

JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was \$44.8 billion in 2009, down \$29.4 billion from 2008. U.S. goods exports in 2009 were \$51.2 billion, down 21.4 percent from the previous year. Corresponding U.S. imports from Japan were \$96.0 billion, down 31.1 percent. Japan is currently the 4th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Japan were \$41.2 billion in 2008 (latest data available), and U.S. imports were \$24.5 billion. Sales of services in Japan by majority U.S.-owned affiliates were \$60.0 billion in 2007 (latest data available), while sales of services in the United States by majority Japan-owned firms were \$93.3 billion.

The stock of U.S. foreign direct investment (FDI) in Japan was \$79.2 billion in 2008 (latest data available), down from \$81.9 billion in 2007. U.S. FDI in Japan is concentrated largely in the finance/insurance, manufacturing, and wholesale sectors.

REGULATORY REFORM OVERVIEW

The United States-Japan Regulatory Reform and Competition Policy Initiative

The U.S. Government has been engaging with Japan through the United States-Japan Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) to seek changes in Japanese regulations and practices that have hindered access to Japan's market, limited competition, and prevented the introduction of innovative products and services offered by U.S. companies and exporters. This work has focused on a broad range of industry sector-specific issues, as well as a variety of cross-sectoral issues affecting the overall business environment.

The governments of the United States and Japan concluded the Eighth Report to the Leaders under the Regulatory Reform Initiative in July 2009. The Report documented progress made under the Regulatory Reform Initiative through working-level and high-level meetings that took place following an exchange of recommendations between the two governments in October 2008.

The following sections on Sectoral Regulatory Reform and Structural Regulatory Reform outline some of the key reform and market access issues on which the U.S. Government has been seeking progress by Japan under this Initiative.

SECTORAL REGULATORY REFORM

Telecommunications

In its Regulatory Reform Initiative recommendations, the U.S. Government has continued to urge that Japan ensure fair market opportunities for emerging technologies and business models, ensure a regulatory framework appropriate to addressing converged and Internet-enabled services, and strengthen competitive safeguards on dominant carriers. The U.S. Government also has continued to request that Japan improve transparency in rulemaking and ensure the impartiality of its regulatory decision making, including by abolishing the legal requirement that the government own one-third of the dominant carrier, Nippon Telegraph and Telephone (NTT).

Fixed-line Interconnection: In July and November 2008, Japan revised its rules to extend non-discriminatory and cost-oriented interconnection to Internet Protocol (IP)-enabled networks and services. This included classifying the Next-Generation Networks (NGN) of NTT East and NTT West as Category I Designated Telecommunications Facilities, which subjects them to access and pricing provisions that promote competition. In March 2009, Japan's Ministry of Internal Affairs and Communications (MIC) authorized rates for the termination of Voice-over-Internet-protocol (VoIP) calls onto NTT East and NTT West fiber optic networks. Although MIC continued to push NTT to lower interconnection rates, they still remain high by international standards.

Dominant Carrier Regulation: NTT continues to dominate Japan's fixed line market through its control over almost all "last-mile" connections. As Japan's broadband users transition from digital subscriber line (DSL) (where competition, ensured through regulation, was vibrant) to optical fiber, NTT's competitors fear NTT will expand its dominant position through control of the fiber-to-the-home (FTTH) market, where it holds a market share of about 75 percent, and by bundling NTT fixed-line services with those of NTT DoCoMo, the dominant wireless operator. While NTT asserts that there is adequate competition in FTTH service and that consequently unbundling rules should be relaxed, NTT's share of that market has steadily increased over the past few years. The U.S. Government has urged Japan to remain committed to ensuring competition in the telecommunications market, both in light of the upcoming review of the overall legal structure of NTT and the development of a new broadcasting law, which affect all players participating in markets for converged services.

Universal Service Program: Japan approved a system, beginning in January 2007, for NTT East and NTT West and their competitors to collect a universal service fee from voice services subscribers. MIC has undertaken periodic reviews to determine whether this amount should be adjusted to more accurately reflect costs and has endorsed a proposal to increase significantly the universal service fees. NTT regional carriers, the only carriers able to benefit from the fund, then receive these fees through the universal service fund to offset the costs of providing services in rural areas. The U.S. Government has urged Japan to broaden the base of this fund's potential beneficiaries and ensure it is implemented in a competitively neutral manner. Current cross-subsidization of NTT West by NTT East using interconnection revenue (ostensibly to address NTT West's higher network costs resulting from the higher number of rural subscribers) appears redundant given the existence of the fund, and the U.S. Government has urged the abolition of this cross-subsidy.

Mobile Termination: As in most countries, Japan uses the "Calling Party Pays" system, imposing the entire cost of termination on the calling party (enabling mobile subscribers to benefit from free incoming calls). NTT DoCoMo, the dominant incumbent mobile carrier, announced in March 2009, that it would lower its termination rates by over 10 percent, continuing incremental rate reductions implemented over the past 10 years. Mobile interconnection rates, however, still remain high by international standards and also compared to fixed-line rates in Japan. Despite recognizing DoCoMo as a dominant carrier in 2002, MIC does not require DoCoMo to publish its costs or explain how its rates are calculated. With new entrants now in the mobile sector, the U.S. Government has continued to monitor actions both by DoCoMo and MIC to ensure effective competition and has continued to urge MIC to consider the advantages of moving to a "bill-and-keep" system that is more economically efficient where interconnection payments are not exchanged between carriers.

New Mobile Wireless Licenses: Starting in 2005, MIC began opening the market to new mobile providers beyond the three main incumbents by auctioning blocks of spectrum to a limited number of new wireless entrants. In December 2007, MIC awarded two additional licenses for wireless broadband services. However, the complexity of the factors MIC selected in determining how to evaluate applications raised questions about whether it achieved its stated goal of awarding these licenses based on objective criteria. Given the scarcity of spectrum and high demand for new technologies, the U.S. Government has urged

MIC to consider alternative mechanisms, including auctions, to assign commercial spectrum in a timely, transparent, objective, and nondiscriminatory manner that adheres to principles of technology neutrality, particularly for spectrum expected to become available as broadcasters switch to digital television by July 2011. The U.S. Government has also stressed to Japan the importance of ensuring reasonable “roaming” rates for competitors and Mobile Virtual Network Operators (MVNOs), an issue where MIC is making noticeable progress through policies and dispute mediation.

Information Technologies (IT)

Health IT: Government policies that fail to encourage interoperability, technology neutrality, and international harmonization, in addition to insufficient reimbursement incentives, inhibit the expansion of Japan’s health IT services sector, an important market for U.S. companies. The U.S. Government has urged Japan to foster interoperability and technology neutrality, facilitate vendor participation in government-sponsored projects that develop health IT systems, and implement reimbursement systems that reward use of innovative IT.

IT-Related Financial Reform: The U.S. Government welcomed passage by the Diet of the “Payment Services Act” in June 2009 allowing non-banking entities to provide fund transfer services without a banking license, as long as they are registered, and clarifying their financial liabilities. As the government of Japan continues to develop and implement regulations covering online payments, it should continue to consider private sector views and ensure that rules are consistent, clear, and workable.

Privacy: Separate and inconsistent privacy guidelines among Japanese ministries have created an unnecessarily burdensome regulatory environment for U.S. business with regard to the storage and general treatment of personally identifiable information in Japan. The U.S. Government welcomed a Japanese government announcement in July 2008 of 37 guidelines, a subsequent review by ministries and agencies concerning rules for protecting personal information, as well as continued engagement on these topics in international fora.

IPR Protection: The U.S. Government continues to urge Japan to adopt a number of new measures to improve and strengthen IPR protection. These include: improving copyright protection and enforcement; improving the efficacy of the patent application process; and actively working with the United States to develop ways to promote greater protection of IPR worldwide, especially in Asia. (See also “Intellectual Property Rights Protection” in this section.)

Government IT Procurement: Lack of transparency, excessive reliance on sole-source contracting, and restrictions on intellectual property ownership, among other factors, hinder the participation of U.S. companies in Japan’s government IT procurement. The U.S. Government therefore has urged Japan to expand disclosure of procurement information, broaden participation in evaluation committees, make it easier for companies to own intellectual property they develop through government contracts, apply competitive bidding rules to independent administrative entities and government-sponsored firms, and ensure contracts are swiftly concluded after bidders are chosen and are not backdated.

IT and Electronic Commerce Policymaking: Insufficient transparency in Japan’s policymaking process for IT and electronic commerce has constrained U.S. company access. The U.S. Government has urged Japan to improve its policymaking process by seeking and considering industry input at all stages of policymaking. This will help foster development of programs that promote technology neutrality, facilitate private sector participation in government-appointed advisory groups, and provide companies with adequate time to offer public comments and adjust to rule changes.

Medical Devices and Pharmaceuticals

Japan's market for medical devices and pharmaceuticals continues to be one of the world's largest. In 2007, the Japanese market for medical devices and materials was just over \$18 billion, with total imports by Japan of U.S. medical devices exceeding \$5 billion, a 27 percent market share. The pharmaceuticals market in Japan is valued at \$60 billion and American pharmaceutical firms have achieved a market share approaching 20 percent, or total sales worth \$12 billion. Despite the size of these markets, many globally available pharmaceuticals and medical devices have not yet been introduced in Japan. There is an average lag time of over four years when introducing pharmaceuticals into Japan compared to the United States. Similarly with medical devices, only about half of all European and American medical devices are available in Japan. Japanese authorities have recognized the need to address this pharmaceutical and medical device "lag", which prevents timely patient access to innovative and life-saving technologies. As a result, Japan has issued policy papers that propose measures to improve access to innovative pharmaceuticals and medical devices. The U.S. Government continues to urge Japan to ensure that its policies foster the private sector's development of innovative products and improve patients' access to such products. Moreover, the U.S. Government supports Japan's efforts to improve the overall regulatory environment for these industries through bilateral government talks and other vehicles.

Although changes implemented by Japan are expected to improve the regulatory environment, its reimbursement pricing policies have also traditionally hindered the introduction of innovative medical technology to the market. In the upcoming biennial price revision of April 1, 2010, the Japanese government will again tighten enforcement of Foreign Average Pricing (FAP). Japan will reduce reimbursement prices for new devices to 1.5 times the average price of devices in the United States, Britain, France, and Germany from the current 1.7. In a positive development, Japan will implement, on a trial basis, a new premium system that would minimize downward price revisions for new drugs for which there are no corresponding generics. To qualify for this premium, manufacturers will be required to fulfill requests from the Japanese government to bring to market products that address unmet medical needs in Japan. The U.S. Government urges Japan to ensure that decisions made regarding the new pricing system are transparent and that industry is given ample opportunities to provide input into the process being established for assessing unmet medical needs.

The U.S. Government recognizes and welcomes the goal of Japan's new drug price maintenance premium, which is to promote the introduction of innovative products in Japan. Other facets of Japan's reimbursement pricing system, however, run counter to this goal. The United States continues to urge Japan to refrain from implementing reimbursement policies that hinder the development and introduction of innovative medical devices and pharmaceuticals. Transparency of drug and medical device reimbursement decision making processes, including on potential further systemic changes, continues to be a major concern. The U.S. Government has been urging Japan to build further on recent improvements in this area to foster a more open, predictable market.

Blood Products: Japan's 2002 Blood Law established a principle of "self-sufficiency" and includes a Supply and Demand Plan for the government to manage the blood market. The U.S. Government has been urging Japan to increase patient access to life-saving blood plasma therapies by refraining from restricting imports of plasma protein products. In addition, the United States continues to encourage Japan to increase the efficiency of product reviews and ensure that labeling of plasma protein products is non-discriminatory. With respect to reimbursement, the U.S. Government has been urging Japan to develop a reimbursement system for blood products that accounts for the unique nature of plasma protein therapy.

Nutritional Supplements: Japan has taken steps to streamline import procedures and to open its \$10 billion nutritional supplements market, although many significant market access barriers remain.

Unusually burdensome restrictions on health and nutrition claims are a major concern. Only those products approved as Foods for Specified Health Uses (FOSHU) or Foods with Nutrient Function Claims (FNFC) are allowed to have health or structure/function claims. Producers of most nutritional supplements, however, are unable to obtain FOSHU or FNFC approval due to FOSHU's costly and time consuming approval process and to the limited range of vitamins and minerals that qualify for FNFC. Other concerns include: long lead times for food additive applications; high levels of import duties for nutritional supplements compared to duties on pharmaceuticals containing the same ingredient(s); stopping of shipments at quarantine stations due to naturally occurring traces of substances such as benzoic acid and sorbic acid, which Japan classifies as food additives; lack of transparency in new ingredient classification; and a lack of transparency in the development of health food-regulations.

Cosmetics and Quasi-Drugs: Japan is the world's second largest market for cosmetics and "quasi-drugs" after the United States. In 2008, U.S. exports of cosmetics and personal care products to Japan were estimated at \$350 million, second only to U.S. exports to France valued at \$549 million. Despite a successful U.S. market presence, regulatory barriers continue to limit consumer access to safe and innovative products. Unlike the U.S. over-the-counter drug monograph system, Japan requires premarket approval for certain products classified as quasi-drugs under the Pharmaceutical Affairs Law. The approval process includes requirements that are burdensome, lack transparency, and do not appear to enhance product safety, quality, or efficacy. In addition, restrictions on advertising claims for cosmetics and quasi-drugs prevent companies from conveying product benefits to consumers. The U.S. Government appreciates Japan's willingness to communicate with industry on these issues. Enhanced communication between both the U.S. and Japanese governments and industries has led to some improvements in the Japanese regulatory system. For example, in the fall of 2009, the Japanese government agreed to reduce the amount of paperwork required to import cosmetic products. The United States continues to urge Japan to address these and other issues.

Proprietary Ingredient Disclosure Requirement for Food and Dietary Supplements: As part of its product classification process for new-to-market food and dietary supplement products, Japan mandates that all ingredients and food additives be listed by name, along with content percentages, and include a description of the manufacturing process. In addition to being burdensome, this process runs the risk that proprietary information may be obtained by competitors. The U.S. Government has raised this issue under the Regulatory Reform Initiative.

Financial Services

The U.S. Government welcomes recent progress on reforms in Japan's financial services sector. For example, in June 2009, Japan enacted a new law providing the legal framework necessary for non-bank providers to offer electronic fund transfer services in Japan. In July 2009, Japan also passed legislation raising the defined contribution pension employer contribution limit from ¥46,000 (\$505) to ¥51,000 (\$560) per month, and the government will reportedly propose legislation in the 2010 parliamentary session to allow employee contributions. In addition, Japan's Financial Services Agency has remained committed to its Better Markets Initiative to improve the attractiveness of Tokyo as a financial center, which includes promoting competition and improving the regulatory environment.

The U.S. Government has urged Japan to continue with such reforms, including in the areas of online financial services, defined contribution pensions, credit bureaus, and sharing of customer information. In addition, the U.S. Government has urged Japan to improve transparency in this sector by taking steps such as enhancing the effectiveness of the no-action letter and related systems, providing written interpretations of Japan's financial laws, and soliciting input from all interested parties on concerns and potential improvements related to the inspection process.

Agriculture

Japan maintains many high tariffs and other nontariff barriers against trade in the agricultural sector. As noted above, the U.S. Government's recent submissions to Japan under the Regulatory Reform Initiative have included several recommendations to enhance the efficiency of the trading environment for agricultural products and the transparency of trade-related rules and regulations.

STRUCTURAL REGULATORY REFORM

Antimonopoly Law and Competition Policy

Although Japan has taken significant positive steps in recent years to bolster its competition regime, cartel activity and bid rigging persist. Additional measures to combat anticompetitive behavior would improve the business environment and further attention is needed to ensuring enforcement procedures are fair and transparent.

Improving Antimonopoly Compliance and Deterrence: Japan's Antimonopoly Act (AMA) provides for both administrative and criminal sanctions against cartel violators. Administrative penalty ("surcharge") levels against hard-core violations have been too low, however, and criminal prosecutions, which should have the strongest deterrent effect against anticompetitive behavior, have been few and penalties against convicted company officials have been weak. The U.S. Government has urged Japan to take steps to maximize the effectiveness of enforcement against hard-core violations of the AMA, including by augmenting administrative and criminal penalties, extending the statute of limitations, and strengthening the effectiveness of the Japan Fair Trade Commission's (JFTC) leniency program (which eliminates or reduces penalties for whistle blowing companies). The government of Japan has taken certain steps to address these concerns, particularly through AMA amendments enacted on June 3, 2009. These amendments increase surcharge rates for enterprises that played a leading role in cartel activities by 50 percent, extended the statute of limitations for both cease and desist orders and surcharge payment orders to five years, increased maximum prison sentences and the statute of limitation for criminal violations of Article 89 to five years, and revised the leniency program to allow two or more enterprises within the same group, under certain conditions, to jointly file a leniency application. Most of these amendments became effective in January 2010. The 2009 AMA amendments also provide for mandatory surcharges on enterprises that engage in exclusionary private monopolization, abuse of superior bargaining position and repeat violations of certain unfair trade practices. The JFTC issued guidelines on exclusionary private monopolization on October 28, 2009, after considering public comments. The JFTC's ability to enforce the AMA effectively continues to be hindered by a lack of employees with post-graduate economics training, a factor that undermines JFTC ability to engage in the careful economic analysis necessary to properly evaluate non-cartel behavior. The U.S. Government continues to urge the JFTC to improve its economic analysis capabilities.

Improving Fairness and Transparency of JFTC Procedures: Japan introduced a system in January 2006 that empowered the JFTC to make determinations of AMA violations without a formal administrative hearing, with respondents being afforded the right to seek administrative review of the decision only after the decision was put into place. Although the JFTC allows companies subject to a proposed cease-and-desist or surcharge payment order to review the evidence relied upon by JFTC staff and to submit evidence and make arguments in their defense prior to a final order being issued, questions have been raised as to whether this system provides sufficient due process protections. To ensure further credibility for, and transparency of, JFTC hearing procedures, the U.S. Government has asked Japan to review the *ex post* hearing system and take necessary measures to ensure that respondents are afforded procedural fairness in the JFTC decision making and appeals process, as well as to ensure that JFTC investigatory processes are conducted in accordance with generally accepted notions of fundamental procedural

fairness. In December 2009, Japan's government announced its plan to introduce legislation to the Diet in 2010 that would eliminate the *ex post* hearing system and instead allow appeals of JFTC orders directly to the Tokyo District Court.

Broadening Measures to Combat Bid Rigging: Japanese officials have implemented a series of measures to address the problem of frequent and persistent bid rigging. Apart from several cases in which the JFTC invoked the 2003 law against bureaucrat-led bid rigging (so-called *kansei dango*), the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) has strengthened administrative sanctions against companies found by JFTC to have engaged in unlawful bid rigging. As of April 2009, MLIT and 13 other central government entities have also introduced an administrative leniency program to complement the JFTC leniency program (designed to help encourage individuals and companies to report anticompetitive acts). Japan has also put in place a series of measures aimed at ensuring a competitive bidding process for project contracts tendered at the central and local government levels. In June 2007, the Japanese Diet passed legislation, which became effective on December 31, 2009, aimed at controlling post-retirement employment by Japanese government officials in companies they previously helped regulate or were otherwise involved with while in government service, the so-called "descent from Heaven" (*amakudari*), which has been a factor in many bid rigging conspiracies. The U.S. Government has recommended that Japan strengthen measures to: prevent conflicts of interest in government procurement; improve efforts to eliminate involvement in bid rigging by government officials; expand administrative leniency programs; and further improve procurement practices to ensure open and competitive bidding.

Transparency

Transparency issues remain a top concern of U.S. companies operating in Japan's market. The U.S. Government has strongly urged Japan to adopt new measures to achieve a higher degree of transparency in governmental regulatory and policy making processes.

Advisory Groups: Although advisory councils and other government-commissioned study groups are accorded a significant role in the development of regulations and policies in Japan, the process of forming these groups can be opaque and nonmembers are too often not uniformly offered meaningful opportunities to provide input into these groups' deliberations. The U.S. Government continues to urge Japan to ensure the transparency of advisory councils and other groups convened by the government by adopting new requirements to ensure ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in, and directly provide input to, these councils and groups.

Public Comment Procedures (PCP): Many U.S. companies remain concerned by inadequate implementation of the PCP by Japanese ministries and agencies. Examples include cases where comment periods appear unnecessarily short, as well as cases suggesting comments are not adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. The U.S. Government has stressed the need for Japan to ensure its existing PCP is being fully implemented and to make additional revisions to further improve the system.

Transparency in Regulation and Regulatory Enforcement: To ensure the private sector has sufficient information about regulations and official interpretations of those regulations that require compliance, the U.S. Government is urging Japan to specifically require its ministries and agencies to make public their regulations and any statements of policy of generally applicable interpretation of those regulations.

Privatization

The United States does not have a position on whether Japan Post should be privatized or otherwise restructured. However, as modifications to the postal financial institutions and network subsidiary could

have serious ramifications for competition in Japan's financial market, the U.S. Government continues to carefully monitor the Japanese government's postal reform efforts and to call on the Japanese government to ensure that all necessary measures are taken to achieve a level playing field between the Japan Post companies and private sector participants in Japan's banking, insurance, and express delivery markets.

In the area of express carrier services, the U.S. Government remains concerned by unequal conditions of competition between Japan Post Service and international express delivery providers. The U.S. Government urges Japan to enhance fair competition, including by ensuring that Japan Post Service is subject to customs clearance procedures and costs for competitive services similar to those of other international express delivery service suppliers, and that subsidization of Japan Post Service's international express service by revenue from monopoly postal services is also prevented. (*For discussion of Japan Post privatization and the postal insurance corporation, see "Insurance" under the Services Barriers section.*)

The U.S. Government also continues to emphasize the importance of transparency and disclosure in the postal reform process. As a result, the U.S. Government has continued to urge the Japanese government to ensure that the postal reforms process is fully transparent, including by providing full and meaningful use of public comment procedures and opportunities for interested parties to express views to related officials and advisory bodies before decisions are made. Timely and accurate disclosure of financial statements and related notes serves a key function in the privatization process, as does the continued public release of meeting agendas, meeting minutes, and other documents relevant to the process.

Commercial Law

Japan undertook a major reform of its commercial law by enacting a new Corporate Code, which entered into force May 1, 2006. Among other provisions, the code now permits the use of certain modern merger techniques, including domestic and cross-border triangular mergers. These new provisions, however, have not yet been as effective as had been hoped in facilitating foreign investment into Japan. This may reflect the limited range of tax-advantaged merger tools and corporate governance systems that do not adequately reflect the interests of shareholders.

Through the Regulatory Reform Initiative, the U.S. Government has been urging Japan to improve further its commercial law and corporate governance systems to promote efficient business practices and management accountability to shareholders in accordance with international best practices. Specifically, the U.S. Government has urged Japan to identify and eliminate impediments to cross-border mergers and acquisitions, including the availability of reasonable qualifying rules for tax-deferred treatment for many such transactions, and to take measures to ensure that shareholder interests are adequately protected when Japanese companies adopt anti-takeover measures or engage in cross-shareholding arrangements.

The U.S. Government also continues to encourage Japan to identify legislation and other measures necessary to strengthen corporate governance mechanisms, including by: facilitating and encouraging active and appropriate proxy voting by institutional investors such as pension and mutual funds; ensuring the independence of outside directors; allowing the boards of directors of Japanese corporations to delegate certain decision making functions to committees composed solely of independent directors; strengthening protection of minority shareholders by clarifying fiduciary duties of directors and controlling shareholders; and encouraging the stock exchanges to adopt listing rules and guidelines that will improve the corporate governance of listed companies and ensure that the interests of minority shareholders are protected when the board of directors decides to issue new shares, conduct a reverse stock split or allocate shares to third parties. The government of Japan has convened several groups to examine these and other measures.

The U.S. Government continues to look to Japan to amend Article 821 of the Company Law to prevent adverse effects on U.S. companies seeking to legitimately conduct their primary business in Japan through Japanese branch offices.

Legal System Reform

Japan imposes restrictions on the ability of foreign lawyers to provide international legal services in Japan in an efficient manner. The U.S. Government continues to urge Japan to further liberalize the legal services market by allowing foreign lawyers to form professional corporations and establish multiple branch offices in Japan whether or not they have established a professional corporation, counting all of the time foreign lawyers spend practicing law in Japan toward the three year experience requirement for licensure as a foreign legal consultant, and speeding up the registration process for new foreign legal consultants. The U.S. Government has also requested that Japan take measures to ensure that no legal or Bar Association impediments exist to Japanese lawyers becoming members of international legal partnerships with lawyers outside Japan, and to ensure that foreign legal consultants can legally provide alternative dispute resolution (ADR) services and represent parties in any international ADR proceedings taking place in Japan.

In order to encourage victims of trade secret theft to cooperate with prosecutors in bringing criminal charges against wrongdoers, the U.S. Government is urging Japan to adopt necessary procedures that will ensure that the content of a trade secret will not be disclosed to the public in the criminal trial.

Distribution

Through this initiative, the U.S. Government has recommended that Japan take a variety of steps to improve customs processing and to facilitate other faster and lower-cost solutions in the distribution sector. In this regard, the U.S. Government is encouraged by and welcomes Japan's work to formulate an Authorized Economic Operator (AEO) system, which allows exporters with good compliance records to process goods more expeditiously through Customs. To facilitate more efficient cargo flows, the U.S. Government has been recommending that Japan exempt AEO exporters from paying the 5 percent consumption tax for cleared cargo. Currently, Japan Customs refunds this tax, but an exemption would reduce the administrative burden of filing for a refund. The U.S. Government has also been recommending that Japan raise the Customs Law *de minimis* ceiling from 10,000 yen (about \$100) to a higher level, such as 20,000 yen or higher, in line with international best practice.

IMPORT POLICIES

Rice Import System: Japan's highly regulated and non-transparent importation and distribution system for imported rice limits meaningful access to Japanese consumers. In 1999, Japan established a tariff-rate quota (TRQ) of approximately 682,000 metric tons (milled basis) for imported rice. The Staple Food Department (SFD) of the Ministry of Agriculture, Forestry and Fisheries (MAFF) manages imports of rice within the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous buy-sell (SBS) tenders. Imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. MAFF releases these stocks exclusively for non-table rice users in the industrial food processing or feed sector and for re-export as food aid. In calendar year 2009, U.S. rice exports to Japan were valued at \$423 million, representing approximately 400,000 metric tons. Only a small fraction of this rice reaches Japanese consumers identified as U.S. rice, despite industry research showing Japanese consumers would buy U.S. high quality rice if it were more readily available. The United States expects Japan to continue meeting its WTO import volume commitments.

Wheat Import System: Japan requires wheat to be imported through MAFF's Food Department, which then resells the wheat to Japanese flour millers at prices substantially above import prices. These high prices discourage wheat consumption by increasing the cost of wheat based foods in Japan. In 2007, MAFF revised the wheat import regime to allow more frequent adjustment to the resale price and therefore more closely reflect international price movements. However, the U.S. Government remains concerned by Japan's operation of a state trading entity for wheat and its potential to distort trade.

Pork Import Regime: Japan is the largest export market for U.S. pork on both a volume and a value basis (importing 401,000 metric tons in 2009, worth \$1.5 billion). The import tariff for pork is established by a gate price system that applies a 4.3 percent *ad valorem* tariff when the import value is equal to, or higher than, the administratively established reference price. Imports that fall below the reference price pay an additional duty equal to the difference between the import value and the reference price.

Beef Safeguard: Japan negotiated a beef safeguard during the Uruguay Round to protect domestic producers in the event of an import surge. The safeguard is triggered when the import volume of beef increases by more than 17 percent from the level of the previous Japanese fiscal year on a cumulative quarterly basis. Once triggered, the safeguard remains in place for the rest of the fiscal year. When triggered, beef tariffs would rise to 50 percent from 38.5 percent.

Fish and Seafood Products: While U.S. fish and seafood exports to Japan have decreased since 1999, Japan remains an important export market for U.S. products, representing 18 percent of total U.S. seafood exports in 2008. An overall decrease in Japanese seafood consumption and therefore imports, as well as the growing demand for seafood in the United States, the EU, and other countries, help to explain the downturn in U.S. fish and seafood exports to Japan.

Japan's tariffs on seafood imports are generally low, although tariffs on certain products remain an impediment to U.S. exports, making the products too expensive for Japanese importers in an increasingly competitive global marketplace. However, some market access issues remain. For example, Japan maintains import quotas on Alaska Pollock, Pacific Cod, Pacific Whiting, mackerel, sardines, squid and herring. Japan also maintains quotas on specific products such as pollock and cod roe, and surimi. Administration of Japan's import quota system has improved considerably over the years and it is expected that obstacles to U.S. exports of fish and seafood products will continue to be reduced. While Japan cut tariffs as a result of the Uruguay Round of multilateral trade negotiations, it did not change its import quotas at that time. Since then, administrative burdens of the system have been eased. As part of ongoing WTO Doha negotiations, Members including the United States and Japan have committed to clarify and improve rules on fisheries subsidies.

High Tariffs on Beef, Citrus, Dairy, and Processed Food Products: Japan maintains high tariffs on a number of food products that are important exports for the United States, including red meat, citrus, wine, and a variety of processed foods. Examples of double digit import tariffs include 38.5 percent on beef, 32 percent on oranges during winter months (16 percent in the summer), 40 percent on processed cheese, 29.8 percent on natural cheese, 22.4 percent on shredded mozzarella cheese, 20 percent on dehydrated potato flakes, 17 percent on apples, 10.5 percent on frozen sweet corn, 20.4 percent on cookies, up to 17 percent on table grapes depending on the season of the year, and 15 percent to 57.7 percent on wine depending on the Harmonized Tariff System (HTS) classification. These high tariffs generally apply to food products where Japan has domestic production. Tariff reductions on these and other products continue to be a high priority for the U.S. Government in the WTO Doha Development Agenda agriculture negotiations.

Wood Products and Building Materials: Japan continues to restrict imports of certain manufactured wood products through tariff escalation (*i.e.*, progressively higher tariffs based on the level of processing of the

wood product). The elimination of tariffs on wood products remains a long standing U.S. Government objective.

Leather/Footwear: Japan continues to apply a TRQ on leather footwear that substantially limits imports into Japan's market and establishes these quotas in a nontransparent manner. The U.S. Government continues to seek elimination of these quotas.

GOVERNMENT PROCUREMENT

Japan is a signatory to the WTO Agreement on Government Procurement (GPA). For procurement of construction services by sub-central and government enterprises covered under the GPA, Japan applies a threshold of approximately \$23 million, which is three times the threshold applied by the United States.

Construction, Architecture, and Engineering

U.S. companies annually obtain far less than 1 percent of projects awarded in Japan's massive public works market, valued at \$195 billion in 2009. Two bilateral public works agreements are in effect: the 1988 United States-Japan Major Projects Arrangements (MPA) (updated in 1991); and the 1994 United States-Japan Public Works Agreement, which includes the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works (Action Plan). The MPA includes a list of 42 projects in which international participation is encouraged. Under the Action Plan, Japan must use open and competitive procedures for procurements valued at or above the thresholds established in the GPA. The United States raises public works issues in the annual Expert-Level Meetings on Public Works under the United States-Japan Trade Forum.

Problematic practices continue to limit the participation of U.S. design/consulting and construction firms in Japan's public works sector, including bid rigging (*dango*), under which companies consult and prearrange a bid winner. The U.S. Government continues to press Japan to take more effective action to address this pervasive problem.

The U.S. Government has raised its concerns with Japan's use of excessively narrow Japan-specific qualification and evaluation criteria that preclude U.S. firms from competing for projects. The U.S. Government has also continued to urge Japan to: (1) ensure that all project-related qualification requirements are made public, as required by the GPA and the bilateral agreements; (2) address problems related to the treatment of joint venture members; and (3) remove or narrowly apply the operational safety exemption for railroad procurements covered by the GPA.

The U.S. Government is paying special attention to several major projects covered by the public works agreements that are of particular interest to U.S. companies; these projects should provide important opportunities for U.S. firms. These include: major expressway projects, including the Gaikan Expressway Project and Metropolitan Expressway Shinagawa Route Project; major public buildings, railroad procurements, urban development and redevelopment projects; planned port facilities expansion projects; major Private Finance Initiative (PFI) projects; and the MPA projects still to be undertaken or completed. The U.S. Government is also monitoring developments related to "Green" building, design, and procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The U.S. Government continues to engage with Japan on efforts to improve IPR protection and enforcement through bilateral consultations and cooperation, as well as in multilateral and regional fora. Japan continues to make progress in improving the protection and enforcement of IPR.

Japan provides a 70 year term of protection for cinematographic works and 50 years for all other works protected by copyright and related rights. In 2009, the U.S. Government continued to encourage Japan to extend the term of protection for all the subject matter of copyright and related rights in line with international trends among other countries with which Japan shares a similar advanced level of economic development.

In June 2009, the Japanese Diet passed a bill revising the Copyright Law, which went into effect on January 1, 2010. The bill amends Japan's statutory private use exception to make clear that the private use exception does not apply in cases where a downloaded musical work or a motion picture is obtained from an infringing source where the download is made with the knowledge that the source is infringing. The U.S. Government encourages the Japanese government to expand this limitation to cover all works protected by copyright and related rights.

The U.S. Government has also urged Japan to continue efforts to reduce piracy rates, including adopting methods to protect against piracy in the digital environment. Police and prosecutors lack *ex officio* authority to prosecute IPR crimes on their own initiative, without the requirement of rights holders consent. Japan's Internet Service Provider liability law needs to improve adequate protection for the works of rights holders on the Internet. In addition, Japan's law should provide better protection against the unauthorized circumvention of technological measures used by copyright owners to protect their works by providing criminal remedies for unauthorized circumvention of these measures and for the trafficking in tools used to circumvent them.

SERVICES BARRIERS

Insurance

Japan's private insurance market is the second-largest in the world, after that of the United States, with direct net premiums of an estimated 34.7 trillion yen (approximately \$335 billion) in Japan fiscal year 2008. In addition to the offerings of Japanese and foreign private insurers, substantial amounts of insurance are also provided to Japanese consumers by insurance cooperatives (*kyosai*) and the Japan Post Insurance Co., Ltd., a wholly government-owned entity of the Japan Post Group. Given the size and importance of Japan's private insurance market as well as the scope of the obstacles that remain, the U.S. Government continues to place a high priority on ensuring that the Japanese government's regulatory framework fosters an open and competitive insurance market.

Postal Insurance: Japan's postal life insurance system remains a dominant force in Japan's insurance market. At the end of Japan fiscal year 2008, there were approximately 52 million postal life and postal annuity insurance policies in force, with approximately 2.7 million having been issued by the new Japan Post Insurance Co., Ltd., after it began operations on October 1, 2007, and the remainder held as assets of the Public Successor Corporation. In comparison, 128 million life and annuity policies were in force with all other life insurance companies combined. The U.S. Government has long standing concerns about the postal insurance company's impact on competition in Japan's insurance market and is continuing to monitor closely the implementation of reforms. The critical objective, from the U.S. Government perspective, is to establish equivalent conditions of competition between the Japan Post companies and the private sector, consistent with Japan's international obligations. A level playing field between the postal insurance company and private sector insurers is critical to cultivate competition, enhance consumer choices, encourage more efficient resource allocation, and stimulate economic growth.

The U.S. Government continues to urge Japan to take a number of steps to ensure equivalent treatment, including, but not limited to: (1) ensuring equal supervisory treatment of Japan Post's financial institutions, including Japan Post Insurance, and private sector companies; (2) implementing adequate

measures to prevent cross-subsidization among the newly created Japan Post businesses and related entities, including by ensuring the Japan Post companies' strict compliance with the Insurance Business Law's arm's length rule and requiring adequate financial disclosures to demonstrate that cross-subsidization is in fact not occurring; and (3) ensuring that the company established to manage Japan's post office network will provide private companies access to its network in a manner that is comparable to that given to Japan Post entities and will select and distribute financial products of private providers transparently and without discrimination.

The U.S. Government continues to call on Japan to ensure a level playing field between the postal insurance company and private insurers before the postal insurance company introduces new or altered insurance products. The process for approving new products should be transparent and open to all parties. It is also critical that the process include careful analysis of, and full consideration given to, actual competitive conditions in the market and that private sector views are actively solicited and considered before decisions are made.

As modifications to the postal financial institutions and the postal network subsidiary could have serious ramifications to competition in Japan's financial market, adequate transparency in implementation of legislation passed by the Diet is essential. The U.S. Government has urged Japan to continue to take a variety of steps to ensure transparency, including providing meaningful opportunities for interested parties to exchange views with related government officials as well as members of government-commissioned advisory committees and groups before decisions, including those on new products, are made; and fully utilizing public comment procedures with respect to drafting and implementing regulations, guidelines, Cabinet Orders, and other measures. Timely and accurate disclosure provides important information as well as independent means to track and validate the reform process.

Kyosai: Insurance businesses run by cooperatives, or *kyosai*, hold a substantial share of insurance business in Japan. Some *kyosai* are regulated by their respective agencies of jurisdiction (the Ministry of Agriculture, Forestry and Fisheries or the Ministry of Health, Labor and Welfare, for example) instead of by the Financial Services Agency (FSA), which regulates all private sector insurance companies. These separate regulatory schemes undermine the ability of the Japanese government to provide companies and policyholders a sound, transparent regulatory environment and afford *kyosai* critical business, regulatory, and tax advantages over their private sector competitors. The U.S. Government believes *kyosai* must be subject to the same regulatory standards and oversight as their private sector counterparts to ensure a level playing field and to protect consumers.

The Japanese government has taken some important steps since 2006 to bring more oversight to unregulated *kyosai*. Under these regulatory reforms, previously unregulated *kyosai* were required to apply to the FSA for new legal status by April 2008. Some of the cooperatives, which elected to become full-fledged insurance companies, have been held to the same regulatory standards as private sector insurers. Others opted to become Small Amount Short Term Insurance Providers (SASTIP), which limits their product range and size and holds the firms to different requirements than those applied to private sector insurance companies. The remaining unregulated *kyosai* that were required to close their businesses by the end of March 2009 have done so. The FSA is to review the SASTIP system within five years from the date of its enforcement (before April 2011) and in doing so, the FSA will, as necessary, provide information on the review and meaningful opportunities for input from insurance companies, including foreign insurance companies, and other parties concerned. With respect to *kyosai* regulated by ministries and agencies other than the FSA, the U.S. Government remains concerned by their continued expansion in Japan's insurance market and continues to call on Japan to bring these *kyosai* under FSA supervision.

Policyholder Protection Corporations: The Life and Non-life Policyholder Protection Corporations (PPCs) are mandatory policyholder protection systems created to provide capital and management support to insolvent insurers. Legislation was introduced in Japan's Diet in late 2008 to renew the life insurance PPC system prior to its scheduled expiration in April 2009. The new legislation, which passed the Diet in December 2008, will renew the protection system for three additional years. It was passed without full deliberations on the effectiveness of the current system, which continues to rely on pre-funding of the PPC by its members and a government "fiscal commitment" in case industry funding is insufficient, instead of adopting a system where an insolvency would result in members contributing funds to the PPC as needed (post-funding). The U.S. Government continues to urge Japan to consider more fundamental changes in the PPC systems, including through full and meaningful deliberations with interested parties before renewal legislation is required.

Bank Sales: In December 2007, the Japanese government fully liberalized the range of insurance products eligible for sale through banks. As a follow-up, the U.S. Government promptly asked Japan to review market conduct rules, including the limits on sales of first and third sector products and treatment of customer data (including Insurance Business Law Enforcement Rules, Article 212), to ensure they do not limit the effectiveness of bank sales of insurance or impede consumer convenience and choice. While the FSA has committed to conduct a review of market conduct rules within three years, the U.S. Government has called for a more expedited review.

Domestication of Foreign Insurance Operations: The U.S. Government has recommended that Japan take measures to ensure foreign incorporated companies operating branches in Japan that wish to transfer business operations to a Japan-incorporated entity be able to do so in a seamless manner that protects policyholders and creditors while ensuring business continuity. The U.S. Government urged that the portfolio and transfer provisions of the Insurance Business Law be revised accordingly.

Other Services

Medical Services: Restrictive regulation limits foreign access to the medical services market. The U.S. Government continues to urge Japan to open this sector to foreign service providers and allow new opportunities for commercial entities to provide full-service, for-profit hospitals (including through Japan's special economic zones).

Educational Services: Regulations related to administrative requirements and restrictions on pedagogical choices discourage foreign universities from operating branch campuses in Japan. Under the United States-Japan Investment Initiative, the Japanese government established a new category – "Foreign University, Japan Campus" – for foreign accredited institutions of higher education. Under this designation U.S. branch campuses derive some benefits similar to those accorded Japanese educational institutions (*e.g.*, student eligibility for student rail passes and student visas). However the designation does not extend the tax benefits provided to Japanese universities and their students to foreign branch institutions. The U.S. Government continues to urge Japan's Ministry of Education, Culture, Sports, Science and Technology to work with foreign universities to find a nationwide solution that grants tax benefits comparable to Japanese schools and allows foreign universities to continue to provide their unique contributions to Japan's educational environment.

INVESTMENT BARRIERS

Despite being the world's second largest economy, Japan continues to have the lowest inward FDI as a proportion of total output of any major OECD country. Inward foreign merger and acquisition (M&A) activity, which accounts for up to 80 percent of FDI in other OECD countries, also lags in Japan, though on an upward trend.

The Japanese government has recognized the importance of FDI to revitalizing the country's economy. In September 2006, the Japanese government set a goal of doubling the stock of FDI in Japan by 2010 to the equivalent of 5 percent of Gross Domestic Product (GDP). Japan has also taken several steps to improve the FDI environment, including revision of the Corporate Code to permit the use of triangular stock swaps for international M&A deals. With only one cross border stock transaction occurring under the new rules, however, the adequacy of measures taken to date to promote cross border M&A rules remains unclear. Cross border M&A is more difficult in Japan than in other countries, partly because of attitudes toward outside investors, inadequate corporate governance mechanisms that protect entrenched management over the interest of shareholders, and a relative lack of financial transparency and disclosure.

The United States-Japan Investment Initiative, initiated in 2001 and co-chaired by the U.S. Department of State and Japan's Ministry of Economy, Trade and Industry, has worked to promote policy changes that improve the overall environment for foreign (and domestic) investment and to focus on specific barriers in certain sectors, including educational and medical services.

OTHER BARRIERS

Autos and Auto Parts

A variety of nontariff barriers have traditionally impeded access to Japan's automobile and automotive parts market, and overall sales of North American made vehicles and parts in Japan remain low. Japan Automobile Importers Association (JAIA) data indicates that registrations in Japan of U.S. produced motor vehicles fell from 12,666 units in 2008 to 9,314 units in 2009, reflecting a trend that remains a source of serious concern.

In June 2009, Japan instituted an Environmentally-Friendly Vehicle Purchase Program that provides subsidies to consumers for the purchase of a new vehicle, with differing subsidy amounts available depending upon the class of the vehicle and whether a qualifying used vehicle is traded-in. The Program was made retroactive to purchases beginning April 10, 2009, and is scheduled to expire on March 31, 2010. Japan is expected to extend this program for six additional months, starting April 1, 2010. The U.S. Government raised strong concern with the Program because, as originally structured, U.S. automobiles imported into Japan using the Preferential Handling Procedure (PHP) certification process were unable to qualify. On January 19, 2010, Japan announced it would open its program to qualifying automobiles imported using the PHP process. While a welcome step, the actual number of U.S. models that qualified was greatly limited by Japan's decision to use the U.S. Environmental Protection Agency (EPA) "city" mileage fuel economy rating, instead of the EPA "combined" mileage fuel economy rating, as a criterion for qualification. The U.S. Government continues to urge the Japanese government to reconsider this decision and instead apply the EPA "combined" rating.

The U.S. Government also has expressed concern with the overall lack of market access to Japan's automotive market, as well as with specific aspects of Japan's regulatory system that limit the ability of U.S. automobile and related companies to expand their business in the market. For example, U.S. automakers seeking to introduce, for testing and demonstration purposes, automobiles using new technology (*i.e.* fuel cell vehicles) face a lack of transparency and other barriers to certifying these new products in a timely and efficient manner. The U.S. Government is urging Japan to address other regulatory barriers and to take into full consideration global harmonization efforts as it develops and implements standards and regulations.

Aerospace

Japan is among the largest foreign markets for U.S. civil aerospace products. The civil aerospace market in Japan is generally open to foreign firms and some Japanese firms have entered into long term relationships with American aerospace firms.

Military procurement by the Ministry of Defense (MOD) accounts for approximately half of the domestic production of aircraft and aircraft parts and continues to offer the largest source of demand in the aircraft industry. Although U.S. firms have frequently won contracts to supply defense equipment to Japan (over 90 percent of the annual foreign defense procurement is from the United States), the MOD has a general preference for domestic production or the licensing of U.S. technology for production in Japan to support the domestic defense industry.

Although Japan has considered its main space launch vehicle programs as indigenous for many years, U.S. firms continue to participate actively in those space systems, including Japan's primary space launch vehicle, the HII-A. The U.S. Government has welcomed Japan's plans to develop a Global Positioning System (GPS) navigation satellite constellation known as the "quasi-zenith" system. The U.S. Government is working closely at the technical level with Japanese counterparts to ensure the Japanese and U.S. systems remain compatible and anticipates U.S. companies will have the opportunity to supply major components.

Business Aviation

Japan's regulatory framework coupled with infrastructure shortages impedes the development of business aviation in Japan. Because of the lack of guidelines specific to business aviation, regulations for commercial airline safety, maintenance, and repair issues administered by the Japan Civil Aviation Bureau (JCAB) of the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) also apply to business aircraft. This situation in turn raises the costs of qualification, operation, and maintenance of business aircraft to uneconomical levels. In addition to the regulatory environment, landing rights for business aircraft in Japan are difficult to obtain because of rules that hamper flexible scheduling, especially in the Tokyo area. These factors greatly limit business opportunities in this sector for sales of U.S. aircraft in Japan.

Certain Chubu and Kansai region airports have begun to attract business aircraft, although with modest results thus far. Regional airports are attempting to provide many of the same services business aircraft operators receive in the United States and Europe. Severely restricted hours for landings and take-offs at Haneda Airport in Tokyo, a preferred business destination and the lack of services for private business aircraft at both Narita and Haneda continue to significantly limit travel to and within Japan.

The U.S. Government has continued to urge the JCAB to reexamine the application of airline-specific commercial civil aviation regulations to business aviation and develop appropriate regulations specific to the business aviation industry that are consistent with the treatment of business aviation in North America, Europe, and other developed economies. Immediate improvements in the overall regulatory framework for business aviation are needed in advance of an additional runway opening at Haneda planned for 2010.

During 2008, the JCAB took some initial and positive steps, including engaging in greater dialogue with the U.S. Government and other stakeholders. A May 2008 JCAB report highlighted the importance of business jets in Japan's aviation future and noted that Japan lags noticeably behind other countries in business aviation development. The JCAB also laid out a road map for a new business aviation policy, calling for improvements in facilitation, regulatory framework, facilities, and air fields. In July 2008, in its first actual deregulation involving business aviation, the JCAB extended its ETOPS (Extended-range

Twin-engine Operational Performance Standard) requirement from 60 minutes to 180 minutes, which permits JA (Japan) registered aircraft with two engines to fly routes far longer than they could previously. In the spring of 2009, the JCAB conducted follow-up research on business aviation, but no announcement has been made regarding the results and any responding measures.

Civil Aviation

Japan is our largest aviation partner in the Asia-Pacific region. Consistent with its longstanding policy to promote competition and market access in civil aviation, the U.S. Government initialed the text of an Open Skies agreement with Japan on December 11, 2009.

Our previous agreement with Japan dates from 1952, though it was significantly amended and supplemented on various occasions in the past, including in 1998 and 2007. Under the 1952 agreement, U.S. airlines serving Japan were subject to restrictions on pricing, code-sharing, and – except for three “incumbent” carriers” – on the number of flights they could operate. Some U.S. airlines were barred from entering the market. The new agreement contains all essential Open Skies elements and will be a pro-consumer, pro-competition, pro-growth accord. Specifically, Open Skies will remove the current restrictions on cities that can be served, traffic that can be carried, the number of flights that can be operated, the number of U.S. airlines that can enter the market, and the prices that can be charged, as well as expanding opportunities for cooperative marketing arrangements, including code-sharing. Japan will not sign the agreement, however, until after the U.S. Department of Transportation (DOT) has considered applications for anti-trust immunity from U.S. and Japanese airlines.

The U.S. Government welcomes the Japanese government’s willingness to negotiate an Open Skies agreement and for the planned expansion of landing and take-off slots at Tokyo’s Narita and Haneda airports. Once signed, the new agreement will provide assured opportunities for growth of U.S. airline operations at Narita airport and ensure fair competition for U.S. airlines when Tokyo’s Haneda airport opens to scheduled international air service in October 2010. The U.S. Government is encouraged by the steps that Japan is taking in 2010 to increase the number of slots at Tokyo’s Narita and Haneda airports and urges Japan to continue to take further steps to increase capacity and reduce overall congestion at these airports.

Transport/Ports

The U.S. Government continues to raise longstanding concerns about barriers to entry to, and the competitiveness of, Japanese ports. Foreign shipping companies servicing Japan are locked into long-term relationships with specific Japanese stevedoring companies, which reportedly collude within the industry association to keep newcomers out and costs high. Stevedoring businesses owned and operated by foreign firms do not exist at major Japanese ports. Foreign companies are concerned that a lack of transparency in Japanese laws and regulations related to ports creates a barrier to entry. As part of the Regulatory Reform Initiative, the U.S. Government has made recommendations on transparency that are applicable to the rulemaking process. Japanese laws and regulations could be reviewed to facilitate new entrants and greater competition in the stevedoring business. Because conditions at Japanese ports are a continuing concern to the Federal Maritime Commission (FMC), it has kept open an active formal proceeding pursuant to which it requires Japanese-flag and United States-flag vessel operating common carriers to semi-annually report on developments relating to those conditions.

Since 1999, the U.S. Government has continued to express concern that reforms have not lessened the Japan Harbor Transportation Association’s (JHTA) ability to inhibit new entry and restructuring in the ports sector. The Port Transportation Business Law (effective November 2000) introduced requirements that run counter to the need for efficient port operations and discriminate against new entrants wishing to

offer port services. In addition, MLIT has not addressed concerns about the prior consultation process conducted by the JHTA nor about the apparent threat of illegal strikes against foreign carriers who obtain permission to operate their own container terminals. The U.S. Government has raised with the Japanese government its failure to implement important aspects of the wide-ranging port deregulation promised in 1997 and continues to encourage Japan to share further information about changes in Japanese law made in 2006 that may be relevant to the FMC's ongoing review.