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# **2007 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA, and BIT**

**April 2007**

**Multilateral Trade System Department**

## What is the 2007 Report on Compliance by Major Trading Partners with Trade Agreements –WTO, FTA/EPA, and BIT-?

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- The Report on Compliance by Major Trading Partners with Trade Agreements –WTO, FTA/EPA, and BIT (previously known as “Report on the WTO Inconsistency of Trade Policies by Major Trading Partners”) is an annual report by the Industrial Structure Council that points out trade policies and measures adopted by major partners that must be or should be corrected in light of the WTO agreements and other international rules and that calls for corrective action.
- The US, the EU, Canada and China etc. issue similar annual reports.
- The report points out issues involved in the trade policies and measures adopted by Japan’s major trading partners, explains Japan’s stance thereon and describes efforts made by Japan toward resolving the issues.

Note: The 2007 report points out 112 issues, of which 35 concern the US, 28 China, 19 ASEAN, 12 the EU and 18 other partners.

- The 2007 report provides analysis and explanations concerning economic partnership agreements and bilateral investment treaties as new international rules, in addition to WTO agreements.
- Following the issuance of the report, the Ministry of Economy, Trade and Industry (METI) announces issues deemed as high priority and places emphasis on negotiations concerning these issues.

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# **Utilization of WTO Agreements**

# WTO Dispute Settlement Mechanism

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- After the establishment of the WTO in 1995, the WTO dispute settlement mechanism was used in 361 cases as of the end of March 2007.
- A variety of issues covered by the WTO agreements such as tariffs, antidumping measures, non-tariff barriers, restrictions on services can be subject to this mechanism.
- This mechanism has been used to resolve US-EU disputes such as the US's preferential tax treatment for exporting companies and the EU's prohibition on hormone-treated beef.
- Japan has also actively used the mechanism since it first resorted in a dispute over automotive tariffs related to Section 301 of the US Trade Act. In January 2007, Japan won a ruling that a US antidumping practice known as "zeroing" violates the WTO agreements.
- China, which acceded to the WTO more than five years ago, has also been subject to this mechanism, as its system for certifying finished vehicle characteristics is under examination by a WTO dispute settlement panel upon request from the US, EU and Canada. In addition, the US and Mexico requested for consultations (a phase before the request for the establishment of a panel) concerning the issue of Chinese export subsidies. (In both cases, Japan is participating as a third-party.)
- Furthermore, based on the WTO agreements, Japan called for corrective action with regard to the issues of Chinese tariffs on photographic film and Indonesian tariffs on digital cameras and succeeded in settling these issues through bilateral talks, before having recourse to the WTO dispute settlement mechanism.

# Priority Issues in 2007(1)

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- Following the issuance of the Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA, and BIT-, METI announces its approach to issues deemed as high priority in its trade policy. As shown in the following pages, a resolution has been reached or a substantial improvement has been made with regard to almost all of priority issues in recent years.
- As of April 2007, there are 11 priority issues as follows. Three new issues have been added.

## Issues over Which Japan Urges Prompt Implementation of the WTO Recommendations

With regard to the following issues, WTO recommendations totally accepting Japan's arguments have been adopted. Japan will urge prompt implementation of the recommendations.

### US

- Halt of Distribution under the Byrd Amendment
- Prompt Implementation of the WTO Recommendations on Zeroing Methodology
- Prompt Implementation of the WTO Recommendations on Anti-dumping Measures against Hot-Rolled Steel Products from Japan
- Handling of Measures to Invalidate the Damages Recovery Law that was Enacted to Counteract the Anti-dumping Act of 1916 <new item>

# Priority Issues in 2007 (2)

## Issues Already Referred to WTO Dispute Settlement Procedures

The following issues related to China have already been referred to WTO dispute settlement mechanism by the US and other partners, and Japan has been participating as a third-party. Japan will request for clarity and improvement of the systems through WTO and bilateral consultations etc.)

### China

- Correction of Tariffs on Automobile Parts
- Operation and Improvement of its Subsidy System in a Transparent Manner and in accordance with WTO Agreements <new item>

## Issues over Which Variety of Approaches Will Be Used toward Resolution

With regard to the following issues related to China, the EU and Asian countries, a resolution will be sought through a variety of approaches (bilateral consultations and multilateral forums including the WTO).

### China

- Handling of Counterfeit, Pirated and Other Infringing Products
- Improvement with regard to Inappropriate Application of Anti-dumping Measures

### EU

- Correction of Tariffs on Products Covered by the Information Technology Agreements <new item>
- Ensuring Clarity and Uniformity of Various Regulations relating to Chemical Products and Electrical and Electronic Equipment (REACH, WEEE, RoHS)

Asian countries and territories (ASEAN, South Korea, Taiwan, Hong Kong and India)

- Handling of Counterfeit, Pirated and Other Infringing Products

# Status of Efforts concerning Priority Issues in Recent Years (1)

Countries and regions	Priority Issues	Status of improvement and efforts
US	Halt of Distribution under the Byrd Amendment	In September 2005, Japan imposed countermeasures against the US. Following these actions, the US repealed the Byrd Amendment in February 2006. However, since distribution will continue for the time being due to the transition clause, Japan has been requesting the US to halt distribution and extended countermeasures in August 2006.
	Prompt Implementation of the WTO Recommendations on Zeroing Methodology	In January 2007, the Appellate Body report was issued and adopted which fully accepted Japan's arguments and ruled that zeroing in all anti-dumping procedures violates the WTO agreement. To establish an implementation period, Japan referred this matter to arbitration in March of 2007.
	Prompt Implementation of the WTO Recommendations on Anti-dumping Measures against Hot-Rolled Steel Products from Japan	A bill for implementing the portion of WTO recommendations not yet implemented was discarded due to the end of the 109th Congress at the end of 2006. In January 2007, the US Government expressed their intention to work on this case with the new Congress.
	Handling of Measures to Invalidate the Damages Recovery Law that was Enacted to Counteract the Anti-dumping Act of 1916 <new item>	In August 2006, Japan submitted an amicus brief to request revocation of the preliminary anti-suit injunction preventing lawsuits under Japan's Damage Recovery Law to the US Federal Court of Appeals.
China	Correction of Tariffs on Automobile Parts	A panel was established in October 2006 based on the requests of the US, the EU and Canada. Japan also participates in the panel proceeding as a third party. The first meeting of the panel is scheduled in May 2007.
	Operation and Improvement of its Subsidy System in a Transparent Manner and in accordance with WTO Agreements <new item>	Japan raised this issue in the WTO Subsidy Committee in October 2006. In February 2007, moreover, the U.S. and Mexico requested consultations on their contention that export subsidies, etc., are included in China's subsidy system. Japan participated as a third party in the consultations among these countries in March 2007.
	Handling of Counterfeit, Pirated and Other Infringing Products	Through actions such as the dispatch of a joint government-private mission concerning the protection of intellectual property in June 2006 and the exchange of opinions with the Study Group for Amendment of China's Patent Law, Japan has been engaged in this issue through requests for improvement and cooperation. Criminal thresholds for units were lowered in April 2007.
	Improvement with regard to Inappropriate Application of Anti-dumping Measures	Japan raised this issue at the annual meeting between METI and the Department of Commerce in April 2006. Japan also submitted government opinions in individual cases which requested China to apply anti-dumping measures in a manner consistent with the WTO agreement.
	Improvement of Import Regulation on toxic chemicals	As a result of a demarche from the Japanese Embassy in Beijing in February 2006 and the annual consultations between METI and the Department of Commerce, concerns about registration expenses were resolved.
	Correction of Tariffs on Photographic Film	As a result of bilateral consultations, China reduced the specific tariff rates on some items comparable levels of tariff concession in January 2006 and January 2007.

## Status of Efforts concerning Priority Issues in Recent Years (2)

Countries and regions	Priority Issues	Status of improvement and efforts
EU	Correction of Tariffs on Products Covered by the Information Technology Agreements <new item>	Series of consultations have been held, including those between Akira Amari, Minister of METI, and Peter Mandelson, European Commissioner for Trade, in January 2007.
	Regulations of Registration, Evaluation and Authorization of Chemicals (REACH)	As a result of dialogue between Japan and the EU on regulatory reform etc., draft regulations including the notion of "one substance, one registration" were adopted at the Council of the EU in December 2006. The regulations are scheduled to come into effect in June 2007.
	Directives on Waste Electrical and Electronic Equipment (WEEE) and Directives on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS)	As a result of dialogue between Japan and the EU concerning regulatory reform etc., the European Commission published FAQs and enforcement guidelines for clarification purposes.
Indonesia	Correction of Tariffs on digital cameras	As a result of bilateral consultations, the Indonesian Government agreed to eliminate customs duties gradually by January 2009. Indonesia implemented a tariff reduction in the 2007 revised customs tariff schedule.
Malaysia	Handling of Discriminatory Taxes on Automobiles	Japan requested for improvement at Japan-Malaysia EPA negotiations. As a result, in October 2005, Malaysia announced a revision of the schemes concerning tariffs and excise duties on finished vehicles, thereby largely eliminating discrimination between "national cars" and "non-national cars" produced in Malaysia.
Asian countries and territories	Handling of Counterfeit, Pirated and Other Infringing Products	Japan has requested these countries and territories to improve relevant legislation and strengthen enforcement efforts in multilateral and bilateral discussions under the auspices of APEC, WIPO, WTO, etc., and provides support for training the personnel in related organizations.



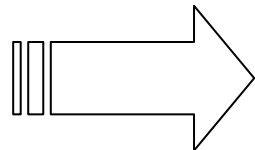
# Examples of Improvement and Efforts concerning Priority Issues in Recent Years (1)

## US

### Calculation of Dumping Margin Based on "Zeroing" Methodologies

The US has imposed unfairly high antidumping duties by calculating the dumping margins with the use of the "zeroing" methodologies, which arbitrarily excludes some transactions from the calculation (i.e. regards the price difference as zero).

Arbitrarily exclusion of some transactions from the calculation of the antidumping margins violates Articles 2 and 9 of the Antidumping Agreement, which stipulate that the antidumping margin calculation must cover all transactions.



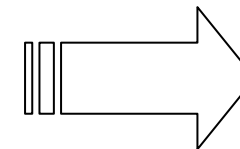
A report issued by the WTO Appellate Body in January 2007 totally accepted Japan's argument, ruling that the use of the zeroing method violates the WTO rules in any antidumping procedures, and recommended corrective action. Japan now engages in consultation with the US for implementation.

## China

### Tariffs on Automobile Parts

China decided to introduce a system for applying the finished vehicle tariff rate (25%) to auto parts regarded as having the characteristics of a finished vehicle, instead of applying the auto parts tariff rate (10%), and the system has been partially put into effect.

The application of the finished vehicle tariff rate, which is higher than the auto parts tariff rate to auto parts, may be in violation of Article 2 of the GATT.



At the end of March 2006, the US and the EU requested for consultations to China, and Japan participated in the consultations as a third-party. Although China announced it would postpone the implementation of some of the relevant provisions, a WTO dispute settlement panel was set up in October 2006. Japan also participates in the panel as a third-party. The first meeting of the panel is scheduled to be held in May 2007.

# Examples of Improvement and Efforts concerning Priority Issues in Recent Years (2)

## China

### Import Regulation on toxic chemicals

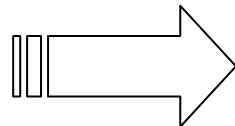
With regard to the items included in the list of chemicals whose imports and exports are strictly restricted by China, importers must follow procedures for the issuance of certificates of registration for toxic chemicals import environment control. In 2006, 158 items were added to the list.

The control system imposes a fee which is higher than necessary and may be in violation of Article 2 of the TBT Agreement, which bans trade-restrictive practices.

After Japan's several protests and expression of concerns to the Chinese authorities, China responded at Japan-China economic partnership consultations in July 2006 that the registration fee does not have to be paid for each sales contract and that once importers obtain the registration certificate, they can import the chemicals any number of times without making an additional fee payment during the validity period of two years, thus resolving Japan's biggest concerns.

#### **Registration certificate issuance procedures**

- Fee: US\$10,000
- Import registration and approval are required for each contract.



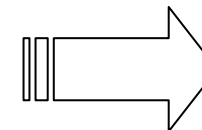
## China

### Tariff on Photographic Film

Excessive tariffs were imposed on 37 product items that belong to the HS37 type of photosensitive material.

If China applies higher tariff rates than it committed at the time of its accession to the WTO, it may be in violation of Article 2 of the GATT Agreement.

As a result of tariff cuts in January 2006 and January 2007, the specific tariff rate dropped to nearly the same level as the bound tariff rate.



An example of tariff change for photo film (in the case of 35mm film)

In 2002: 120 yuan/m<sup>2</sup>  
(A specific tariff rate of more than 190%)

Bound tariff rate:  
42% in 2002  
18% in 2006

After the tariff rate revision in January 2007: 28 yuan/m<sup>2</sup>

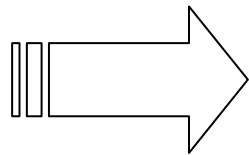
# Examples of Improvement and Efforts concerning Priority Issues in Recent Years (3)

## Indonesia Tariffs on Digital Cameras

As of 2003, Indonesia imposed a 5% tariff on digital cameras, an item covered by the ITA (Information Technology Agreement). In 2004, Indonesia revised its tariff classification and started imposing a 15% tariff on digital cameras equipped with a moving image function.

Under the ITA, Indonesia was due to eliminate tariffs on the products covered by the agreement by 2002. As the list of items covered by the ITA include the item "digital still image video camera," Indonesia's imposition of tariffs on digital cameras may be in violation of Article 2 of the GATT Agreement.

In July 2006, Indonesia agreed to phase out the tariffs on digital cameras between 2007 and 2009 on a most-favored-nation treatment basis.

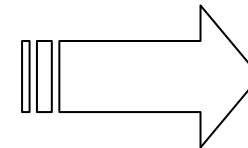


## Malaysia Discriminatory Tax on Automobiles

In Malaysia, vehicles produced by a particular manufacturer were designated as "national cars," which received preferential treatment in terms of the excise tax compared with vehicles produced in Malaysia by foreign manufacturers and imported vehicles.

Preferential treatment provided to the national cars, which are practically domestic products, in terms of the excise tax may be in violation of the "National Treatment on Internal Taxation" referred to in Paragraph 2, Article 3 of the GATT Agreement.

The discriminatory treatment on the excise tax between "national cars" and "non-national cars" was largely eliminated as a result of a new automobile policy (a revision of the schemes concerning tariffs and excise tax) announced by the Malaysian government in October 2005.





# **Utilization of Economic Partnership Agreements and Investment Treaties**

# Significance of Economic Partnership Agreements and Investment Treaties

Increasing number of economic partnership agreements and investment treaties have been concluded, complementing WTO agreements.

1. Since 2002, Japan has concluded economic partnership agreements with Singapore, Mexico, Malaysia, the Philippines, Chile and Thailand, while pursuing the maintenance and enhancement of the WTO regime as the centerpiece of its trade policy. Negotiations are underway about many other economic partnership agreements. In addition, Japan has concluded 11 bilateral investment treaties.
2. As a result, the weight of economic partnership agreements and investment treaties in international trade rules has increased, contributing to enhanced discipline on trade in goods, investment and trade in services and complementing the WTO Agreements. Regional trade agreements emerging in the three major trade zones of US, EU and Asia and movements toward regional cooperation in the Asia-Pacific region, led mainly by APEC, underpin the multilateral free trade regime under the WTO and are expected eventually to contribute to trade and investment liberalization on a global scale.
3. The 2007 version of the report explains rules under EPAs and BITs in its Part III.
  - The report not only describes EPAs and BITs Japan has concluded but also refers to agreements concluded by other countries, including NAFTA, and explains and analyses their rules.
  - Japan will keep monitoring the compliance with its EPAs and BITs by other countries.

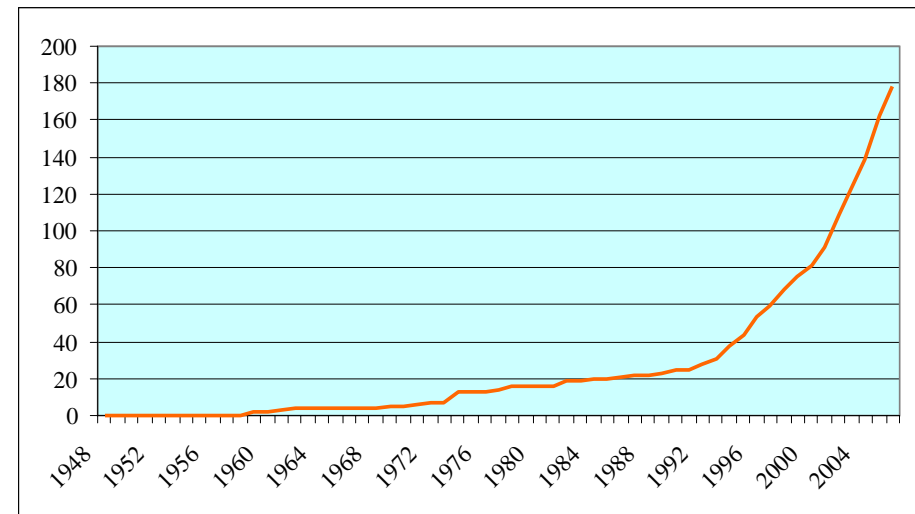
## Chronological Table of Japan's Economic Partnership Agreements

As of February 27, 2007

	2004	2005	2006	2007
<b>Singapore</b>	(Negotiations started in January 2001) Put into effect in November 2002		Broad agreement on revision reached in July	Revised EPA signed in March
<b>Mexico</b>	(Negotiations started in November) Signed in September	Put into effect in April		
<b>Malaysia</b>	January Under negotiation	Broad agreement reached in May	Signed in December	Put into effect in July
<b>Philippines</b>	(Start of negotiations agreed upon in December 2003) February Broad agreement reached in November		Signed in September	
<b>Chile</b>		January (Start of negotiations agreed upon in November) Industry-academic government joint study meeting	February Under negotiation	Signed in March
<b>Thailand</b>	February Broad agreement reached in September			
<b>Indonesia</b>		January (Start of negotiations agreed upon in June) Industry-academic government joint study meeting	February Under negotiation	Broad agreement reached in November
<b>Brunei</b>		February Negotiations started in June	Broad agreement reached in December	
<b>South Korea</b>	(Start of negotiations agreed upon in October 2003) December Under negotiation	Negotiations suspended in November		
<b>ASEAN</b>	February (Start of negotiations agreed upon in November)	April		Aiming to conclude negotiations within 2 years
<b>GCC (Gulf Cooperation Council)</b>			Preliminary talks in May	September Under negotiation
<b>Vietnam</b>		February Single study meeting	January	Under negotiation
<b>India</b>		July Single study meeting	July	Under negotiation (with a goal of reaching agreement within 2 years)
<b>Australia</b>		November Start of negotiations agreed upon in		Under negotiation
<b>Switzerland</b>		October Inter-governmental study		Start of negotiations agreed upon in January
<b>Japan-China-South Korea investment treaty</b>	Start of inter-governmental consultations agreed upon in November	May Inter-governmental consultations		March Under negotiation
<b>South Africa</b>				East Asian EPA
<b>East Asia</b>		April East Asian Free Trade Area (EAFTA) ASEAN-Japan experts' study		Top-level agreement reached in January

## Number of FTAs/EPAs Reported to the WTO

As of 1990, the number of FTAs and EPAs reported to the WTO stood at 25. The number rapidly increased to 191 by the end of 2006.



Source: WTO

# Characteristics of the Part III of the 2007 Report on Compliance by Major

## Trading Partners with Trade Agreements –WTO, FTA/EPA, BIT-

Covers the legal discipline of EPAs/BITs Japan had concluded in the past  
 May provide suggestions for future FTA/EPA negotiations of Japan by analyzing FTAs concluded between third-party countries.

### Table of Contents of Part III (Economic Partnership Agreements/Bilateral Investment Treaties)

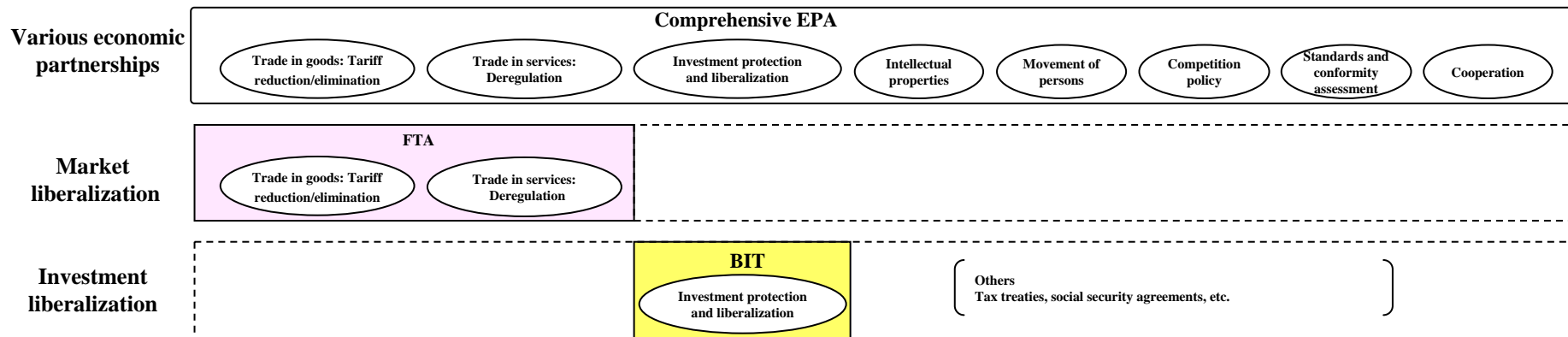
General Statement  
 Overview of FTAs/EPAs and BITs  
 1. Positioning of economic partnership agreement in this report  
 2. Trends in other countries and regions  
 3. Japan's approaches  
 Chapter 1 Various issues of trade in goods (customs, rules of origin, anti-dumping measures, safeguards, standards and certification)  
 Chapter 2 Services  
 Chapter 3 Movement of persons  
 Chapter 4 Intellectual property rights  
 Chapter 5 Investment  
 <Reference> Major cases in relation to investment arbitration  
 Chapter 6 Competition, government procurement, trade facilitation  
 Chapter 7 Other (energy, environment, dispute settlement, etc.)

### Framework of the articles of EPAs Japan had concluded in the past

Japan-Singapore EPA Chapter 1 General Provisions Chapter 2 Trade in Goods Chapter 3 Rules of Origin Chapter 4 Customs Procedures Chapter 5 Paperless Trading Chapter 6 Mutual Recognition Chapter 7 Trade in Services Chapter 8 Investment Chapter 9 Movement of Natural Persons Chapter 10 Intellectual Property Chapter 11 Government Procurement Chapter 12 Competition Chapter 13 Financial Services Co-operation Chapter 14 Information and Communications Technology Chapter 15 Science and Technology Chapter 16 Human Resource Development Chapter 17 Trade and Investment Promotion Chapter 18 Small and Medium Enterprises Chapter 19 Broadcasting Chapter 20 Tourism Chapter 21 Dispute Avoidance and Settlement Chapter 22 Final Provisions	Japan-Mexico EPA Chapter 1 Objectives Chapter 2 General Definitions Chapter 3 Trade in Goods Chapter 4 Rules of Origin Chapter 5 Certificate of Origin and Customs Procedures Chapter 6 Bilateral Safeguard Measures Chapter 7 Investment Chapter 8 Cross-Border Trade in Services Chapter 9 Financial Services Chapter 10 Entry and Temporary Stay of Nationals for Business Purposes Chapter 11 Government Procurement Chapter 12 Competition Chapter 13 Improvement of the Business Environment Chapter 14 Bilateral Cooperation Chapter 15 Dispute Settlement Chapter 16 Implementation and Operation of the Agreement Chapter 17 Exceptions Chapter 18 Final Provisions	Japan-Malaysia EPA Chapter 1 General Provisions Chapter 2 Trade in Goods Chapter 3 Rules of Origin Chapter 4 Customs Procedures Chapter 5 Technical Regulations, Standards and Conformity Assessment Procedures Chapter 6 Sanitary and Phytosanitary Measures Chapter 7 Investment Chapter 8 Trade in Services Chapter 9 Intellectual Property Chapter 10 Controlling Anti-competitive Activities Chapter 11 Improvement of Business Environment Chapter 12 Co-operation Chapter 13 Dispute Settlement Chapter 14 Final Provisions	Japan-Philippines EPA Chapter 1 General Provisions Chapter 2 Trade in Goods Chapter 3 Rules of Origin Chapter 4 Customs Procedures Chapter 5 Paperless Trading Chapter 6 Mutual Recognition Chapter 7 Trade in Services Chapter 8 Investment Chapter 9 Movement of Natural Persons Chapter 10 Intellectual Property Chapter 11 Government Procurement Chapter 12 Competition Chapter 13 Improvement of the Business Environment Chapter 14 Cooperation Chapter 15 Dispute Avoidance and Settlement Chapter 16 Final Provisions
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# Assessment of Japan's EPAs and Challenges Lying Ahead

1. Japan's efforts with regard to EPAs have made progress as reflected in the increase in the number of EPAs concluded by the country (6 EPAs already concluded, 9 EPAs under negotiation and 3 EPAs under consideration).
2. Japan's EPAs are comprehensive in that they include sectors not covered by the WTO in principle. They can match FTAs involving other countries in terms of the quality of the provisions and the range covered thereby.



3. The way has been paved for the formation of economic partnerships within East Asia. Japan now plans to direct efforts to trade agreements with countries outside East Asia that have large potential as markets and investment destinations, with FTAs and investment treaties as possible options.
4. Japan attaches importance not only to bilateral EPAs but also to multilateral EPAs. It aims for an early conclusion of the Japan-ASEAN EPA in particular.
5. Japan is lagging behind other countries in terms of the number of investment treaties concluded (Japan has concluded 17 investment treaties, compared with 2,495 concluded around the world).
6. Japan has enhanced the protection of intellectual property rights and intends to continue efforts in this regard.
7. Japan has started making serious efforts with regard to natural resources and energy. It is also important to tackle environmental issues.

# Sector-by-Sector Assessment (1)

## **Trade in Goods :**

Tariffs will be eliminated for over 90% of the total value between the parties within 10 years.

All trade will effectively be liberalized based on the GATT Agreement.

## **Rule of Origin :**

Under Japan's EPAs, either change in tariff classification criteria or the value-added criteria can be selected in principle.

Note: There are three major types of application of country of origin rules around the world as follows.

American type: Based on the change in tariff classification criteria

European type: Based on the manufacturing process criteria and the value-added criteria

Asian type: Based on the value-added criteria

## **Antidumping Procedures :**

The antidumping provisions of Japan's FTAs are of a standard type that confirms the rights and obligations under the WTO Antidumping Agreement.

Note: There are three major types of antidumping provisions around the world as follows.

(1) Provisions that confirm the rights and obligations under the WTO Antidumping Agreement

(2) Provisions that are more stringent than the rules under the WTO Antidumping Agreement

(3) Provisions that abolish antidumping measures within the area

## **Safeguards :**

Safeguard measures under Japan's FTAs are standard ones based on the WTO Safeguard Agreement.

## **Investment :**

Although Japan has concluded relatively few bilateral investment treaties (BITs), the Japan-South Korea, Japan-Vietnam BITs and BITs concluded by Japan thereafter as well as the investment-related chapters of Japan's EPAs are of a high standard as they provide for not only protection measures (national treatment (NT), most-favored-nation treatment (MFN), fair and equitable treatment, free transfer of funds, protection against conflicts, protection against seizures) but also cover liberalization measures (NT, MFN and prohibition of performance requirements) and in principle include arbitration for disputes between investors and states.

(Note)

US: The US includes investment chapters in its FTAs (NAFTA, FTAs with Australia and Singapore, etc.) in addition to concluding bilateral investment treaties. It has also published a model BIT.

Europe: Each country in the region has concluded a number of bilateral investment treaties (not including liberalization provisions). Many countries have published model BITs.

## **Trade in Services :**

Pledges included in the services chapters of Japan's EPAs are provided in the positive-list format except for those in the Japan-Mexico and Japan-Chile EPA. Japan attaches importance to the liberalization of computer-related services, rental/leasing of construction machinery and office equipment, and services related to manufacturing industries in the partner countries.

(Note)

Pledges in NAFTA, the Australia-Singapore FTA, the US-Singapore FTA and the US-Australia FTA are provided in the negative-list format.



# Sector-by-Sector Assessment (2)

## **Movement of Persons :**

Japan allows entry and temporary stay by short-term business travelers, corporate expatriates and investors. In addition, Japan has agreed to accept nurses and welfare workers from the Philippines under a bilateral EPA with that country.

(Note)

Among FTAs involving other countries and regions, there are agreements that provide for treatment much more generous than that pledged under the GATS, such as the EU-Switzerland FTA, which accords national treatment related to working conditions.

## **Competition :**

There are provisions for the implementation of appropriate measures against anticompetitive practices and for cooperation among relevant authorities.

## **Government procurement :**

Efforts are made to ensure a competitive environment not inferior to the ones in other countries through measures such as the provision of most-favored-nation treatment, exchanges of information and consultations, depending on the partner country.

## **Intellectual Property :**

Japan's EPAs have a well-balanced mix of advanced features such as speedy examination, simple procedures, enhanced rights protection measures such as protection of established trademarks and a ban on the imitation of product configurations and enhanced enforcement such as expansion of the range of items subject to customs clearance suspension.

(Note)

US: Detailed provisions for certain areas (extension of the patent protection period from 50 years to 70 years, clarification of requirements for internet service provider immunity (procedures for deletion of illegal content on the Internet), protection of test data submitted to seek approval for drug sale, enforcement enhancement, etc.)

EU: Simple provisions concerning the obligation to sign international treaties and a review of the international treaties that should be signed

## **Trade Facilitation :**

Speeding-up of customs procedures, enhancement of cooperation between the customs authorities, etc.

## **Energy and Environment :**

Although Japan's existing EPAs have few substantive provisions concerning energy and the environment protection, these items will grow in importance in the future.

(Note)

Among FTAs involving other countries, there are some that are supplemented by separate agreements concerning environment and labor.

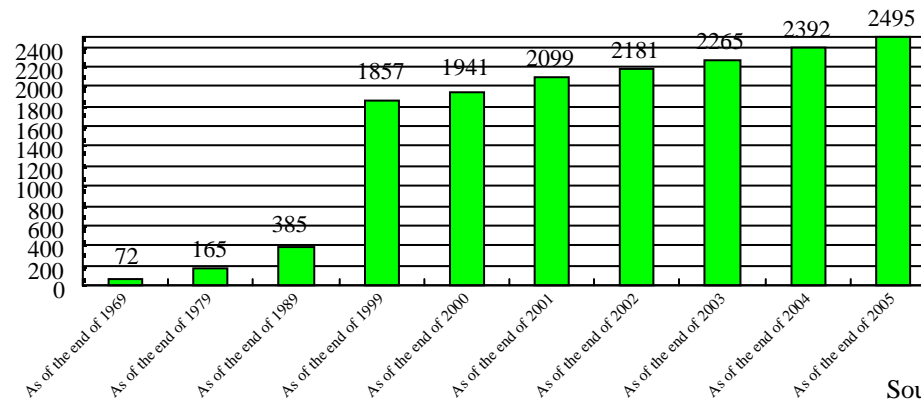
## **Improvement in Business Environment :**

Japan is seeking to secure a dialogue framework for improving the business environment while implementing EPAs.

# Investment Treaties/EPA Investment Chapters

There are 2,495 bilateral investment treaties (BITs) around the world as of the end of 2005. Japan has concluded only 17 BITs (11 investment treaties and 6 EPA investment chapters), lagging behind other major countries. Japan is devoting efforts to both the conclusion of investment treaties and the improvement of the business environment. It is also important to implement policy measures for linking investment treaties and investment insurance. ((1) selection of partner countries, (2) underwriting terms such as premium rates and coverage ratios and (3) payments (including subrogation)

**Sharp Rise in the Number of Bilateral Investment Treaties Concluded around the World in the 1990s**



Source: UNCTAD

**The Number of Bilateral Investment Treaties Concluded by Major Countries (As of June 2005)**

Country	Number of treaties concluded
Germany	132
China	113
UK	101
France	98
South Korea	80
India	56
US	47
Japan	11

Source: UNCTAD "World Investment Report 2006" and UNCTAD "database on BITs"

Note: Treaties included in the diagram are those that feature mainly investment-related provisions. Investment-related chapters of free trade agreements and economic partnership agreements are not included.

**Countries with Which Japan Has Concluded Bilateral Investment Treaties**

- (1) Egypt (1977)
- (2) Sri Lanka (1982)
- (3) China (1988)
- (4) Turkey (1992)
- (5) Hong Kong (1997)
- (6) Pakistan (1998)
- (7) Bangladesh (1998)
- (8) Russia (1998)
- (9) Mongolia (2001)
- (10) South Korea (2002)
- (11) Vietnam (2003)

Note: The numbers in the parentheses indicate the years when the treaties were signed.

# Dispute Settlement under EPAs and Investment Treaties

FTAs/EPAs and BITs establish procedures for dispute settlement between the signatory countries.

In addition, investment treaties establish procedures for arbitration to settle disputes between investors and states. In recent years, the number of arbitral cases has increased sharply (There have been a total of 255 arbitral cases around the world but only one related to a Japanese company).

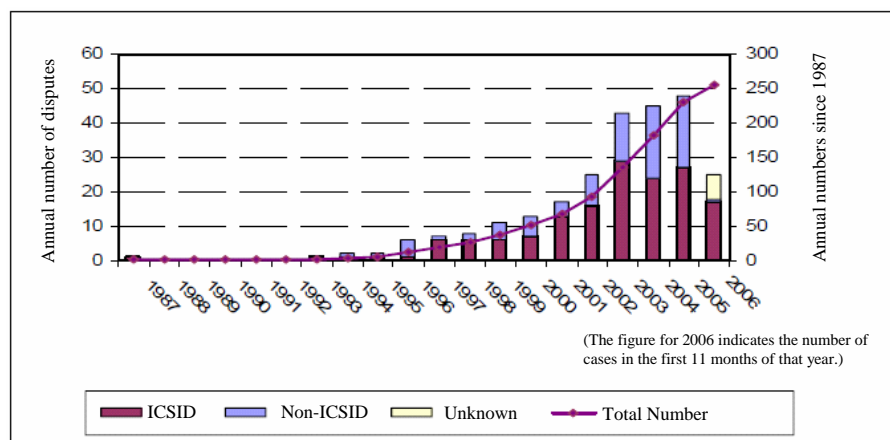
Japan should regard FTAs/EPAs and investment treaties as legal frameworks for dispute settlement and actively utilize them for this purpose.

## <Key Points of Arbitration between Governments under FTAs/EPAs>

Dispute settlement mechanisms under many FTAs and EPAs, like the WTO DSU (Dispute Settlement Understanding), provide for (1) consultations among the parties concerned, (2) referral to a dispute settlement body designated by the relevant agreement (3) a binding decision by the dispute settlement body and (4) corrective action or compensation by the country against which the complaint is filed. Japan's EPAs provide for similar measures.

## <Arbitration in Investor-States Disputes under Investment Treaties>

### Rapid Increase in the Number of Arbitral Cases in Investor-States Dispute (Cumulative Numbers till November 2006)



Source: UNCTAD

### Arbitration in Investor-States Disputes under the Energy Chapter Treaty

In the energy sector, the dispute settlement provisions of the Energy Chapter Treaty, which is a multilateral treaty, are also utilized, in addition to those of FTAs/EPAs and BITs. The Energy Chapter Treaty is currently the only multilateral treaty that provides for protection of investment, trade and remittances in the energy sector (A total of 46 countries including Japan are signatories of this treaty now).

An example of dispute: A suit lodged by foreign shareholders of Yukos against the Russian government for an alleged illegal asset expropriation.