

JAPAN

TRADE SUMMARY

U.S. goods exports in 2013 were \$65.1 billion, down 6.9 percent from the previous year. Corresponding U.S. imports from Japan were \$138.5 billion, down 5.4 percent. The U.S. goods trade deficit with Japan was \$73.4 billion in 2013, down \$3.0 billion from 2012. 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 \$46.5 billion in 2012 (latest data available), and U.S. imports were \$26.9 billion. Sales of services in Japan by majority U.S.-owned affiliates were \$76.8 billion in 2011 (latest data available), while sales of services in the United States by majority Japan-owned firms were \$100.0 billion.

The stock of U.S. foreign direct investment (FDI) in Japan was \$134.0 billion in 2012 (latest data available), up from \$126.0 billion in 2011. U.S. FDI in Japan is mostly in the finance/insurance, and manufacturing sectors.

Overview

Japan is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Japan, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Mexico, New Zealand, Peru, Singapore, Malaysia, and Vietnam.

In addition to the TPP negotiations, the United States also will continue to address trade-related concerns and issues with Japan through bilateral as well as other fora.

IMPORT POLICIES

Beef Import System

At the end of January 2013, the United States and Japan agreed on new terms and conditions which paved the way for expanded exports of U.S. beef and beef products to Japan. Under these terms, which entered into effect on February 1, 2013, Japan permits the import of beef from cattle less than 30 months of age, compared to the previous limit of 20 months, among other steps. In an accompanying letter exchange, Japan also confirmed the ongoing bovine spongiform encephalopathy risk assessment by the Food Safety Commission, which includes a consideration of raising the age limit above 30 months for beef and beef product imports from the United States, taking into account international standards. This issue is discussed in detail in USTR's 2014 Report on Sanitary and Phytosanitary Measures.

Rice Import System

Japan's highly regulated and nontransparent importation and distribution system for imported rice limits meaningful access to Japan's 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 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 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 uses in the industrial food processing or feed sector and for re-export as food aid. U.S. rice exports to Japan in 2013 were valued at nearly \$197 million, totaling 288,695 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 U.S. Government continues to monitor Japan's imports in light of its WTO import 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 its wheat import regime to allow more frequent adjustment to the resale price so that prices more closely reflect international price movements. The U.S. Government continues to carefully monitor the operation of Japan's state trading entity for wheat and its potential to distort trade.

Pork Import Regime

Japan is the largest export market for U.S. pork and pork products on a value basis, with shipments valued at nearly \$1.89 billion (424,858 metric tons) in 2013, accounting for nearly one-third of the value of total U.S. shipments to all destinations in that year. The import tariff for chilled and frozen pork is established by a gate price system that applies a 4.3 percent *ad valorem* tariff when the import value is greater than or equal to the administratively established reference price. When the value of imports falls below the reference price, the importer pays an additional specific duty equal to the difference between the import value and the reference price.

Beef Safeguard

In 2013, Japan again became the largest export market for U.S. beef and beef products on both a value and volume basis. Shipments to Japan reached \$1.39 billion (234,617 tons), accounting for nearly 23 percent of total U.S. beef and beef product exports (value basis) to all destinations in that year. In 1995, as part of the results of the Uruguay Round, Japan was allowed to institute a beef special safeguard (SSG) to protect domestic producers in the event of an import surge. The SSG 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. When triggered, beef tariffs rise to 50 percent from 38.5 percent for the rest of the Japanese fiscal year. Although U.S. exports have increased since further market opening at the start of 2013, the safeguard was not triggered.

Fish and Seafood Products

U.S. fish and seafood exports to Japan were valued at \$710 million in 2013, an 8 percent decrease from 2012, and accounting for 12 percent of total U.S. fish and seafood exports to all destinations in that year. Tariffs on several fish and seafood products remain an impediment to U.S. exports and also pose an

impediment for importers who rely on U.S. raw product for their processing operation. Other market access issues remain and include Japan's import quotas on Alaska pollock, cod, Pacific whiting, mackerel, sardines, squid, and Pacific herring, as well as on specific products such as pollock roe, cod roe, and surimi. Although Japan has reduced tariffs, increased import quota volumes, and eased the administrative burdens associated with those quotas, the import quotas remain a deterrent to U.S. exports. The United States is urging Japan to continue to eliminate tariffs and remove nontariff obstacles to U.S. exports of fish and seafood.

High Tariffs on Beef, Citrus, Dairy, Processed Food, and Other Agricultural Products

Japan maintains high tariffs and other border measures that hinder U.S. exports of agricultural and other food products, including grains, sugar, pork, red meat, citrus, wine, dairy, and a variety of processed foods. Examples of double digit import tariffs include 38.5 percent on beef, 32 percent on oranges imported during the period December to May, 40 percent on processed cheese, 29.8 percent on natural cheese, 22.4 percent on shredded frozen 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 tariff classification. These high tariffs generally apply to food products that Japan produces domestically. Addressing tariffs and improving market access for these and other products remains a high U.S. priority.

Wood Products and Building Materials

Japan maintains tariffs on imports of certain manufactured wood products, which remain of serious concern to the U.S. Government.

On April 1, 2013, Japan's Forestry Agency (FA) announced the Wood Use Point Program (WUPP), which provides 56 billion yen (approximately \$574 million) to promote the use of local wood. At this time, only two foreign wood species have been provisionally approved for inclusion in the program and it remains unclear whether additional foreign woods species will be approved before the program expires or program funds are depleted. Moreover, before receiving subsidy benefits, the species that have been provisionally approved are required to undergo an extensive review involving approval by each of Japan's prefectures. The U.S. Government has raised strong concerns about the WUPP as a subsidy that appears to promote the use of domestic Japanese wood products over imported wood products and will continue to urge Japan to address concerns regarding possible discriminatory treatment of imported wood products under the WUPP.

Leather/Footwear

Japan continues to apply a tariff-rate quota (TRQ) on leather footwear that substantially limits imports into Japan's market, negatively impacting market access for U.S.-made and U.S.-branded footwear. The U.S. Government continues to seek improved market access for U.S. exports in this sector.

Customs Issues

The U.S. Government continues to urge Japan to take a variety of steps to improve customs processing and to facilitate other expeditious and lower-cost solutions in the distribution sector. The U.S. Government has encouraged Japan to raise the Customs Law *de minimis* ceiling from JPY 10,000 (approximately \$102) to a higher level. Strengthening Japan's system for advanced rulings would also improve transparency and predictability for U.S. exporters.

SERVICES BARRIERS

Japan Post

The U.S. Government remains neutral as to whether Japan Post should be privatized. 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 monitor carefully 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 delivery services, the U.S. Government remains concerned by unequal conditions of competition between Japan Post Company and international express delivery providers. The U.S. Government urges Japan to take action to enhance fair competition by leveling the playing field, including with respect to customs procedures and requirements as well as by prohibiting the subsidization of Japan Post Company's international express service with revenue from non-competitive (monopoly) postal services.

The U.S. Government also continues to urge the Japanese government to ensure that the postal reform process, including implementation of revisions to the Postal Privatization Law, is fully transparent, including by providing full and meaningful use of public comment procedures and opportunities for interested parties to express views to government officials and advisory bodies before decisions are made. Timely and accurate disclosure of financial statements and related notes is a key element in the postal reform process, as is the continued public release of meeting agendas, meeting minutes, and other relevant documents.

Insurance

Japan's private insurance market is the second largest in the world, after that of the United States, with direct net premiums of JPY 38,080 billion (approximately \$390 billion) in Japanese fiscal year 2012. In addition to the offerings of Japanese and foreign private insurers, insurance cooperatives (kyosai) and Japan Post Insurance, a wholly government-owned entity of the Japan Post Group, also provide substantial amounts of insurance to consumers. Given the size and importance of Japan's private insurance market as well as the scope of the obstacles that remain to market access, 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 Japanese fiscal year 2012, there were approximately 41.7 million postal life and postal annuity insurance policies in force. In comparison, 138 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 negative impact on competition in Japan's insurance market and continues to closely monitor the implementation of reforms. A critical objective, from the U.S. Government's perspective, is to establish equivalent conditions of competition between the Japan Post companies and the private sector, consistent with Japan's WTO obligations. It is also critical for Japan to ensure full transparency in the implementation of laws and regulations related to Japan Post Group companies.

The U.S. Government continues to urge the Japanese government to take steps in the insurance sector related to Japan Post in order to address a range of level playing field concerns, including differences in supervisory treatment between Japan Post Group's financial institutions and private sector companies,

access to the Japan Post Company network for private providers (including the process of selection of financial products), and cross-subsidization among the Japan Post businesses and related entities.

The U.S. Government continues to urge the Japanese government not to allow the Japan Post Group to expand the scope of operations for its financial services companies before a level playing field is established. The current restraints on the scope of these operations – including the cap on the amount of insurance coverage and limits to the types of financial activities and products Japan Post entities can offer – have helped to limit the extent to which the uneven playing field harms private insurance companies. The U.S. Government welcomed the statement by Deputy Prime Minister Taro Aso on April 12, 2013, that the Japanese government will refrain from approving new or modified cancer insurance and/or stand-alone medical products of Japan Post Insurance until it determines that equivalent conditions of competition with private sector insurance suppliers have been established, and that Japan Post Insurance has a properly functioning business management system in place, which Japan expects will take at least several years to achieve. In addition, before final decisions are made, it is vital that Japan's process for approving new products be transparent and open to all parties, including active solicitation and consideration of private sector views, along with careful analysis and full consideration of actual competitive conditions in the market.

Kyosai: Insurance businesses run by cooperatives (kyosai) hold a substantial share of insurance business in Japan. Some kyosai are regulated by their respective agencies of jurisdiction (e.g., the Ministry of Agriculture, Forestry and Fisheries or the Ministry of Health, Labor and Welfare) instead of by the FSA, which regulates all private sector insurance companies. These separate regulatory schemes create a nontransparent regulatory environment and afford kyosai critical business, regulatory, and other advantages over their private sector competitors.

The U.S. Government remains concerned about the reversal of progress toward giving FSA supervisory authority over kyosai that have insurance operations that are neither regulated by the FSA nor by any other government agency. The 2005 Insurance Business Law revisions would have achieved this by requiring unregulated kyosai to come under FSA supervision; the Japanese government, however, has delayed and, in some cases provided exemptions to, implementation.

Bank Sales of Insurance: 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 asked Japan to review market conduct rules, including the limits on sales of designated products and treatment of customer data, to ensure they do not limit the effectiveness of bank sales of insurance products or impede consumer convenience and choice. With minor revisions made to these rules in 2012, the U.S. Government continues to call on the Japanese government to conduct in the near term a fact-based and transparent review of the bank sales channel that includes meaningful opportunities for input from interested stakeholders and that takes into account global best practices to further enhance policyholder protection and improve consumer choice.

Local Incorporation of Foreign Insurance Operations: The U.S. Government urges the Japanese government to continue allowing foreign insurance providers choice of juridical form in accessing the Japanese markets and to afford U.S. insurance providers meaningful opportunities to provide their input on any actions that would affect the provision of insurance. The U.S. Government welcomes the current treatment of branches of foreign insurance companies by Japan's Financial Service Agency (FSA) as described in its "Annual Supervisory Policy for Insurance Companies, etc. for Program Year 2013."

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. In March 2012, the Japanese government extended the existing system of

government pre-funding of the PPCs for an additional five years, until March 2017. 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 renewing these measures again.

Other Financial Services

While improvements have been made in Japan's financial services sector, such as the FSA's continued commitment to its Better Markets Initiative, the U.S. Government continues to urge reforms in the areas of online financial services, defined contribution pensions, credit bureaus, and sharing of customer information. While the FSA continues to enhance its engagement and outreach with both domestic and foreign financial firms operating in Japan, more improvement in this sector is needed, particularly with respect to transparent practices 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.

Telecommunications

The U.S. Government continues to urge Japan to ensure fair market opportunities for emerging technologies and business models, and ensure a regulatory framework appropriate for addressing converged and Internet-enabled services, and maintain competitive safeguards on dominant carriers. The U.S. Government also continues to urge Japan to improve transparency in rulemaking and ensure the impartiality of its regulatory decision making.

Fixed-line Interconnection: In March 2013, Japan's Ministry of Internal Affairs and Communications (MIC) approved both Nippon Telegraph and Telephone (NTT) East and NTT West's interconnection rates based on the Long Run Incremental Cost Method for Japanese fiscal year 2013. In March 2013, MIC also authorized Japanese fiscal year 2013 interconnection fees for the "Next Generation Network", including ethernet data transmission, operated by NTT East and NTT West. These interconnection rates 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 robust) to optical fiber, competitors have raised concerns that the more lightly regulated fiber-based services will allow NTT to expand its dominant position through control of the fiber-to-the-home (FTTH) market, where it holds a market share of about 72.1 percent as of the end of June 2013. NTT's authority to bundle its fixed-line services with NTT DOCOMO's mobile service is also of concern, as it appears to undermine the rationale for structurally separating the companies.

Universal Service Program: 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 universal service fund.

Mobile Termination: Like 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). Mobile interconnection rates still remain high by international standards and particularly compared to fixed-line rates in Japan. However, following new guidelines from MIC on calculating interconnection rates, NTT DOCOMO, the dominant incumbent mobile carrier, announced in February 2010 that it would lower its termination rates by over 10 percent, continuing incremental rate reductions implemented over the past 10 years. In March 2013, NTT DOCOMO announced a decision to cut interconnection fees for

calls to other wireless service operators by up to 4.3 percent, retroactive to April 2012. MIC is encouraging all wireless carriers to follow the new guidelines. In contrast to NTT DOCOMO, however, other mobile operators' termination rates remain high, and mediation efforts to reduce these rates have not been successful.

New Mobile Wireless Licenses: Starting in 2005, MIC began opening the market to new mobile providers beyond the three main incumbents by assigning blocks of spectrum to a limited number of new wireless entrants. In March 2012, Softbank was awarded 900MHz frequencies, and in June 2012, NTT DOCOMO, KDDI, and eAccess (acquired by Softbank in January 2013) were awarded 700MHz spectrum. While Softbank launched its 900MHz networks in 2013, the 700MHz frequencies will not be utilized until 2015. In July 2013, MIC awarded additional frequencies in the 2,625 MHz to 2,645 MHz bands to UQ Communications, a subsidiary of KDDI, to provide advanced Broadband Wireless Access systems. Unlike most advanced economies, Japan does not use auctions to allocate spectrum, and the factors MIC used to determine how to evaluate applications have raised questions related to the fairness of the allocation process. Although the Japanese government has previously considered introducing legislation to that allows for auctions as an option to assign commercial spectrum, it remains unclear whether such legislation will be introduced.

Information Technologies (IT)

Health IT: The U.S. Government has urged Japan to improve the quality and efficiency of healthcare by rapidly implementing health IT that is based on international standards, promotes technology neutrality and interoperability, and allows patients greater access to their own health records. Engagement between U.S. and Japanese Government health IT experts continues to address health IT issues of mutual interest.

Privacy: Separate and inconsistent privacy guidelines among Japanese ministries have created an unnecessarily burdensome regulatory environment with regard to the storage and general treatment of personally identifiable information in Japan. The U.S. Government has urged Japan to introduce greater uniformity in the enforcement of the Privacy Act across the central government through policy standardization and consistent implementation of guidelines. The U.S. Government also has urged the Japanese government to reexamine the provisions and application of the Privacy Act, so as to foster appropriate sharing of data, to ensure full transparency, and to consult widely as privacy guidelines for online advertising are developed. The United States has been working with Japan through the Asia-Pacific Economic Cooperation (APEC) to facilitate Japan's participation in the Cross Border Privacy Rules system, a voluntary system of commercial data privacy standards. Completion of this process, begun in June 2013, is expected in spring 2014.

Consumption Tax on Online Content from Abroad: In 2012, the Ministry of Finance (MOF) announced that it intends to begin levying a consumption (value-added) tax on music and books distributed online from overseas to consumers in Japan. Such products offered by firms with a physical presence in Japan are already subject to a consumption tax. MOF proposes to introduce a mandatory registration system for foreign firms, modeled on that used in the European Union. On March 1, 2013, MOF submitted to the Diet a tax reform bill, but it did not include any provisions to levy the consumption tax on music and books distributed online from overseas, and MOF has indicated it is still considering an effective framework of imposing the tax on online content from overseas. MOFA plans to levy the consumption tax on online content from abroad beginning in October 2015, when the consumption tax is scheduled to rise to 10 percent. The U.S. Government is continuing to monitor developments.

Legal Services

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. Legislation was submitted to the Diet in March 2012 that would allow foreign lawyers to form Japanese professional corporations that are permitted to establish branch offices within Japan, but the legislation did not pass and has not been reintroduced. In addition to this legislation, another important step would be to allow foreign lawyers to establish multiple branch offices in Japan, whether or not they have established a professional corporation. The U.S. Government also urges Japan to take other important measures, including ensuring that no legal or Bar Association impediments exist to Japanese lawyers becoming members of international legal partnerships and accelerating the registration process for new foreign legal consultants.

Educational Services

The U.S. Government continues to urge the Japanese government to work with foreign universities to find a nationwide solution that grants tax benefits comparable to those provided to Japanese schools and allows them to continue to provide their unique contributions to Japan's educational environment.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Japan generally provides strong intellectual property rights (IPR) protection and enforcement. The U.S. Government, however, continues to urge Japan to improve IPR protection and enforcement in specific areas through bilateral consultations and cooperation, as well as in multilateral and regional fora.

The U.S. Government also has urged Japan to continue 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 a rights holder's complaint. The U.S. Government also seeks improvements to Japan's Internet Service Provider liability law to promote cooperation between right holders and Internet service providers.

Japan took steps to revise its Customs Law and Unfair Competition Law in 2011 and its Copyright Law in 2012, which extended protection for technological protection measures, among other things. The U.S. Government recommends that Japan further strengthen its laws to provide effective criminal and civil remedies against the unauthorized circumvention of technological protection measures used by rights holders to protect their works and against the trafficking in tools used to circumvent them.

In other areas, although Japan provides a 70 year term of protection for cinematographic works, it only provides a 50-year term for all other works protected by copyright and related rights. The U.S. Government continues to urge Japan to extend the term of protection for all subject matter of copyright and related rights in line with emerging international trends. While the U.S. Government welcomed clarifications to Japan's Copyright Law in 2010 that the statutory private use exception does not apply in cases where a downloaded musical work or a motion picture is knowingly obtained from an infringing source, the U.S. Government continues to urge the Japanese government to expand this limitation on the private use exception to cover all works protected by copyright and related rights.

The U.S. Government continues to monitor developments related to Japan's announcement in October 2011 of plans to introduce a *sui generis* system for the protection of geographical indications (GIs) within five years. The U.S. Government urges Japan to ensure that certain core principles are upheld involving the scope of GI protection and GI registration safeguard procedures, including protecting the prior rights

of owners of existing trademarks, safeguarding the use of generic terms, and ensuring objection and cancellation procedures, as it considers changes to its existing system for protecting GIs.

GOVERNMENT PROCUREMENT

Japan is a signatory to the WTO Agreement on Government Procurement (GPA). Japan applies a threshold of 15 million SDRs (approximately \$23.98 million) for procurement of construction services by sub-central entities and many government enterprises covered under the GPA, which is three times the threshold applied by the United States and most other GPA Parties.

The U.S. Government continues to emphasize the importance of improving the bidding process for government contracts in Japan, including by increasing transparency in tendering decisions and taking steps that facilitate improved opportunities for participation by qualified bidders.

Construction, Architecture, and Engineering

U.S. companies annually obtain far less than 1 percent of projects awarded in Japan's massive public works market, estimated at \$225 billion in 2013. 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.

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 (*see "Broadening Measures to Combat Bid Rigging" under the Anticompetitive Practices section*). The U.S. Government continues to press Japan to take more effective action to address this pervasive problem. The U.S. Government continues to monitor Japan's public works sector.

Specifically, the U.S. Government is paying special attention to certain major projects covered by the public works agreements that are of particular interest to U.S. companies. These include major expressway projects; major public buildings, railroad and railroad station procurements, urban development and redevelopment projects; planned port facilities expansion projects; major private finance initiative projects; and the MPA projects still to be undertaken or completed. The U.S. Government is also monitoring developments related to environmental remediation, "green" building, design, and procurement.

Procurement of Information Technology

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 Japanese government IT procurement. The U.S. Government therefore has urged Japan to introduce greater competition, transparency, and fairness in government procurement of IT through steps such as implementation of national government-wide policies that reflect international technology trends and standards and that follow principles of technology neutrality and interoperability. In August 2012, Japan appointed its first central government Chief Information Officer (CIO). The U.S. Government encourages Japan to use the new CIO's position to reform government procurement of IT in the ways described above.

INVESTMENT BARRIERS

Despite being the world's third largest economy, Japan continues to have the lowest inward foreign direct investment (FDI) as a proportion of total output of any major OECD country. According to OECD statistics, FDI stock at the end of 2012 was only 3.4 percent of GDP in Japan, compared to 30.6 percent on average for all OECD members. 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.

While the Japanese government has previously recognized the importance of FDI to revitalizing the country's economy, its performance in implementing domestic regulatory reforms to encourage a sustained increase in FDI has been uneven. In June 2013, Prime Minister Shinzo Abe announced his goal to double Japan's inward FDI stock by 2020 and reconfirmed the target in his published growth strategy. It is unclear, however, how aggressively Japan's government will adopt reforms and other policies to promote this target.

While progress toward this new target will be measured in part by the numbers of transactions and monetary values of M&As, the Japanese government has done little to explicitly encourage inward investment through M&A as a policy priority. Even before the financial crisis of 2008 and 2009, questions existed regarding the adequacy of measures taken to promote a level of cross-border inbound M&A necessary to achieve the government's target. After peaking at 309 in 2007, numbers of annual inbound M&A transactions declined to 112 in 2012. A variety of factors make inbound M&A difficult in Japan, including attitudes toward outside investors, inadequate corporate governance mechanisms that protect entrenched management over the interest of shareholders, cross-shareholdings, aspects of Japan's commercial law regime (*see Commercial Law section*), and a relative lack of financial transparency and disclosure.

ANTICOMPETITIVE PRACTICES

Improving Anti-Monopoly Compliance and Deterrence

Japan's Anti-Monopoly Act (AMA) provides for both administrative and criminal sanctions against cartels. 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 continually urged Japan to take steps to maximize the effectiveness of enforcement against serious violations of the AMA. While the Japanese government has taken some steps to address these concerns, particularly through AMA amendments enacted in June 2009, the U.S. Government continues to urge the Japan Fair Trade Commission (JFTC) to make further improvements, including by improving the economic analysis capabilities of JFTC staff, to strengthen its ability to enforce the AMA effectively.

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 prior formal administrative hearing. Respondents are only afforded the right to seek administrative review of the JFTC decision after the decision is 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 issuance of a final order, questions have arisen as to whether the current system provides sufficient due process protections. In December 2013, the Japanese Diet enacted an AMA amendment bill to eliminate the *ex post* hearing system and to allow appeals of JFTC orders to go directly to the Tokyo District Court. The

new system will be implemented by July 2015. The U.S. Government continues to raise concerns about procedural fairness issues related to the JFTC's investigative and pre-decisional processes.

Broadening Measures to Combat Bid Rigging

The U.S. Government continues to raise concerns with the problem of bid rigging in Japan, and urges that further measures are taken to prevent conflicts of interest in government procurement, improve efforts to eliminate involvement in bid rigging by government officials, and expand administrative leniency programs.

OTHER SECTORAL AND CROSS-SECTORAL BARRIERS

Transparency

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 with respect to the formation and operation of advisory councils and other groups convened by the government by adopting new requirements to ensure that 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 Procedure (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 where comments do not appear to be 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 additional revisions are made to further improve the system, such as doubling the standard public comment period for rulemaking from 30 days to 60 days.

Commercial Law

Foreign investment into Japan remains constrained by a range of issues, including conditions for using tax-advantaged merger tools for inward-bound investment to Japan, securities law and capital market issues inherent in cross-border stock-for-stock transactions, and corporate governance systems that do not adequately reflect the interests of shareholders. The U.S. Government continues to urge Japan to identify and eliminate impediments to cross-border mergers and acquisitions, including the availability of reasonable and clear incentives 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 urge Japan to improve further its commercial law and corporate governance systems in order to promote efficient business practices and management accountability to shareholders in accordance with international best practices. Areas ripe for improvement include facilitating and encouraging active and appropriate proxy voting, setting minimum requirements for and ensuring the independence of outside directors, augmenting the role of outside directors on corporate boards, 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 improve the corporate governance of listed companies in a manner that protects the interests of minority shareholders.

Based on 2012 Ministry of Justice Legislative Council recommendations, the Japanese government submitted to the Diet in November 2013 a bill to amend the Companies Act to require firms to appoint at least one outside director, or to disclose at annual shareholders' meetings why such an appointment would be "inappropriate." The amendments would also have required introduction of the audit and supervisory form of corporate governance and tightened the requirements governing outside directors. The Diet did not pass the amendments in the fall 2013 session, although the bill may be taken up again in the next regular session in early 2014.

Automotive

A variety of nontariff barriers have traditionally impeded access to Japan's automotive market. Overall sales of U.S.-made vehicles and automotive parts in Japan remain low, which is a serious concern. The U.S. Government has expressed strong concern with the overall lack of access to Japan's automotive market for U.S. automotive companies. Barriers include, but are not limited to, issues relating to standards and certification, a range of transparency issues including the lack of sufficient opportunities for stakeholder input in the development of standards and regulations, barriers that hinder the development of distribution and service networks, and the lack of equivalent opportunities for U.S. models imported under the preferential handling procedure (PHP) certification program to benefit from financial incentive programs. The U.S. Government urges Japan to address these and other barriers in Japan's automotive market.

Medical Devices and Pharmaceuticals

Japan continues to be one of the most important markets for U.S. medical device and pharmaceutical exports. According to the latest official figures from the Ministry of Health, Labor and Welfare's Annual Pharmaceutical Production Statistics, the Japanese market for medical devices and materials in 2012 was just over \$32.4 billion (up 8.7 percent from 2011 in yen terms). Japan's total imports of U.S. medical devices exceeded \$7.3 billion in 2012. According to the American Medical Devices and Diagnostics Manufacturers' Association, approximately 60 percent of "new medical devices" approved in Japan were from its member companies. The pharmaceuticals market in Japan was valued at \$120.9 billion in 2012 (up 2.9 percent from 2011 in yen terms). Japan's total imports of U.S. pharmaceuticals totaled \$6.6 billion in 2012, which comprises a 5 percent market share. The total market share of U.S.-origin pharmaceuticals in Japan would be significantly higher than suggested by official statistics (approaching 20 percent) if local production by U.S. firms and compounds licensed to Japanese manufacturers were also included.

Prime Minister Shinzo Abe's economic revitalization and growth strategy, introduced in June 2013, calls for promotion of the pharmaceutical and medical device industries. Among other measures, the strategy includes steps to accelerate regulatory approvals to reduce the so-called "lag" time between application and approval of new medical devices pharmaceuticals as well as steps to reward innovative medical devices and pharmaceuticals. These and other measures that Japan plans to take should improve opportunities for U.S. medical devices and pharmaceuticals.

The Japanese government has made progress in several areas, including the reduction of lengthy approval periods for medical devices and pharmaceuticals as well as Diet passage in November 2013 of amendments to the Pharmaceutical Affairs Law that will enable further improvements to the regulatory review process, including the establishment of a distinction between the characteristics of medical devices and pharmaceuticals. The U.S. Government continues to urge Japan to adopt an approach that is fully consistent with international standards with respect to issues such as the Quality Management System for medical devices, and also to improve performance goals for product reviews by setting clearer performance targets.

The U.S. Government continues to urge Japan to implement predictable and stable reimbursement policies that reward innovation and provide incentives for companies to invest in the research and development of advanced healthcare products and pharmaceuticals. With regard to medical devices, U.S. firms have expressed concerns about Japan's application of, and changes to, the Foreign Average Price (FAP) rule, a mechanism to cut prices of medical devices in Japan based on the simple average of prices for the same or similar products in the United States, Germany, France, the United Kingdom, and Australia. The U.S. medical device industry has cited the FAP rule as a major factor that has impeded the introduction of innovative medical technology to the market.

With regard to pharmaceuticals, the U.S. Government welcomes Japan's decision in April 2012 to continue the new premium system trial for an additional two years. The new premium, which minimizes downward price revisions on new drugs for which there are no corresponding generics, has considerably improved the development of new drugs and unapproved indications in Japan. Making this new system permanent would help increase the predictability and attractiveness of the Japanese market, help further reduce lag time for introduction of pharmaceuticals, and promote long-term investment in Japanese life sciences work. The U.S. Government continues to urge the Japanese government to make the new premium system permanent.

Although the level of transparency in Japan's drug and medical device reimbursement decision making processes has improved in recent years, the U.S. Government continues to urge Japan to build further on recent improvements to foster a more open and predictable market.

Nutritional Supplements

Japan has taken steps to streamline import procedures and to open its JPY 1,185 billion (approximately \$12 billion) nutritional supplements market, although many significant market access barriers remain. Burdensome restrictions on health claims are a major concern. Currently, 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 due to the limited range of vitamins and minerals that qualify for FNFC. These processes apply to both imported and domestic products.

Other concerns include long lead times for food additive applications; the difficulties associated with using unregistered food additives (including organic solvents) as processing ingredients for use in nutritional supplements; high import duties for nutritional supplements compared to duties on pharmaceuticals containing the same ingredient(s); lack of transparency in new ingredient classifications; and lack of transparency in the development of health food regulations.

Prime Minister Abe's regulatory reform plans outlined in Japan's Revitalization Strategy in a Cabinet decision of June 14, 2013, includes plans to implement a new functional labeling system by the end of March 2015. In order to establish this new system, Japan will reportedly reference the U.S. labeling system for dietary supplements. If implemented, this could be a significant step forward in reducing regulatory barriers and expanding the dietary supplement market in Japan by enabling the Japanese consumer to obtain more functional information regarding dietary supplements. The U.S. Government will closely monitor these developments.

Cosmetics and Quasi-Drugs

Japan is the world's second largest market for cosmetics and quasi-drugs after the United States. In 2012, U.S. exports of cosmetics and personal care products to Japan were estimated at \$437.5 million, second only to France. Despite this market presence by U.S. products, regulatory barriers continue to limit timely consumer access to safe and innovative products, generating unnecessary costs. Unlike the over-the-counter drug monograph system in the United States, Japan requires premarket approval for certain products, such as a category called "medicated cosmetics" that are classified as quasi-drugs under the Pharmaceutical Affairs Law. The quasi-drug 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 informing customers of product benefits necessary for making informed choices. Overly complex import notification procedures and a burdensome foreign manufacturer accreditation process act as additional market access barriers for U.S. firms. Enhanced communication between the U.S. and Japanese Governments and industries has led to some improvements in the Japanese regulatory system.

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 risks the release of proprietary information to competitors.

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 U.S. aerospace firms. The U.S. Government continues to monitor Japan's development of indigenous aircraft.

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, many contracts for defense equipment are not open to foreign bids. MOD's general preference is that defense products and systems be developed and produced in Japan, and it will often opt for local development and/or production, even when a foreign option exists that could fulfill the requirements more efficiently, at a lower cost, and with better interoperability with Japan's allies.

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. Japan is also developing a global positioning system navigation satellite constellation known as the "quasi-zenith" satellite system (QZSS). At the conclusion of the United States-Japan Consultative Committee meeting on October 3, 2013, the Governments of the United States and Japan released a joint statement in which the two nations welcomed the establishment of the United States-Japan Comprehensive Dialogue on Space, as well as the conclusion of the U.S.-Japan Space Situational Awareness Sharing Agreement, and expressed their desire to improve maritime domain awareness by leveraging satellite capabilities.

Civil Aviation

Japan has been taking steps to bolster aviation operations through the liberalization of regulations and investment in infrastructure. Japan is the United States' largest aviation partner in the Asia-Pacific

region, and a bilateral Open Skies regime has been in place since 2010. Operations between the United States and Tokyo's Haneda Airport, however, are limited because Japan strictly controls access to Haneda airport. Limited additional access to the airport will become available in March 2014 for long-haul international flights, and the U.S. Government continues to be interested in a commercially meaningful expansion of access to Haneda for U.S. airlines.

In the general aviation sector, the United States and the APEC-member economies, including Japan, have reached consensus on best practices for the treatment and regulation of international business aviation operations. The U.S. Government will continue to work with the Japan Civil Aviation Bureau to promote greater liberalization in the business aviation sector, including work through APEC's Transportation Working Group.

Transport and Ports

The U.S. Government has had longstanding concerns about barriers to entry to, and the lack of competitiveness in, Japanese ports. Long-term relationships, a lack of transparency, licensing requirements, and other practices and requirements have greatly limited the ability of foreign shipping companies to do business in Japan. On January 26, 2011, the U.S. Federal Maritime Commission (FMC) issued an Order terminating a proceeding that it had opened in 1995 to investigate these practices. In its 2011 Order, the FMC stated that concerns about practices and requirements in Japan had not been completely eliminated, and that it will remain watchful for unfavorable conditions in the U.S.-foreign ocean-borne trade.