METI Priorities Based on the 2009 Report on Compliance by Major Trading Partners with Trade Agreements (May 27, 2009)

The 2009 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA, and BIT – was adopted today by the Industrial Structure Council’s Subcommittee on Unfair Trade Policies and Measures. The Report addresses the wide-ranging trade policies and measures of major trading partners, and requests improvements thereof in light of WTO agreements and other international rules. The Ministry of Economy, Trade and Industry (METI) will seek the improvements requested of these deficient policies and measures, and accordingly, take all opportunities and routes available, including bilateral dialogues and the dispute resolution mechanisms provided for by the Word Trade Organization (WTO), Economic Partnership Agreements (EPAs), etc.

METI has been for long making the maximum effort and taking every opportunity to remove impediments in the measures of foreign governments to trade, investment and other business activities of Japanese enterprises. The joint effort by the industry and the Government of Japan has achieved significant improvements in a number of the measures last year as well, as summarized in “Status of Recent METI Priorities” annexed hereto.

Nevertheless, the world has witnessed, after having experienced a serious economic crisis, a series of trade measures taken by a number of governments apparently with a view to protecting the domestic industries and employment, which may represent movement toward protectionism. Under these circumstances, in February 2009, METI, in collaboration with related ministries, agencies and organizations, including the Japan External Trade Organization (JETRO), stepped up its systematic effort for information gathering on trade measures that appear motivated by protectionist consideration and has taken appropriate actions.

Against this background, in response to the 2009 Report, METI hereby announces the cases it gives a high priority in its trade policy and its approaches to tackle these priority issues. In tandem, METI will continue the best effort to increase a variety of routes available for dispute settlement. METI is of cognizant that this agenda is as important as settlement of individual cases, based upon the awareness that the forum for the Improvement of the Business Environment introduced by the EPAs as a new framework for dialogue provide effective tools for dispute resolution.

Issues on which Japan Urges Prompt Implementation of the WTO Recommendations

With regard to the following issues involving China and the United States, as a result of recourse made by Japan and other Members to the WTO dispute settlement procedures, the WTO Dispute Settlement Body (DSB) adopted recommendations that require China and the United States to bring their measures into conformity with relevant WTO Agreements. Japan will continue urging both countries to implement the WTO recommendations promptly and fully and to take appropriate action in accordance with the recommendations.
China
- Correction of Automotive Policy Order Imposing Customs Duties applicable to Automobiles on Automobile Parts
- Handling of Counterfeit, Pirated and Other Infringing Products

The US
- Halt of Distribution under the Byrd Amendment
- Prompt Implementation of the WTO Recommendations on the 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 US Anti-dumping Act of 1916

Issues Already Referred to the WTO Dispute Settlement Mechanism
The following issue involving the European Union (EU) has already been referred to the WTO dispute settlement procedures by Japan, the United States and Chinese Taipei. Japan will keep seeking improvements of the measures concerned through the WTO mechanisms in cooperation with the United States and Chinese Taipei.

EU
- Correction of Duty Rates on Products Covered by the Information Technology Agreement

Issues, while not having been Referred to the WTO Dispute Settlement Mechanism, for which Solutions Continue to be Sought
With regard to the following issues, although they have not been referred to the WTO dispute settlement procedures, solutions will be sought through the WTO mechanisms and bilateral consultations.

China
- Improvement with regard to Inappropriate Application of Anti-dumping Measures
- Withdrawal of the proposed Chinese Compulsory Certification (CCC) for IT Security Products

The US
- Improvement of the “Buy American” Clause Included in the American Recovery and Reinvestment Act of 2009

Asian Countries and Territories
- Handling of Counterfeit, Pirated and Other Infringing Products

India
- Abolition of Special Additional Duties on Imported Products

Russia
- Abolition of the Measure to Increase Duties on Vehicles, etc.
Note: Russia’s accession to the WTO is still under negotiation. However, METI listed the above-mentioned measure because Russia introduced it in direct opposition to the spirit of WTO Agreements while negotiating WTO accession.
○ Argentina
  - Improvement of Application of the Non-Automatic Import Licensing System for Elevators, etc.

○ Ukraine
  - Abolition of the Measure to Increase Duties
<table>
<thead>
<tr>
<th>Country</th>
<th>Priority Issues</th>
<th>Actions Taken and Resulted Improvements</th>
</tr>
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<tbody>
<tr>
<td>China</td>
<td>Correction of Imposition of Customs Duties for Automobiles on Automobile Parts</td>
<td>In January 2009, the WTO Appellate Body concluded that the measure taken by China is inconsistent with Article 3 of the GATT because it falls under internal charges and foreign-made parts are treated less favourably than Chinese-made parts. China expressed its intention to implement the WTO recommendations.</td>
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<td>Handling of Counterfeit, Pirated and Other Infringing Products</td>
<td>Japan has been addressing this issue by means of both requests for improvement of the systems and the provision of action-based cooperation at forums including the Japan China Economic Partnership Consultation held in October 2008, the Consultation between Heads of Patent Offices of Japan and China held in January 2009, and by the dispatch of a joint government-private mission concerning the protection of intellectual property rights in February 2009, etc. A Panel to examine the issues, such as the Chinese criminal thresholds, was established in September 2007 based on a request from the US, and Japan participated in the proceedings as a third party. In January 2009, the Panel concluded that the measure taken by China partly violates WTO agreements. In March 2009, this conclusion was approved by the DSB.</td>
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<td>Improvement with regard to Inappropriate Application of Anti-dumping Measures</td>
<td>Japan requested China to improve the anti-dumping measures at a series of meetings, including the Transitional Review Mechanism on China at the Anti-Dumping Committee in October 2008. Furthermore, Japan informed China of problems with individual cases and requested the country to implement its AD system in accordance with WTO agreements through the submission of the Government of Japan’s comments to the other country.</td>
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<td>Halt of Distribution under the Byrd Amendment</td>
<td>Japan invoked countermeasures against the US in September 2005. The US repealed the Byrd Amendment in February 2006. However, since the distribution of duties will be continued under the transitional clause, Japan urged the US to halt the distribution and extended the validity of the countermeasures. As the US had still not yet suspended the distribution, however, Japan further extended the validity of the countermeasures by one year in September 2008, following its alteration of commodity items and duty rates.</td>
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<td>Prompt Implementation of the WTO Recommendations on the Zeroing Methodology</td>
<td>In January 2007, the WTO Appellate Body fully accepted Japan’s claims and concluded that zeroing is inconsistent with WTO agreements. However, since the US had not clarified the particulars of actions taken by the deadline for the WTO recommendations, Japan submitted to the WTO a request for authorization to impose countermeasures against the US in January 2008. In April 2008, Japan asked for the establishment of a compliance panel based on the mutual agreement between Japan and the US. In April 2009, the compliance panel fully accepted Japan’s claims, and concluded that the US has not abolished zeroing and therefore has not fulfilled its obligation to implement the WTO recommendations. The US appealed the compliance panel’s rulings to the WTO Appellate Body in May 2009.</td>
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<td>Prompt Implementation of the WTO Recommendations on Anti-dumping Measures against Hot-Rolled Steel Products from Japan</td>
<td>The bill that aims to implement a part of the WTO recommendations which the US had not implemented was discarded due to the prorogation of the 109th Congress at the end of 2006. In January 2007, the US Government expressed its intention to work with the new Congress on this issue. Since the United States has not yet implemented the WTO recommendations, Japan has made a request for prompt implementation of the recommendations at meetings in the Japan-US Regulatory Reform Initiative in October 2008, and on other occasions, as well as at meetings of the DSB.</td>
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<td>Handling of Measures to Invalidate the Damages Recovery Law that was Enacted to Counteract the US Anti-dumping Act of 1916</td>
<td>In August 2006, Japan submitted an amicus brief to the US Federal Court of Appeals arguing that the preliminary anti-suit injunction regarding the Damages Recovery Law should be vacated. Accepting Japan’s arguments, the US Federal Court of Appeals decided to vacate the preliminary anti-suit injunction in June 2007. The defeated US company appealed to the US Federal Supreme Court. In June 2008, the US Federal Supreme Court rejected the appeal.</td>
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<td>EU</td>
<td>A series of consultations have been held, including those between Mr. Akira Amari, then Minister of METI, and Mr. Peter Mandelson, then European Commissioner for Trade. Since the EU has not demonstrated a willingness to solve the problem, however, Japan, together with the US and Chinese Taipei, requested consultations under the WTO dispute settlement procedures in May 2008. In July 2008, consultations were held between Japan and the EU. Since a response indicating a willingness to cooperate in the solution of the problem was not received from the EU, Japan requested for the establishment of a panel. The panel was established in September 2008. At present, the panel is conducting its examination.</td>
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<td>Asian Countries and Territories (Note)</td>
<td>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 the development of human resources in relevant organizations.</td>
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(Note) Asian Countries and Territories: ASEAN countries, Korea, Chinese Taipei, Hong Kong and India
METI Priorities in 2009 and the State of Play of METI Priorities in 2008

Set forth below are METI priorities in 2009 and the state of play of METI priorities in 2008:

China:

**Correction of Automotive Policy Order Imposing Customs Duties Applicable to Automobiles on Automobile Parts**

China introduced and put into force in part a measure whereby imported automobile parts shall be subject to the 25% import duty rate applicable to whole vehicles rather than the 10% import duty rate applicable to auto parts, if imported automobile parts are found as having the characters of whole vehicles, for example, (i) they are knockdown parts, (ii) they constitute a combination of particular components (for example, vehicle bodies, engines), or (iii) the total price of the imported parts accounts for 60% or more of the total value of the finished automobile, for the purpose of increasing the production capacity of complete vehicles and auto parts in China, and tightening the enforcement of customs duty collection on imported automobile parts. Although the entry into force of the measure was originally scheduled for July 1, 2006, with respect to imported parts that meet criterion (iii) above, the Government of China announced in that month that it would be postponed for two years.

In March and April 2006, Japan participated as a third party in the consultations for the WTO dispute settlement procedures which were initiated by the joint request of the United States, the EU and Canada. In May and June 2006, Japan had informal bilateral consultations on the issue with China. Subsequently, a panel was established at the DSB meeting held in October 2006 pursuant to the joint request of the United States, the EU and Canada, with Japan continued participating in the panel process as well as a third party.

The panel report issued in July 2008 accepted the claims of the complainants, and concluded that the Chinese system is inconsistent with the WTO Agreements, in that (i) the measure taken by China is inconsistent with Article III of the GATT because it is deemed as an “internal charge” and it treats foreign-made parts less favourably than Chinese-made parts and (ii) (even if the WTO Appellate Body considers the measure as a customs duty) the measure will be inconsistent with Article II of the GATT because it imposes tariffs at rates in excess of the bound tariff rates on foreign-made parts. In September 2008, China appealed to the WTO Appellate Body. However, the WTO Appellate Body report issued in January 2009 also concluded that the measure mentioned in above item (i) is WTO-inconsistent (as for the matter mentioned in above item (ii), the WTO Appellate Body found it unnecessary to examine the matter because the measure was determined to consistute “internal charges”).

At the meeting of the DSB held in February 2009, China expressed its intention to implement the DSB recommendations. Japan will continue to closely watch to see if China will bring the measure into conformity with the DSB recommendations.

**Handling of Counterfeit, Pirated and Other Infringing Products**

Although China has implemented a series of legislative amendments concerning measures
against counterfeit, pirated and other infringing products since it acceded to the WTO, its legislative systems and enforcement are still inadequate, and examination procedures take a long time. It is essential to implement measures to strengthen the protection of rights-holders.

Japan has participated in the consultations and the panel proceedings regarding the issue of the protection of intellectual property rights in China for which the US filed a lawsuit against China with the WTO in April 2007. The panel report, which was issued in January 2009 and approved by the DSB in March 2009, concluded that criminal thresholds don’t violate the TRIPS Agreement but the protection of copyrights for works not approved in China and the treatment of products forfeited by the customs authorities violate the TRIPS Agreement.

Through various bilateral and multilateral conferences and frameworks, including a joint mission of the government and industry concerning the protection of intellectual property rights in February 2009, Japan requested China to improve its domestic legislation, enforce legal protection appropriately and effectively, and strengthen administrative and judicial enforcement. In addition, Japan has provided support for the development of human resources in relevant organizations such as customs, police, courts and administrative agencies that deal with intellectual property rights. Japan has also provided support for the improvement of legal systems in China’s administrative and judicial institutions. These efforts are aimed at solving problems associated with both personnel and institutions.

Furthermore, the Office of Intellectual Property Protection, the government’s unified contact established within METI, has been responding to the requests of individual enterprises for advice and information and supporting various industry activities such as discussions with the Chinese government and Chinese industry representatives. Japan also conducted questionnaire surveys to determine the damage suffered by Japanese enterprises and the current status of controls by Chinese authorities.

Some improvement has been observed, as evidenced by the increase in the number of criminal prosecutions for infringement of intellectual property and the lowering of criminal thresholds for enterprises. However, the abundance of counterfeit, pirated and other infringing products is still a major concern. The damage suffered by Japanese companies has been huge and, accordingly, Japan will continue to request that China introduce and enforce legislation appropriately, take steps to strengthen criminal and administrative controls, and provide information regarding enforcement of relevant regulations.

**Improvement with regard to Inappropriate Application of Anti-dumping Measures**

Following its accession to the WTO in December 2001, China initiated 133 anti-dumping (AD) investigations by February 2009, 27 of which involved Japanese products. However, it is generally pointed out that AD investigations in China have the following problems:

(i) The Ministry of Commerce (MOFCOM, China’s investigating authority) initiates investigations without examining the accuracy and adequacy of the evidence provided in the application concerned.

(ii) It is unclear how MOFCOM evaluates all relevant economic factors and indices having a bearing on the state of the industry, and MOFCOM doesn’t disclose sufficient basis for “an objective examination” regarding a causal relationship between the dumped imports and injury to the domestic industry, in particular separating and distinguishing the injurious effects of other causal factors from the effect of dumped
imports.

(iii) By applying the “facts available,” MOFCOM uniformly applies unfair anti-dumping duties ranging from several dozens of percent to over 100% to other exporters or producers who are not known to MOFCOM and to whom a notice of the initiation of an investigation or a copy of the full text of the application concerned is not given.

Japan requested China to improve the procedures and practices of the AD investigations at various meetings, including the Transitional Review Mechanism on China at the WTO Anti-Dumping Committee in October 2008 and the Japan-China Economic Partnership Consultation. Furthermore, the Government of Japan had consultations with, and submitted comments to, MOFCOM, in each case where Japan found procedures inconsistent with WTO agreements and inappropriate practices.

Japan will continue to urge MOFCOM to implement AD investigation systems in a manner consistent with WTO agreements and, based on opinions or requests of Japanese companies, Japan will also strongly ask MOFCOM to conduct investigations in an appropriate manner.

**Withdrawal of the proposed Chinese Compulsory Certification (CCC) for IT Security Products**

In January 2008, the Chinese Government announced that with effect from May 1, 2009, 13 IT security products, including firewalls and smart card OSs, will be newly covered by the Chinese Compulsory Certification (CCC) System.

This issue was discussed at the meetings of the WTO TBT Committee in March, July and November 2008 and March 2009. At these meetings, Japan, the United States, EU and Korea expressed concerns that the system could be a barrier to foreign trade. In addition, Japan raised various issues in regard to this matter at bilateral meetings with the Chinese Government in close coordination with the United States, EU, Korea, etc. As a result, China announced on April 29, 2009 that the application of the Chinese Compulsory Certification (CCC) System would be limited to the IT security products procured by the Chinese Government and this application will commence on May 1, 2010.

Since this system will impede efficient trade between Japan and China even if it applies only to products procured by the Chinese Government, Prime Minister Taro Aso asked Prime Minister Wen Jiabao to reconsider the system at the Japan-China summit meeting held on April 29, 2009. Japan will continue urging the Chinese Government to withdraw the system.

**United States:**

**Halt of Distribution under the Byrd Amendment**

Certain amendment to the Tariff Act of 1930 of the United States, as widely known as the “Byrd Amendment”, provides for the distribution of duty revenues collected through anti-dumping (AD) and countervailing duty (CVD) measures to US companies, including such companies that have petitioned for the relevant measures.

The panel was established at the request of 11 countries and territories, including Japan and the EU. In January 2003, the WTO Appellate Body found that the Byrd Amendment is inconsistent with WTO Agreements and recommended that the United States bring it into
conformity with them. However, the December 2003 deadline for implementation passed without the United States having amended or abolished the Byrd Amendment. In response to the US failure to comply, an application to impose retaliatory measures submitted by Japan and seven other countries and territories including the EU was approved in November 2004. The EU and Canada implemented the retaliatory measures in May 2005, Mexico in August, and Japan in September. Japan imposed an additional duty at the rate of 15% on 15 products, including bearings and steels.

In February 2006, an act to repeal the Byrd Amendment was enacted in the United States. However, the transitional clause of the act permits the distribution of duty revenues on entries of goods made and filed before October 1, 2007. As long as the distribution continues even after the repeal of the Byrd Amendment, the inconsistency with WTO Agreements will remain and there still remain unfair competitive advantages for US producers. In consideration of this situation, Japan twice extended the effective term of the retaliatory measures by one year in September 2006 and in September 2007. Nevertheless, since no move toward a halt of distribution was observed in the United States, Japan further extended the effective term of the retaliatory measures by one year in August 2008 with subject items and duty rates changed. (An additional duty rate of 10.6% was adopted on two models of bearing products. Since the upper limit of the retaliatory measures was reduced due to a reduction in the total amount of distributed duty revenues, subject items and duty rates were changed accordingly.)

However, the United States distributed duty revenues pursuant to the provision of the transitional clause even in 2008. The amount of distributed duty revenues collected from Japanese products under the transitional provision amounted to $22.30 million (approximately ¥2.4 billion).

Japan requested that the US Government stop distribution despite the transitional clause on the occasions of the Japan-US Regulatory Reform Initiative and WTO DSB meetings. Japan will continue to cooperate with other Members to strongly urge the US Government to promptly halt the distribution and correct the inconsistency with the WTO agreements.

**Prompt Implementation of the WTO Recommendations on the Zeroing Methodology**

The US applies an AD procedure known as “zeroing,” under which price differences for each transaction or model exported at higher prices than domestic prices are treated as zero and dumping margins for overall products are artificially inflated. The zeroing procedure for calculating dumping margins is unfair since in actual practice it ignores transactions in which dumping is not occurring.

For this reason, Japan requested consultations with the US under WTO dispute settlement procedures in November 2004, and asked for the establishment of a panel in February 2005. During the panel proceedings it argued that not only the actual application of zeroing by the US in individual AD cases, but also the zeroing methodology as such were inconsistent with WTO agreements. The WTO Appellate Body in its report issued in January 2007 fully accepted Japan’s claims, ruling that zeroing was inconsistent with the WTO agreements throughout AD procedures, and recommended that the US bring the zeroing measure into
conformity.

In February 2007, Japan presented its request concerning specific issues to be implemented to the USTR and the Department of Commerce through letters from METI’s Vice-Minister and had several consultations with the US for implementation in cooperation with the EU, etc. However, since the US had not fully implemented the recommendations by the end of the reasonable period of time (December 24, 2007,) Japan submitted to the WTO a request for authorization to impose countermeasures against the US in January 2008, aiming to reserve the right to invoke the countermeasures. Following this, the US alleged at the DSB meeting that it had fully implemented the recommendations, even though it actually had not. Thereafter, Japan and the US reached agreement on subsequent procedures in March 2008, and Japan requested the WTO to establish a compliance panel to confirm the US’s failure to take measures to comply with the recommendations in April 2008. The compliance panel in its final report issued in April 2009 fully accepted Japan’s claims, and concluded that the US has not rectified the zeroing methodology as such and the actual application of zeroing in individual AD cases and therefore has not fulfilled its obligation to implement the WTO recommendations. The US appealed the compliance panel’s rulings to the WTO Appellate Body in May 2009.

Japan will continue to urge the US to abolish the practice of zeroing through two channels: the WTO dispute settlement procedures and the DDA rules negotiations.

**Prompt Implementation of the WTO Recommendations on Anti-dumping Measures against Hot-Rolled Steel Products from Japan**

With regard to AD measures that the United States imposed on certain hot-rolled steel products from Japan in June 1999, both the panel established upon the request of Japan and the WTO Appellate Body determined that the methodology of calculating the margin of dumping was inconsistent with WTO agreements and in August 2001, the DSB recommended that the United States bring the measure into conformity with the relevant agreement.

During the original reasonable period of time for implementation (which ended in November 2002), the United States failed to fully implement the recommendations, including the amendment of the US anti-dumping duty statute. Japan and the United States subsequently agreed to extend the period three times. In May 2005, a bill to implement the recommendations was introduced in the US House of Representatives (H.R. 2473,) but there was no prospect of adoption by the end of the extended period for implementation (end-July 2005.) In July 2005, recognizing the US’s intention to continue efforts to enact the bill, Japan reached an understanding with the United States that the period of time for compliance would not be extended any further and that Japan would retain its right to invoke retaliatory measures at any future date.

However, despite requests from Japan for the full and prompt implementation of the recommendations at several meetings, including the Japan-US Regulatory Reform Initiative in December 2006, the 109th Congress did not pass the bill and it was discarded at the end of 2006. Consequently, in January 2007, then Minister of Economy, Trade and Industry Akira
Amari again requested the then USTR Susan Schwab to make further efforts to implement the recommendations as soon as possible. At the DSB meeting in January 2007, the US Government expressed its intention to work with the new Congress on this issue. Although Japan has made several requests at DSB meetings and the Japan-US Regulatory Reform Initiative in October 2008, the US has not fully implemented the recommendations.

Japan will continue to request, at the DSB meetings and bilateral consultations such as the Japan-US Regulatory Reform Initiative, the United States to exert sincere efforts to fully and promptly implement the recommendations and rulings.

**Handling of Measures to Invalidate the Damages Recovery Law that was Enacted to Counteract the Anti-dumping Act of 1916**

In 1999, Japan and the EU filed complaints against the US with claims that remedy measures against dumping under Article 810 of the 1916 Revenue Act (1916 Anti-Dumping Act, “the 1916 AD Act”) are not AD duties permitted by the GATT and AD agreements and that provisions regarding the triple damages and others are inconsistent with WTO agreements. At the September 2000 DSB meeting, the reports of the panel and the WTO Appellate Body giving nearly complete approval to the claims of Japan and the EU were adopted, confirming that the 1916 AD Act is inconsistent with WTO agreements.

In the time since, the US has not taken any corrective measure to amend or abolish the 1916 AD Act. In a lawsuit demanding damage recovery under the 1916 AD Act lodged against a Japanese company in May 2004, the US Federal District Court handed down a judgment ordering the Japanese company to pay damages that amounted to approximately ¥4 billion. In response to this move, Japan introduced in December 2004 a special measures law (the Damage Recovery Law), which enables Japanese companies that have incurred damages through lawsuits under the 1916 AD Act to recover these damages, and put the law into effect in the same month.

In December 2004, the US repealed the 1916 AD Act. However, the repealing act carried a grandfather clause that the effect of the repeal did not extend to cases pending before the courts on the day of the repeal. Thus, the lawsuit against the Japanese company continued. In June 2006, the Japanese company lost the case and was forced to pay the large amount of damages previously ordered.

Based on a petition submitted by the US company as plaintiff, the US Federal District Court issued a preliminary anti-suit injunction prohibiting the Japanese company from filing a suit in Japan to obtain relief under Japan’s Special Measures Law. The Japanese company then submitted an appeal to the US Federal Court of Appeals complaining about this injunction. In August 2006, the Government of Japan submitted an *amicus brief* to the US Federal Court of Appeals arguing that the preliminary anti-suit injunction should be vacated on the grounds that it invalidated remedy measures provided by Japan relating to damages incurred by private individuals through measures in violation of international law, and thus should not be justified from the viewpoint of international comity.

In June 2007, the US Federal Court of Appeals accepted arguments in Japan’s *amicus brief*, and decided to vacate the US Federal District Court’s grant of the preliminary anti-suit injunction and remanded the case for dismissal of the US company’s claim regarding the
anti-suit injunction. In response to this, the US Federal District Court formally dismissed the claim by the US company in August 2007. In November 2007, the dissatisfied US company appealed to the US Federal Supreme Court. In June 2008, however, the US Federal Supreme Court rejected the appeal. As a result, the judgment made by the US Federal Court of Appeal to vacate the US Federal District Court’s grant of the preliminary anti-suit injunction became final.

Japan regards the above judgment of dismissal made by the US Federal Supreme Court as appropriate because Japan had requested that the anti-suit injunction should be vacated to avoid interference with Japan’s legitimate exercise of sovereignty and the legitimate right of access to courts that Japanese companies have.

On the other hand, some senators have repeatedly submitted a bill to Congress to in effect invalidate Japan’s Damages Recovery Law since 2008. Therefore, Japan will continue to closely watch movements in the US and respond appropriately.

Improvement of the “Buy American” Clause Included in the American Recovery and Reinvestment Act of 2009

In the United States, the Federal Government has been long obligated under the Buy American Act of 1933 to purchase US products or use US-made materials when it concludes contracts to purchase products or construct public buildings. Because the Buy American obligation of the act was amended to make it inapplicable to the contracting parties to the WTO’s Government Procurement Agreement (GPA), in order to ensure that the act remain consistent with the GPA.

However, the American Recovery and Reinvestment Act enacted in February 17, 2009 contains the so-called “Buy American” clause under which all of the iron, steel, and manufactured goods used for a project for the construction, alteration, or repair of a public building or public work conducted under the act must be produced in the United States. (However, there is a provision that if inconsistent with the public interests, or if sufficient and reasonably available quantities of products of a satisfactory quality are not produced in the US, or if the total cost of a project increases by 25% or more due to the use of US-made products, the “Buy American” clause will not apply.)

The American Recovery and Reinvestment Act also contains a provision that obligates the United States Department of Homeland Security to procure US-made textile items (those directly related to the national security interests) such as clothing and tents, but this provision will not apply if there exist no such products that can meet certain conditions.

The act stipulates that these provisions shall be applied in a manner consistent with US “obligations under international commitments.” Therefore, one may tell that certain consideration was made to respond to concerns of other countries.

However, the adoption of a clause giving preferential treatment to domestic products in itself runs counter to the commitment of the international community to act against protectionism that was underscored at the Summit on Financial Markets and the World Economy held in
November 2008. While Japan is expecting the US economy to make an early recovery, Japan must watch closely to see if the United States does apply the American Recovery and Reinvestment Act in a responsible manner with due regard to its international commitments and the commitment of the international community to act against protectionism.

**European Union**

**Elimination of Customs Duties on Products Covered by the Information Technology Agreement**

In the EU, while computers, computer-related equipment, semiconductors and other products subject to the WTO ITA (Information Technology Agreement) are imported free of duties, high tariffs are imposed on electrical appliances such as televisions and video apparatus, which are not covered by the ITA. Amid the diversification and sophistication of these products in recent years, the EU has already imposed or is currently considering imposing custom duties on such products that should be covered by the ITA through arbitrary changes of its tariff classifications.

Given that technological developments take place quickly in the IT sector, the ITA from its beginning addressed the need to respond to technological progress by, for example, providing, “Each party’s trade regime should evolve in a manner that enhances market access opportunities for information technology products” (Paragraph 1 of the ITA declaration) and stipulating for agreement by consensus to incorporate additional products covered by the ITA. However, Japan is seriously concerned that recent developments taking place within the EU to impose tariffs on certain IT products incorporating multiple and/or advanced functions through technological development could go against the basic principle of the ITA, as well as its achievements to date (tax concessions made by various countries).

In January 2007, Minister of Economy, Trade and Industry Akira Amari requested European Commissioner for Trade Peter Mandelson to resolve this problem, and there have also been several meetings between the Vice-Minister of METI and the Director General for Trade of the European Commission to discuss resolution of this problem.

However, the EU didn’t make an effort to solve this problem. In May 2008, therefore, Japan requested consultations under the WTO dispute settlement procedures in cooperation with the US and Chinese Taipei, claiming that the imposition of customs duties on these products is inconsistent with the WTO ITA. In July 2008, Japan held consultations with the EU.

However, Japan did not receive a satisfactory response from the EU at the consultations. Therefore, Japan requested the establishment of a panel in cooperation with the US and Chinese Taipei. The panel was established in September 2008. The panel decided to make an effort to help solve the problem. With the aim of resolving the issue, Japan will proceed with formalities under the WTO rules in cooperation with the US and Chinese Taipei.

**Asian Countries and Territories (ASEAN Countries, Korea, Chinese Taipei, Hong Kong and India)**

**Handling of Counterfeit, Pirated and Other Infringing Products**

While awareness of the need for the protection of intellectual property rights is growing in Asian countries and territories, much remains to be improved in terms of legal systems and
their administration, and it is absolutely essential to strengthen the protection of the holders of intellectual property rights.

Japan has requested—through various opportunities and frameworks for multilateral as well as bilateral discussion, such as APEC, WIPO, WTO, and EPAs with various countries—that the Asian countries and territories administer relevant legal systems appropriately and effectively and strengthen enforcement efforts by administrative and judicial branches. In February 2008, a joint government-private mission was dispatched to India for the first time. During the meetings that took place, experts in intellectual property rights from both countries exchanged views and Japan asked India to strengthen the protection of intellectual property rights in that country.

Japan has also supported the development of human resources in relevant local organizations such as customs, police, and administrative offices related to intellectual property rights, making strenuous efforts toward solving the problem in both personnel and institutional aspects.

As ASEAN countries often become locations of distribution of infringing products, it is essential to promote exchanges of information on cases of infringement of intellectual property rights among the countries concerned to help rectify these conditions. Japan has been leading international efforts to strengthen the protection of intellectual property rights: for example, the establishment of a joint session between experts from customs and intellectual property fields that was proposed by Japan was agreed at the APEC IPEG in June 2007; then, a joint session between experts from customs and intellectual property fields was held in Peru in February 2008.

Further, mainly through the Office of Intellectual Property Protection, the Government of Japan’s unified contact established within METI, Japan supports various activities, for example, responding to the requests of individual enterprises for advice and the provision of information.

However, the actual proliferation of counterfeit, pirated and other infringing products in Asian countries and territories, including the manufacture and distribution of infringing products, still poses great concern. Also, given the serious damage suffered by Japanese companies, Japan will continue to request that these countries and territories provide information on the appropriate improvement and administration of their legal systems concerned regarding the enforcement of intellectual property rights.

**India/Abolition of Special Additional Duties on Imported Products**

As ties between the Japanese and Indian economies increase, many Japanese enterprises point out that India’s complicated taxation and tariff systems pose a trade barrier. There is a possibility that some of these systems violate WTO agreements. For example, when products are imported into India, a “Countervailing Duty (Additional Duty,)” “Special Additional Duty” and “Education Cess,” in addition to “Basic Custom Duty (applicable duty rate),” are collected by customs offices. It is noted that the imposition of these duties possibly violates WTO agreements. As for the Countervailing Duty and Special Additional Duty, in particular, the WTO Appellate Body in 2008 considered these to be in violation of the GATT. However, India still continues to apply these duty rates. On the occasion of inter-governmental consultations, including Japan-India EPA negotiations, Japan has requested the Government
of India to change its customs tariff system, including the Special Additional Duty, to make it more transparent and consistent with WTO agreements. Japan must make use of various opportunities to urge India to improve its customs tariff system.

As for the Special Additional Duty, the Government of India introduced a refund system in 2007. However, it is necessary to note that the introduction of the refund system doesn’t guarantee consistency with WTO agreements. A problem that has been pointed out with regard to the refund system is that conditions for application are too rigid and the details of the procedure are unknown. Although it can be appreciated to some degree that a relaxation of application conditions was announced in November 2008, there have only been a limited number of cases where a refund was actually provided since the introduction of the new conditions. Therefore, it is necessary to urge India to further improve the refund system.

Russia
Repeal of Increases in Customs Duties on Automobiles, etc.

Russia, which has the largest size of economy among all the non-WTO Member countries, raised the rates of customs duties on automobiles and trucks in January 2009 and on a part of steel products and agricultural machinery in February 2009.

It will be difficult to question the consistency of the measure with the international trade rules (i.e. the WTO Agreements) because Russia is not a WTO Member. However, Russia, as a member of the Group of Twenty, at its Summit on Financial Markets and the World Economy held in Washington, D.C., the United States in November 2008, participated in their [joint?] declaration that no protectionist measure would be taken within the next 12 months.

On the ground that the measures taken by Russia will not contribute to the promotion of free and open trade—the basic principle of the WTO—and rather run counter to the declaration of the summit meeting, Japan has repeatedly requested that Russia should immediately abolish the measures increasing the rates of said customs tariffs at the Leaders level, via the concerned Minister and from the Embassy of Japan in Russia. The Government of Russia has taken note of concerns expressed by Japan. At present, however, there is no action taken by Russia to repeal the measures. Rather, Russia raised the rates of customs tariffs on special purpose vehicles, including mobile cranes, in April 2009, and raised the rates of customs tariffs on LCD and plasma TVs in May.

The restraint on protectionist measures was discussed at the 2nd Summit on Financial Markets and the World Economy held in London, the United Kingdom in April 2009, and it was agreed that the effective term of the agreement made in Washington, D.C. would be extended up to the end of 2010. Prime Minister Taro Aso asked Prime Minister Vladimir Putin during his visit to Japan in May 2009 to reconsider the raised tariff. Japan will continue to closely watch developments regarding a move toward protectionist measures in Russia and will continue to ask for the repeal thereof through all available channels.
Argentina

Improvement of Application of the Non-Automatic Import Licensing System to Elevators, etc.

In November 2008, Argentina changed its import licensing system for elevator products from automatic to non-automatic to meet the necessity to establish a mechanism for the monitor and control during customs clearance procedures of certain types of imported metallurgical products. In addition, the import licensing system for other products was also changed from automatic to non-automatic. This led to a situation where an elevator product exported from Japan to Argentina arriving at port couldn’t be landed because an import license had not been obtained. Delivery of the product was delayed and warehousing charges incurred.

The WTO’s Agreement on Import Licensing Procedures stipulates that if a non-automatic import licensing system is introduced, the system should not restrict importation and an import license should be issued within 30 days, in principle, from the date of the import application.

In the case under review, an import license was not issued for the elevator product imported from Japan even after the lapse of 30 days from the date of the import application, and there is a high possibility that this violates the WTO rules. Therefore, METI requested the Argentine Ambassador to Japan to apply the non-automatic import licensing system in a manner consistent with the WTO rules, including the issuance of an import license for the elevator product concerned. In Argentina, the Japanese embassy requested the Argentine Ministry of Foreign Affairs and Ministry of Production to take positive action on the matter.

In response to the request made by Japan, the Argentine side replied that they would make an effort to solve the problem as early as possible. After the request, an import license was issued for a portion of the products, including the elevator product kept at the Argentine port. Although there are moves toward improvement for certain products, there are some indications that the import licensing system will be introduced for other products.

Japan will continue to watch closely how the Argentine side acts in relation to this matter.

Ukraine

Repeal of Increases in Customs Duties

In December 2008, Ukraine’s Supreme Council (equivalent to the Diet in Japan) adopted a bill to uniformly increase the rates of customs duties by 13% for all imported products (except for certain products), however, on a temporary basis (only for six months), for the reason that the country’s trade balance had deteriorated. President Viktor Yushchenko vetoed the bill once, but signed it on February 20, 2009. Pursuant to the GATT, Ukraine submitted a notice to the WTO to the effect that this measure aims to improve the country’s international balance of payments, and increased the rates of customs duties with effect from March 7, 2009.

On the ground that Ukraine, which acceded to the WTO in May 2008, is suspected to have adopted the bill of increasing the rates of customs duties in order to protect its domestic industries and that this measure runs counter to the WTO’s spirit of promoting free and open trade, Japan, through its Ambassador to Ukraine, asked Ukraine to reconsider the matter as soon as possible. METI also asked Ukraine’s Ambassador to Japan to repeal the increases in
Moreover, on March 10, 2009, as the increase in the custom duty rates in excess of the tariff bindings is inconsistent with the GATT, Senior Vice Minister of Economy, Trade and Industry, Sanae Takaichi, asked Ukraine’s Minister of Economy, during his visit to Japan, to withdraw immediately the measure. At the Japan-Ukraine summit meeting held in Tokyo in March 2009, Japan pointed out that it is important for both countries to resist protectionist moves in order to bolster the recovery of the world economy.

In response to these requests from Japan, Ukraine’s cabinet meeting submitted a bill to repeal the increases in customs tariff rates to the Supreme Council on March 18, 2009. In April 2009, however, the taxation and tariff committee of the Ukraine’s Supreme Council prepared a document to send the bill back to the Government. Thus, there is not much advance about the abolition of the increase in customs duties of Ukraine.

Against this background, Japan recently again asked the Government of Ukraine to make an effort to realize a reduction in customs tariffs at an early date. Japan will continue to closely watch developments regarding this issue.