

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) TRADE POLICY OBJECTIVES

1. Japan's overall trade policy objective has not changed since its last Review; it is to ensure the long-term prosperity and growth of Japan through the promotion of economic activities in Japan and abroad. Japan grants at least MFN treatment to all countries and economies except Andorra, the Republic of Equatorial Guinea, Eritrea, Lebanon, North Korea, Republic of South Sudan, and Timor-Leste. From the available trade data, it would appear that the MFN rate is applied to more than 80% of Japan's imports.¹ However, data are not collected on the total value of imports subject to preferential duties.

2. Japan considers that its regional and bilateral trade agreements complement the multilateral system. The authorities state that Japan makes every effort to simplify the rules and procedures involved in adopting an economic partnership agreement (EPA); at the same time, they acknowledge that the level of complication increases with the entry into force of the free-trade agreements (FTAs), since rules applied for specific goods are different among FTAs.² In November 2010, Japan approved the Basic Policy on Comprehensive Economic Partnerships. Under the policy, the Government is determined to "open up the country" and "pioneer a new future". In this regard, Japan will take major steps to promote high-level economic partnerships with major trading partners. In tandem, Japan plans to institute fundamental domestic reforms so as to strengthen competitiveness. Furthermore, according to the Basic Policy on Comprehensive Economic Partnerships, all goods, including certain sensitive products, would be subject to negotiations; however, the sensitivity of trade in certain products would be taken into consideration.

3. Currently Japan has 12 bilateral trade agreements and one regional agreement (with ASEAN). Japan is currently negotiating bilateral FTAs (EPAs) with the Gulf Cooperation Council (Bahrain, Kingdom of Saudi Arabia, Kuwait, Oman, Qatar, and the United Arab Emirates), Australia, and Mongolia. Since June 2008, Japan has been holding working-level consultations to "consider and create a favourable environment for the resumption of negotiations" with the Republic of Korea. Japan also participates in the Asia-Pacific Economic Cooperation (APEC) forum and in other regional trade fora, such as the Asia-Europe meeting (ASEM), the ASEAN+3, and the East Asian Summit. Japan officially encourages foreign direct investment (FDI). However, in recent years, inward FDI into Japan has remained low (Chapter I).

(i) Trade policy formulation and implementation

4. Some laws and regulations governing Japan's trade-related framework have been amended during the period under review (Table II.1).

5. Trade-related issues are the responsibility of a number of ministries and agencies, mainly the Ministry of Foreign Affairs (MOFA) and the Ministry of Economy, Trade, and Industry (METI), as specified under the various laws establishing relevant ministries and agencies. Other ministries and agencies with responsibility for sectoral issues involved in trade policy formulation and implementation are the ministries of: Agriculture, Forestry and Fisheries; Education, Culture, Sports, Science and Technology; Environment; Finance; Health, Labour and Welfare; Justice; Land, Infrastructure and Transport; and Internal Affairs and Communications; as well as the Cabinet

¹ Calculation by the WTO Secretariat, based on the value of imports into Japan from its trading partners that have concluded bilateral/regional FTAs and the data on imports subject to Japan's GSP scheme.

² See for example, WTO document WT/TPR/M/211/Add.1, 22 May 2009, p. 155.

Office. Overall coordination of trade policies, including ensuring policy coherence and consistency with the WTO Agreements, remains the final responsibility of the Cabinet. Trade and trade-related policy issues may also be debated in various Committees, including standing committees in the Diet.³ The authorities state that each ministry and agency receives inputs from the private sector concerning matters related to trade policies through, *inter alia*, exchanging opinions with private entities and receiving petitions from them. In addition, the Cabinet Office invites comments and opinions concerning regulations (including matters related to trade policies) from the general public.

Table II.1
Major trade-related laws and regulations, October 2012

	Most recent amendment
Foreign trade and exchange restrictions	
Foreign Exchange and Foreign Trade Act (1949 Law No. 228)	2009
Export and Import Transaction Act (1952 Law No. 299)	2008
Foreign Exchange Order (1980 Order No. 260)	2011
Export Trade Control Order (1949 Order No. 378)	2012
Import Trade Control Order (1949 Order No. 414)	2009
Customs- and tariff-related regulations	
Customs Law (1954 Law No. 61)	2012
Customs Tariff Law (1910 Law No. 54)	2012
Temporary Tariff Measures Law (1960 Law No. 36)	2012
Cabinet Order Relating to Countervailing Duties (1994 Order No. 415)	2009
Cabinet Order Relating to Anti-Dumping Duties (1994 Order No. 416)	2009
Cabinet Order Relating to Emergency Duties (1994 Order No. 417)	2009
Cabinet Order Relating to Retaliatory Duties (1994 Order No. 418)	2000
Cabinet Order on Tariff Quotas (1961 Order No. 153)	2011
Trade promotion	
Trade and Investment Insurance Act (1950 Law No. 67)	2008
Services and energy	
Construction Business Act (1949 Law No. 100)	2012
Banking Law (1981 Law No. 59)	2011
Insurance Business Law (1995 Law No. 105)	2011
Financial Instruments and Exchange Law (1948 Law No. 25)	2011
Telecommunications Business Law (1984 Law No. 86)	2011
Law Concerning the Measures by Large-Scale Retail Stores for Preservation of Living Environment (1998 Law No. 91)	2000
Employee's Pension Insurance Law (1954 Law No. 115)	2011
Civil Aeronautics Act (1952 Law No. 231)	2011
Marine Transportation Law (1949 Law No. 187)	2012
Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers (1986 Law No. 66)	2003
Certified Public Accountants Act (1948 Law No. 103)	2011
Certified Tax Accountant Law (1951 Law No. 237)	2007
Law for Improvement of International Tourist Hotels (1949 Law No. 279)	2011
Travel Agency Law (1952 Law No. 239)	2011
Electricity Utilities Industry Act (1964 Law No. 170)	2012

Table II.1 (cont'd)

³ These include standing committees on: Foreign Affairs, Economy, Trade and Industry; Financial Affairs; Forestry and Fisheries; and Fundamental National Policies. Each committee consists of 10 to 50 members.

	Most recent amendment
Gas Utility Industry Law (1954 Law No. 51)	2012
Petroleum Stockpiling Act (1975 Law No. 96)	2012
Act on the Quality Control of Gasoline and Other Fuels (1976 Law No. 88)	2008
Standards and technical regulations	
Industrial Standardization Act (1949 Law No. 185)	2005
Law Concerning Standardization and Proper Labelling of Agricultural and Forestry Products (JAS Law) (1950 Law No. 175)	2009
Pharmaceutical Affairs Law (1960 Law No. 145)	2011
Food Sanitation Law (1947 Law No. 233)	2009
Quarantine Law (1951 Law No. 201)	2008
Plant Protection Law (1950 Law No. 151)	2012
Act on Domestic Animal Infectious Diseases Control (1951 Law No. 166)	2012
Building Standard Law (1950 Law No. 201)	2011
Electrical Appliance and Material Safety Law (1961 Law No. 234)	2011
Consumer Product Safety Law (1973 Law No. 31)	2011
High Pressure Gas Safety Act (1951 Law No. 204)	2011
Road Vehicle Law (1951 Law No. 185)	2009
Act concerning the Rational Use of Energy (1979 Law No. 49)	2011
Fire Service Law (1948 Law No.186)	2009
Intellectual property rights	
Patent Act (1959 Law No. 121)	2011
Customs Law (1954 Law No. 61)	2012
Act Against Unjustifiable Premiums and Misleading Representations (1962 Law No. 134)	2009
Unfair Competition Prevention Act (1993 Law No. 47)	2011
Utility Model Act (1959 Law No. 123)	2011
Design Act (1959 Law No. 125)	2011
Trademark Act (1959 Law No. 127)	2011
Copyright Law (1970 Law No. 48)	2012
Civil Code (1896 Law No. 89)	2011
Agriculture	
Basic Law on Food, Agriculture and Rural Areas (1999 Law No. 106)	2009
Temporary Law for Compensation Price of Milk for Manufacturing Use (1965 Law No. 112)	2008
Others	
Administrative Procedure Law (1993 Law No. 88)	2006
Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Anti-Monopoly Act) (1947 Law No. 54)	2009

Source: Information provided by the Japanese authorities.

6. Additionally, the Consumer Affairs Agency (CAA) and the Government Revitalization Unit (GRU) were established in 2009. The CAA has responsibility for overseeing, *inter alia*, the JAS Law (on quality control) and the Food Sanitation Act (on labelling), while the GRU is responsible for regulatory reform.⁴ At the time of the last Review of Japan, the Cabinet had authorized a regulatory reform programme issued by the GRU, under which the authorities were to review and improve about 60 regulations on, *inter alia*, environment and energy, medical and elderly care services, and agriculture. The GRU was to monitor the implementation of the programme. A follow-up report regarding the implementation of the programme was published in June 2012.⁵ Furthermore, the authorities have taken six cabinet decisions, which include 436 items concerned with regulations and system reform.

⁴ The GRU has taken over the role of the Council for the Promotion of Regulatory Reform (CPRR).

⁵ Cabinet Office online information (in Japanese). Viewed at: <http://www.cao.go.jp/sasshin/kisei-seido/meeting/2011/subcommittee/120629/agenda.html>.

(ii) Transparency and policy evaluation

7. Promoting transparency remains one of the Government's policy priorities. All laws and regulations are published in the *Government Gazette* and are made available on the internet. In coordination with the Administrative Project Review Section of the Cabinet Office, the Government makes available and clarifies the mission of each policy and undertakes policy evaluations. It has also promoted the release of information on policy evaluations to the public, including on special taxation measures. On the other hand, the lack of cost-benefit analyses of policies, particularly of existing policies, makes it difficult for consumers to assess their effectiveness and effectively undermines the Government's intention to promote transparency.⁶

8. Under the Government Policy Evaluations Act (GPEA) and the Basic Guidelines for Implementing Policy Evaluation, the Cabinet Office and ministries are required to evaluate their own policies before and after implementation and to publish the results of these evaluations. In certain cases, ministries and agencies are required to conduct ex-ante regulatory impact analyses, to be presented when soliciting "public comments" before the Cabinet makes a decision to introduce, abolish or change regulations. Since 2007, draft laws or draft cabinet orders to enact, revise or abolish regulations must be evaluated by ex-ante regulatory impact analyses (RIAs), the results of which must be published.⁷ However, not all bills are subject to ex-ante RIAs, for example an ex-ante RIA was not conducted on the draft bill on the reform of the Japan Post Office. Additionally, existing regulations and measures that are not subject to amendment or abolition are not subject ex-ante RIAs. Thus, the costs and benefits of protection from various tariffs and or other trade policy measures are not evaluated by the Government.

9. Under the provisions of the GPEA, the Ministry of Internal Affairs and Communications (MIC) is required to undertake independent assessments of the policies implemented by other ministries. In addition, the Ministry of Finance conducts its own policy evaluation of selected expenditure programmes, which according to the authorities are taken into consideration in the annual budget formulation. A new policy evaluation body was setup within the GRU in 2009, aimed at cutting the expenditure of a number of government projects. In 2010, the GRU introduced the Public Project Review scheme, aimed at increasing the transparency of the budget request process as well as reducing government expenditures. Over 5,000 projects were reviewed; the authorities state that reviews resulted in a reduction in initial budget appropriations of ¥1.3 trillion in 2010 and ¥450 billion in 2011.

10. The authorities state that ex-post evaluations of general policies are reflected in the budget requests and policies; as such 176 out of 405 general policies in FY2010, and 153 out of 388 in FY2011 involved improvements and revisions.

11. Ministries and agencies must publish draft regulations, including draft cabinet orders or ministerial orders, and allow 30 days for comments from the public.⁸ Ministries and agencies are required to consider and publish the public comments as well as the results of their consideration, and

⁶ Japan ranked 19th among 48 countries in the 2009 Opacity index, which measures the degree to which countries lack clear, accurate, easily discernible, and widely accepted practices governing the relationships among governments, businesses, and investors. See Milken Institute (2009).

⁷ For further details regarding regulatory impact analysis please see WTO document WT/TPR/S/243/Rev.1 May 2011.

⁸ If the authorities decide that comments are required within less than 30 days of publication, they must publish the reason for this decision. The authorities state that draft laws are not subject to the public comment requirements, as they are scrutinized in the Diet.

the reason for the results. The Ministry of Internal Affairs and Communications (MIC) conducts and publishes a comprehensive annual survey on the implementation of the public comment procedure under the Administrative Procedure Act. A report published in December 2010 states that comments submitted have been reflected in 136 (32.5%) out of 418 cases. Furthermore, the GRU introduced screening (*jigyo-shiwake*) of government projects. The screening is conducted by meetings of selected representatives from politicians, academics, and private sectors; it does not involve quantitative cost-benefit analysis. Since 2009, 449 projects have been reviewed and scrutinized. The authorities state that this has resulted in savings of ¥1.35 trillion, while revenues have risen by ¥2.4 trillion. Additionally, a more focused review was conducted in 2011, concerning projects in energy and social security, and proposals for reform were made.

(2) TRADE AGREEMENTS AND ARRANGEMENTS

(i) WTO

(a) Participation in the WTO

12. The authorities state that Japan remains committed to working actively towards a successful multilateral conclusion of the DDA and will continue to make every effort toward reaching agreement in the negotiations and explore different negotiating approaches, as agreed at the WTO Ministerial Conference held in December 2011. Japan has submitted comprehensive notifications under WTO Agreements (Table AII.1).

(b) Disputes

13. Since 2010, Japan has been involved in five cases as a complainant (Table AII.2). In addition, Japan participated as a third party in ten dispute cases.⁹

(ii) Regional trade agreements

14. Japan has an ambitious programme for expanding its already relatively large network of 13 RTAs. The authorities note that Japan's policy on RTAs is to pursue high-level economic partnerships strategically and from several perspectives, with a wide range of countries, such as major trading partners. According to the Basic Policy on Comprehensive Economic Partnerships, the Asia-Pacific region is of particular importance for Japan, politically, economically, and with regard to security. Japan will increase its efforts to promote and conclude ongoing bilateral EPA negotiations, such as with Australia; it will work towards the realization of the China-Japan-Korea FTA, and the Regional Comprehensive Economic Partnership (RCEP) among others. Further afield, it will expedite talks with the EU to enter into negotiations and will work actively to strengthen its economic partnerships with other Asian economies, newly emerging economies, and resource-rich countries.¹⁰ Japan has entered into consultations with the countries currently negotiating the Trans-Pacific Partnership (TPP) Agreement, following an announcement by the Prime Minister in November 2011. Japan has made early announcements to the WTO of agreements under negotiation with Australia, the Gulf Co-operation Council, and Korea. According to the authorities Japan has also decided to launch EPA negotiations with Canada, Colombia, and Mongolia.

⁹ Cases in which requests for consultations were made and panels were established between June 2010 and August 2012 (WTO documents DS413, DS414, DS420, DS422, DS425, DS426, DS427, DS430, DS431 and DS432).

¹⁰ Ministry of Foreign Affairs and Trade, Basic Policy on Comprehensive Economic Partnerships, 6 November 2010. [<http://www.mofa.go.jp/policy/economy/fta/policy20101106.html>].

15. Since its last Trade Policy Review in 2011, Japan has notified the entry into force of two EPAs, with India and Peru, in addition to its 11 previous RTAs (Table AII.3).¹¹ Except for its agreement with ASEAN, all of its RTAs include goods, services, and investment, frequently with a separate chapter on the temporary movement of natural persons (mode 4), which provides improved temporary access to certain categories of natural persons. Japan has negotiated broad-based agreements with most of its partners, taking into consideration sensitivities in trade in certain products. In certain agreements for which the WTO Secretariat has prepared factual presentations (with Mexico, Chile, Malaysia, Brunei, Indonesia, the Philippines), Japan's tariff liberalization has in general been less than that of its trading partners by the end of the implementation of the agreement, with agricultural products tending to be excluded from liberalization or subject to restricted liberalization through tariff rate quotas. Under its RTAs that entered into force during the review period, with India, Japan will liberalize 88.9% of its tariffs (59.6% of agricultural products will be liberalized) corresponding to 97.5% of imports from India during 2008-10, over a period of 10 years; with Peru, Japan will liberalize 89.4% of its tariffs (61.6% of agricultural products will be liberalized), corresponding to 98.9% of its imports during 2009-11 after 16 years.

(iii) Generalized System of Preferences and other preferential arrangements adopted unilaterally by Japan

16. Japan affords preferential tariff treatment unilaterally to certain developing countries under the Generalized System of Preferences (GSP) scheme.¹² The Government has the authority to unilaterally designate, withdraw, suspend, and limit the beneficiaries or products that receive preferential treatment under the scheme. A beneficiary country is removed (graduates) when it has been classified in the World Bank statistics as a high-income country over the three preceding years. During the period under review, Kosovo entered the scheme, while Barbados, Oman, British Anguilla, British Virgin Islands, Canary Islands, Gibraltar, Ceuta and Melilla, Turks and Caicos Islands, Falklands Islands and Dependencies, and Trinidad and Tobago graduated from the scheme. The current GSP scheme is valid until 31 March 2021.

17. In 2011, Japan abolished all ceiling-based schemes.

18. The simple average GSP tariff rate is 5.3%, slightly lower than the overall applied MFN average tariff of 6.0% in FY2012. Japan grants preferential tariff treatment under its GSP scheme to 138 developing countries and 7 territories for 409 agricultural and fishery products, and 3,147 industrial products at HS 9-digit level.¹³ Numerous agricultural products and some industrial products are excluded (e.g. rice and rice products, meat and meat products, fish, dairy products, pineapples, cereal products, textiles and clothing, leather and leather products, and footwear). Many of the excluded products are export items in which developing countries have a comparative advantage.

19. According to the authorities a quantitative cost and benefit analysis on the effect of excluding products from the GSP scheme, has been undertaken, as a result of which the ceiling based scheme was abolished in 2011. The authorities maintain that Japan's tariff rate is appropriately set by taking

¹¹ These are: Japan-ASEAN; Japan-Brunei Darussalam; Japan-Chile; Japan-Indonesia; Japan-Malaysia; Japan-Mexico; Japan-Philippines; Japan-Singapore; Japan-Switzerland; Japan-Thailand; and Japan-Vietnam.

¹² For details of the GSP scheme see MOFA online information. Viewed at: <http://www.mofa.go.jp/policy/economy/gsp/explain.html#6> [28.08.2012].

¹³ These figures take into account only tariff lines where the preferential rate is lower than the corresponding MFN applied rate.

into consideration the results of multilateral negotiations, international requirements, the need to protect domestic industries, and price gaps between domestic and overseas markets. Under the GSP, duty-free tariff lines account for 58.1% of all lines, down from 61.2% at the time of the last Review. China continues to be the main beneficiary of GSP treatment (Table II.2).

Table II.2
Ten largest GSP beneficiaries, FY2011

Beneficiaries	Import value of preferential treatment (¥ million)	Share (%)
World	1,015,186	100.0
People's Republic of China	744,480	73.3
The Union of Myanmar	41,564	4.1
The People's Republic of Bangladesh	39,679	3.9
Republic of South Africa	35,056	3.5
Federative Republic of Brazil	27,474	2.7
Kingdom of Cambodia	21,416	2.1
India	19,404	1.9
Islamic Republic of Mauritania	14,162	1.4
Republic of Peru	6,919	0.7
Democratic Socialist Republic of Sri Lanka	6,393	0.6

Source: Information provided by the Japanese authorities.

20. There has been no change to Japan's duty-free and quota-free treatment for LDCs since its previous Review. Currently, there are 48 LDC special beneficiaries; the Maldives graduated during the review period. The current coverage is about 98%, defined at the HS nine-digit level; and the simple average applied rate for LDCs in FY2012 is 0.5%, the same as in FY2010. For 209 tariff lines (2.2% of the total)¹⁴, the applied rates on imports from LDCs are the same as the applied MFN rates in FY2012. Data provided by the authorities indicate that the value of imports from LDCs under the duty-free and quota-free treatment amounted to ¥85,851 million in FY2010 (up from ¥65,566 million in FY2008).

(iv) Other bilateral/regional arrangements

(a) Japan–U.S. bilateral relationship

21. The Japan-U.S. Economic Harmonization Initiative (EHI), launched in November 2010, aims to facilitate trade, address the business climate and individual issues, and advance coordination between Japan and the United States on regional issues of common interest. Discussions under the initiative included: exchanging information on the trade and economic-related policies of the two countries; promoting further Japan-U.S. cooperation in the economic field; collaborating on common regional and global challenges; and taking new steps to facilitate trade and address the business climate. A "Record of Discussion", published in January 2012, summarizes the results of discussions between February 2011 and January 2012.¹⁵

¹⁴ These cover, for example, fish, products of the milling industry, sugar, and articles of leather and footwear.

¹⁵ Japan-U.S. Economic Harmonization Initiative (EHI), "Record of Discussion". Viewed at: http://www.mofa.go.jp/mofaj/press/release/24/1/pdfs/0127_01_3.pdf.

(b) Japan–EU bilateral relationship

22. During the period under review, annual Japan-EU Summits took place in April 2010 and May 2011. At the 2010 summit, the leaders reviewed and welcomed the progress made regarding "a few specific non-tariff issues" under paragraph 34 of the Joint Press Statement of the EU-Japan Summit of 2009. At the summit held in May 2011, the leaders agreed to start the negotiating process for a comprehensive Economic Partnership Agreement (EPA)/Free Trade Agreement (FTA), and started a "scoping exercise", which would define the scope and level of the EPA. After the scoping exercise was completed, the European Commission submitted draft negotiation directives to the Council in July 2012. In November 2012, the Council approved a mandate for the Commission to negotiate the EPA, and authorized the opening of negotiations with Japan. Negotiations are to commence in due course. Additionally, the Japan-EU Business Round Table (BRT) issued recommendations for starting negotiations on a balanced and mutually beneficial bilateral agreement.

(c) APEC (Asia-Pacific Economic Cooperation)

23. In 2011, 65.2% of Japan's merchandise imports were from APEC members, and 76.1% of its merchandise exports were to APEC.¹⁶ In keeping with its policy of supporting multilateral trade and investment liberalization, Japan is a strong supporter of APEC's "open regionalism" goals. Like other members, Japan submits an annual Individual Action Plan (IAP), which provides a roadmap of its intended actions in various policy areas with a view to realizing APEC's liberalization goals.¹⁷ Furthermore, at the 18th APEC Economic Leaders Meeting held in Yokohama, APEC economic leaders concluded that 13 economies including Japan had made significant progress towards achieving the Bogor Goals.¹⁸ Since the Eighteenth APEC Economic Leaders' Meeting, held in Yokohama, Japan, in November 2010, Japan has contributed actively to the process of raising consensus among the APEC Leaders on: promoting effective, non-discriminatory, and market-driven innovation policy; increased participation in global production chains by small and medium-sized enterprises; promoting trade and investment in environmental goods and services¹⁹; reinforcing the implementation of good regulatory practices; enhancing supply-chain connectivity by establishing a baseline *de minimis* value of US\$100 on exports by the end of 2012; address barriers to trade faced by SMEs in the region; and facilitate trade in remanufactured goods. In the 2012 Ministerial Meeting in Vladivostok, Japan reiterated its commitment towards, *inter alia*: strengthening the multilateral trading system; advancing trade and investment liberalization; addressing next-generation trade and investment issues; liberalizing and facilitating trade in services; facilitating investment; promoting trade in environmental goods; ensuring food security and sustainable agriculture; and establishing reliable supply chains. Furthermore, Japan contributed actively to the development of the APEC List of Environmental Goods (54 items), which was endorsed in Vladivostok in 2012.

¹⁶ UN Comtrade database.

¹⁷ The latest available IAP for Japan was issued in 2009. See APEC online information. Viewed at: http://www.apec-iap.org/document/JPN_2009_IAP.htm.

¹⁸ 2010 Leaders' Declaration. APEC online information. Viewed at: http://www.apec.org/meeting-papers/leaders-declarations/2010/2010_aelm.aspx.

¹⁹ APEC Leaders agreed to develop an APEC list of environmental goods that contribute to their green growth and sustainable development objectives, on which they would reduce their applied tariff rates to 5% or less by end of 2015. The list and subsequent reduction in tariff would take into account APEC economies' economic circumstances, without prejudice to APEC economies' positions in the WTO.

(d) ASEM (Asia-Europe Meeting)

24. At the eighth ASEM Summit held in Brussels in October 2010, the Leaders "reiterated their resolve to conclude the WTO Doha Development Agenda promptly with an ambitious, comprehensive and balanced outcome consistent with its mandate and based on progress already made, as this would represent a single most important contribution to the objective. Leaders further agreed that all forms of trade protectionism should be rejected and that existing tariff and non-tariff barriers should be rolled back without delay. In order to promote economic growth and development, leaders also reaffirmed the need for a fair and rule-based multilateral trading system under the WTO."²⁰

25. At the tenth ASEM Foreign Ministers Meeting in Hungary in June 2011, Ministers "underlined the importance of maintaining a functioning open, equitable, rules based international trading system. They acknowledged the instrumental role played by the WTO in mitigating protectionist pressures particularly at the time of the economic crisis. Its existing framework of rules and its consultative mechanisms have been critical in contributing to the beginnings of global economic recovery. Ministers stressed that in the current still fragile state of the world economy it is all the more important to refrain from introducing or raising barriers to trade and investment in order to keep markets open and sustain growth."²¹

26. Japan participated in the Informal ASEM Senior Officials' Meeting for Trade and Investment, the 9th ASEM Customs Directors General/Commissioners Meeting and the 6th Meeting of the ASEM Working Group on Customs Matters.

(e) Other bilateral/regional arrangements

27. Japan participates in the Asia Pacific Metrology Programme and the Asia Pacific Legal Metrology Forum, as well as the Asia Pacific Laboratory Accreditation Cooperation (APLAC), which aims to facilitate cooperation in the harmonization of laboratory accreditation practices.

28. The Joint Study Committee for an FTA between China, Japan, and Korea was launched in May 2010. The Committee completed its work at its 7th meeting, in December 2011. At the 5th Trilateral Summit Meeting in May 2012, consensus was reached to launch FTA negotiations within the year. Since then three working group meetings have been held as part of the preparatory work for the launch of the FTA negotiations.

29. With regard to the Trans-Pacific Partnership Agreement, the Japanese Prime Minister announced in November 2011 that Japan would enter into consultations towards participating in the TPP negotiations.

30. During the period under review, amendments were made to Japan's bilateral tax treaties with Singapore (amendment entered into force in July 2010), Malaysia (December 2010), Luxembourg (December 2011), Switzerland (December 2011) and Belgium (amendment signed in January 2010, but not yet in force). Japan also signed new bilateral tax treaties with Bermuda (entered into force in August 2010), Netherlands (December 2011), Hong Kong (August 2011), Saudi Arabia (September 2011), Bahamas (August 2011), Cayman Islands (November 2011), the Isle of Man

²⁰ Eighth Europe Asia Meeting, "Chair's Statement". Viewed at: http://www.mofa.go.jp/policy/economy/asem/asem8/pdfs/chair_state.pdf.

²¹ Tenth ASEM Foreign Ministers' Meeting, "Chair's Statement". Viewed at: http://www.mofa.go.jp/policy/economy/asem/asem10/chair1106_withannex.pdf.

(September 2011). New treaties have also been signed with Kuwait, Jersey, Guernsey, and Portugal but these have not yet entered into force. None of the tax treaties Japan has signed contains MFN provisions.

31. Japan currently has bilateral investment treaties in force with 16 trading partners, and has signed new treaties with Papua New Guinea and Colombia, which have not entered into force yet (section 3(i)).²²

(3) FOREIGN INVESTMENT REGIME

32. Inward FDI in Japan continues to be much lower than outward FDI, and is also relatively low compared with that in other large OECD economies. The continued low level of FDI may be attributed to factors such as the appreciating exchange rate, high costs of doing business in Japan, and regulatory barriers.²³ The authorities consider that the main reasons include the difficulty involved in hiring qualified employees; high business costs in Japan²⁴; and high customer expectations. On the other hand, Japan's trading partners indicated in the past that it may be attributed, *inter alia*, to impediments to mergers and acquisitions; insufficient regulatory reform and financial transparency and flexibility; and lack of flexibility in the labour market. Japan ranks 20th out of 183 countries in the World Bank's *Doing Business 2012* index²⁵; however, it ranks 120th with respect to paying taxes and 107th with regard to starting a business.

33. In December 2011, the Government approved the "Program for Promoting Japan as an Asian Business Center and Direct Investment into Japan". Location subsidies, tax incentives, and reduced patent fees for R&D sites would be offered under the programme. Although the total cost of Japan's investment promotion programme is not estimated, the authorities stated that ¥2 billion and ¥500 million were spent in FY2010 and FY2011, respectively, on subsidy programmes promoting Asian Site Location.

(i) Regulatory regime

34. There have been no changes to laws, regulations, and rules concerning inward FDI since 2010. FDI (both inward and outward) is governed by the Foreign Exchange and Foreign Trade Act; in addition, relevant cabinet and ministerial ordinances, such as the Foreign Exchange Order and the Order of Inward Foreign Direct Investment apply.²⁶ Inward FDI generally requires *ex post facto* reporting to the Minister of Finance and the Minister in charge of the sector involved, by the 15th day of the month following the investment. Prior notification needs to be officially approved for inward FDI in industries where the authorities feel there would be "significant adverse effect on the smooth management of the national economy." These include: agriculture, forestry and fisheries, crude oil, leather and leather products, and air and maritime transport. Approval is also required in some other sectors on the grounds of public order, public safety, and national security.²⁷ The authorities state that

²² An Investment Agreement signed with India, as part of the EPA, entered into force in August 2011.

²³ WTO (2001).

²⁴ The recent appreciation of the yen may have helped increase the net outflow of FDI in Japan.

²⁵ World Bank online information. Viewed at: <http://doingbusiness.org/rankings>.

²⁶ For an English translation for the Foreign Exchange and Foreign Trade Act, see Cabinet Secretariat online information. Viewed at: http://www.cas.go.jp/jp/seisaku/hourei/data/FTA_2.pdf.

²⁷ These include aircraft, arms, explosives, nuclear power, electric utilities, gas utilities, water, heat generation, rail transport, passenger transport, telecommunications (accompanying certain network facilities), television and cable television, and broadcasting sectors.

only one request for approval has been denied.²⁸ Besides the approval (prior notification) requirements under the Foreign Exchange and Foreign Trade Act, various other laws stipulate specific restrictions on inward FDI in certain sectors, including the acquisition of land, mining, oil industry, telecommunications, and transport.²⁹

35. The examination period for approval of a foreign investment is about two weeks. As a result of reform adopted in April 2009, investment advisors are allowed to make prior notifications without attaching clients' individual information, and investors are allowed to file prior notifications within six months before the date of the investment. The authorities consider that these changes have reduced the burden on foreign investors, as the approval process for most investments takes less than five business days. The number of prior notifications decreased from 641 in 2008 to 248 in 2011.³⁰

36. Cross-border mergers and acquisitions are subject to the Anti-Monopoly Act. During the review period, no merger or acquisition was rejected by the Japan Fair Trade Commission under the provisions of the Act.

37. Japan currently has bilateral investment treaties (BITs) with Bangladesh; Cambodia; China; Egypt; Hong Kong, China; the Republic of Korea; Lao PDR; Russia; Sri Lanka; Turkey; Mongolia; Pakistan; Viet Nam; Uzbekistan; and Peru.³¹ In addition, Japan has signed BITs with Papua New Guinea; Kuwait; Iraq; and Colombia as well as a trilateral investment treaty with China and the Republic of Korea; these have not yet entered into force.

38. Japan's bilateral EPAs/FTAs with Singapore, Mexico, Malaysia, Chile, Thailand, Indonesia, Brunei, the Philippines, Switzerland, and India contain provisions on investment whereby preferential treatment is provided to investment from the EPA parties over other foreign investors. The provisions are similar to the provisions of Japan's BITs. These provisions are applied to investors and investments as defined in the agreements, with reservations specified in the texts and annexes. Japan's FTAs with Viet Nam and Peru do not contain provisions on investment, as separate BITs have been signed with these countries and have been incorporated into the EPAs.

(ii) Investment promotion measures

39. As mentioned, in December 2011 Japan launched the "Program for Promoting Japan as an Asian Business Center and Direct Investment into Japan". The Programme's five central initiatives are:

- to boost profitability to promote investment, which would include measures such as the Asian Business Promotion Project;
- to utilize the special zone system to attract investment. Measures under this initiative would include the Special Zone for Reconstruction and the Comprehensive Special Zone System, where firms would be exempt from regulations and be provided fiscal and financial incentives;

²⁸ This concerned a particular FDI proposal in electric utilities in 2008 (see WTO (2009), p. 30).

²⁹ For details regarding the restrictions, see WTO document WT/TPR/S/243/Rev.1 May 2011

³⁰ There were 361 prior notifications in 2009 and 325 in 2010.

³¹ These BITs stipulate investment protection and liberalization by, for example: providing, in principle, national treatment and MFN treatment with respect to the "pre-establishment phase of investments"; obliging the contracting parties to abide by their contracts with investors; and prohibiting, in principle, performance requirements that might hinder investment.

- to improve the investment environment and create structure for investment support;
- to make the living environment more comfortable at investment sites; and
- the initiative to enrich the dissemination of information welcoming investment.

40. Under the programme, the authorities have set out targets to be achieved by 2020. These include: increasing the number of high value sites by 30 each year; doubling the number of employees of foreign enterprises to 2,000,000; and doubling the volume of direct investment into Japan.³²

³² Program for Promoting Japan as an Asian Business Center and Direct Investment into Japan. Viewed at: http://www.invest-japan.go.jp/program/en_index.html.