

JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was \$59.8 billion in 2010, up \$15.1 billion from 2009. U.S. goods exports in 2010 were \$60.5 billion, up 18.4 percent from the previous year. Corresponding U.S. imports from Japan were \$120.3 billion, up 25.6 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 \$40.9 billion in 2009 (latest data available), and U.S. imports were \$20.8 billion. Sales of services in Japan by majority U.S.-owned affiliates were \$69.8 billion in 2008 (latest data available), while sales of services in the United States by majority Japan-owned firms were \$99.5 billion.

The stock of U.S. foreign direct investment (FDI) in Japan was \$103.6 billion in 2009 (latest data available), up from \$101.9 billion in 2008. U.S. FDI in Japan is mostly in the finance/insurance, manufacturing, and wholesale trade sectors.

OVERVIEW

The U.S. Government continues close engagement with the Japanese government to urge the removal of a range of trade barriers. This engagement takes place through several means, including through regular, established mechanisms, such as the U.S.-Japan Trade Forum. Furthermore, the U.S.-Japan Economic Harmonization Initiative was established in 2011 as a new forum to promote the harmonization of regulatory and other approaches in ways that facilitate bilateral trade, address individual trade and business environment-related issues, and strengthen bilateral coordination on issues of common interest in the Asia-Pacific region. The U.S. Government will continue to address trade and trade-related concerns through these, as well as other, fora.

IMPORT POLICIES

Beef Import System

Japan continues to maintain OIE-inconsistent market access barriers to U.S. beef and beef product exports. Reopening Japan's beef market consistent with science and international standards as well as in a commercially viable manner is an important priority. This issue is discussed in detail in USTR's annual Report on Sanitary and Phytosanitary Measures.

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 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 2010, U.S. rice exports to Japan were valued at \$233 million, representing approximately 319,000 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 so that prices 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 434,515 metric tons in 2010, worth \$1.6 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 whose value falls 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 of multilateral trade negotiations 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 exports of U.S. fish and seafood to Japan have decreased since 1999, Japan is still an important market for U.S. products, especially when considering Japanese imports of U.S. fish and seafood processed in China and Southeast Asia, in addition to direct exports from the U.S. An overall decrease in Japanese seafood consumption and therefore imports, as well as growing seafood demand in the United States, the EU, and other countries, helps explain the decrease in U.S. fish and seafood exports to Japan.

While Japan's tariffs on seafood imports are generally low, tariffs on several products remain an impediment to U.S. exports. Other market access issues also remain. For example, Japan maintains import quotas on Alaska pollock, Pacific cod, Pacific whiting, mackerel, sardines, squid, and herring. Japan also maintains quotas on 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 will continue to be reduced. While Japan cut tariffs as a result of the Uruguay Round, it did not change its import quotas at that time. Since then, the administrative burdens of the system have eased.

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 tariff-rate quota (TRQ) on leather footwear that substantially limits imports into Japan's market and it sets these quotas in a non-transparent manner. The U.S. Government continues to seek elimination of these quotas.

SERVICES BARRIERS

Japan Post

The United States 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 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 by preventing subsidization of Japan Post Service's international express service with revenue from monopoly postal services. (*For discussion of Japan Post and postal insurance, see "Insurance" under the Services Barriers section.*)

The U.S. Government also continues to emphasize the importance of transparency and disclosure as Japan considers reforms to Japan Post. As a result, the U.S. Government has continued to urge the Japanese government to ensure that the postal reform 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 postal reform process, as does 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 approximately \$375.9 billion in Japan fiscal year 2009. 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 2009, there were approximately 50.5 million postal life and postal annuity insurance policies in force, with approximately 4.8 million having been issued by the new Japan Post Insurance, after it began operations on October 1, 2007, and the remainder held as assets of the Public Successor Corporation, but reinsured by Japan Post Insurance. In comparison, 131 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 continues to monitor the implementation of reforms closely. 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 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 by requiring adequate financial disclosures to demonstrate that cross-subsidization is in fact not occurring; and (3) ensuring that the Japan Post Network (the company established to manage Japan's post office network) will provide private companies access to its network comparable to that given to Japan Post entities and will select and distribute financial products of private providers through its network transparently and without discrimination.

The U.S. Government continues to urge Japan not to allow Japan Post 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 could pursue, have helped to limit the extent to which the uneven playing field harms private insurance companies. The U.S. Government is concerned about a March 2010 Japanese cabinet proposal that would weaken these restraints by agreeing to pursue nearly doubling the per-person caps on Japan Post Insurance coverage from 13 million yen to 25 million yen. In addition, it is vital that the process for approving new products be transparent and open to all parties. It is also critical that the process include careful analysis of and that full consideration is 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, Japan must ensure adequate transparency in implementation of laws and regulations related to Japan Post. 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 and members of government-commissioned advisory committees and groups in advance of decisions, including those on new products; 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.

After passing legislation in December 2009 that froze the sale of Japanese government-held stock in the Japan Post group companies, the Japanese Government submitted legislation to the Diet in April 2010 that would roll back certain other aspects of Japan's postal reforms that went into effect in 2007. This legislation passed the Diet's lower house in May 2010 but failed to pass the upper house before the Diet session ended. The Japanese Government reintroduced the legislation in October 2010, and it was carried over in the Diet session starting in January 2011. The U.S. Government has expressed concerns that the draft legislation would give additional competitive advantages to the Japan Post group companies, such as preferential regulatory and tax treatment. The U.S. Government has urged the Japanese government as it proceeds with its legislative process to fully address long-standing level playing field concerns, consistent with Japan's WTO obligations, and to ensure full transparency in the policymaking process, including providing meaningful opportunities for comments from U.S. companies.

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 create a non-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, including being brought under FSA supervision.

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 accountable 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 provide, as necessary, information on the review and meaningful opportunities for input from insurance companies, including foreign insurance companies, and other parties concerned.

However, the U.S. Government has been concerned regarding moves by the Japanese government in 2010 to reverse its previous progress. For example, to deal with the issue of *kyosai* business operated by public interest corporations, which were required to meet the requirements of the SASTIP system by November 2013, the Japanese government passed legislation in November 2010 to revise the Insurance Business Law (IBL) with exemptions to allow certain existing types of public interest corporations to continue *kyosai* business for the time being. The law calls for certain public interest corporations that already existed at the time of the 2005 IBL revision to continue conducting *kyosai* business under a new category called "authorized specified insurance providers." It also calls for such *kyosai* businesses to be supervised by the ministry or agency that currently supervises the public interest corporations instead of by the FSA. In addition, Japan government passed legislation in May 2010 that provided an exemption for certain unregulated *kyosai*, such as the Parent and Teacher Association *kyosai*, to remain outside the jurisdiction of the FSA.

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, renewed the protection system for three additional years until March 2012. 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 the event that 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 FSA will conduct a review of the system within three years after the enforcement of the legislation. 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. FSA has committed to conduct a review of market conduct rules around December 2010, three years after liberalizing the bank sales channel, and is in the beginning stages of the review process. The U.S. Government continues to call for a fact-based, transparent, and timely review of the bank sales channel with meaningful opportunities for input from interested stakeholders and taking into account global best practices.

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 continues to urge that the portfolio and transfer provisions of the Insurance Business Law be revised accordingly.

Financial Services

The U.S. Government continues to urge reforms in the financial sector, 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. While Japan has shown progress in this sector, such as the FSA's continued commitment to its Better Markets Initiative, which includes promoting competition and improving the regulatory environment to make Tokyo more attractive as a financial center, many issues remain.

Distribution Services

The U.S. Government continues to urge Japan to 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 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. Exempting AEO exporters from paying the 5 percent consumption tax for cleared cargo would help facilitate more efficient cargo flows. 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 encouraged Japan to raise the Customs Law *de minimis* ceiling from 10,000 yen (about \$100) to a higher level, such as 20,000 yen or higher. The customs clearance process and clearance times could also be further

facilitated by, for example, allowing users of Nippon Automated Cargo and Port Consolidated System (NACCS) to select the Customs Office for declaration, and by allowing customs officials to be co-located at the bonded premises of private companies handling shipments.

Telecommunications

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

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 2010, Japan's Ministry of Internal Affairs and Communications (MIC) approved both NTT East and NTT West's interconnection based on the Long Run Incremental Cost Method for 2010. In June 2010, MIC also authorized FY 2010 connection fees for the Ethernet data transmission of the NGN operated by NTT East and NTT West. Although MIC continued to push NTT to lower these 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, 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 75 percent. NTT's ability to bundle its fixed-line services with NTT DOCOMO's mobile service is another cause of concern, as it appears to undermine the rationale for structurally separating the companies. 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, in light of the review of the overall legal structure of NTT, which affects all players participating in markets for converged services.

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. The U.S. Government has urged the abolition of this cross-subsidy. A MIC panel is reviewing the universal service system as part of the "Hikari no Michi" (New Broadband Superhighway) plan. Under the present universal service system, NTT East and NTT West are required to maintain subscribers' copper lines. Nonetheless, the panel recognizes a need to avoid letting this requirement become an impediment to development of fiber optic lines. The panel is expected to recommend that the universal service system allow fiber optic IP telephony, which is equivalent in voice quality, reliability, and other factors, to subscribers' existing wireline telephony.

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 February 2010, that it would lower its termination rates by over 10 percent, continuing incremental rate reductions implemented over the past 10 years. In January 2011, NTT DOCOMO announced a decision to cut connection fees for

calls to other wireless service operators by up to 35.6 percent retroactive to April 2010. Mobile interconnection rates, however, still remain high by international standards and particularly compared to fixed-line rates in Japan. Despite recognizing NTT DOCOMO as a dominant carrier in 2002, MIC does not require NTT 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 NTT DOCOMO and MIC to ensure effective competition and to urge MIC to consider the advantages of moving to a “bill-and-keep” system that is more economically efficient and 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 assigning blocks of spectrum to a limited number of new wireless entrants. In September 2010, MIC awarded only one license for mobile multimedia broadcasting services, even though the subject spectrum band was able to support two operators. The complexity of the factors MIC used to determine 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, that 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. Japan has started to consider introducing an auction system for spectrum allocations, but internal Japanese government taskforce discussions continue on which characteristics of an auction should be implemented and how to incorporate auction methods used in the United States and other countries.

Information Technologies (IT)

Cloud Computing: Cloud computing has the potential to increase efficiency and reduce costs in the public and private sectors. Cloud computing and the Internet economy can flourish only if governments permit the free flow of data across borders. The United States, therefore, has urged Japan to adopt the principle of non-discrimination between data services offered inside and outside of Japan. The U.S. Government also has urged the Japanese government to ensure full transparency and consult foreign and domestic industry as rules on data centers and cloud computing are formulated and implemented.

Health IT: Government policies that fail to encourage interoperability, technology neutrality, and international harmonization, in addition to providing 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 improve the quality and efficiency of healthcare by rapidly implementing health IT that is based on international standards, that promotes technology neutrality and interoperability, and that allows patients greater access to their own health records.

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, and to ensure full transparency and consult widely as privacy guidelines for online advertising are developed.

IT and Electronic Commerce Policymaking: Insufficient transparency in Japan’s policymaking process for IT and electronic commerce has stifled innovation and competitiveness in Japan and 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.

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 by, among other issues: allowing foreign lawyers to form professional corporations and establish multiple branch offices in Japan whether or not they have established a professional corporation; and by accelerating 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.

Medical Services

Restrictive regulation limits foreign access to the medical services market, such as the ability of commercial entities, including foreign service providers, to provide full-service, for-profit hospitals.

Educational Services

Excessive regulation remains one of the factors that has discouraged foreign universities from operating branch campuses in Japan, presenting obstacles both in the form of administrative requirements and restrictions on pedagogical choices. 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. This designation provides these campuses with benefits similar to those accorded Japanese educational institutions (*e.g.*, student eligibility for student rail passes and student visas), but does not confer the tax benefits enjoyed by Japanese institutions and their students. 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 them to continue to provide their unique contributions to Japan's educational environment.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION AND ENFORCEMENT

Japan generally provides strong IPR protection and enforcement. However, the U.S. Government continues to urge Japan to improve IPR protection and enforcement through bilateral consultations and cooperation, as well as in multilateral and regional fora.

For example, while Japan provides a 70 year term of protection for cinematographic works, only a 50 year term is provided for all other works protected by copyright and related rights. In 2010, the U.S. Government continued to urge Japan to extend the term of protection for all the subject matter of copyright and related rights in line with emerging international trends. In addition, amendments to the Copyright Law came into effect in 2010 which, among other things, clarified 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 also 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 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. Japan's Internet Service Provider liability law also needs to be improved in order to provide adequate protection for rights holder's works on the Internet. In addition, Japan's laws should provide effective criminal and civil remedies against unauthorized circumvention of technological protection measures used by rights holders to protect their works, trafficking in tools used to circumvent them, and providing circumvention services.

Japan is also an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, which were concluded in November 2010. The ACTA establishes an international framework that will assist parties in their efforts to effectively combat the infringement of intellectual property rights, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

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 \$22.9 million, which is three times the threshold applied by the United States.

Construction, Architecture, and Engineering

U.S. companies annually obtain far less than one percent of projects awarded in Japan's massive public works market, estimated at \$157.2 billion in 2010. 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. (*For more, 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 also has continued to urge Japan to remove or narrowly apply the operational safety exemption for railroad procurements covered by the GPA. The U.S. Government continues to monitor Japan's public works sector.

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 as these projects should provide important opportunities for U.S. firms. These include: major expressway projects, including the Gaikan Expressway 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.

Information Technologies (IT)

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. The U.S. Government is urging that Japanese government procurement of cloud computing services be neutral with respect to the technology used by cloud service providers.

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. 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 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 September 2006, the Japanese government set a goal of doubling the stock of FDI in Japan by 2010 to the equivalent of five percent of Gross Domestic Product (GDP). As of December 2009, this figure stood at 3.9 percent of GDP, well short of the FDI goal. Estimates for FDI levels for December 2010 suggest that figure will remain below 4 percent. Even before the financial crisis of 2008-2009, questions existed regarding the adequacy of measures taken to promote a level of cross border M&A necessary to achieve the government's target. A variety of factors make cross border M&A difficult in Japan. These include: 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. Japan's Foreign Exchange and Foreign Trade Act governs investment in sectors deemed to have national sovereignty or national security implications.

ANTICOMPETITIVE PRACTICES

Although Japan has taken significant positive steps in recent years to bolster its competition regime, more needs to be done to eliminate and deter cartel activity and bid rigging. At the same time, concerns persist regarding whether the present system for enforcing the Antimonopoly Act (AMA) affords sufficient due process protections. Additional measures to combat anticompetitive behavior and provide for basic due process protections would improve the business environment and ensure that enforcement procedures are fair and transparent.

Improving Antimonopoly Compliance and Deterrence

The 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 continually urged Japan to take steps to maximize the effectiveness of enforcement against hard-core violations of the AMA. The Japanese government has taken certain steps to address these concerns, particularly through AMA amendments enacted in June 2009 that, for the most part, came into effect in January 2010. These amendments increased surcharge rates for enterprises that played a leading role in cartel activities by 50 percent, extended the statute of limitations to five years, increased maximum prison

sentences for criminal cartel and bid-rigging violations to five years, and improved the leniency program to encourage reporting of unlawful cartels. 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 Japan Fair Trade Commission (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 an insufficient number 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 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 2009, the Japanese government announced its intention to eliminate the *ex post* hearing system and to allow appeals of JFTC orders directly to the Tokyo District Court. Although legislation for those purposes was submitted to the Diet, it has not yet been enacted. The business and legal communities have also raised concerns about the lack of procedural fairness provided by certain aspects of the JFTC's investigative process.

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 which is designed to help encourage individuals and companies to report anticompetitive acts. In addition, Japan has 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 with which they were otherwise involved 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 continues to raise concerns that further measures are needed 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

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 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 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 specifically to require its ministries and agencies to make public their regulations and any statements of policy of generally applicable interpretation of those regulations.

Commercial Law

Japan undertook a major reform of its commercial law by enacting a new Corporate Code, which entered into force in May 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.

The U.S. Government continues to urge 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 has also continued to urge 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, such as by facilitating and encouraging active and appropriate proxy voting, ensuring the independence of outside directors and augmenting their role 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 will improve the corporate governance of listed companies and ensure that the interests of minority shareholders are protected. While the Japanese government has convened study groups to

examine these matters -- two of which in 2009 recommended improvements in systems of corporate governance -- observers have voiced concern that the movement to reform commercial law seems to have stalled since that time.

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

Automobiles and Automobile Parts

A variety of nontariff barriers have traditionally impeded access to Japan's automobile and automotive parts market. Overall sales of U.S. made vehicles and parts in Japan remains low, which is a serious concern.

The U.S. Government has expressed concern with the overall lack of 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 business in the Japanese market. For example, U.S. automakers seeking to introduce, for testing and demonstration purposes, automobiles using new technology (*i.e.*, fuel cell vehicles) have faced a lack of transparency and other barriers to certifying these new products in a timely and efficient manner. U.S. automakers also face challenges in bringing vehicles with new safety features into Japan. The U.S. Government continues to urge Japan to address these and other regulatory barriers, as well as to take into full consideration global harmonization efforts as it develops and implements standards and regulations.

In September 2010, Japan phased out its Environmentally-Friendly Vehicle Purchase Program that had provided subsidies to consumers for the purchase of a new vehicle. The U.S. Government had raised a strong concern with the Program because U.S. automobiles imported into Japan using the Preferential Handling Procedure (PHP) certification process were unable to qualify. Although Japan amended the program in January 2010 to provide an opportunity for these automobiles to qualify, 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" rather than "combined" mileage fuel economy rating, as the criterion for qualification. The U.S. Government raised serious concerns with this decision.

Medical Devices and Pharmaceuticals

Japan's market for medical devices and pharmaceuticals continues to be one of the most important for U.S. medical device and pharmaceutical exports. In 2009, the Japanese market for medical devices and materials was just over \$23.2 billion (down seven percent from 2008 in yen terms). Japan's total imports of U.S. medical devices exceeded \$6.1 billion in 2009, a 26 percent market share. The pharmaceuticals market in Japan was valued at \$93.8 billion (up three percent from 2008 in yen terms) in 2009 and American pharmaceutical firms have achieved a market share approaching 20 percent, or total sales worth \$19 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 about two years between the introduction of pharmaceuticals in the United States and their introduction in Japan. Similarly, only about half of all European and American medical devices are available in Japan. Recognizing the need to address this drug and device "lag," which prevents timely patient access to innovative and life-saving technologies, Japan has taken various measures to address these issues such as improving the clinical trials environment and accelerating the review process. Also, Japan has set specific goals to improve access to innovative pharmaceuticals and medical devices such as reducing total review times for new products to 12 months

by April 1, 2012, for pharmaceuticals and to 14 months by April 1, 2014, for 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 patient access to such products.

Japan's reimbursement pricing policies for medical devices continue to hinder the introduction of innovative medical technology to the market. In the biennial price revision of April 1, 2010, the Japanese government again tightened enforcement of Foreign Average Price (FAP) Rule by reducing reimbursement prices for new devices to 1.5 times the average price of devices in the United States, Britain, France, and Germany from the previous 1.7 times the average. As Japan considers what reimbursement rules to adopt for the next biennial price revision in April 2012, a number of serious issues have emerged such as the possible addition of Australia to the FAP group of countries, the elimination of the highest price country in FAP calculations, and further reduction of the FAP ratio. In addition, the manner in which exchange rate changes are accounted for in FAP ratios continues to have a negative impact on device prices. The U.S. Government has been urging Japan to eliminate the FAP rule due to its inherent unpredictability and instability. If Japan does not decide to eliminate the FAP rule, the U.S. Government will continue to urge Japan, at a minimum, to ensure that the rules applied to the next biennial reimbursement price revision are no more onerous than the rules used in the last round.

With regard to pharmaceuticals, the U.S. Government welcomes Japan's decision to implement, on a trial basis, a new premium system that minimizes downward price revisions on new drugs for which there are no corresponding generics. The new premium system, considered to be a major breakthrough by both Japanese and foreign drug industries, is expected to promote the introduction of innovative products in Japan. The U.S. Government urges Japan to make the new premium system permanent as it would help increase the predictability and attractiveness of the Japanese market, reduce the drug lag, and promote investment in Japanese life sciences discovery over the long term. The U.S. Government also continues to urge Japan to refrain from implementing other facets of reimbursement policies that hinder the development and introduction of innovative pharmaceuticals such as re-pricing based on market expansion.

Lack of transparency in Japan's drug and medical device reimbursement decision-making processes, including potential additional systemic changes, remains a major concern. The U.S. Government is urging Japan to build further on recent improvements in this area to foster a more open and 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 is urging Japan to increase patient access to life-saving blood plasma therapies by refraining from restricting imports of plasma protein products. In addition, the U.S. Government 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 1.18 trillion yen, or \$13.4 billion, nutritional supplements market, although many significant market access barriers remain. Unusually burdensome restrictions on health 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 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; inability to use many organic solvents for processing ingredients to be used in nutritional supplements; high levels of import duties for nutritional supplements compared to duties on pharmaceuticals containing the same ingredient(s); blocking 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 and does not recognize as naturally occurring in most cases; lack of transparency in new ingredient classification; and 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. Despite this market presence by U.S. companies, regulatory barriers continue to limit consumer access to safe and innovative products. Unlike the over-the-counter drug monograph system in the United States, 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. 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 U.S. Government 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 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 (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. Japan is also developing a Global Positioning System (GPS) navigation satellite

constellation known as the “quasi-zenith” system. The U.S. Government is working to ensure U.S. companies have full opportunities to participate in Japan’s satellite market.

Business Aviation

Japan's regulatory framework, coupled with infrastructure shortages, impedes the development of business aviation in Japan. Due to the lack of guidelines specific to business aviation, business aircraft are subject to the same regulations that apply to commercial airlines for safety, maintenance, and repair issues administered by the Japan Civil Aviation Bureau (JCAB) of the Ministry of Land, Infrastructure, Transport and Tourism (MLIT). 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 (the top preferred business destination for overseas business jets) and the lack of services for private business aircraft at both Narita and Haneda continue to significantly limit travel by business aircraft to and within Japan.

The U.S. Government has continued to urge the JCAB to reexamine the application of civil aviation regulations specific to commercial airlines 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.

Since 2008, the JCAB has taken some 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.

In September 2010, the JCAB announced important liberalization of the rules regarding the use of business aviation at Haneda Airport in conjunction with the new runway that opened the following month. The liberalization includes: permission for daytime use for international flights; an increase of landing and take-off slots; extension of parking periods; same-day request of use; and improvements in passenger convenience. These significant liberalization steps at Japan’s gateway airport are expected to be highly beneficial to international business aviation users. Furthermore, there is ongoing discussion about providing business aviation facilities at Narita Airport in the coming Japanese fiscal year. Continued improvements in the overall regulatory framework for business aviation, however, are still needed.

Civil Aviation

Japan is the United States’ 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 signed an Open Skies Memorandum of Understanding (MOU) with Japan on October 25, 2010.

This is a pro-consumer, pro-competition, pro-growth accord. Specifically, this agreement has removed past 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.

The U.S. Government welcomed 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. The new agreement provides assured opportunities for growth of U.S. airline operations at Narita airport and ensures fair competition for U.S. airlines at Tokyo's Haneda airport, which opened to limited scheduled international air service in October 2010. The U.S. Government has been encouraged by the steps that Japan took 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 and Ports

The U.S. Government has had longstanding concerns about barriers to entry to, and the competitiveness of, Japanese ports. Long-term relationships, a lack of transparency, licensing requirements, and other factors have had the effect of greatly limiting the ability of foreign shipping companies from servicing Japan. On January 26, 2011, the Federal Maritime Commission (FMC) terminated a proceeding that it opened in 1995 into restrictive commercial and labor laws and practices in Japanese ports.

The FMC concluded that the restrictive practices it had identified either had been addressed or that market conditions have changed so significantly that the restrictions no longer raise concern. The Commission's record, consistency of reports of U.S.-flag and Japanese shipping companies, now suggest that any remaining potential benefits of continuing the proceeding and its semi-annual reporting requirements no longer justify the accompanying regulatory burdens on the affected ocean carriers. In its Order of January 26, 2011 discontinuing the proceeding, the FMC stated that it still had concerns about licensing requirements for new entrants in the Japanese port terminal industry and the prior consultation rules. The FMC announced that it will remain watchful for unfavorable conditions in the U.S.-foreign oceanborne trade.