters, partners or founders, and documents certifying their names, addresses and dates of birth*
 - v) *Where the applicant is an association other than juridical persons listed in iv):*
 - *A certified copy of the association articles, rules, etc. describing the purpose, organization, operations, etc. of said association*
 - *A list of officers and documents certifying their names, addresses and dates of birth*
 - vi) *Where the applicant is an individual, a document certifying the person's name, address and date of birth*

Further details about the above are in the Manual for Market Entry into Japanese Telecommunications Business

(http://www.soumu.go.jp/joho_tsusin/eng/Resources/Manual/Entry-Manual/entry2k-eng.pdf) issued by MIC.

Question Q43

Could Japan provide a full list of legislations on telecommunication market supervision?

Answer

Legislations on telecommunications market supervision in Japan are as follows:

<i>Law for Enforcement of the Wire Telecommunications Law and the Telecommunications Business Law (Law No. 98 of 1953)</i>
<i>Wire Telecommunications Law (Law No. 96 of 1953)</i>
<i>Cabinet Order for Enforcement of the Wire Telecommunications Law (Cabinet Order No. 130 of 1953)</i>
<i>Rules for Enforcement of the Wire Telecommunications Law (Ministerial Ordinance of MPT No. 36 of 1953)</i>
<i>Cabinet Order for Wire Telecommunications Equipment (Cabinet Order No. 131 of 1953)</i>
<i>Rules for Enforcement of Cabinet Order for Wire Telecommunications Equipment (Ministerial Ordinance of MPT No. 2 of 1971)</i>
<i>Radio Law (Law No. 131 of 1950)</i>
<i>Cabinet Order for Enforcement of the Radio Law (Cabinet Order No. 245 of 2001)</i>
<i>Regulations for Enforcement of the Radio Law (Radio Regulatory Commission Rules No. 14 of 1950)</i>
<i>Essential Standards for Establishing Radio Stations Other Than Broadcast Stations (Radio Regulatory Commission Rules No. 12 of 1950)</i>
<i>Regulations for Procedure for Obtaining a Radio Station License (Radio Regulatory Commission Rules No. 15 of 1950)</i>
<i>Ordinance Concerning Attested Private Inspector Etc. (Ministerial Ordinance of MPT No. 76 of 1997)</i>
<i>Essential Standards for Opening of Specified Radio Stations (Ministerial Ordinance of MPT No. 72 of 1997)</i>
<i>Ordinance Regulating Radio Equipment (Radio Regulatory Commission Rules No. 18 of 1950)</i>
<i>Ordinance Concerning Technical Regulations Conformity Certification of Specified Radio Equipment (Ministerial Ordinance of MPT No. 37 of 1981)</i>
<i>Rules for Radio Operators (Ministerial Ordinance of MPT No. 18 of 1990)</i>
<i>Regulations for Operating Radio Stations (Radio Regulatory Commission Rules No. 17 of 1950)</i>
<i>Rules Concerning Examination and Hearing of Opinions by the Radio Regulatory Council (Ministerial Ordinance of MPT No. 68 of 1994)</i>
<i>Ordinance Providing the Proceedings of the Radio Regulatory Council (Ministerial Ordinance of MPT No. 24 of 1952)</i>
<i>Rules Concerning Prevention of Interference under the Radio Law (Ministerial Ordinance of MPT No. 16 of 1964)</i>
<i>Cabinet Order for Fees Relating to the Radio Law (Cabinet Order No. 307 of 1958)</i>
<i>Ordinance Concerning Survey, Etc. on Radio Spectrum Usage (Ministerial Ordinance of MPHPT No. 110 of 2002)</i>
<i>Rules for Type Approval of Radio Equipment (Ministerial Ordinance of MPT No. 40 of 1961)</i>
<i>Rules Concerning Calibration of Measuring Instrument, Etc. (Ministerial Ordinance of MPT No. 74 of 1997)</i>
<i>Law Concerning Wire Broadcasting Telephone Business (Law No. 152 of 1957)</i>
<i>Rules for Wire Broadcasting Telephone Business (Ministerial Ordinance of MPT No. 17 of 1956)</i>
<i>Telecommunications Business Law (Law No. 86 of 1982)</i>
<i>Cabinet Order for Enforcement of the Telecommunications Business Law (Cabinet Order No. 75 of 1982)</i>
<i>Regulations for Enforcement of the Telecommunications Business Law (Ministerial Ordinance of MPT No. 25 of 1985)</i>
<i>Rules for Telecommunications Business Accounting (Ministerial Ordinance of MPT No. 26 of 1985)</i>
<i>Rules for Interconnection Charges (Ministerial Ordinance of MPT No. 64 of 2000)</i>
<i>Rules for Category I Designated Telecommunications Facilities Interconnection Accounting (Ministerial Ordinance of MPT No. 91 of 1997)</i>
<i>Regulations for Telecommunications Facilities for Telecommunications Business (Ministerial Ordinance of MPT No. 30 of 1985)</i>
<i>Regulations for Chief Telecommunications Engineer (Ministerial Ordinance of MPT No. 27 of 1985)</i>
<i>Regulations for Telecommunications Numbers (Ministerial Ordinance of MPT No. 82 of 1997)</i>
<i>Ordinance Concerning Terminal Facilities Etc. (Ministerial Ordinance of MPT No. 31 of 1985)</i>
<i>Rules Concerning the Technical Conditions Compliance Approval for Terminal Equipment (Ministerial Ordinance of MIC No. 15 of 2004)</i>
<i>Rules for Installation Technician (Ministerial Ordinance of MPT No. 28 of 1985)</i>
<i>Rules for Reporting on Telecommunications Business (Ministerial Ordinance of MPT No. 46 of 1988)</i>
<i>Cabinet Order for the Telecommunications Business Dispute-settlement Commission (Cabinet Order No. 362 of 2001)</i>
<i>Rules for Procedures of the Telecommunications Business Dispute-settlement Commission (Ministerial Ordinance of MPHPT No. 155 of 2001)</i>

<i>Rules for Organization of the Secretariat of the Telecommunications Business Dispute-settlement Commission (Ministerial Ordinance of MPHPT No. 154 of 2001)</i>
<i>Ordinance for Designating Designated Agencies as Specified under the Telecommunications Business Law (Ministerial Ordinance of MPHPT No. 74 of 2001)</i>
<i>Rules for Calculating Method of Subsidies and Contribution on the Universal Service System (Ministerial Ordinance of MPHPT No. 64 of 2002)</i>
<i>Law Concerning Nippon Telegraph and Telephone Corporation, Etc. (Law No. 85 of 1984)</i>
<i>Cabinet Order for Enforcement of the Law Concerning Nippon Telegraph and Telephone Corporation, Etc. (Cabinet Order No. 30 of 1985)</i>
<i>Rules for Enforcement of the Law Concerning Nippon Telegraph and Telephone Corporation, Etc. (Ministerial Ordinance of MPT No. 23 of 1985)</i>
<i>Ordinance for Specifying Areas of Article 2 Paragraph (3) Item i) of the Law Concerning Nippon Telegraph and Telephone Corporation, Etc. (Ministerial Ordinance of MPT No. 24 of 1999)</i>
<i>Ordinance Concerning Transfer of Business Operations and, Succession of Rights and Obligations of Nippon Telegraph and Telephone Corporation (Ministerial Ordinance of MPT No. 90 of 1997)</i>
<i>Ordinance for Specifying Scope of Amount of Money That East Nippon Telegraph and Telephone Corporation May Pay to West Nippon Telegraph and Telephone Corporation (Ministerial Ordinance of MPT No. 73 of 1999)</i>
<i>Law on Restrictions on the Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identity Information of the Sender (Law No. 137 of 2001)</i>
<i>Ordinance for Specifying Identity Information of the Sender of Article 4 Paragraph (1) of the Law on Restrictions on the Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identity Information of the Sender (Ministerial Ordinance of MPHPT No. 57 of 2002)</i>
<i>Law for Implementation of the Mutual Recognition Between Japan and the European Community and the Republic of Singapore in Relation to Conformity Assessment of Specified Equipment (Law No.111 of 2001)</i>
<i>The Cabinet Order for Implementation of the Mutual Recognition between Japan and the European Community and the Republic of Singapore in Relation to Conformity Assessment of Specified Equipment (Cabinet Order No.355 of 2001)</i>
<i>Ordinance concerning Designated Accreditation Bodies, etc. based on the Law for Implementation of the Mutual Recognition Between Japan and the European Community and the Republic of Singapore in Relation to Conformity Assessment of Specified Equipment (Ministerial Ordinance of MPHPT, METI No. 2 of 2001)</i>
<i>Ordinance concerning the Law for Implementation of the Mutual Recognition between Japan and the European Community and the Republic of Singapore in Relation to Conformity Assessment of Specified Equipment (Ministerial Ordinance of MPHPT, METI No. 3 of 2001)</i>
<i>Ordinance concerning Designated Accreditation Bodies specified in Article 14 Paragraph (1) of the Law for Implementation of the Mutual Recognition between Japan and the European Community the Republic of Singapore in Relation to Conformity Assessment of Specified Equipment (Ministerial Ordinance of MPHPT, METI No. 1 of 2001)</i>
<i>Ordinance on the Mark etc. based on the Law for Implementation of the Mutual Recognition between Japan and the European Community and the Republic of Singapore in Relation to Conformity Assessment of Specified Equipment (Ministerial Ordinance of MPHPT No. 146 of 2001)</i>
<i>Ordinance concerning Designated Conformity Assessment Bodies Specified in Article 3 Paragraph (4) of the Law for Implementation of the Mutual Recognition Between Japan and the European Community and the Republic of Singapore in Relation to Conformity Assessment of Specified Equipment (Ministerial Ordinance of MPHPT, METI No. 6 of 2001)</i>
<i>Law on Identification of Cellular Phone Users by Mobile Operators and Prevention of Abusive Use of Cellular Phones (Law No. 31 of 2005)</i>
<i>Rules for Enforcement of the Law on Identification of Cellular Phone Users by Mobile Operators and Prevention of Abusive Use of Cellular Phones (Ministerial Ordinance of MIC No. 167 of 2005)</i>
<i>The Law on Regulation of Transmission of Specified Electronic Mail (Law No. 26 of 2002)</i>
<i>Rules for Enforcement of Cabinet Order for the Law on Regulation of Transmission of Specified Electronic Mail (Ministerial Ordinance of MPHPT No. 66 of 2002)</i>

Question Q44

Please give a brief description on recent development of Japanese basic telecommunication market, value-added telecommunication market and internet market.

Answer

Japan has been implementing competition policy along with remarkable technological advances in the telecommunications sector. As a result, the policy has promoted the development of a telecom sector where the fastest, most reasonably priced broadband services which are the most technically advanced in the world are available. It is estimated that the penetration rate of the Internet in Japan is 66.8% and that the broadband population is 85.29 million (a year-on-year increase of 5.81 million). As of the end of September 2006, the number of DSL subscribers was 14.40 million for broadband service, while the number of FTTH subscribers was 7.155 million. Furthermore, the average transmission speed is becoming faster. The number of IP telephone subscribers reached 13 million as of September 2006 and is continuing to increase.

Question Q45

Could Japan provide information on necessary network and information security standards and requirements that foreign capital should meet in order to enter Japanese market?

Answer

For entry into the Japanese telecommunications market, there are no requirements discriminating between domestic suppliers and foreign suppliers, and the foreign suppliers need only to fulfill the same procedures and standards as those for domestic suppliers.

Furthermore, when one accesses the Japanese telecommunications market, one must guarantee the provisions specified in Article 41 Paragraph (3) of the Telecommunications Business Law (There are also informative descriptions in "the manual for market entry into the Japanese telecommunications business" presented above, so please refer to this too).

Article 41

3 The technical conditions of the preceding two paragraphs shall be so specified as to ensure the following matters:

- i) The provision of telecommunications service shall not be extremely hindered by damage or failure of telecommunications facilities.*
- ii) Quality of telecommunications services shall maintain an appropriate level.*
- iii) Secrecy of communications shall not be violated.*
- iv) Telecommunications facilities of users or other telecommunications carriers connected shall not be damaged or impaired, nor shall functions thereof be impaired.*
- v) The demarcation of responsibilities between the telecommunications facilities of a telecommunications carrier and those of others shall be clearly stipulated.*

Question Q46

According to complaints from Chinese enterprises and students in Japan, Japan applies stringent visa requirements to business people or students who need to travel frequently between China and Japan. China believes such strict requirements is more burdensome than necessary and hampers flow of trade in services. Are there any future plans to relax these requirements?

Answer

In order to facilitate business exchanges, Japan encourages Chinese business people equivalent to manager level or above who need to visit Japan frequently for temporary stays (less than 90 days) to apply for multiple entry visas.

For Chinese long-stay business people and students, with the certificate of eligibility issued by Immigration Bureau, since May 2005, the Ministry of Foreign Affairs of Japan (MOFA) has streamlined its visa examination procedures for such people.

MOFA has publicized the principal criteria for visa issuance on its website.

Question Q47

It is reported by many Chinese enterprises that maritime transport of coal exports from China to Japan is monopolized by Japanese shipping companies. As almost all ships are rented by buyers who have signed long term COA contracts with these Japanese shipping companies, freight fee is extremely opaque. Therefore, Chinese coal export companies are not able to compare their own CIF prices with the ones from other countries to Japan. This practice has an adverse effect on the negotiating status of Chinese coal exporters. Could Japan urge its domestic enterprises to enhance transparency, especially on issues like freight fees?

Answer

In Japan, there is no restriction for any contract in the field of the international shipping business. In addition, any discriminatory treatment of shippers is prohibited under Article 30 of the Japanese Marine Transportation Law.

Question Q48

It is also reported that there exist some internal "unwritten" rules by Japan Harbor Transportation Association which stipulate that shipping companies (including Japanese shipping companies) are not allowed to conduct port operations in Japan. Therefore, foreign shipping companies have to contract with Japanese port operation companies in order to unload and load cargoes in harbors of Japan, which increases operation cost for foreign shipping companies and hampers further development of the Japanese market. Could the Japanese government urge its Harbor Transportation Association to remove such restrictions in the spirit of trade facilitation and fair trade within the industry?

Answer

Since it is prohibited to perform any port transport business without permission under the Port Transport Business Law, a shipping company which is not permitted under the law is not allowed to perform any port transport business.

Question Q49

Japan does not allow subsidiary bodies of foreign banks to participate in its deposit insurance system. Would Japan clarify whether this is consistent with the national treatment commitment? China would appreciate it if Japan can provide rationale for maintaining such requirement.

Answer

The point mentioned by China in its question, that Japan does not allow subsidiaries of foreign banks to participate in the deposit insurance system of Japan, is not correct. Subsidiaries of foreign banks established in Japan are required to participate in the deposit insurance system as well as domestic banks.

CHINA – ADDITIONAL REPLIES

Question

Protection of human health is a legitimate objective, but it must also be kept in mind that the WTO SPS Agreement requires members to use least trade-distortive and least trade-restrictive means for achieving these legitimate objectives. From the very experience of China's food exports to Japan, it could be fair to say that the Positive List System is the most trade-distortive and most trade-restrictive means.

The WTO SPS Agreement also requires members to base its SPS measures on available scientific evidence and risk analysis. However, many of the residue limit levels in the positive list system and their implementation are arbitrary and discretionary. We see no sufficient scientific evidence for Japan to drastically tighten the residue limit levels in such a short time.

We strongly urge Japan to take necessary steps to ensure the consistency of its SPS measures with the WTO SPS Agreement and to eliminate the extreme uncertainty caused to agricultural trade between Japan and other WTO members.

Answer

The residue standards (maximum residue limits: MRLs) which were provisionally established in the process of introducing the positive list system were based on the following standards in descending priority:

- i. CODEX standards,*
- ii. Registration withholding limits under the Agricultural Chemicals Regulation Law (Law No. 82, 1947), limits of determination (LODs) for veterinary drugs at the time when they were authorized under Pharmaceutical Affairs Law (Law No. 145, 1960), or LODs for feed additives at the time when they were authorized under the Law for Safety Assurance and Quality Improvement of Animal Feed (Law No. 35, 1953), and*
- iii. Standards established by other countries where MRLs are assumed to be established, based on toxicity study data equivalent in quality to those used in scientific evaluations by JMPR (Joint FAO/WHO Meeting on Pesticide Residues) and JECFA (Joint FAO/WHO Experts Committees on Food Additives). These countries are Australia, Canada, the EU, New Zealand, and the United States.*

In addition, a positive list system has also been already introduced to other Member countries such as the EU, Germany, Canada and New Zealand.

In light of the scientific validity of the system and international harmonization of the Japanese standards, Japan does not recognize that the positive list system would create arbitrary trade barriers.

Japan will continue to operate the system from a scientific and technical standpoint, while cooperating to gain a better understanding from other countries.

EUROPEAN COMMUNITIES

Question Q1

Does the issue of trade and sustainable development fit into Japan's overall trade policy strategies?

Answer

Our basic trade policy is to promote trade liberalization mainly by maintaining and strengthening the rule-based and non-discriminatory multilateral trading system. Japan's high level of economic development

owes much to this system. We believe that the sustainable development of developing countries is very important for the stability and prosperity of the world. Japan has been actively supporting the efforts by developing countries to achieve sustainable development through the promotion of trade.

Based on this concept and experience, Japan launched the "Development Initiative for Trade", prior to the WTO Hong Kong Ministerial Conference in 2005, which aims to support these efforts by developing countries in a comprehensive manner through ODA, duty-free and quota-free treatment for LDCs and other related measures.

Question Q2

What mechanisms does Japan have in place to ensure adequate coordination of environmental policy and trade policy?

Answer

Japan has been taking various actions on the coordination of environmental policy and trade policy.

Japan is controlling the import and export of endangered flora and fauna based on CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora). This contributes to ensuring the sustainability of the international wildlife trade and conserving biodiversity for the future.

Based on the Law Concerning the Promotion of Procurement of Eco-friendly Goods and Services by the State and Other Entities, Japan promotes government procurement of goods and services which show consideration towards the environment. This Law provides for the establishment of clear numerical standards for goods and services which are less harmful to the environment. To this extent, Japan provides full consideration to conformity between the Law and the WTO agreement on Government Procurement Agreement, so that it will not create unnecessary obstacles to international trade.

Question Q3

How have labour costs been reduced, and has this had consequences for working conditions particularly in the manufacturing industry where the labour force has dropped?

Answer

According to the latest labour statistics of the Ministry of Health, Labour and Welfare, the wages for employment have been rising lately (332,784 yen in 2004 and 334,910 yen in 2005).

Question Q4

Since the text of the Japan-Thailand EPA was finalised in June 2006, could Japan confirm the expected date for its signature?

Answer

Because of the political situation in Thailand, the timing of the JTEPA's signing has not been decided.

Question Q5

What additional elements and clauses would the AJCEP add to the already concluded or negotiated EPAs with, and mutually complementary to, bilateral EPAs between Japan and ASEAN member countries?

Answer

One of the objectives in concluding the AJCEP agreement is to narrow the development gaps among the ASEAN member states and to facilitate the economic integration of ASEAN.

Question Q6

Could Japan specify the expected dates for resuming negotiations on the Japan-Korea FTA?

Answer

As described in the Secretariat's Report, Japan is open to resuming the negotiations at any time, but it is difficult at this moment to specify the exact dates.

Question Q7

There have been reports that the Administration would be in favour of a faster approval procedure of EPAs by the Diet.

What are the prospects for this to happen?

Answer

As the approval procedure by the Diet is one of the most important processes in adopting EPAs, reasonable time may be necessary.

Question Q8

Japan has previously expressed its commitment to introduce a duty- and quota-free preference system for LDCs.

Will this take place in 2007 as indicated in the report?

Answer

Subject to the approval of the Diet (the Japanese Parliament), the expansion of duty-free and quota-free market access to LDCs will enter into force in FY 2007.

Question Q9

What is the intended coverage – will it be a completely duty- and quota-free?

Answer

The coverage of duty-free and quota-free market access from LDCs will be 98.1% defined at the tariff line level.

Question Q10

What concrete results are expected from these programmes in the longer term; are there already positive indications for inward FDI increase? For example, did the 'Project to Promote FDI in Selected Areas' (page 29, para. 56) have positive results?

Answer

The effective implementation of relevant measures has resulted in an increase in inward FDI stock of ¥11.9 trillion at the end of 2005. In order to further promote inward FDI into Japan, the Japan Investment Council (JIC) set up the Program for the Acceleration of Foreign Direct Investment in Japan in June 2006. The program aims to double the ratio of inward FDI stock to GDP by 2010, i.e. to raise it to a level of around 5%.

About 70% of the foreign companies operating in Japan have their headquarters located in Tokyo. However, following the Project to Promote Foreign Direct Investment in Selected Areas, an increasing number of foreign companies have located their headquarters outside of Tokyo, mainly in the regions where the project is supported.

Question Q11

The WTO Secretariat's Report states that Japan did not implement new tax measures aimed specifically at FDI promotion. Recently, tax-deferral for cross-border mergers has been discussed. But, it has been decided that only in restrictive cases tax-deferral will apply.

Why did Japan not create tax incentives in this area, despite the figures and the target set by the JIC to double Japan's inward FDI stock to a level of about 5% of its GDP (page 20, para. 105, Japan's report)?

Answer

Having adopted non-discriminatory treatment as a basic principle, the reform proposals decided at the end of last year will treat cross-border triangular mergers, just like the mergers between domestic companies, as qualified for tax deferrals when they meet certain conditions, such as the "business relationship" requirement between the merging subsidiary and the target company.

From the perspective of overall economic policy including industry and investment policy, the decision has been made that cross-border triangular mergers be treated in the same manner as domestic mergers. It strictly follows the principle of non-discrimination, as any and all triangular mergers, domestic or not, will be subject to exactly the same requirements for tax deferrals as currently required for domestic direct mergers.

Question Q12

The government of Japan has been negotiating various FTA/EPAs which include chapters on investment and the China-Korea-Japan investment agreement is being negotiated currently.

How does it relate to Japan's policy on promoting FDI? And how will it take shape more concretely?

Answer

Japan recognises the importance of the role of the private sector in stimulating the international economy, and has been making efforts for promoting both inward and outward investments. In particular, Japan has been implementing various measures, including improving the investment environment of other countries through EPAs/FTAs and taking measures to promote the inward Foreign Direct Investment into Japan through the Japan Investment Council, and has the intention to adopt additional policies to promote investment in an appropriate manner.

In negotiating the EPA/FTAs, Japan has been pursued high-level liberalisation and protection of investment which includes that of the third-mode Service. Japan will continue to make efforts to conclude high-level agreements in respect of investment and seek to contribute to the promotion of cross-border investment.

In the Summit Meeting among Japan, the People's Republic of China and the Republic of Korea held on 14 January in Cebu, the Philippines, the three countries agreed to start negotiations on a trilateral investment agreement. The negotiation on the trilateral investment agreement is a symbol of the trilateral cooperation, as well as an engine to drive regional cooperation in East Asia.

Question Q13

Given these facts, the EC would like to know when Japan will dismantle its tariff quotas on leather and leather footwear. The EC would stress that as an industrialised country, Japan is expected to eliminate all TQs on industrialised goods.

Answer

With regard to tariff quotas (TQs) on leather and leather footwear, Japan has no concrete plans to reform the existing TQs due to historical and social difficulty surrounding this sector.

Question Q14

Ski boots: The EC would like to know when Japan would be ready to lower its very high tariffs on imported ski boots and align them on the rates of other industrialised members such as the EC.

Answer

Due to the historical and social difficulty surrounding this sector, Japan has no concrete plans to reduce the existing tariffs on ski boots.

Question Q15

Customs duties for sugar confectionery (17.04), sugar free confectionery products (21.06) are usually below 10% in most developing and developed Countries.

In Japan these two sets of products encounter respectively 25% and 15% import duties, which de facto determine a rather closed market (only 2.8% of sugar confectionery products in Japan are imported). However, the EC notes that the Government of Japan has recently reduced the duties on chocolate products (chocolate and chocolate based confectionery products (18.06), from 25% to 10%.

Given the above and considering the clear similarities between the chocolate product market and the sugar and sugar free confectionery market, the EC would like to know whether Japan intends to lower significantly its import duties on sugar and sugar free confectionery products, thus aligning with the level of duties imposed on average by developed and developing countries (i.e. below 10%)

Answer

The tariff rates for agricultural products such as sugar confectionery, is being discussed in the DDA negotiations, and Japan intends to address the issue appropriately, based on the result of the negotiations.

Question Q16

Concerning import quotas on certain products, including fish, we would appreciate clarification from Japan on the following points: the objective of the quotas, their compatibility with Japan's obligations under the multilateral trading system, the manner in which they are implemented and their intended duration.

Answer

The administration of the import quota system varies according to products. The import quota administration system plays an important role in complying with international treaties, complimenting conservation and management measures for natural resources, protecting human life and health, and protecting the essential interests of national security, and is consistent with the WTO Agreements. The import quota procedures are shown in the public notice "Import Notice" based on the Foreign Exchange and Foreign Trade Act.

Question Q17

Could Japan indicate whether it has taken measures to restrict the importation of plasma derived medical products during the reported period? If so, under which conditions?

Answer

No, such measures have been taken.

(Notes)

The notion of "domestic self-sufficiency", as referred to in Article 3 of the Blood Law of Japan, is presented as one of the basic principles, and no specific provisions are given in the Law to impose specific obligations towards individual manufacturers/importers.

The "Supply and Demand Plan" (referred to as a "plan to ensure the stable supply of blood products" in the Law) is defined in Chapter 4 of the Law. In this Chapter, Article 25 provides that the Government of Japan formulate a plan for ensuring the stable supply of blood products, and obviously it is on the premise that international trade rules are observed throughout the process of formulating and implementing the plan.

The next Article, 26, is meant to provide measures to ensure the stable supply of blood products, and provides that the Government of Japan may make a recommendation to the manufacturer and/or importer to make arrangements for securing a stable supply. In practice, such a provision may be put into effect when the actual amount manufactured and/or imported is deemed as extremely inappropriate in the light of the given year's Supply and Demand Plan – for example, excessive shortage of amount from the manufacturer and/or importer against its planned amount endangered a stable supply, and (in parallel), the manufacturer and/or importer was granted the opportunity to express its views, but failed to demonstrate rational reasons for the excessive deviation from the planned amount (i.e. shortage).

Question Q18

The Government of Japan revised the Guidelines on Promotion of Proper Tendering and Contracting for Public Works on 23 May 2006 in order to step up measures against persisting bid-riggings and to enhance transparency, efficiency and competition in public works. The revision of the guidelines is certainly a step forward but, as they are non-binding guidelines, it is doubtful whether real improvement for foreign companies can be expected in the area of public works at the non-central government level, as prefectures and municipalities are fully exempt from the lowering of the threshold for public works subject to open competitive bidding. Does Japan plan to make these guidelines binding?

Answer

Central and local government entities and related agencies shall endeavor to take measures to promote proper tendering and contracting for public works in accordance with the "Guiding Principles Concerning Measures to Promote Proper Tendering and Contracting for Public Works" (the Guiding Principles). The Minister of Land, Infrastructure and Transport, the Minister of Internal Affairs and Communications and the Minister of Finance may request reports from those entities on measures taken in

accordance with the Guiding Principles. These three Ministers, based on the reports, have to publish a summary of the reports every fiscal year. In addition, the three Ministers may request those entities and agencies to take measures which are deemed to be particularly necessary in the light of the Guiding Principles.

Question Q19

The GoJ lowered the threshold of public works subject to open bidding (i.e. not "designated bidding" system) from 720 million yen (i.e. the GPA threshold) to 200 million yen in fiscal 2006. However, this is only mandatory for central government projects (approximately Yen 7 trillion) and does not affect local projects of prefectures or municipalities (approximately Yen 16 trillion). Will Japan consider to also make it mandatory for local authorities to use the open bidding system?

Answer

Local government entities shall endeavor to take measures to promote proper tendering and contracting for public works in accordance with the "Guiding Principles Concerning Measures to Promote Proper Tendering and Contracting for Public Works" (the Guiding Principles). The measures under the Guiding Principles include expansion of open and competitive bidding as soon as possible. Based on the Guiding Principles, the Ministry of Internal Affairs and Communications has been urging local governments to expand open and competitive bidding as soon as possible, in consultation with the Ministry of Land, Infrastructure and Transport.

Question Q20

The percentage of tenders won by foreign companies continues to be very low. There also seems to be a slightly decreasing trend. Furthermore the share of single and selective tendering rose.

Could Japan raise any comments regarding this trend?

Answer

The percentage of foreign suppliers' awards in open tendering was 1.5% in 2004. On the other hand, the percentage of foreign suppliers' tenders in open tendering, which was 0.8% in 2004, was much lower than that of awards.

Regarding selective tendering, its share remained at a low level in 2002-2004.

[The trend in selective tendering]

	2002	2003	2004
Procurement Value	1.5%	1.5%	1.7%

The share of single tendering remained at the same level in 2002-2003. It rose to 44.1% in 2004.

[The trend in single tendering]

	2002	2003	2004
Procurement Value	35.4%	35.2%	44.1%

In 2004, the share of the single tendering cases under Article XV: 1(a) of the GPA (i.e. in the absence of tenders in response to an open or selective tender) increased.

[Grounds for use of single tendering procedures]

	2002	2003	2004
Article XV:1(a)	23.5%	22.0%	30.7%
Article XV:1(b)	25.2%	26.1%	24.5%

<i>Article XV:1(d)</i>	46.4%	49.3%	42.1%
<i>Others</i>	4.9%	2.6%	2.7%

(Note)

Percentage of foreign suppliers' awards: The number of contracts awarded to foreign tenders / The total number of contracts x 100

Percentage of foreign suppliers' tenders: The number of foreign tenders / The total number of tenders x 100

(Based on the same statistical data as referenced in para.41 of the Report by the Secretariat.)

Question Q21

Of the 513 revised and the 267 JIS items newly established how many were aligned with international standards?

Answer

Out of the 513 revised and the 267 JIS items newly established, 99.7% are aligned with international standards.

Question Q22

Of the 500 foreign factories certified how many are in the EU? In a normal case, how long does it take to attain certification and what are the costs involved?

Answer

At present there is no foreign certified factory in the EU under the new JIS mark scheme (11 foreign certified factories in the EU under the old JIS marking scheme).

Under the new JIS law standard processing period for and cost for the new JIS certification is dependent on each private accredited certification body.

Question Q23

WTO Secretariat's Report, page 44, para.50

The figures above would indicate that the ratio of standard aligned to international ones is decreasing? If so, what is the reason?

Answer

Until the 2003 report, Japan had calculated the column "corresponding to an international standard" by dividing the number of UN/ECE regulations Japan had adopted by the total number of UN/ECE regulations. However, this may not indicate the ratio of harmonized regulations (for example. the denominator includes the regulations whose scope is not included in Japanese regulations); therefore, Japan has changed the calculation method since the 2005 report, by dividing the number of domestic regulations which Japan has aligned with UN/ECE regulations, by the total number of domestic regulations. Thus the numbers in the 2003 report and that in the 2005 report have different connotations.

By using the new calculation method, the percentage in 2003 is 18%, which shows that there are more harmonized regulations in 2005 (20%) than in 2003.

Question Q24

Are any of the six foreign bodies placed in the EU?

Answer

There is no designated foreign inspection body in the EU under the old JIS mark scheme.

Question Q25

In any sector, is Japan using, or considering using, Suppliers' Declaration of Conformity, in the following sense?: The supplier himself declares conformity of his product with the requirements of the applicable legislation without any mandatory third party intervention – neither in the design phase nor the production phase of the manufacturing process – that would involve product tests according to the relevant legislation. The Suppliers' DoC is based on an assessment or test performed by the manufacturer himself or any other party.

Answer

Under the laws such as the Electrical Appliance and Materials Safety Law, the Consumer Product Safety Law, the Telecommunications Business Law and Radio Law, Japan is using the Suppliers' Declaration of Conformity.

Question Q26

Many food additives, whose safety is globally confirmed and that are widely used outside Japan, are not allowed in Japan. These substances had already been evaluated by the Joint FAO/WHO Expert Committee on Food Additives and Contaminants (JECFA), and are therefore approved and used in many countries, Japan has started to approve 46 food additives, and four additives and twelve flavouring agents have been approved. However, the process has slowed down during the past year. Could Japan explain whether there are any plans to speed up the process of screening the listed substances and to adapt a more flexible approach towards administrative obstacles?

Answer

In Japan food additives are not permitted for use unless they are designated by the Minister of Health, Labour and Welfare under the Food Sanitation Law as substances which are unlikely to cause adverse health effects. In addition, the Food Safety Basic Law requires the Minister to hear the opinion of the Food Safety Commission (FSC) in the process of authorizing food additives.

Japan recognizes that not only Japan but also almost all other countries, such as Australia, the EU, and the United States, permit the use of food additives only when they are authorized by their own food health authorities (whether or not these additives are used globally).

Separately from the ordinary authorizing process, the Government of Japan (GOJ) is proceeding with a review with the intent to authorize the 46 food additives and flavorings, that have been proven safe by the JECFA (Joint Expert Committee on Food Additives) and that are widely used globally. The Ministry of Health, Labour and Welfare of Japan, on a priority basis, has the FSC carry out risk evaluation of these additives and flavoring agents. However, the GOJ would like the EU to understand that if the FSC requests additional information as needed in the scientific evaluation, it will take more time to conduct additional studies to gain the information.

Question Q27

Can Japan explain supported by science why it does not align its legislation with OIE guidelines on trade in beef and lamb and establish fair, non-discriminatory and transparent rules for the import of bovine and ovine meat?

Answer

With regard to import of bovine meat and offal, taking into account the OIE code, Japan will set its trade requirements based on risk assessment. The same procedure will apply to import of ovine meat.

Question Q28

With regards to Avian influenza, can Japan explain why it uses serology as the main laboratory testing, while OIE terrestrial Animal health Code in line with current scientific opinion recommends also virology and a combination of serology and virology in case of the use of vaccination?

Question Q29

It this respect, can Japan explain supported by science why it does not accept vaccinated products from countries free from Avian Influenza?

Answer (for Q28 and 29)

Japan considers that vaccination masks the real infection status among poultry, which might allow the introduction of highly pathogenic avian influenza into Japan.

Question Q30

Access to Design protection should be simplified for industries that create a lot of models for "short cycle" products. A possible way of improving the situation could be to provide that a Design is also eligible for protection under the law of copyright or to create, besides the Registered Design system, an Unregistered Design with a shorter protection term and more limited rights conferred. Does Japan implement any such system?

Answer

1. *Design is protected primarily under the Design Law in Japan.*

Under the Design Law in Japan, a design can be protected for up to 15 years (under the revised Design Law, the maximum term of design protection will be extended to 20 years for applications filed on and after 1 April 2007), after design registration is granted. In 2005, the average pending term for the first office action was seven months. This is evaluated by industries in Japan to be fair. Also, the Japan has special treatment for preferential examinations where there are urgent requests by applicants, leading to prompt implementation of designs. When accelerated examination is requested, the first office action is carried out within two months. We also have a more rapid procedure for countercharges against actual infringements as well as possible infringements. In 2005, the first office action was provided within one month for these special cases.*

** In the discussion of the revision of the Design Law in 2006, there was an argument from some industries that, though the average 7-month period is favorable, an optional procedure for more rapid examination might be helpful for "short cycle" products. Accordingly, there was thorough discussion regarding the introduction of a double-track examination system, which would include both on-going substantive examination procedures and a proposed examination procedure which would have only formality examinations. However, in conclusion, the proposed procedure with only formality examinations*

was not introduced, since it was considered that such procedures would lead to ambiguity in the effects of registered design rights, resulting in the right holders facing difficulties in court cases with expensive litigation fees. The seven-month average period and accelerated examination treatment were considered to meet the requests from most of the applicants in Japan. Thus, the proposed idea of the double-track examination system has not been legalized so far.

2. Beside the protection under the Design Law in Japan, the Unfair Competition Prevention Law considers the following acts to be unfair competition: of distributing or displaying for the purpose of distribution goods which imitate the configuration (excluding configuration that is indispensable for ensuring the function of said goods) of another person's goods (excluding cases in which three years have elapsed from the date when they were first sold in Japan) in Articles 2 (1)(iii) and 19 (1)(v). Any person or legal entity whose interests have been infringed by the above acts may seek an injunction or damages through the courts.

Question Q31

As regards last amendment in 2005 of the standard in relation to geographical indication, could Japan clarify whether foreign geographical indications may be designated by the Commission of the National Tax Agency to receive protection and, if so, how many foreign GIs have been designated to date?

Answer

The place of origin of sake in a member of the World Trade Organization other than Japan may be designated by the Commissioner of the National Tax Agency if it fulfills all the following requirements:

- (1) The geographical indication that indicates the respective place of origin meets the definition of geographical indication prescribed in Paragraph 1, Article 22 of the TRIPS Agreement.*
- (2) The respective place of origin shall be protected as a geographical indication in that member country.*

As of January 2007, no foreign place of origin of sake is designated.

In terms of designation of place of origin of geographical indications for wines and spirits, the Commissioner of National Tax Agency may designate a place of origin only in Japan. Although we do not have a designation system for the place of origin of foreign geographical indications, any geographical indications for wines and spirits in a member of the World Trade Organization shall be protected according to the provisions on Article 23 of the TRIPS Agreement.

Question Q32

Japan Custom tariff law has been amended recently. Could Japan explain if its legislation provides rules allowing seizure of fakes, not only at import, but also at export and in transit?

Answer

The Customs law was amended in March 2006 to prohibit, in addition to the import, the export and reshipment of infringing goods. The prohibition on the export and reshipment of goods infringing plant breeder's rights went into effect in June 2006 and the prohibition on the export and reshipment of goods infringing patent rights utility-model rights, design rights, or trademark rights, and goods which violate the Unfair Competition Prevention Law went into effect in January 2007.

Question Q33

How many measures targeted under the previous period (2003-2006) have been (i) implemented, (ii) discarded, or (iii) rolled over into the current programme?

Answer

(i) 1,063, (ii) 10, (iii) 76

Question Q34

Could Japan provide figures about the amount of subsidies being allocated for rice?

Answer

The amount of domestic support on rice has been regularly notified to the Committee on Agriculture. Japan is currently preparing for the domestic support notification for FY 2003.

Question Q35

Have all measures ended by 2006 or are they still in place?

Answer

Concerning the special safeguard actions and the emergency measures on beef and pork mentioned in Paragraph 15, the related bills will be deliberated in the current Diet session and the application period will be extended until the end of FY 2007.

Question Q36

Would Japan consider the possibility of taking up such measures again?

Answer

Japan may invoke the above mentioned measures in the future, based on the WTO agreements and the result of consultations with exporting countries during the Uruguay Round negotiations.

Question Q37

Japan states it aims to raise the self-sufficiency rate.
Could Japan elaborate on its plans?

Answer

To attain the target of food self-sufficiency, (1) on the consumption side, the government is implementing a nationwide campaign for easy-to-understand and practical "food education", including spreading and utilizing a "Diet balance guide" for the promotion of a "Japanese-style diet", and (2) on the production side, the government is encouraging production to cater to consumers' needs by strengthening ties between the food industry and farmers, and supporting principal farmers who are capable and have a sound sense of business management.

Question Q38

Could Japan indicate the ratio of its quota compared to domestic consumption of leather and leather footwear since the Uruguay Round?

Answer

Domestic consumption of leather footwear is, due to the declining birth rate and low growth rate, generally considered to be declining; thus, the ratio of quota to consumption is presumably increasing.

Question Q39

Could Japan specify the development in the number of people employed in the leather sector by their social origins?

Answer

There are no adequate statistics.

Question Q40

What steps are being taken to speed up the process under the Pharmaceutical Affairs Law (PAL)? What has it been done in order to facilitate the use of foreign data for approval of pharmaceuticals and medical equipment?

Answer

1. *Speeding up the process*

In order to speed up application reviews for pharmaceuticals and medical devices under the Pharmaceutical Affairs Law (PAL) the Pharmaceuticals and Medical Devices Agency (PMDA) has strengthened its review system by increasing the number of reviewers, etc. since its foundation in April 2004.

In addition, for the purpose of discussing issues necessary for faster access to effective and safe pharmaceuticals, MHLW set up a Ministers' special committee, and started to discuss review policy, reinforcement of the review system, etc. in 2006.

2. *Foreign Data*

Regarding reviews for pharmaceuticals, MHLW/PMDA has been accepting foreign data performed according to ICH Guidelines for reviews of pharmaceuticals as much as possible, as well as requiring domestic clinical data necessary for scientifically verifying the efficacy and safety of a pharmaceutical for Japanese patients at the same time. The number of approvals of new pharmaceuticals which were reviewed based mainly on foreign data has been increasing . (47 approvals (new ingredients) as of the end of 2006)

Regarding reviews for medical devices, MHLW issued a notification on 31 March 2006, explaining that MHLW/PMDA accepts studies performed according to other countries' Good Clinical Practices (GCP) that are equivalent or superior to the Japanese GCP.

Question Q41

What instruments, if any, are available to the Government of Japan – including recommendations, fines and termination of business license – to ensure stable demand for PPTs in Japan?

Answer

The demand for PPTs in Japan is driven by the market, corresponding to medical needs. The Government of Japan is not equipped with the means of intervention to ensure stable demand for PPTs.

Question Q42

What guarantees, if any, does the government of Japan provide to companies supplying PPTs that their products will be absorbed on the domestic market?

Answer

The products are supplied according to marketing decisions made by individual companies corresponding to medical needs. The Government of Japan does not provide any guarantees for the absorption of PPTs in Japan's domestic market.

Question Q43

Could Japan elaborate on the state of play of the liberalization of gas sales to customers consuming over 100,000 cubic meters per year and the tentative schedule of the liberalization?

Answer

As expressed in the report by WTO Secretariat, Paragraph 27, page 71, the liberalization of gas sales to customers consuming over 100,000 cubic meters per year will start in April 2007.

Question Q44

Could Japan explain whether there have been any requests for market access from foreign entities?

Answer

There have been prior notifications of foreign entities' investments in electric and gas utilities under Article 27 of the Foreign Exchange and Foreign Trade Law in recent years.

Question Q45

Would Japan provide more details on the provisions in Japan's bilateral agreements which deal with temporary movement of natural persons (mode 4) and how they will be implemented in practice in Japan?

Answer

Economic Partnership Agreements (EPAs) with Singapore, Mexico, and Malaysia have already been enacted and one has been signed with the Philippines. The EPAs with Singapore, Mexico, and the Philippines include the chapter on the Movement of Natural Persons which stipulates measures regarding immigration laws and regulations, and in the EPA with Malaysia the measures are stipulated in the chapter on Trade in Services. In order to implement the measures stipulated in the EPAs, the relevant Ministries communicate and consult with each other.

Question Q46

Could Japan explain in further detail the process of privatization of Japan's Post? Is this going according to plan and how does Japan intend to ensure a level playing field?

Answer

The process of the privatization of postal services is broadly covered in WTO's Secretariat Report (Box I.1). The Japan Postal Services Holding Company (JPSHC) is required to submit an implementation plan to the Prime Minister and the Minister of Internal Affairs and Communications by end-April 2007, which describes the details concerning its succession as a business to Japan Post. The JPSHC is now

drawing up the implementation plan. The process of the privatization of postal services is steadily moving ahead in accordance with relevant laws and regulations at this stage.

Concerning fair conditions of competition, the Postal Savings Bank (PSB) and the Postal Insurance Company (PIC) will be supervised by the Financial Services Agency based on the Banking Law and Insurance Business Law, and will be subject to the same accounting and disclosure standards, as well as tax obligations as other private financial institutions from the beginning of the privatization, 1 October 2007.

Regarding the approval of the future business scope of the PSB and the PIC, the Prime Minister and the Minister of Internal Affairs and Communications will make appropriate decisions from the viewpoint of fair conditions of competition and business conditions of the two financial companies, after hearing opinions from the Postal Services Privatization Committee (PSPC) (a third-party organization comprised of experts). The PSPC publicly released the "View of Postal Services Privatization Committee concerning its study and discussion on the future business scope of Postal Savings Bank and Postal Insurance Company" on 20 December 2006, which compiled the PSPC's basic recognition and principles in its study and discussion concerning the future business scope of the PSB and the PIC (<http://www.yuseimineika.go.jp/iinkai/pub/syoken.pdf>). The PSPC is now inviting the public to offer their opinions about its view (due date: 31 January 2007).

With respect to individual businesses, the Government of Japan will assess the appropriateness of these businesses when the two financial companies actually apply to the government for approval, while hearing the opinions of the PSPC. The PSPC will study and discuss from the viewpoint of fair conditions of competition and the business conditions of the two financial companies, based on the attitude described in the "View" and the situation at that time.

The progress of the privatization of postal services is released on the website of the relevant authorities including the Office for the Promotion of Postal Services and Ministry of Internal Affairs and Communications, and updated in a timely manner.

Question Q47

Postal Life Insurance is exempted from corporate taxes and deposit insurance premiums.

- Would Japan explain how it intends to ensure a level playing field between the Postal Life Insurance, or its planned successor as of October 2007, and private life insurance providers?

Answer

As described in the WTO Secretariat's Report (Paragraph 41), the current Postal Life Insurance will be abolished with the privatization of postal services. Concerning fair conditions of competition between the Postal Insurance Company and private life-insurance companies, please refer to the answer to Q46.

Question Q48

We are aware of the "New Competition Promotion Programme 2010" which aims to review comprehensively the legal framework including telecommunications and broadcasting with the view to establishing new fair competition rules in the IP based network era.

- Could further information be provided regarding the abovementioned Programme?

Answer

The "New competition Promotion Program 2010" set out in September 2006 has been compiled as a roadmap for developing fair competition rules to be implemented by the early 2010s in the

*telecommunications market. Based on changes in the market environment caused by the transition to IP-based networks and broadbandization, this program raises wide-ranging issues as the comprehensive pro-competitive policies to be implemented by the early 2010s, including a review of dominance regulations, and a study concerning the framework for network neutrality and indicates the schedules and items to be studied concerning each issue. Please refer to the website below for more detailed information:
http://www.soumu.go.jp/joho_tsusin/eng/pdf/060926_1.pdf*

Question Q49

We are aware of the "New Competition Promotion Programme 2010" which aims to review comprehensively the legal framework including telecommunications and broadcasting with the view to establishing new fair competition rules in the IP based network era.

Could Japan provide further details regarding the "Review of the Universal Service System"?

Answer

Japan is at present in the process of considering a Review of Universal Service Fund System (USFS); a broad-ranging analysis of USFS will be conducted from various aspects including the scope of USFS, the supplier of the services, the methodology of the cost of the services and the transition measures which will facilitate transition from PSTN to the IP network.

Question Q50

Even though Japan's telecommunication sector has recently pursued a liberalization of the sector, the JFTC considers that Japanese market for fixed and mobile telecom services is still oligopolistic. Could Japan comment on this?

Answer

For appropriate implementation of Section 8-4 of the AMA concerning measures against a monopolistic situation, the JFTC has been monitoring industries that are characterized by the following market structure as oligopolistic markets.

- *The aggregated total value of goods or services that are supplied within Japan during the past year exceeds ¥95 billion.*
- *The market share of the top firm exceeds 45% of the market or the combined market share of the top two firms exceeds 70% of the market.
According to research by the JFTC, fixed telecommunications and mobile telecommunications met the market conditions (Ref: According to a recent revision (in September 2006) of the list of monitored industries based on the research in 2004, fixed telecommunications and mobile telecommunications are still under monitoring).*

Naturally, telecommunications markets tend to be monopolistic or oligopolistic. The MIC, the regulator with power in Japan, has established effective rules for fair competition such as the rules of interconnection with bottleneck facilities and introductions of asymmetric regulation on major suppliers. As a result, competition in the telecommunications markets has become fierce. For example, broadband services such as DSL services are provided at the lowest cost in the world and FTTH services for mass users have been expanding. People in Japan can enjoy the most advanced broadband services in the world. Moreover, 3G mobile telecommunications systems have rapidly penetrated, and we can enjoy more attractive services in terms of price and speed than other countries, including EC members.

To facilitate further competition in the telecommunications sector, the JFTC established the "IT and Public Utility Task Force" in order to efficiently and quickly collect information on violations of the AMA in this

sector and has thereby been addressing AMA violations quickly and stringently. The JFTC and the MIC also established joint guidelines on the promotion of competition in the telecommunications sector.

Question Q51

Even though Japan's telecommunication sector has recently pursued a liberalization of the sector, the JFTC considers that Japanese market for fixed and mobile telecom services is still oligopolistic.

- Could Japan comment on this?

Japan still suffers from high international communication charges.

- Does Japan expect that these charges will decrease in the near future?

Answer

Japan has been actively promoting regulatory reforms and policies to encourage competition among businesses as a result, lower rates and charges have been realized in various services.

The international calling rate has been steadily decreasing since 1985, with the Japan-US international calling rate of 2006 decreasing to one-twentieth of that of 1985. Japan expects that further decreases in calling rates will continue with more competition among businesses.

Question Q52

What measures are in place or are envisaged to ensure that the prior consultation procedures are transparently, equitably and swiftly executed?

Answer

The prior consultation procedures are the systems based on an agreement among private companies at the request of shipping companies, and their improvement and abolishment should be discussed among the affected parties.

These prior consultation procedures were much improved in terms of the facilitation and transparency of procedures by the agreement among the relevant parties in October 1997. As a result, conventional prior consultation matters through the Japan Harbor Transportation Association have been reduced by more than 95%, and shipping companies have expressed their gratitude.

Additionally, another procedure, which is not interposed by the Japan Harbor Transportation Association, has been set up. Therefore, it depends on the decision of shipping companies whether the Japan Harbor Transportation Association is interposed or not.

The Japanese Government recognizes that no matters have arisen as of now.

Question Q53

Does Japan identify a need to improve the competitiveness of its ports? If so, which initiatives are envisaged to do so?

Answer

Japan recognizes that it is important to promote lower-cost and better service in order to strengthen the international competitiveness of Japanese ports.

Therefore, the “Super Hub Port Project”, which contains both soft and hard measures including the development of deep berths and yards in response to large-sized container vessels, improvement of accessibility, and the privatization of terminal operators in order to improve the efficiency of the management and operation of the container terminal, has been implemented in Keihin Port (Port of Tokyo and Port of Yokohama), Ise Bay (Port of Nagoya and Port of Yokkaichi), and Hanshin Port (Port of Kobe and Port of Osaka).

Additionally, various measures to improve the efficiency of port-related service, such as the deregulation of the port transport businesses and the fundamental reform of the pilotage system, have been taken.

Furthermore, the computerization of port formalities and custom clearance has been promoted, and the new single-window system, where relevant ministries cooperate to integrate their contact points, will be introduced in October 2008.

Consequently, it is expected that the convenience of users will be improved and that this Super Hub Project will contribute to strengthening international competitiveness.

Question Q54

Given that foreign shipping companies carry over 60% of Japan’s inward and outward international container trade, would Japan engage international actors in discussions on specific development initiatives concerning its ports and if so, how?

Answer

The content of this question is not clear. Japan has been promoting measures such as those given in the previous answer in order to strengthen international competitiveness.

Question Q55

Could Japan provide further information regarding the environmental measures taken or planned?

Answer

Narita International Airport Corporation is covering the entire cost that is required to manage Narita Airport, including the execution of environmental measures, through a variety of charges such as the landing fee. Charges which are intended exclusively for the execution of environmental measures are not collected.

EUROPEAN COMMUNITIES – ADDITIONAL REPLIES

Question Q1 Coverage of DFQF

- What products or product lines will be excluded at the time of implementation? Will these products be phased in at a later stage?

Answer

The Government of Japan would like to answer this question after the Diet deliberates the draft of legal amendment to expand the coverage of DFQF. The draft has been submitted to the Diet and is expected to be discussed in the current Diet session.

Question Q2

Concerning the faster approval procedure by the Diet, the EC would like further clarification regarding question 7.

- We would like to know whether the Administration has plans to adapt a faster procedure for EPAs approval by the Diet by this year.

Answer

As the approval procedure by the Diet is one of the most important processes in concluding EPAs, a reasonable period of time for deliberation may be necessary. The administration does not have a plan to simplify the deliberation by the Diet.

Question Q3

As regards question 11, we acknowledge that Japan adopted a non-discriminatory treatment for the requirements to allow tax-deferral in domestic as well as cross-border mergers. We note that Japan allows for tax-deferral in principle, except for 'paper companies'. However, it is worth mentioning that foreign companies cannot engage in a direct merger (which is available for national companies) using a share-to-share swap, and therefore, they only have the option to conduct a triangular merger. Consequently, a so-called Special Purpose Vehicle has to be set up, which is de facto a 'paper company'. This means that, even though the foreign company itself is not a 'paper company' -unless it already has a well-established subsidiary in Japan- it cannot enjoy tax-deferral in a triangular merger. Therefore, in most cases, a tax-deferral will not be applied.

In this context, the EC would like to ask whether Japan is planning to address this problem.

Answer

Having adopted non-discriminatory treatment as a basic principle, the reform proposals decided at the end of last year will treat cross-border triangular mergers, just like the mergers between domestic companies, as qualified for tax deferrals when they meet certain conditions, such as the "business relationship" requirement between the merging subsidiary and the target company.

From the perspective of overall economic policy, including industry and investment policy, the decision has been made that cross-border triangular mergers be treated in the same manner as domestic mergers. It strictly follows the principle of non-discrimination, as any and all triangular mergers, domestic or not, will be subject to exactly the same requirements for tax deferrals as currently required for domestic direct mergers.

Consequently, in the case where the merging subsidiary is a paper company, cross-border triangular mergers, whether its parent is a domestic company or not, would not be qualified for tax deferrals because they do not meet the "business relationship" requirement.

Regarding the actual criteria to assess the fulfillment of the "business relationship" requirement, if the merging businesses will actually be operated in an integrated manner, they are treated as meeting the "business relationship" requirement under current application.

Nevertheless, we are aware of the concern that such treatments are not stipulated by ordinance, and thus transparency is insufficient for foreign businesses. To clarify these administrative treatments, the Government will deliberate on the specifics in order to further clarify, as much as possible by governmental or ministerial decrees, the criteria for assessing the qualifications for fulfillment of the requirements, such as the "business relationship" requirement for eligible corporate reorganization.

Question Q4

During the introductory statement by Ambassador Yokota, he referred to an OECD research paper which concluded that Japan was "one of the least restrictive countries among the OECD Members with respect to the FDI regulation". Using the same source, the EC would like to point out the conclusions set out in the OECD Economics Department Working Paper No. 526, "Strengthening the integration of Japan in the world economy to benefit more fully from globalization". This paper, published in November 2006, recommends Japan to adopt comprehensive measures in order to improve the climate for inflows of FDI, given that Japan has the lowest level among OECD countries of import penetration, stock of inward FDI relative to GDP and foreign workers as a share of employment.

In that regard, the EC would like to encourage Japan to take further steps in implementing an open and dynamic FDI policy with a view to overcoming remaining barriers to FDI inflows.

As regards the reply to question 10, the EC would like Japan to elaborate further on the specific measures included in their Program for the Acceleration of Foreign Direct Investment in Japan, adopted in June 2006.

Answer

Please refer to the attached document on the measures included in the Program for the Acceleration of FDI.

The website of the "Investment in JAPAN" is the following URL: <http://www.investment-japan.go.jp/index.htm>

Question Q5

As regards question 31, from Japan's reply we understand that a foreign GI does not need to register in Japan in order to receive protection according to Article 23 TRIPs.

- (1) Could Japan confirm whether our understanding is correct?
- (2) Does Japan automatically protect any Geographical Indication for wine or spirit as soon as this GI is recognised in its home country?

Answer

(1) Yes.

(2) *If the indications are Geographical Indications for wines and spirits that actually fulfill the definition of Geographical Indications stipulated in paragraph 1 of Article 22 of the TRIPS agreement and, in addition, protected as Geographical Indications in their country of origin, the respective indications shall be protected as Geographical Indications in Japan.*

Question Q6

Regarding medical devices, does the foreign GCP have to be approved before hand or is it possible to hand in a study without the prior approval? Is there a list over foreign 'Good Clinical Practices' that are deemed equivalent or superior to the Japanese GCP?

Answer

There is no system to approve the foreign GCP itself as well as no list for foreign GCP. MHLW/PMDA decides on a case-by-case basis whether the foreign GCP is equivalent or superior to the Japanese GCP, and whether the studies performed, according to foreign GCP, are deemed equivalent or superior to the Japanese GCP are acceptable or not.

EUROPEAN COMMUNITIES – ADDITIONAL REPLIES (ATTACHEMENT)

Program for Acceleration of Foreign Direct Investment in Japan (Provisional Name)		
Issue	Measures that Should Be or Will Be Taken	Ministries and Other Organizations Concerned
1. Regional-Oriented Economic Growth and Quality of Life Improvement		
	<ul style="list-style-type: none"> ○ The national government and JETRO will, in addition to cooperating with local governments, utilize networks with private sector financing institutions and advisory agencies to ascertain the needs and desires of foreign corporations and local communities. They will coordinate with the Industrial Cluster Project and SME measures, and take measures for special zones and regional revitalization into account, in order to provide support that extends seamlessly from identifying candidate businesses, to establishing enterprises, to expanding business. ○ Develop information related to regional investment (information on industrial clusters in the local area, the specialized personnel, the businesses, the infrastructure). Develop a Web site for parties interested in investing that provides this information with further enhancements tailored to their interests. ○ Improve internationally competitive research and educational centers by applying measures to promote more focused investment, according to competitive principles, to those organizations that are aiming to become top world-level centers of excellence. In this way, aim to create about 30 research centers that are recognized as top world-level centers of excellence. ○ Seek regional revitalization by means of "programs to revitalize regional centers of knowledge" that work by revitalizing and utilizing universities and other such organizations that are regional centers of knowledge. ○ Promote international exchange at the bilateral government level and in the private sector, making use of diplomatic channels and JETRO, in order to create links between domestic and overseas industrial clusters. Aim also for cooperation related to business tie-ups, joint research and development activities, and international investment. ○ Achieve the goal of attracting 10 million foreign visitors to Japan by the year 2010 through steady implementation of the Visit Japan Campaign and related programs. Aim to make Japan a "major power in tourism that stands open to the world." ○ Reevaluate the special zone system with a view to introducing a bill to the next regular Diet session, taking into consideration locally originated proposals such as the Forum of Local Governments for Forum of Local Authorities for the Promotion of Foreign Direct Investment in Japan . Working on the assumption of active involvement by local communities, facilitate the formation of special zones to promote FDI in Japan that provide packages of regulatory exceptions and other such incentives for FDI. 	<p>Cabinet Secretariat, METI, JETRO</p> <p>METI, JETRO</p> <p>CAO, MEXT</p> <p>CAO, MEXT, Ministries and Agencies Concerned</p> <p>MOFA, METI</p> <p>MLIT</p> <p>Cabinet Secretariat</p>
2. Improvement of an Investment Environment Capable of Overcoming Global Competition, Etc.		
	<p>A. Improvement of Environment for Corporate Business, Etc.</p> <p>A-1. Promote mergers, acquisitions, and other such reorganization as well as increased flexibility in organizational form to enable more effective use of management resources by corporations. At the same time, improve the lateral business environment for smoother securing of human resources and flow of personnel and goods, smoother transfer of funds, improvement of technological and related infrastructure, and so on.</p>	

	<p>Increase Flexibility for Restructuring and Organizational Form</p> <ul style="list-style-type: none"> ○ Steadily implement the portions of the Corporate Law relating to the easing of rules on compensation for mergers, etc., by the summer of 2007. Also examine and reach a conclusion regarding related tax measures before implementation in terms of the appropriateness and fairness of taxation, and with a view to preventing tax avoidance. Examine related legal systems as necessary to enable smoother reorganization. ○ Ascertain the actual status of utilization of the limited liability company (LLC) system and limited liability partnership (LLP) system. ○ Market oversight functions will seek to improve corporate transparency and reliability in order to enable scrutiny of and ruling on corporate governance by providing for enhanced information disclosure in listed corporations. This will involve review of the restrictions on takeover bid (TOB) transactions and the system of large shareholding reports as well as the adoption of a quarterly report system and strengthening of internal controls relating to financial statements and other such activities. ○ Promote disclosure of the status of exercise of shareholder voting rights by institutional investors in order to strengthen fiduciary responsibility. <p>Develop Human Resources</p> <ul style="list-style-type: none"> ○ Take steps to secure creative, well-qualified personnel by improving the mobility of intellectual specialists, for example by the broad-based adoption of a fixed-term system, the use of open recruitment for hiring researchers, and the promotion of personnel exchange among industry, academia, and government organizations. ○ Foster the development of personnel who have acquired the specialized knowledge as well as the ability in English language and skills in presentation, planning and management required in the world community, and who are able to engage in international activity. To this end, promote the enhancement of English language instruction, exchanges with foreign students, and other such measures in primary and secondary education. ○ Make greater efforts to train personnel who can be adaptable and resourceful in both management and engineering, and personnel who are highly capable in foreign language. To that end, utilize professional graduate schools to enhance education in fields such as technology management and business, and support outstanding measures for educational programs at such institutions. Take steps for the gradual adoption of accreditation systems to guarantee the quality of universities and other institutions that provide education in these areas. <p>Expand Acceptance of Foreign Personnel</p> <ul style="list-style-type: none"> ○ Take active measures to receive high quality human resources, including exchange students and research personnel, from Asian and other countries. These will include strengthening the research and development infrastructure, expanding scholarships and other support for receiving exchange students, promoting employment in Japan, improving the environment for foreigners in the universities and other institutions, and improving an environment to enable encounters by them with top-level Japanese personnel, facilitating a new cross fertilization of human resources. Work to attract overseas research and development centers, including foreign corporations, and expedite the inflow of human resources from other countries so as to develop internationally competitive research and development and educational centers in Japan and promote the conduct of innovative research and development. <p>Improve the Working Environment</p> <ul style="list-style-type: none"> ○ Recognizing the necessity to have fair and transparent civil rules for labor contracts defined clearly, conduct an examination of the desired form of the law governing labor contracts. ○ Taking the status of implementation of the defined contribution pension system into account, conduct an examination of systems with even greater ease of use. ○ Expedite negotiations for agreements on social security with other countries in order to avoid dual membership in public pensions and other such social security systems, with the resulting wasted premium payments. <p>Increase Efficiency of Flow of People and Goods, Etc.</p> <ul style="list-style-type: none"> ○ Bring a common government-wide portal into operation by 2008 as a next-generation single-window system in accordance with the operations and system optimization plan for imports, exports, and airport and seaport procedures. ○ Move toward greater efficiency in the international flow of people and goods by improving facilities to expand the capacity of Narita, Haneda, and other airports and improve access to them by fiscal year 2009. Also work to establish scheduled international service at Haneda Airport, and improve connections between international and domestic lines at hub airports near major cities. ○ Expedite the improvement of port and harbor bases and facilitate their operation on a 24-hour basis in order to strengthen the performance of ports and harbors that are international transport hubs. Lower port and harbor costs and reduce lead times in super hub ports by fiscal year 2010. <p>Facilitate International Capital Movements, Etc.</p> <ul style="list-style-type: none"> ○ Improve international tax systems, to include amendment of tax conventions, in order to eliminate double taxation and levy appropriate taxes. <p>Institute Improvements Related to Technology, Intellectual Property, Standards, Qualifications, Land Use, Etc.</p> <ul style="list-style-type: none"> ○ Work toward strategic prioritization of science and technology in accordance with the Basic Plan for Science and Technology and comprehensive strategies for creating innovation. Stimulate development of science and technology to the highest world level by conducting rigorous evaluation of selected key projects while also steadily taking measures to expand competitive funding, drastically strengthen review systems, and strengthen industry-academia-government collaboration. ○ Create an intellectual property strategy that includes active patent applications in other countries in order to promote collaboration between foreign corporations and Japanese universities. Improve funding for overseas patent applications by universities and other institutions while also improving international business-academia 	<p>MOJ, MOF (METI), Ministries and Agencies Concerned</p> <p>METI</p> <p>FSA</p> <p>FSA, Ministries and Agencies Concerned</p> <p>MEXT, METI</p> <p>MOFA, MEXT</p> <p>MEXT, METI</p> <p>MOFA, MEXT, METI</p> <p>MHLW</p> <p>MHLW</p> <p>MOFA, MHLW</p> <p>MOFA, MLIT, MJ, MHLW, MAFF, METI</p> <p>MLIT</p> <p>MLIT</p> <p>MOFA, MOF</p> <p>CAO (MEXT, METI)</p> <p>CAO, MEXT, METI</p>
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A-2. Promote measures that will contribute to improved productivity and enhancement of public services for the nation through the use of foreign corporations' knowhow and capabilities in the various individual areas of service.

Public Services, Etc.

- Improve the environment for effective utilization of the Private Finance Initiative (PFI) system in ways that are easier for foreign corporations to make use of, in order to promote even better use of the vitality of the private sector in the public service sectors. Also adopt a market testing system, publicize the third-party contractor system in water supply and related operations, promote the Peace of Mind House Plan ("Anshin House Plan" in Japanese) of good quality housing for the elderly, and so on.
- Support entry into Japan by top-level overseas service corporations with a view to raising productivity.

Ministries
and
Agencies
Concerned

JETRO
(Ministries
and
Agencies
Concerned)

Pharmaceuticals and Medical Devices

- Conduct follow-up on the three-year plan for nationwide revitalization of clinical trials in order to move toward further improvement of the environment for clinical testing. In light of the results from follow-up, study measures for improving that environment.
- Further improve the handling of clinical trial consultations and approval review in the Pharmaceuticals and Medical Devices Agency, an independent administrative institution, by raising operational efficiency, making use of outside personnel, and other such measures to improve operations and strengthen structure.
- As regards approval of foreign manufacturers of medical devices according to the Pharmaceutical Affairs Law, the range of manufacturers required to obtain approval and the documentation that must be submitted with applications will be considered on the assumption that safety will be assured and personal information will be safeguarded. Given these considerations, work to achieve still greater foreseeability for business operators by taking measures to make procedures more transparent, such as by clarifying operating criteria. Publish the status of progress made in this direction in fiscal year 2008.
- State the criteria involved in administration of the general nomenclature list of medical devices (JMDN) in order to increase foreseeability as regards the necessary procedures and documentation for specific approval review or examination for certification when placing new medical devices, and especially low-risk medical devices, on the market.
- Facilitate the utilization of foreign clinical data, post-marketing utilization data, and other such data in approval review of drugs, for instance in the case of drugs for treating serious illnesses that afflict a small number of patients. Consider also methods for facilitating the utilization of data from international collaborative trials, while assuring safety. Publish the status of progress made in both efforts in fiscal year 2008.

MHLW

MHLW

MHLW

MHLW

MHLW

Food Products

- Publish the status of progress with respect to the evaluation of food additives in appropriate form in order to improve transparency and foreseeability.

MHLW

Educational Services

- Provide guidance as needed regarding the purpose and meaning of standards for establishing specialized training colleges and miscellaneous schools when the Japan campuses of foreign universities want to be designated as such colleges or schools. The fact that the authority to approve such establishment lies with the prefectures should be taken into consideration, as well as the economic situation of the Japan campuses.

MEXT

Legal Services

- Aim for an annual level of 3,000 candidates who pass the national bar examination in 2010, in light of the Program for Promoting Justice System Reform. Further improve the training system for judicial apprentices, given the increasing number of apprentices. Work to further the development of high-quality legal personnel in Japan.

MJ

B. Review Administrative Procedures

B-1. Improve information provision and simplify procedures so that foreign corporations and investors can more readily obtain information related to investment in Japan.

	<p>Provide Information Related to Investment</p> <ul style="list-style-type: none"> ○ JETRO and the other ministries and agencies concerned operate the Office of Invest Japan where information is provided on procedures for various kinds of investment involved when establishing companies, conducting mergers and acquisitions, and establishing plants and shops. The investment information provided also includes information on markets and companies. ○ The ministries and agencies concerned are enhancing their provision of English-language information related to investment on their Web sites. JETRO is also enhancing its provision of services and information in foreign languages other than English. Work will also go forward on the English-language translation of some 200 laws and ordinances under the plan for preparation of translations. <p>Simplify Procedures and Put Them On-Line</p> <ul style="list-style-type: none"> ○ Steadily implement action plans for the promotion of on-line service utilization and other such measures to further simplify procedures and make them more available on-line. 	<p>All Ministries and Agencies Concerned, JETRO</p> <p>All Ministries and Agencies Concerned, JETRO, Cabinet Secretariat</p> <p>Ministries and Agencies Concerned</p>					
	<p>B-2. Increase foreseeability for investors by further facilitating the active use of public comment procedures and pre-filing inquiry procedures, which clarify interpretations of laws and ordinances about which investors have queries.</p> <table border="1" data-bbox="316 824 1295 1144"> <tr> <td data-bbox="316 824 1295 1003"> <ul style="list-style-type: none"> ○ To further increase the utilization of pre-filing inquiry procedures, determine the status of utilization and, as necessary, study issues and measures for further promoting utilization of these procedures. JETRO will provide support for pre-filing inquiries, as required, for corporations that are considering investment in Japan, taking the needs of such corporations into account. ○ To further increase the utilization of public comment procedures, ascertain the status of implementation and act to broaden and deepen the use of this system. </td> <td data-bbox="1295 824 1428 1144"> <p>All Ministries and Agencies Concerned, JETRO</p> <p>All Ministries and Agencies Concerned</p> </td> </tr> </table> <p>B-3. Strengthen Coordination within the Government</p> <table border="1" data-bbox="316 1211 1295 1491"> <tr> <td data-bbox="316 1211 1295 1368"> <ul style="list-style-type: none"> ○ Create a database of projects and measures related to FDI to Japan and share that information within the government. ○ Coordinate with the Council for the Promotion of Japan as a Tourism Leader, the Council for the Promotion of Privatization and Regulatory Reform, the Headquarters for the Promotion of Special Zones for Structural Reform, the Headquarters for Regional Revitalization, the Council for Science and Technology Policy, and other organizations concerned to work toward more effective implementation of policies. </td> <td data-bbox="1295 1211 1428 1491"> <p>CAO, All Ministries and Agencies Concerned</p> <p>Ministries and Agencies Concerned</p> </td> </tr> </table> <p>C. Improve the Living Environment</p> <p>C-1. Improve the systems for entry to and residence in Japan. (Reevaluate the situation in light of various issues involving resident status control for foreigners and the problems they face when living in Japan.)</p> <table border="1" data-bbox="316 1608 1295 1839"> <tr> <td data-bbox="316 1608 1295 1697"> <ul style="list-style-type: none"> ○ Improve the environment for business travel, including use of the APEC Business Travel Card, to smooth the process of entry to Japan for short visits for business purposes. ○ Study the various issues involved in constructing an effective system for foreign resident status control. These include how to develop arrangements for mutual access to and provision of information by the ministries and agencies concerned with foreign resident status, what form the amended Alien Registration Law should take, whether the organizations that bring in personnel from other countries should also be made responsible for reporting, and so on. Reach conclusions within fiscal year 2006. </td> <td data-bbox="1295 1608 1428 1839"> <p>MOFA</p> <p>Ministries and Agencies Concerned</p> </td> </tr> </table> <p>C-2. Improve the educational environment for foreign children resident in Japan by developing systems related to international schools and Japan campuses of foreign universities.</p>	<ul style="list-style-type: none"> ○ To further increase the utilization of pre-filing inquiry procedures, determine the status of utilization and, as necessary, study issues and measures for further promoting utilization of these procedures. JETRO will provide support for pre-filing inquiries, as required, for corporations that are considering investment in Japan, taking the needs of such corporations into account. ○ To further increase the utilization of public comment procedures, ascertain the status of implementation and act to broaden and deepen the use of this system. 	<p>All Ministries and Agencies Concerned, JETRO</p> <p>All Ministries and Agencies Concerned</p>	<ul style="list-style-type: none"> ○ Create a database of projects and measures related to FDI to Japan and share that information within the government. ○ Coordinate with the Council for the Promotion of Japan as a Tourism Leader, the Council for the Promotion of Privatization and Regulatory Reform, the Headquarters for the Promotion of Special Zones for Structural Reform, the Headquarters for Regional Revitalization, the Council for Science and Technology Policy, and other organizations concerned to work toward more effective implementation of policies. 	<p>CAO, All Ministries and Agencies Concerned</p> <p>Ministries and Agencies Concerned</p>	<ul style="list-style-type: none"> ○ Improve the environment for business travel, including use of the APEC Business Travel Card, to smooth the process of entry to Japan for short visits for business purposes. ○ Study the various issues involved in constructing an effective system for foreign resident status control. 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	<ul style="list-style-type: none"> ○ Implement a system of low-interest loans for the improvement of international schools that meet certain requirements. ○ Provide guidance as needed regarding the purpose and meaning of standards for establishing specialized training colleges and miscellaneous schools when the Japan campuses of foreign universities want to be designated as such colleges or schools. The fact that the authority to approve such establishment lies with the prefectures should be taken into consideration, as well as the economic situation of the Japan campuses. (Repeated entry) 	<p>METI, MEXT, Development Bank of Japan (OBJ)</p> <p>MEXT</p>
C-3. Improve the living environment for foreign residents by measures to deal with medical care for foreigners, the building of multicultural society in regional communities, and so on.		
	<ul style="list-style-type: none"> ○ Support requests to bring foreign physicians into Japan as appropriate in order to make medical care more convenient for foreigners residing in this country. ○ Take steps for all of Japan's prefectures and those cities designated by Cabinet Order to formulate their own guidelines or plans for the construction of multicultural society within fiscal year 2006, patterning them after the Regional Multicultural Society Promotion Plans formulated by the Ministry of Internal Affairs and Communications as guidelines for Japan's local regions. ○ Questions of medical care, education for children, friction with local residents, and other such real problems that foreigners face as residents in Japan will be taken up in the Liaison Council of Ministries and Agencies Concerned with the Issue of Foreign Workers. The current situation will be analyzed with attention to the desired allocation of costs for resolution of these problems, and comprehensive measures will be compiled in organized form within 2006. Steps will also be taken for collaborative study by the ministries and agencies concerned in order to improve Japanese language education, to strengthen measures addressing the issue of children not attending school, for example by providing directions on school attendance, to increase the number of signs and markers in foreign languages, and to take other such measures. 	<p>MHLW</p> <p>MIC</p> <p>Ministries and Agencies Concerned</p>
3. Vigorous Conduct of Domestic and International Public Relations Activities		
A. Domestic Public Information Programs to Further Deepen the Understanding of the General Public		
	<ul style="list-style-type: none"> ○ Make use of regional Japan Investment Councils and other such means to provide a forum where leaders of local government can directly express and clarify their commitment to attracting foreign corporations. The national government will also provide active support so that promotion of foreign direct investment in Japan will become a nationwide program with regional roots. Regions that are engaging actively in programs to attract foreign corporations, therefore, will conduct their own campaigns to disseminate and enhance popular awareness of the specific effects of FDI. ○ Gather together specific success stories about investment and use them to disseminate and enhance popular awareness of the effects foreign direct investment has had in Japan. Collect figures and perform statistical analysis on the effects of M&A, the contributions made to local employment, and so on. Publicize these in widely understandable form using all public information media. ○ Conduct studies to determine what kind of statistics on FDI are wanted in order to obtain a more accurate grasp of such investment and its effects. Take account of the status of statistical development in other countries, IMF and other international standards, and related considerations. ○ Conduct surveys of specific success stories of investment in other countries, the effects of FDI inducement, FDI inducement systems, and so on, in order to develop a body of objective data concerning the influence of such direct investment on Japan's economy. 	<p>CAO, METI, JETRO</p> <p>CAO, METI, JETRO</p> <p>MOF (METI)</p> <p>MOFA, METI, JETRO</p>
B. Overseas Publicity Campaigns		

	<ul style="list-style-type: none"> ○ Make Japan's welcoming stance to investment more widely known by sales campaigns conducted at the highest level by Cabinet ministers and local government leaders. Investment missions will also be dispatched. Implement permanent publicity programs by Japanese ambassadors and other personnel at overseas diplomatic missions to attract FDI. ○ Organize large-scale Japan investment seminars in other countries with a view to providing occasions for Cabinet ministers and local government leaders from Japan to conduct high-level sales campaigns as well as for inducing corporations to relocate in Japan and for forming business partnerships. ○ Develop information related to regional investment (information on industrial clusters in the local area, the specialized personnel, the businesses, the infrastructure). Develop a Web site for parties interested in investing that provides this information with further enhancements tailored to their interests. (Repeated entry) ○ Promotion of foreign tourism, particularly as it increases the number of foreign visitors to Japan, is a contribution to increased international understanding. Public information campaigns will therefore be conducted in other countries in coordination with the Visit Japan Campaign. ○ Provide information and other such support in cooperation with activities conducted by chambers of commerce and similar organizations in other countries. 	<p>CAO, MOFA, METI, JETRO</p> <p>MOFA, METI, JETRO</p> <p>METI, JETRO</p> <p>CAO, METI, MLIT, JETRO</p> <p>METI, JETRO</p>
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REPUBLIC OF KOREA

Question Q1-1

Please provide further information on the suspension of release by Customs regarding patents, including the name of applicants and dependants, the country of origin and a description of suspended goods.

Answer

With respect to patent infringements, the number of items that Customs suspended at the border in 2005 was 46,906, and the number of cases in 2005 was 66. The name of applicants/dependants, the country of origin, and a description of suspended goods with regard to the suspension of goods infringing patent rights are not available.

Question Q1-2

Please provide data on how many applications have been made and what percentage of them have been accepted by Customs. We would also like to know how many suspensions, if any, have afterwards been denied by the Japanese Courts.

Answer

The number of valid applications for import suspension at the end of 2006 was 479. Regarding patents rights, 16 applications are in force. The percentages of rejection/acceptance of import suspension are not available.

So far there have been no cases in which Japan Customs' identification was denied by Japanese Courts.

Question Q1-3

Please provide English version of the detailed Verification Procedure.

Answer

When Customs detects goods suspected of infringing IPR, Customs commence an identification (verification) procedure with notifications to the right-holder and importer. The notifications include key information such as the name and address of right holder/importer and the amount of suspected goods. During the identification procedure, the right-holder and importer are able to submit statements and evidences about the suspected goods, and Customs identify the infringements based on evidence and

statements. In order to determine the infringements of IPR in complicated issues, Japan Customs can seek advice from related government agencies such as JPO and refer to the opinions of IPR experts.

Question Q1-4

We hope the Japanese government will exempt patents from the items subject to the Verification Procedure under article 21(4) of the CTL. Please provide Japan's view on this issue.

Answer

As the IPR Strategic Program 2006 indicates, the development of an enforcement system with legal and technical expertise at the border in order to determine infringement of complicated IPR cases, such as patent or design rights, is one of the important issues in Japan. To this end, Japan Customs has improved the enforcement system, such as the new system to seek advice from IPR experts introduced in April 2006. Japan will continue these efforts for appropriate administration at the border.

Question Q2

The JIS mark scheme is a high hurdle for foreign products looking to enter the Japanese market as foreign firms have to go through a fastidious process to acquire the JIS mark. Therefore, Korea requests the Japanese government to provide more accessible information to foreign firms regarding the JIS acquisition process, to mitigate the process itself and to implement programs to support foreign firms in acquiring JIS marks in certain cases. Does Japan have a plan set out to improve this process?

Answer

The conformity assessment procedures under the JIS mark scheme are undertaken in a no less favorable order for products of foreign countries than domestic products.

Japan also permits participation of product certification bodies located in the territories of the other countries under conditions no less favorable than product certification bodies located within Japan.

Japan has provided information on the new JIS mark scheme for foreign countries by holding seminars in some foreign countries, publishing brochures in English and establishing a website in English.

The METI has even given explanation of the new JIS mark scheme at the annual policy dialogue with Korea for standards, and held conformance and a seminar for all old Korean JIS mark factories in Korea.

There is an accredited product certification body for the new JIS mark in Korea at present and the body can also provide information on the new JIS mark scheme.

Question Q3

Road vehicles, electricity, gas and chemical products are required to undergo a safety test in Japan even if they are currently sold in the U.S. and Korea after passing the international safety test. We have noted that Japanese certification procedures have placed a heavy burden on foreign manufacturers. Korea is not opposed to Japan's safety regulations, but considering the long time frames (3-5 years) and huge expense required to acquire a safety certification in some cases, the regulations are considered to act as an import barrier. For example, Japan's mandatory regulations under the Electricity Utilities Industry Law for DVRs (digital Video Recorders) are not aligned with international standards. The Japanese government does not recognize other certificates like the UL in the United States or the TUV in Germany, thus resulting in double testing. As there are only 3 agencies in charge of conformity assessment in Japan, exporters have difficulty in obtaining required certification. Moreover, the process is time-consuming and prohibitive.

Please explain whether Japan has plans to allow imported products to be exempt from certification procedures in Japan if they have undergone similar strict procedures in the country of origin?

Answer

Regarding electrical products sold in Japan, foreign manufacturers have been allowed to undergo conformity assessments and certifications done in foreign countries by Foreign Registered Conformity Assessment Bodies under the Electrical Appliance and Material Safety Law (hereinafter as “the Law”). In addition, technical regulations on electrical appliances and materials designated under the Law have been adjusted to the IEC standards in cases where IEC standards which correspond to these exist. Therefore, it could be said that foreign producers that export electrical products to Japan have been given a virtually equal opportunity of conformity assessment to that of Japanese domestic producers.

Concerning road vehicles, Japan is a contracting party of the UN/ECE 1958 agreement and accepts the type approval issued by the other contracting parties applying the same UN/ECE regulations as those applied by Japan. As foreign manufacturers do not need to get type approvals in Japan for such devices, Japan does not consider that Japanese certification procedures have placed a heavy burden on foreign manufacturers.

Question Q4

Continuation Inspection System for Automobiles

Almost 80% of Japanese automobile owners use private inspection offices for continuation inspections. In the case of regular inspections conducted by private Japanese inspection bodies, the inspection fee charged for imported cars is far higher than that for Japanese cars. In addition, expenditure breakdowns for inspections are open to the public in the case of Japanese cars but not for imported cars. Due to such practices, Japanese consumers prefer Japanese vehicles over imported cars. The aforementioned practices of private inspection bodies in Japan are regarded as remnants of import restrictions imposed in the past. In this regard, we hope that such unfair practices in vehicle inspection will be changed. Please provide your view on this issue.

Answer

The total fee charged for vehicle inspection in designated motor vehicle maintenance and repair shops (service garages which supply private inspection services) mainly consists of the inspection charge, which is pay to be paid to the Government, and the maintenance and repair fee. The inspection charge varies according to vehicle size, but it does not vary depending on whether the vehicle is built in Japan or not. The fee, excluding the inspection charge, is not regulated by the Government. It is set by designated motor vehicle maintenance and repair business operators individually.

Therefore, the Government of Japan (GOJ) recognizes that the total cost charged for the vehicle inspection in designated motor vehicle maintenance and repair shops is not unfair.

You state, “expenditure breakdown for inspections are open to the public in the case of Japanese cars”, but the GOJ have not made such material public.

Question Q5

Mandatory Recycling System for Home Appliances

Recycling fees, which are paid by the consumer to either the manufacturer or the importer, depend solely on the category under which the product falls, not the price and energy efficiency. This is burdensome to some home appliance manufacturers who export small-sized products with relatively high energy

efficiency. Has Japan considered revising of the Recycling System for Home Appliances, including changing the calculation basis of the Recycling fees from the category to a product's energy efficiency?

Answer

Manufacturers and importers set recycling fees based on recycling costs by product category under the designated Home Appliances Recycling Act. The Government of Japan (GOJ) is reviewing the recycling system for home appliances. However, the GOJ is not considering changing the calculation basis of recycling fees to product's energy efficiency.

Question Q6

Please confirm whether Table III.4 on page 43 of the Secretariat's report deals with all standards which are designated in Japanese legislation as mandatory technical regulations.

Answer

Table III.4 on page 43 of the Secretariat's report is not an exhaustive list of mandatory technical regulations, but a list of major standards and technical regulations in Japan.

Question Q7

Korea would like to know the methods that have been used to derive figures in the columns ' (Corresponding to international standards' and 'Equivalent to international standards' .

Answer

Concerning the figures in Table 3.4, Japan's method is based on "ISO/IEC GUIDO 21-1". For Safety Regulations for Road Vehicles, the column of "Corresponding to an international standard" refers to the percentage of total domestic regulations which are aligned with international standards (UN/ECE regulations).

Question Q8

According to paragraph 51, about 1800 standards, which are approximately 20% of all JIS, are designated in Japanese legislation. Table III.4, however, shows that about 20% were aligned with international standards only in Safety Regulations for Road Vehicles. This explanation does not seem to correspond with the argument that about 93% of JIS were aligned with international standards. Korea would welcome an explanation for these ambiguities.

Answer

In Table III.4, the calculation method for each law is decided by each government agency which is in charge of each law. The supporting documents which explain our calculation basis regarding JIS are shown in the answer to Q9.

Question Q9

In addition, Korea would like to request the supporting documents that prove 20% of the JIS is designated in the Japanese legislation and a list of JIS in each law.

Answer

Laws in which the JIS are quoted are as follows (including cabinet orders, ministerial ordinances and notices):

Laws	Numbers
<i>Industrial Standardization Act</i>	<i>approximately 1,400</i>
<i>Pharmaceutical Affairs Law</i>	<i>approximately 700</i>
<i>Fire Service Law</i>	<i>approximately 500</i>
<i>Building Standard Law</i>	<i>approximately 500</i>
<i>Industrial Safety and Health Law</i>	<i>approximately 400</i>
<i>Human Resources Development Promotion Law</i>	<i>approximately 300</i>
<i>Law on the Regulation of Nuclear Source Material, Nuclear Fuels Material and Reactors</i>	<i>approximately 300</i>
<i>Law Concerning Safety Assurance and Quality Improvement of Feeds</i>	<i>approximately 300</i>
<i>The Law on the Quality Control of Gasoline and Other Fuels</i>	<i>approximately 200</i>

Question Q10

With regard to paragraph 50, we would like to know the reason why the road safety standards aligned with international standards have been reduced to 20% in 2005 from 24% in 2003.

Answer

Until the 2003 report, Japan had calculated the column “corresponding to an international standard” by dividing the number of UN/ECE regulations Japan had applied by the total number of UN/ECE regulations. However this may not indicate the ratio of harmonized regulations (for example, the denominator includes the regulations whose scope is not included in Japanese regulations), therefore Japan has changed the calculation method since the 2005 report, by dividing the number of domestic regulations which Japan has aligned with UN/ECE regulations, by the total number of domestic regulations. Thus the number in the 2003 report and that in the 2005 report have different connotations.

By using the new calculation method, the percentage in 2003 is 18%, which shows that there are more harmonized regulations in 2005(20%) than in 2003.

Question Q11

A general revision in approval standards on GM foods is in progress and FSC Japan is conducting safety assessments on all GM food products including those that have already been approved, which we assume will result in a higher level of uncertainty in the export market. Thus Korea hopes for the prompt determination of these standards. When does Japan expect the revision process to be finished by?

Answer

Since 2001, the safety assessment of genetically modified foods (GM foods) has been mandatory under the Food Sanitation Law in Japan.

Since the Food Safety Commission (FSC) was established in 2003, the Ministry of Health, Law and Welfare (MHLW) requests the FSC to assess the safety of GM foods under the Food Safety Basic Law and the Food Sanitation Law, however, the reassessment of the GM foods approved before 2003 are not conducted by the FSC at this time.

According to the Japanese regulations, safety assessment of the effect of GM foods on health shall be conducted on the basis of the state-of-the-art scientific knowledge of the time. The Government of Japan might revise the Safety Assessment Standards, when we find new scientific knowledge. However, at present, there is no plan to revise the Safety Assessment Standards.

Question Q12

The Japanese government generally allows traditional Japanese food additives which are not normally produced in foreign countries but bans others such as light mayonnaise, creamy mustard, and figs containing potassium sorbate which are allowed by international standards organizations. What is the reason that Japan's food additive regulations are not aligned with international standards and does Japan have a plan to harmonize the regulations with international standards in the future?

Answer

In Japan food additives are not permitted for use unless they are designated by the Minister of Health, Labour and Welfare under the Food Sanitation Law as substances which are unlikely to cause adverse health effects. In addition, the Food Safety Basic Law requires the Minister to hear the opinion of the Food Safety Commission (FSC) in the process of authorizing food additives.

Japan recognizes that not only Japan but also almost all other countries, such as Australia, the EU, and the United States, permit the use of food additives only when they are authorized by their own food health authorities (whether or not these additives are used globally).

Separately from the ordinary authorizing process, the Government of Japan (GOJ) is proceeding with a review with the intent to authorize the 46 food additives and flavorings, that have been proven safe by the JECFA (Joint Expert Committee on Food Additives) and that are widely used globally. The Ministry of Health, Labour and Welfare of Japan, on a priority basis, has the FSC carry out risk evaluation of these additives and flavoring agents. However, the GOJ would like the Korean Government to understand that if the FSC requests additional information as needed in the scientific evaluation, it will take more time to conduct additional studies to gain the information.

Question Q13

The Japanese government bans polysorbate, a common food additive which is generally allowed in other developed countries like the United States and the European Union member countries. In order to export instant noodles to Japan, foreign suppliers must currently adjust their ingredients at additional cost, which has caused foreign countries' exports of instant noodles to Japan to suffer.

Other developed nations like the United States and the European Union member states allow polysorbate levels of up to 1,000ppm/kg and international organizations like the Joint FAO/WHO Expert Committee on Food Additives (JECFA) allow for up to 25mg/kg of a person's weight as the daily recommended allowance. What is the reason that Japan has restricted the use of polysorbate more strictly than other developed countries? Does Japan have a plan to harmonize its regulations with international standards on polysorbate?

Answer

Polysorbate is one of the 46 food additives mentioned in the answer to Q12. The GOJ has already initiated the required procedure toward the authorization.

Question Q14

The Japanese government prohibits the use of potassium sorbate in frozen foods even though the substance has been proven harmless to humans. Therefore, foreign suppliers have to produce a special pickled radish for exports of frozen dumplings to Japan. What is the reason that Japan has prohibited the use of potassium sorbate in frozen foods although the substance has been proven harmless to humans? Does Japan have a plan to harmonize the regulations with international standards on polysorbate?

Answer

If Korean businesses wish to expand the scope of foods in which the use of food additives is permitted, they are requested to file an application along with the necessary information to the Ministry of Health, Labour and Welfare.

Question Q15

Complicated scientific examinations for the approval of new food additives are time-consuming and the Japanese government doesn't recognize test data acquired in Korea, which requires products from Korean suppliers to undergo double testing. In this regard, does Japan have any plan to improve the system, such as simplification of the approval system for new food additives and mutual recognition of test data?

Answer

Japan accepts any test data which would contribute to scientific review regardless of whether or not the test was conducted in Japan.

Question Q16

As of May 2006, the Japanese government launched a new inspection system based on a positive list approach. This has resulted in additional costs for cleansing compared to the former negative list system. What is the reason that Japan has revised the inspection system for residues of agricultural chemicals from a negative list to a positive list approach?

Answer

Before the introduction of the positive list system for agricultural chemicals (pesticides, feed additives, and veterinary drugs), the Government of Japan (GOJ) could not regulate any food products even if they contained chemicals (residue standards for which were not established), except for cases subject to Article 6 of the Food Sanitation Law. Only when products contained chemicals at levels exceeding the existing standards did the GOJ prohibit the distribution of the products. In response to growing public concerns about agricultural chemical residues, the GOJ introduced the new system based on a scientific and technical concept in order to fulfill their responsibility for the protection of national consumer health.

At the introduction of the new system, Japan did not modify the inspection and guidance system under the Food Sanitation Law.

Question Q17

The current import approval process for new fruits and vegetables is time-consuming and requires a lot of expenses. In addition, the lack of transparency in the process causes foreign suppliers' exports to Japan to be subject to a high level of uncertainty. Korea hopes the process of import approval for new fruits and vegetables will become more simplified and transparent. Please provide Japan's view on whether it has plans to improve this procedure.

Answer

Importation into Japan of fruits and vegetables from the Republic of Korea is not prohibited under the Plant Protection Law of Japan. Thus, in the case of importation of new fruits and vegetables, "import approval" is not required. Fruits and vegetables are imported into Japan if they pass the import inspection.

The plant quarantine system of Japan is transparent and the information, including the procedures of plant importation, is available at the following website.

<http://www.maff.go.jp/soshiki/nousan/syokubou/index.htm>

Question Q18

The Japanese government places strict regulations on nutritional supplements. These strict regulations make it impossible to advertise a product's beneficial effect(s). The Japanese government also imposes high taxes on nutritional supplements compared to those placed on medicines. What is the reason that Japan regulates nutritional supplements more strictly than international standards would allow for?

Answer

Under the current regulations concerning Food with Health Claims, labeling with certain nutritional or health functions is allowed. The regulations are harmonized with the international guidelines established by the Codex Alimentarius Commission. However, certain kind of expressions with the purpose of a diagnosis, treatment or prevention of illness, or those claiming effects on physical structure or function are regulated under the Pharmaceutical Affairs Law.

Tariffs on agricultural products, including nutritional supplements, were settled by the UR Agreements. The levels of tariff reductions on agricultural products are currently under negotiation in the Doha Round.

Question Q19

Japanese authorities require advance consultation for changes to even simple conditions, which causes unnecessary delays when unloading. We hope the unloading process will become more simplified, thereby further facilitating trade.

Answer

The content pointed out here is not clear, but the prior consultation procedures on cargo handling services in Japanese ports and harbors are systems based on an agreement among private companies at the request of shipping companies, and their improvement and abolishment should be discussed among the affected parties. These prior consultation procedures were much improved in terms of the facilitation and transparency of procedures by agreement among relevant parties in October 1997. As a result, conventional prior consultation matters through the Japan Harbor Transportation Association have been reduced by more than 95%, and shipping companies have expressed their gratitude.

Question Q20

Customs Clearance Procedures: Classification in the HS-code System (WT/TPR/S/175 p.32 para.15)

While textile products for automobile seats are exempt from tariffs, materials from which the seat is made are not. The tariff rate on products with HS code 9401.90.090 (parts for seats excluding leather products) is 0%, while for products with HS code 001.92.016 (textile products made of polyester), the rate is 8.3%. - The tariff rate applied to automobile seat material is 8.3%, the same rate at which general textile products are taxed, because its usage is not limited to automobile seats only.

If seat material can be proven to have been made for automobile seats, is it allowed to be exempt from tariffs? If so, what is necessary to prove this?

Answer

In Japan, parts for automobile seats are classified in HS No.9401.90 and have applied the tariff rate of zero (in the case of materials other than leather, and 3.8% in the case of leather), only if the shape or other characteristics of the parts are deemed to be designed solely or principally for automobile seats. In the case of polyester textile materials, a tariff rate of zero is applied for non-flammable chenille fabrics classified in HS No.5801.36-1 and non-flammable pile fabrics classified in HS No.6001.92-1, if the fabrics satisfy the criteria of non-flammability prescribed by the Cabinet order for implementing the Customs

Tariff Law, i.e. the materials possess retarding and self-extinguishing properties in the test of organic materials for automobile interiors stipulated by Japan Industry Standard (JIS).

Question Q21

Tariffs: Higher tariff rate on SOJU (WT/TPR/S/175 p.36 para.21)

Japan continues to impose a 16% tariff rate on Korean Soju (Korui-shochu in Japan, HS220890129), although it repealed customs duties on whiskey, vodka, etc. imported from Europe in April 2002. Korea is, therefore, concerned about the loss of competitiveness due to this tariff inequality, since *soju* is a viable substitute for spirits such as whiskey, vodka, etc. in the Japanese market. Please clarify Japan's position on this inequality.

Answer

Korean soju is, unlike whisky, vodka, etc, classified as "Ethyl alcohol and distilled alcoholic beverages; other" (HS2208.90-129), the same tariff line as Japanese shochu, a traditional distilled alcoholic beverage peculiar to Japan. Since most shochu breweries are medium and small companies suffering from deficits or low profits, Japan maintains the tariff rate on the product in question.

Question Q22

Taxation: Classification of Korean Soju as a Spirit (WT/TPR/S/175 p.48 para.72)

The Japanese government classifies Korean soju (distilled liquor) as a spirit and imposes a higher tax on it compared to Japanese soju. The Japanese government imposes a 200 yen/ℓ tariff on Japanese soju but 300 yen/ℓ on Korean soju. On what grounds does Japan classify Korean soju as a spirit rather than as alcohol? Is there any room to classify Korean soju by its alcohol content?

Answer

Regarding the taxation system for shochu (distilled liquor) in Japan, there is no distinction between shochu made in Japan and that from foreign countries.

In the meantime, the Japanese taxation system does not allow, in principle, shochu to be blended with other substances. In such cases, it is not classified as shochu but as spirits or liqueur.

For Korea's reference, there is a substantial amount of Korean soju that is imported into Japan classified as shochu under the Japanese taxation system.

Question Q23

Though certain claims for cosmetics and quasi-drugs are based on verifiable data, it is prohibited to advertise these properties in Japan. If the claims made for certain cosmetics and quasi-drugs are proven to be true, would advertising these claims be allowed?

Answer

Advertisement of the effects of quasi-drugs is allowed to the extent approved, while advertisement of these of cosmetics is not allowed, with the exception of 55 kinds of effects where this is allowed, notified by the notification dated 28 December 2000.

Question Q24

There is currently a limitation on the number of times a day flora inspections can be conducted. In some cases, if the product is not inspected in due time, the result is a decrease in the value of the product. Japanese importers are reluctant to import foreign products due to the above reason. Korea hopes that Japan will lighten this limitation and prevent it from working as a non-tariff barrier. Please provide Japan's view on this issue.

Answer

At main airports in Japan, all shipments, including those which arrived on the last flight, are inspected on the day. At main ports, if requested by importers, Japan conducts plant quarantine inspections even at night or during weekends. Furthermore, Japan is increasing the number of plant quarantine inspectors and improving its arrangement of them.

Plant quarantine inspection in Japan is carried out promptly and Japan has not recognized any case in which the quality of products has fallen due to a delay in inspection.

Question 25

Japanese retailers in home appliances dishes, and clothing require from a supplier low prices, sponsorship, and accountability for returned goods. This commercial practice causes distribution difficulties for foreign exporters. Does the Japanese government recognize the commercial practice mentioned above? And if so, does Japan have a plan to resolve the problem in a constructive way?

Answer

The Japan Fair Trade Commission (JFTC) has been monitoring business practices involving large-scale retailers in terms of their compliance with the Antimonopoly Act (AMA). The JFTC has further conducted periodical surveys on the actual conditions of transactions between large-scale retailers and their suppliers. According to the monitoring activities and the surveys, it would appear that the conduct of a certain small portion of large-scale retailers could cause problems under the AMA.

While the transaction terms or conditions for negotiation are basically to be determined between the parties based on their independent business judgement, in cases where a retailer in a dominant bargaining position over its suppliers, by making use of that position, engages in coercion to obtain return of unsold goods, or coercive collection of contributions, such conduct is most likely to present a problem under the AMA as abuse of a dominant bargaining position.

Abuse of a dominant bargaining position is regulated, in general, as an unfair trade practice, under Article 14 (Abuse of Dominant Bargaining Position) of the General Designation (Fair Trade Commission Notification No. 15 of 1982), and regarding the conduct of large-scale retailers such as department stores and supermarkets vis-à-vis their suppliers, in addition to Article 14 of the General Designation, "Specific Unfair Trade Practices by Large-scale Retailers Relating to Trade with Suppliers" (Fair Trade Commission Notification No. 11 of 2005) shall apply to this.

In cases where a business relation between a retailer and its supplier falls under contractor-subcontractor transactions under the Act Against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors, and if it also comes under manufacturing commission of products, such as manufacturing and supplying of goods bearing the brand of the retailers (so-called "private brand" goods), this Act shall apply.

JFTC, where appropriate, has eliminated the illegal acts by rendering cease and desist orders against firms violating the AMA, or by issuing recommendations to firms violating the Act Against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors for prompt payment and so on.

Question Q26

According to the Japanese government's report, it is noted that Japan has recently signed Social Security Agreements with the US (in February 2004), the Kingdom of Belgium and the French Republic (in February 2005). Those agreements include clauses that enable aggregation of a person's social security contribution periods in both countries. Unfortunately the Social Security Agreement signed by the Republic of Korea and Japan in February 2004 has no such clause. What is the position of Japan on amending the Korea-Japan Social Security Agreements to incorporate such clauses?

Answer

Japan considers that a social security agreement, in principle, should cover the aggregation of the periods during which a person has paid social security contributions in both countries. Unfortunately, Japan-Korea Social Security Agreement does not have such provisions on such aggregation because of Korea's position during the negotiation of limiting the scope of this Agreement to only preventing the double payment of pensions, and not including such aggregation. However, during the negotiation, the two countries confirmed their intentions to explore the possibility of introducing such aggregation in the future, and thus Japan is ready for an opportunity to exchange views on this matter at a proper time.

Question Q27

It is known that in their Comprehensive Economic Partnership Agreement (AJCEP) negotiations, Japan and ASEAN have recently agreed to change the modality of negotiations so that both sides can indicate their hyper-sensitive and sensitive products. What is reason for this change and how will Japan maintain complementarity between the AJCEP and bilateral FTAs with ASEAN countries?

Answer

Japan has made a series of proposals on the modality of trade in goods as part of Japan's efforts to narrow the gap between ASEAN and Japan with respect to the approach to trade liberalization and facilitation. Since the AJCEP Agreement is still under negotiation, we cannot comment on the details of our proposals.

Question Q28

Japan-Australia FTA (WT/TPR/G/175 p.17 para.83~86)

Last December, Japan announced that it would negotiate an FTA with Australia. However, right before the official announcement, Japanese agricultural interests, including the Ministry of Agriculture, Forestry and Fisheries, issued statements raising concerns over the harm that would be inflicted to domestic agricultural production from the proposed FTA and pledged that they would make whatever efforts necessary to protect the domestic market. To what extent is the Japanese government willing to open up its agricultural market to Australia ? And how will Japan harmonize its domestic agricultural reforms with its FTA strategies?

Answer

The extent to which Japan will open up its agricultural sector in the Japan-Australia EPA negotiations is to be decided as a result of the negotiations, and this cannot be prejudged before the negotiations start.

Japan's basic stance in the WTO and FTA/EPA negotiations, including that regarding Australia, is to enhance the international competitiveness of Japan's agricultural industry through accelerating initiatives for its structural reform, while paying sufficient attention to those of our agricultural products which are agricultural issues.

Question Q29

11. Japan-Indonesia, GCC, Brunei and Australia FTA (WT/TPR/G/175 p.14~17 para.63, 69, 83~86)

Japan's late FTA agreement with Indonesia contains clauses regarding Indonesia's secure provision of natural resources to Japan. Likewise, Japan's recent choice of FTA counterparts, i.e. GCC, Brunei and Australia, tends to reflect its energy security point of view. Bilateral FTAs are allowed within the WTO system only because the preferential treatment given to one country can be applied to others through subsequent negotiations, which, at the end of the day, would contribute to reinforcing the multilateral trading system. However, clauses regarding secure provision of natural resources do not seem to be in line with this WTO goal. How will Japan maintain the goal of multilateral openness in its FTA policies while satisfying its future energy and natural resource needs?

Answer

The elements that Japan seeks to include in EPA/FTA from the viewpoint of energy security are the following:

- *improvement of the investment climate for the energy and mineral resource sectors*
- *exchanges of information and consultations when introducing changes in to the energy policy, such as import or export restrictions on energy and mineral resources goods*
- *clauses requiring parties to endeavor to minimize the impact of energy regulatory measures on existing contracts*
- *establishment of a sub-committee for policy dialogue*
- *due consideration for the environment*

These provisions in EPAs are designed to enhance energy security by ensuring predictability for economic activities by the private sector. In other words, economic activities of the private sector will not be restrained, and the openness of the multilateral trade system will not be obstructed.

INDONESIA

Question Q1

Could Japan reconcile this trade measure with the Japan obligation under article XI of the GATT 1994?

Answer

Japan's export control is consistent with the GATT 1994 pursuant to Article XI:2, Article XX and Article XXI thereof.

Question Q2

Indonesia understands that export control could be used for national security and to ensure adequate domestic supply. However Indonesia is of the view that export controls could not be reconciled for public safety purpose. Please explain.

Answer

The notion of public safety includes the protection of the environment. In this regard, export control is an effective measure for maintaining public safety. For example, the Basel Convention, which is designed to

reduce the movement of hazardous waste between nations and their disposal, is implemented through each country's export control.

Question Q3

Please explain why JIS were aligned to their international counterparts and not to international standard.

Answer

In this context, international counterparts means international standards.

Question Q4

Can we assume that Japan impose different standards to different counterparts or different markets?

Answer

Japan does not impose different standards to different counterparts or different markets.

Question Q5

It seems to Indonesia that since the MFN average tariff for industrial products have been low (6.3%), Japan has been using technical regulation to protect its industries. Please explain.

Answer

Japan has not been using technical regulation to protect its industries.

Question Q6

(The fact is that Japan still maintains certain policies to foster its export through certain policies such as export finance, quarantines and drawback schemes.) Could Japan justify these policies with the Japanese obligation under the SCM Agreement in particular Annex I: "Illustrative list of subsidies" SCM?

Answer

Japan does not maintain any policies to foster its exports that are not consistent with the SCM Agreement. With regard to export credits, their terms and conditions are based on those of the OECD Arrangement, thereby consistent with the SCM Agreement.

Question Q7

Of 8914 lines (Japan's applied MFN Tariff) in the HS 9 digit, non ad valorem in the amount of 6.6% are applied for certain products such as Footwear, Textiles and Clothing, and vegetables. What is the idea behind the non ad valorem tariff policy for those products which are of the interest of developing countries? See chart III.1 (share of non ad valorem duties, by HS Section FY 2006 page 35 and paragraph 20).

Answer

Japan adopts an appropriate type of tariff for each product in accordance with the product's properties, etc. Non- ad valorem tariffs are applied to certain products since those tariffs have merits such as that duty amounts can be easily calculated with numbers or weight of imports. In addition, non-ad valorem tariffs in Japan are consistent with WTO Agreements.

COLOMBIA

Question Q1

Does Japan also have a policy to promote protection for its investors abroad? If so, does Japan pursue that policy by, *inter alia*, negotiating bilateral investment agreements?

Answer

The objectives of Japan's bilateral investment agreements (BITs) and investment chapters in FTA/EPAs are to ensure a liberalized investment environment as well as high-level protections for investors and their investments.

As regards the liberalization of the investment environment, Japan has sought to include into its BITs and FTA/EPAs such important principles as National Treatment at the pre and post establishment phase, Most-Favored-Nation Treatment at pre and post establishment phase, and TRIMs-plus "Prohibition of Performance Requirements". Regarding the protection of investors and their investments, such provisions as "general treatment (including fair and equitable treatment)", "expropriation and compensation", "access to the courts of justice", "transfer" and "investor-state dispute settlement" will be pursued.

Question Q2

Paragraph 56 of the Secretariat's report states that the inspection provided for in the Law on Food Sanitary Conditions may be waived if the merchandise has been inspected by a public laboratory of the export country and the inspection results are attached. Could Japan please elaborate on the scope and procedure of such waiver?

Answer

Importers are not obligated to attach the test results issued in the exporting country when importing foods.

In case of voluntary or administrative testing, the importer can conduct the tests at overseas laboratories registered by the MHLW. (The inspection items for which the sanitary condition is liable to change during transport (for example, bacteria, mycotoxin, etc.) shall be excluded)

The laboratories that wish to obtain registration by the MHLW must be capable of conducting tests using AOAC methods (those prepared by the US Association of Official Analytical Chemists) and must be categorized into either of two groups:

- i. Laboratories that are under the direct control of the national or state government of an exporting country (official laboratories).*
- ii. Laboratories that are certified or designated by the national or state government of an exporting country (designated laboratories).*

PHILIPPINES

Question Q1

Japan has few non-tariff border measures. Those currently applied involve some import prohibitions and quantitative import restrictions (for example, on some fish). In addition, imports of some goods are subject to licensing requirements to ensure national security, safeguard consumer health and well-being, or preserve domestic plant and animal life and the environment. Japan abolished import quotas on textiles and clothing (i.e. those related to silk products from China) on 1 January 2005.

Can Japan identify the specific import prohibitions and quantitative import restrictions imposed on fish, and the reasons for such NTMs?

Answer

Import restrictions on fish products play important roles for the conservation and management of fishery resources and are consistent with the WTO Agreements, whether they are the IQ system or those to comply with the international treaties such as ICCAT.

Question Q2

What agricultural products, if any, are subject to specific import restrictions and quantitative import restrictions, the specific NTMs and the reason for the measures?

Answer

Japan has no quantitative import restrictions regarding agricultural products according to the results of UR. In addition, some of agricultural products, such as true hemp, opium, poppy straw, and goods which infringe upon rights in breeders, are prohibited to import under the Article 69-11 of the Customs Law in order to protect public morals, human life and health, and intellectual property rights.

ARGENTINA

Question Q1

With reference to page 35 of the English version of document WT/TPR/S/175, could Japan please explain why it uses this untransparent non-*ad valorem* tariff scheme instead of applying *ad valorem* tariffs like most of the developing countries?

Answer

*Japan adopts an appropriate type of tariff for each product in accordance with the product's property, etc. For example, non-*ad valorem* tariffs have such merits that duty amounts can be easily calculated with numbers or weight of imports.*

Question Q2

What is the justification under the SPS Agreement for not recognizing countries free of foot and mouth disease with vaccination?

Answer

Vaccination against FMD prevents development of clinical signs. On the other hand, this might result in non-detection or delay of detection of FMD.

We would also like to point out that there are several cases in which FMD outbreaks were reported soon after gaining the OIE-recognition of FMD-free zones with vaccination.

This shows how difficult it is to control FMD in the country where vaccination is conducted.

Therefore, Japan, as a FMD free country without vaccination, has not yet been confident enough to allow the importation of live ruminants, fresh beef and swine meat from FMD free countries with vaccination and their controlling measures.

ECUADOR

Question

Pursuant to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, Ecuador requests the Japanese Government to provide scientific justification for the determination of the acceptable percentage of the chemical 2,4-D in cocoa beans, for which a 0.01 ppm limit was fixed in spite of the fact that, according to the Japanese health authorities, there are no established international standards governing the maximum residue levels for this product.

Answer

Japan introduced a “positive list system” for agricultural chemicals (pesticides, feed additives, and veterinary drugs) in foods. This activity was based on the Law to Partially Revise the Food Sanitation Law (Law No. 55, 2003). The system took effect on 29 May 2006. From the viewpoint of protection of public health and smooth implementation of the system, it was necessary to provisionally establish maximum residue limits (MRLs) for chemicals without MRLs. The provisional MRLs were established taking into consideration the following standards:

- i. CODEX standards,*
- ii. Registration withholding limits under the Agricultural Chemicals Regulation Law (Law No. 82, 1947), limits of determination (LODs) for veterinary drugs at the time when they were authorized under the Pharmaceutical Affairs Law (Law No. 145, 1960), or LODs for feed additives at the time when they were authorized under the Law for Safety Assurance and Quality Improvement of Animal Feed (Law No. 35, 1953), and*
- iii. Standards established by other countries where MRLs are assumed to be established based on toxicity study data equivalent in quality to those used in scientific evaluations by JMPR (Joint FAO/WHO Meeting on Pesticide Residues) and JECFA (Joint FAO/WHO Experts Committees on Food Additives). These countries are Australia, Canada, the EU, New Zealand, and the United States.*

In addition, Japan decided to apply the uniform limit of 0.01 ppm to foods for which the standards given above were not established.

MRLs for 2,4-D in some other crops and animal products were based on Codex standards and other standards in accordance with the way as mentioned above. However, Japan set the uniform limit for 2,4-D on cacao beans because there was neither Codex MRL nor MRLs in the countries given in iii above.

The uniform limit is based on the policy that any chemical residue in foods in amounts more than necessary should not be permitted. Most of the countries that introduce the positive list system set a certain limit similar to the uniform limit, which is called different name in other countries (for example, the default limit). The uniform limit of 0.01 ppm was based on the acceptable intake of chemicals which were evaluated by the JMPR (Joint FAO/WHO Meeting on Pesticide Residues) or in Japan, and on food consumption by Japanese people. Thorough discussion by experts was carried out in the process of setting the uniform limit.

Japan fulfilled the responsibility as a Member, notifying the WTO of the uniform limit and individual draft MRLs in accordance with the WTO/SPS Agreement (G/SPS/N/JPN/145).
