Japan

【Risk Warning】 In 2008 Japan issued many technical regulations concerning the sectors of industrial products, household goods and agricultural products. In the *Revision of Cadmium and Lead Precipitation Standard of Glass, Ceramic or Enamel Utensils and Food Container*, the limitation on cadmium and lead precipitation is raised to a much more stringent level. As a consequence, related manufacturers and trade enterprises should strive to meet the requirements of the new regulation and to use pigments with no or little cadmium or lead to decorative ceramics and glass products to ensure that the export of the commodities will not be negatively influenced. In addition, the Japanese government will issue "REACH in Japanese version" in 2010, regulateing the responsibility for reporting the specifications of more than 20,000 chemicals, announcing "priority chemical substances" of higher risks, and implementing a whole process management from suppliers through to production on hazardous chemicals. Therefore we remind related Chinese exporters to pay close attention to the related following-ups and to take necessary precautions.

1 An Overview of Bilateral Trade and Investment

According to the statistics released from China Customs, the volume of the bilateral trade between China and Japan hit U.S. $266.79 billion in 2008 with a year-on-year rise of 13%, among which China's export to Japan accounted for U.S. $116.13 billion, which saw a year-on-year growth of 13.8%, while China's imports from Japan saw a year-on-year rise of 12.5% to U.S. $150.65 billion. With imports growing much faster than exports, China ran a trade deficit of U.S. $34.52 billion with Japan.

In 2008, China's major exports were optical devices, photographic devices, medical devices, garments and accessories thereof etc. China's major imports from Japan were electrical machineries, electrical appliances, audio-video devices and parts thereof, steel and organic chemicals.

As was released by China's Ministry of Commerce(MOFCOM), by the end of 2008, the accumulated turnover of the engineering contracts completed by Chinese companies in Japan had added up to U.S. $213 million, the accumulated volume of the completed labor service contracts had been U.S. $1.44 billion.

According to the figures of MOFCOM, China's direct non-financial investment in Japan approved by or filed with MOFCOM totaled U.S. $34.27 million in 2008.

According to the figures of MOFCOM, Japanese firms invested 1,438 projects in China in 2008, with an actual capital use of U.S. $3.65 billion.

2 An Overview of Trade and Investment Regime

2.1 Trade Administration Regime and Its Development

2.1.1 Tariff Regime

2.1.1.1 Tariff Administration

The major legislation governing customs tariff in Japan mainly includes *Customs Law*, *Customs Tariff Law*, and *Temporary Tariff Measures Law*. Japan's Ministry of Finance is the legislative body of tariff administration regime. Japan Customs, affiliated to the Ministry of Finance, is the executive body.

Japan's import tariff rate includes general rate, WTO conventional rate, general preferential rate, LDC preferential rate, temporary rate and free trade temporary rate. General rate is stipulated by *Customs Tariff Law* and will be adopted for a long term if no exceptional case occurs. WTO conventional rate applicable to WTO members is prescribed in the schedules of tariff consessions. General preferential rate, stipulated in Japan's *Temporary Tariff Measures Law* is the general preference given to developing countries since August 1971 after Japan implemented the UNCTAD' resolution. China is one of the recipient countries of Japan's Generalized System of Preference(GSP). Both of least developed country preferential rate and temporary rate are stipulated by *Temporary Tariff Measures Law*. Free trade conventional rate is applicable to the free trade agreements concluded between Japan and specific countries. Japan gives reduction or exemption of customs duty to the products originated in these specific countries in accordance to the free trade conventions. At present, Japan has signed free trade agreements with Singapore, Mexico, Malaysia, the Philippines, Chile, Thailand, Brunei and Indonesia, Association of Southeast Asia, Vietnam and Switzerland. The priority order for Japan's import tariff rates is preferential rate, WTO conventional rate, temporary rate and general rate in turn.

In March, 2008, Japan Customs published some amendments of *Customs Tariff Law* which came into operation on March 1, 2008. The amendments include: expanding the scope of exceptional customs formality, strengthening the management of intellectual property infringement products; exempting the tariff on biological ETBE(gasoline additive) as well as high-carbon Fe-Cr alloy; adding raw silk to the object products of tariff quota management; granting one-year extension to temporary tariff rate, the special emergency tariff system of agricultural products and the tariff emergency measures related to beef and pork, all of which were to expire on March 31, 2008; granting a three-year extension to processing re-import tariff reduction system and the tariff exemption system on the spare parts of airplanes, which were to expire on March 31, 2008.

In May, 2008, Japan Customs published some amendments of *the Law on Import- and-Export Related Business for Electronic Information Processing Organization* which came into operation on October 1, 2008. This modification aimed at making the import and export customs formality more convenient and ensuring the smooth flow of goods at ports and airports and people's freedom of Entry-Exit. According to the amendment,

NACCS(Nippon Automated Cargo Clearance System) dealing with the Customs import and export formalities as well as the civil business and EDI dealing with the port formalities were integrated into the NACCS Center. The original independent Legal Person Clearance Center was dissolved and a new Import, Export, Port-related Information Processing Center Ltd. was established to administrate NACCS Center. Apart from the import and export customs procedures, NACCS Center also handles port procedures, import management procedures, food hygiene procedures, animal and plant quarantine procedures, trade management procedures and other related procedures. NACCS Center becomes an integration center of going through all these procedures.

2.1.1.2 Tariff Level and Its Adjustment

For agricultural products, Japan applies the system of Positive List and imposes preferential tariff only on specific products, which mainly includes live gefilte fish excluding carps and gold fish, tricholoma matsutake, dried bamboo shoots and cooking spices. For industrial products, Japan applies the system of Negative List. GSP preferential rate is applied to all industrial items excluding special products such as leather clothing, plywood, raw silk, etc. Preference-given items are basically duty-free.

In the fiscal year of 2007, Japan's the most-favored-nation simple average rate applied was 5.1%, among which the simple average rate was 21.8% for agricultural products and 2.6% for non-agricultural product.

In 2008, Japan cancelled the GSP preferential rates that are applicable only to products of Chinese origin, mainly on seafood, the kitchen supplies and household goods, including: other finished fish under HS code No. 1604.19ex(except eel and arthropod fish)(only limited to the whole fish and fragmental fish except slander fish); finished mollusks under the HS code No. 1605.90-2-(3)ex(the products other than smoked products, squid, abalone and shellfish products outside column)(excluding the products packed with sealed containers); soda ash under the HS code No. 2836.20-1; table supplies, kitchen supplies and other household goods made in ceramic and other potteries of toiletry under the HS code No. 6912.00; scissors, sewing knives and other similar scissors and knives under the HS code No. 8213.00; spoons, forks and other similar kitchen utensils and table supplies under the HS code No. 8215.99; bedding and similar products(except sleeping bags and mattresses),(limited to the products with springs, the products padded by any materials or stuffed internally and the foam rubber or foam plastic products under the HS code No. 9404.90.

2.1.2 Import Administration

Japan's Ministry of Economy, Trade and Industry and Japan Customs are the major departments of the Japanese government for import administration. *Foreign Exchange and Foreign Trade Control Law*, *Customs Law*, *Import Trade Administration Law*, *Import & Export Trading Law* are major laws of Japan's import and export administration.

According to the stipulations of *Customs Law*, Japan put a ban on the import of drugs, firearms and ammunitions, explosives, precursor materials for chemical weapons,

germs which are likely to be used for bioterrorism, IPR infringing products, forged money, books and drawing that may harm public safety or morals, and child pornography, etc. *Customs Law* also stipulates that the export of some specific goods must be authorized or permitted by other laws, such as *Foreign Exchange and Foreign Trade Control Law*, *Import Trade Management Act*, *Administration Law on Holding Guns and Swords*, *Dangerous Drugs and Toxic Substances Control Act*, *Pharmaceutical Affairs Law and Law on the Protection of Aquatic Resources*, *etc*.

Apart from the prohibited articles, *Import Trade Administration Law* and *Import & Export Trading Law* also provide that, certain products must get approval for importation, including specific products imported from specific places of origin or from the places of shipment, products that must be confirmed by the executive Minister before import, and products that must submit certain files to the Customs. Specifically, these products include whale and whale products produced or shipped in countries which have not signed *the International Anti-whaling Petition*, chars and trout produced or shipped in China, Korea and China's Taiwan province as well as marine mammals, fish and crustacean, sargassum and its products from public sea.

2.1.3 Export Administration

The legal framework of Japan's export administration mainly includes *Foreign Exchange and Foreign Trade Law*, *Import and Export Transactions Law*, and *Export Administration Ordinance*, which stipulates export controls, restrictions on the supply of technologies, prior approval and post-export examination of exports. Japan is a member of the *Wassenaar Agreement* and most of the international export control organizations, including Nuclear Suppliers Group(NSG), Australia Group(AG) and Missile Technology Control Regime (MTCR), and subjects all the goods designated in the relevant international treaties to examinations and licensing. Ministry of Economy, Trade and Industry(METI) is the department responsible for the administration of Japan's export. Other relevant responsible departments include Japan Customs, Ministry of Finance, the Bank of Japan and authorized Foreign Exchange Bank.

According to the stipulations of *Customs Law*, the following four categories of products are prohibited to be imported:(1) narcotic, psychotropic substances, marijuana, opium, poppy powder and doping;(2) child pornographic publications;(3) the products infringing the patent right, the utility new style right, the trademark right, the copyright-related neighboring right the product design patent right and the performance right;(4) the products violating the Article 2.1.1 and Article 2.1.3 of *Countering Unfair Competition Law*. *Customs Law* also provides that the export of some specific goods should be authorized or permitted by other laws, such as *Foreign Exchange and Foreign Trade Control Law*, *Import Trade Management Act*, *Cultural Property Protection Act*, *The Law for the Prevention of Infectious Disease in Domestic Animals*, *and Plant Protection Act*.

2.1.4 Trade Remedies

Japan's trade relief system mainly consists of the following laws and regulations: *Customs Tariff Law*, *Anti-dumping Tariff Ordinance*, *Countervailing*, *Decree on Emergency*

Import Tariff, *Decree on Emergency Import Tariff of Chinese Goods*. Ministry of Finance, ministries of relevant industries and METI are the organizations responsible for the trade relief, but MOF executes the final judgment only.

For a long time, Japan has implemented passive trade remedy policies. Until 2008, Japan only initiated seven antidumping investigations. In recent years, Japan has been transmitting to positive trade remedy policies. In 2008, the Japanese Finance Ministry announced plans to adjust anti-dumping investigation system since 2009 and liberalize the condition of enterprises applying for anti-dumping investigations. The application without complete evidence will be considered as well. Meanwhile, Japan added the temporary measures prior to the official antidumping measures. In addition, during the implementation of temporary measures, the involved parties are allowed to put forward refutations on the application, which will also affect whether the final anti-dumping measures would be implemented officially or not.

2.2 Investment Administration Regime and Its Development

Japan's trade and investment legal regime mainly consists of *Foreign Exchange and Foreign Trade Law* (abbreviated as *Foreign Exchange Law*), *Import and Export Transaction Law*, relevant decrees, ordinances, notice, points for attention of import and export promulgated by the government.

METI is the major administration department for Japan's trade and investment, MOF and its affiliated Customs, Ministry of Agriculture, Forestry and Fisheries, Ministry of Health, Labor and Welfare, the Bank of Japan etc all touch upon the function of trade and investment administration.

Japan adopts post report system to foreign capital, and prior report and approval system in businesses concerning national security and in the businesses that might hinder public order and public safety and should maintain the features of liberalization. Japan has no specific provisions on which industries should be prohibited, restricted or encouraged, and only differentiates between post report system and prior report system. Industry classification is based on *Japan Standard Industry Classification*. Foreign direct investment in Japan has, in the aggregate, been liberalized, with the notable exception in four major sectors, namely, agriculture forestry fishery, mining industry, petroleum industry, and leather industry.

In order to absorb more overseas investment funds and promote enterprise investment in Japan, the Japanese government announced in June 2008 that the domestic commissioned operators who have the substantial right to use funds and make decisions, sign contracts of remuneration with overseas investors and whose income does not depend on specific investment were eligible to corporation tax exemption.

In January 2009, the Japanese government decided to remove the taxes levied on some overseas investors by modifying the tax system to boost the investment in Japan. According to the Japanese government's tax amendments, the overseas investors eligible for tax-free should meet the following requirements: the proportion of foreign investment should not exceed 25%; the proportion of foreign investment in fund operation company should not exceed 50%; the investor has no business of any kinds in

Japan; the investor's purpose is limited to capital operation rather than mergers and acquisitions; the investors should have an one-year or more investment performance, etc.

2.3 Trade and Investment Related Administration Regime and Its Development

Laws concerning standardization management in Japan mainly include *Japanese Industrial Standards Law*, *Japanese Agricultural and Forestry Materials Standards Law*, *Food Sanitation Law*, *Pharmaceutical Affairs Law*, *Japanese Agriculture*, *Forestry Specifications of Silk*, *Consumer Products Safety Law*, *Product Safety of Electrical Appliance & Materials*(*PSE*) and so on.

2.3.1 National Standards System

Japanese national standards can be divided into Japanese Industrial Standards(JIS) and Japanese Agricultural and Forestry Standards(JAS).

2.3.1.1 Industrial Standards(JIS) System

According to *Japanese Industrial Standards Law*, JIS System is to be drafted, revised, confirmed and repealed by Japanese Industrial Standards Investigation Organization of Ministry of Economy and Industry, and approved by related government departments. JIS Standards covers all industrial fields with the exceptions of pharmacy, pesticides, chemical fertilizers, silk, food and other agricultural and forestry products, which are regulated by specific standards or technical specifications. JIS Standards includes products standards (products' shape, size, quality, performance and so on), approaches standards (test, analysis, measurement methods and operational standards) and basic standards(terminology, symbols, units, priority number, etc.). The industrial fields concerned include architecture, mechanics, electric, metallurgy, transportation, chemical industry, mining, textile, paper-making, medical equipment, ceramics, daily necessities and information technology, etc.
Japanese Industrial Standards Law(JIS) was revised in June 2004, and implemented with the new JIS symbols system on October 1, 2005. After three years of transitional period for the old JIS symbols system, the new one has been implemented in an all-round way on October 1, 2008. The modification mainly lies in the following regards: the former country identification system was modified into the third party non-governmental agency (logging in identification agency) identification system; the designated merchandise system was repealed(i.e. the government may designate the line of the products to be allowed to carry JIS tags); the line of identified products was expanded to all the mineral products and its processing technology defined by JIS; the line of applicants formerly limited only to the manufacturers and processors in or out of Japan, was expanded to include business agencies, importers and overseas exports; the design of the symbol of JIS was changed and so on.

2.3.1.2 Agricultural and Forestry Standards(JAS) System

According to *Japanese Agricultural and Forestry Materials Standards Law*, Japanese Agricultural and Forestry Standards (JAS) is to be constituted by an investigation committee made up of experienced representatives in consumption, circulation and

production fields. With the exception of liquor, pharmaceuticals and some other products, JAS Standards applies to all agricultural and forestry materials, namely, (1) food products and grease; (2) agricultural products, livestock products, aquatic products, and products manufactured or processed with the above products as raw materials and stuff; (3) materials prescribed by decrees (general materials, plywood and raw silk etc.). The main contents of JAS identification system lie in the following regards: manage the companies certified by JAS with JAS specifications or standards so as to ensure the reliability of their products; the products with JAS symbols should be registered and evaluated only after the related administrations' verification of the products' accordance with JAS specification; revoke the JAS certification of unqualified products; the Agriculture, Forestry and Fisheries Consumption Technique Center is responsible for the follow-up management operation, the investigation and evaluation of the products sold on the market and the judgment on whether JAS symbol products be in line with the JAS specifications. Meanwhile, the center should also identify the quality management situation of companies, register evaluation agencies and investigate the evaluation operation of companies.

Japanese Agricultural and Forestry Materials Standards Law was implemented on March 1, 2006, after its revision on JAS system. In the new law, criteria of some circulation methods are added, the registration and evaluation agencies are transferred to the third party civil organizations, the evaluation of registration and evaluation agencies are revoked, and the line of products qualified for JAS symbols is expanded.

2.3.2 Other Standard Systems

Besides Industrial Standards (JIS) and Agricultural and Forestry Standards (JAS), there are still some other industry standards, including Japanese Motor Industry's JEM specifications, Automotive Technology Committee's JASO specifications, IT Equipment Interference Voluntary Control Committee's VCCI identifications.

2.4 Trade-related Technical Measures Adopted in 2008

2.4.1 Technical Regulations

In 2008, Japan enacted a lot of technical regulations, covering packaging containers, electrical appliances, toys, chemicals and other industries. The main regulations are as follows:

2.4.1.1 Revision of Packing Container's Criterion

On January 14, 2008, Japanese Ministry of Health, Labor and Welfare released *Revision of General Specifications for Equipment, Packaging, Container and Related Materials, and Revision of Manufacturing Standard for Equipment, Packaging and Container*. It lowered the maximum lead content in tin coating and metal in contact with food, and in solders used for produce equipment, packaging and container; it also revised the line of *copper or copper alloy* equipment, packaging and container which could not be electroplated according to production standards. The act was approved in the end of

April, 2008.

2.4.1.2 Revision of *Electrical Appliance and Material Safety Law*

On January 18, 2008, Japanese Ministry of Economy and Industry announced the Cabinet Decree based on *Electrical Appliance and Material Safety Law*. According to the decree, lithium-ion batteries must meet the technical requirements of Supplier's Declaration of Conformity (SDOC) and paste PSE (Product Safety of Electrical Appliance & Materials) label. The act went into effect on December 20, 2008.

2.4.1.3 Revision of Cadmium and Lead Precipitation Standard of Glassworks and Other Products

On February 5, 2008, Japanese Ministry of Health, Labor and Welfare released *Revision of Cadmium and Lead Precipitation Standard of Glass, Ceramic or Enamel Food Utensils and Food Container*, thus revising cadmium and lead precipitation standard of glass, ceramic or enamel food utensils and food containers. The revised standard came into effect as of October 2008. The revised cadmium and lead precipitation limitation is much more stringent. Take flat containers for example. The former lead precipitation limitation is 1.7 mg/dm^2, while the new standard is 0.8 mg/dm^2; the former cadmium precipitation limitation is 0.17 mg/dm^2, and the revised one in the new standard is 0.07 mg/dm^2.

Ceramics are one of China's bulk export commodities. To ensure the ceramics and glass products exported to Japan comply with the new requirements of the Japanese government about cadmium and lead precipitation limitation, related manufacturers and trade enterprises should pay close attention to the new regulation and try to use pigments with no or little cadmium or lead to decorative ceramics and glass products so that the exportation of the commodities will not be negatively influenced.

2.4.1.4 Revision of *Gas Utility Industry Law Technical Requirements*

On March 19, 2008, Japanese Ministry of Economy and Industry informed that it would revise *the Ministerial and Governmental Decree on Gas Utility Industry Law Technical Requirements* and *the Ministerial and Governmental Decree on Liquefied Petroleum Gas Traded in Safe and Fine Condition of Requirements*. Gas Cooker(including the combustion mouth of grill and oven, except those with small size liquefied petroleum gas container) will be included in the line of products covered in the above decrees. Annular combustion mouth will be required to install combustion mouth safety turning-off device and temperature control device, while the commercial gas stove is exempted from the requirement. The decree went into effect in October 2008.

2.4.1.5 Revision of *Toy Safety Standards*

On March 31, 2008, Japanese *Ministry of Health, Labor and Welfare* released *the Revised Edition of Toy Safety Standards, which* strengthened the regulatory requirements of soluble lead by expanding the line of designated toys, revising descriptions for toy coatings and adding descriptions for the new category "metal and jewel toy".

2.4.1.6 Revision of *Industrial Safety and Health Act*

On June 24, 2008, Japanese Ministry of Health, Labor and Welfare informed *The Revised Edition of Industrial Safety and Health Act Implementation Decree*. The line of asbestos products prohibited by Japanese government has already been expanded from October 1, 2007. (See also in Japanese report G/TBT/N/JPN/198). Besides, the Japanese government will prohibit the production of some products with asbestos which were still in use before(such as the products used in the packaging of chemical and steel industry equipment in the domestic market).

2.4.1.7 Revision of *Pharmaceutical Affairs Act*

On July 18, 2008, Japanese Ministry of Health, Labor and Welfare informed that *the 15th Edition of Japanese Pharmacopoeia* (the standard of sodium) was revised and would come into effect by the end of July 2008. On November 12, 2008, Japanese Ministry of Health, Labor and Welfare released *Partly Revised Implementation Details of Japanese Pharmacopoeia*, which required the marking of dangerous level on containers directly contacting with medicine. It is to be approved and come into effect in June 2009.

2.4.1.8 Revision of *Tab Guide to Chemical Hazards*

On August 12, 2008, Japanese Ministry of Health, Labor and Welfare informed *The Amendment of Tab Guide to Chemical Hazards*, which reflected the revision of *Industrial Safety and Health Act* and established globally unified chemicals classification and labeling system.

2.4.1.9 Identification of Designated Medicine

On November 12, 2008, Japanese Ministry of Health, Labor and Welfare released *The Name of 'Designated Medicine' and Its Proper Usage Prescribed in 'Pharmaceutical Affairs Act'*. To control the abuse of chemical medicines with negative effect on the central nervous system and in accordance with *Pharmaceutical Affairs Act*, the Japanese government identified this kind of medicine as 'designated medicine'. Except being used in proper ways(e. g. in pharmaceuticals, chemical analysis of the standard and research in universities and chemical companies), the 'designated medicines' will be prohibited from manufacturing, import and sales in the market. The bill was approved in December 2008 and went into effect in January, 2009.

2.4.2 Sanitary and Phytosanitary Measures

2.4.2.1 Strengthening Safety Management of Imported Pet Food

On January 15, 2008, Japanese Ministry of Agriculture, Forestry and Fisheries and Japanese Ministry of Environment informed they would release *Pet Food Safety Assurance Law* to prevent harm to animal health caused by harmful pet food. It prescribed production of pet food ingredients and labeling standards, prohibited producing, importing and selling the pet food that does not meet these standards, or

that is polluted or might be polluted by hazardous substances; the ministers of Japanese Ministry of Agriculture, Forestry and Fisheries and Japanese Ministry of Environment could recall or dispose of these foods if the harmful food had been sold; pet food manufacturers and importers should inform the two ministries before the transaction, and manufacturers, importers and dealers of pet food should keep the records of producing, importing, shipping and the introducing of pet food and so on. *Pet Food Safety Assurance Law* released In June 2008 will take effect in September, 2009. China is one of Japan's key pet food exporters of pork pet food. As the implementation of the law will put more requirements on the quality of imported pet food, Chinese pet food companies exporting food to Japan should face up to it actively.

2.4.2.2 Revision of *Enforcement Ordinance of Plant Protection Act*

On May 20, 2008, Japanese Ministry of Agriculture, Forestry and Fisheries released *Bill Summary of Amendments to Enforcement Ordinance of Plant Protection Act*. The bill expanded the line of non-quarantine harmful organisms which do not need to be quarantined, added two kinds of quarantine harmful organisms. If the plant with the two organisms are carried not to be planted, it is allowed into the border without inspection. Plants and regions are added to the list of exporting countries' plants required to undergo testing, and at the same time added to the list of banned import. Some other modifications have been made on the lists of banned import and of exporting countries' plants required to undergo testing.

2.4.2.3 Revision of *the Enforcement Regulation on Food Sanitation Law and Standards and Norms of Food and Food Additives*

On May 20, 2008, the Ministry of Health, Labor and Welfare promulgated the "*Revision of Enforcement Regulation on the Food Sanitation Law* and *Standards and Norms of Food and Food Additives*", approving Nisin as food additives and further stipulated the standards and norms. Revisions on August 11, 2008 approved Monoammonium L-Glutamate as food additives and further stipulated their standards and norms. At the same time, it also revised the stipulated maximum residue limits (MRLs) of ethiprole, oxolinic acid, orysastrobin, benthiavalicarb-isopropyl and benfuresate. On August 22, 2008, it revised the standard of pesticides residue and stipulated the maximum residue limits (MRLs) of amitraz, etoxazole, dichlormid, dimethomorph, cyromazine, halosulfuron-methyl, fenamidone and buprofezin. Revision on October 2, 2008 approved Sodium stearyl lactate, 3-Methyl butanal and Valealdehyde as food additives and further stipulated their standards and norms.

2.4.2.4 *Revision of Ministerial Regulations on Domestic Animal Infectious Disease Control Law*

On November 14, 2008, the Ministry of Agriculture, Forestry and Fisheries announced the *Revision of Ministerial Regulations on Domestic Animal Infectious Disease Control Law*. According to this law, the chicken, quail, ostrich, turkey and their products that are classified as anseriformes belong to the specified produce that must go through

animal quarantine. In order to control the highly pathogenic bird flu, Japan will add pheasant, Guinean wild pheasant and its products to the program of quarantine. Before the AQS issues the import quarantine certificates, these newly-added birds must also go through the following quarantine inspections: the importer must submit the application form including the description of species, numbers, and date of arrival 40-70 days before arriving at the AQS; hygiene certificate issued by the export government must be attached to the import; the imported birds except the one-day-old chicks must be kept for 10 days for inspection in the quarantine facilities, the one-day-old chicks must be kept for 14 days for inspection in the quarantine facilities. The implementation date is on March 1, 2009.

2.4.2.5 Revision of the Standards of Quality Labelling of Processed Tomato Products

On November 18, 2008, the Ministry of Agriculture, Forestry and Fisheries announced the *Revision Compendium of Standards of Quality Labelingl of Processed Tomato Products*. The definition of processed tomato products is revised as follows: (1) fruits and dairy products are not permitted to be used as ingredients in tomato fruit juice, tomato sauce, tomato juice and spicy sauce; (2) percentage of soluble solids in tomato juice is changed from 9-25% to 8-25%, because food sauce requires low density tomato juice. This bill was approved by the end of 2008.

2.4.2.6 Formulation of the Unified Safety Standards for All the Merchandise with Self-owned Brands

In December 2008, Japanese Consumer Cooperative Union determined to formulate the unified safety standards for 5,000 types of merchandise with self-owned brands. The standards assumed every aspect of possible food safety risks ranging from raw material procurement to manufacturing, logistics and marketing, and formulated the preventive countermeasures. Japanese Consumer Cooperative Union sets about 160 standards from product procurement to marketing. Japanese Consumer Cooperative Union was considering replacing the procurement object if the standards were not met.

2.4.2.7 Strengthening Inspection of Melamine in Products Imported from China

From September 2008, Japan strengthened supervision of dairy products made in China. According to the report promulgated by Food Safety Commission of Cabinet, if melamine were found in milk or dairy products imported from China, they should be discarded or returned in accordance with Article 10 of *Food Sanitation Law* (maximum 0.05 ppm). In December 2008, the Ministry of Health, Labor and Welfare made a decision that seafood such as eel, shrimp, crab, puffer fish and turtle cultivated in China should be listed as inspection target for melamine. If the amount of melamine checked out exceeds 2.5 mg/kg because of the indirect influence of fodder, the importers should retrieve the seafood; if the melamine was added on purpose, the case should be dealt with as infringement of Japan's *Food Sanitation Law*. With regard to the strict inspection standards and measures of melamine, the related enterprises should

strengthen quality management and control the products quality from headstream so as to reduce export losses.

2.4.2.8 Continue with Strict supervision on Food imported from China

In 2008, Japan continued with strict supervision on food imported from China and added items requiring monitoring inspection and mandatory inspection. On December 8, 2008, the Ministry of Health, Labor and Welfare announced the supervision results of the imported food. Items under the intensified monitoring inspection against China are endosulfan in eel; kale and chlorpyrifos in bradysia; aflatoxin in buckwheat; hydrazide in big grain groundnut; acetochlor in pine mushroom and sesame seeds; clothianidin amine in spinach; difenoconazole in green pepper; pyrimethanil in rape; pyrimethanil in onion; atrazine in beet; nitrofuran in royal jelly. Items changed from monitoring inspection to mandatory inspection are furaltadone hcl, furanzolidone in chicken, acephate in carrot, melamine in milk, dairy products as well as the processed food with these as raw materials. Items of mandatory inspection are nitrofurans, tetracyclines, malachite green, chloramphenicol in chicken, shrimp, eel, mackerel, honey, ruditapes; tebufenozide, fenpropathrin, methamidophos, pyrimethanil in onion, mushroom, carrot, green pepper; paralytic shellfish poisoning, diarrhetic shellfish poisoning, in bivalve; bacteriocin, coli-group in processed food of eel; sodium cyclamate in all the processed food. Since the implementation of Japan's Positive List System, China's food manufacturing enterprises are faced with demanding technical requirements. Therefore, in order to ensure smooth export of products and successful coping with Japan's strict monitoring measures, the enterprises should strengthen management from headstream and ensure the quality of raw materials. They should also focus on Japan's newly-introduced technical standards and enhance technical level to deal with the trade barrier. Meanwhile, they should enhance management level, establish and improve the detection mechanism and strengthen inspection to improve the quality of products.

3 Trade Barriers

3.1 Tariff and Tariff Administration Measures

3.1.1 Tariff Peaks

In 2008, Japan continued to impose high tariffs on agricultural products and footwear, for example, the tariff rate for milk and dairy products is 35%, seaweed 40%, bananas and grapefruits 40%, sugar 35%, chewing gum 30%, cocoa powder and chocolate 35%, flour dim sum 35%, jam 40%, canned peaches 35%, tomato and grape juice 35%, coffee and tea 35% plus specific duty, fermented beverages and tobacco 35%. Tariff on footwear was 20-30% and on leather shoes reached as high as 60%. Japan also imposed 10-20% tariffs on textile. China exported to Japan most of the above high tariff products. The tariff peak imposed by Japan on these products will have a negative impact on China's export of its products to Japan.

3.1.2 Tariff Quotas

Japan implemented tariff quota on such imported agricultural products as rice, barley, wheat, dairy products and raw silk. A higher tariff rate would be levied on import of over-quotas. In principle, import of over-quotas is through free trade, and the high tariff greatly weakens the competitiveness of imported products, leading to very small amount of over-quota imports. There are restrictions on the breed, price, country and use of the in-quota imports. Take rice for example, Japanese government tenders mainly for long grain rice, which occupies a small proportion of Chinese rice, while American rice occupies 50-60%, making it difficult for Chinese rice to be exported to Japan. Besides, Japan imposed tariff quota on leatherware and leather shoes.

Japan's tariff quota administration regime and procedures are rather complex and its transparency needs improving. For example, on the pretext of lacking in experience, Japan delayed the release of tariff quota allocation or only released the names of enterprises to which certain quota had been granted, but did not give the enterprises the definite amount of the quota obtained, thus making it difficult for enterprises to make comparison to judge whether the allocation process was equitable. The Chinese side hopes that Japan shall increase transparency of its tariff administration regime.

3.2 Technical Trade Barriers

3.2.1 Intensification of Control and Regulation on Chemicals

In November 2008, Japanese government announced that it will demand in the form of law in 2010 enterprises engaged in chemicals to report to the government, once a year with regard to the chemical production, import volume and use. The purpose is to regulate strictly the chemicals that might harm environment and health. This system is called REACH of Japanese Version. The new system will be introduced on the basis of the amendment to the current *Act on the Evaluation of Chemical Substance*. The Ministry of Economy, Ministry of Environment and the Ministry of Health, Labor and Welfare have drafted related programs and will submit to the Diet for review. REACH of Japanese Version will be responsible for reporting the specifications of more than 20,000 chemicals. The government will find out the total amount of the chemical substances through meta-analysis of the reporting data of the enterprises and inspect that they will not harm the environment and national health. Meanwhile, the government will announce the Priority Chemical Substances of higher risks, increasing harmful chemicals from 354 to 462. Hazardous chemicals will go through the whole process management from suppliers through to production. It is estimated that the implementation of this system will involve thousands of Japanese enterprises related to chemical production, automobile and electric equipment. China stays focused on the proposal because the implementation of this system will bring negative effects on the related export enterprises, and increase export costs and difficulties.

3.2.2 Frequent Amendments to Requirements on Tags of Food Quality

Japan frequently amends the requirements on tags of food quality. In 2008, the

Ministry of Agriculture, Forestry and Fisheries announced successively amendments of food quality tags norms to about 20 kinds of food, such as fillets, ham, sausage, vinegar, seasonings, dehydrated soup, vermicelli, instant noodles, brown rice and milled rice, soy sauce, tomatoes and bacon. In addition to amendments to definition, it also raised the mark requirements of the list of ingredients of the above products. The Chinese side believes that Japan's frequent amendments to food tags lead to the unnecessary increase of production costs, because the manufacturers have to change the tags frequently to meet Japan's requirements.

3.3 Sanitary and Phytosanitary Measures

3.3.1 High Standards of Pesticides and Veterinary Drugs Residues Index

Since the implementation of Positive List System, Japan significantly increases pesticides and veterinary drugs residues index. In 2008, Japan strengthened the maximum residue limit of the following chemicals: Carpropamid, Tebuconazole, Tilmicosin, Ametryn, Isoprothiolane, Indanofan Standard, Cafenstrole, Thiobencarb, pyraflufen-ethyl, Flecainide, Flubendiamide, Mefenacet, Benzobicyclon, ethiprole, Oxolinic acid, ORYSASTROBIN, benthiavalicarb-isopropyl, Benfuresate, Amitraz, epoxyethane, Dichlormid, dimethomorph, Cyromazine, Halosulfuronmethyl, Fenamidone, Buprofezin, glycyrrhizic acid, Valnemulin, Flonicamid and Mandipropamid, of which many pesticide residue limits is stricter than international standards.

3.3.2 Raw Poultry Meat Export Problem

In January 2004, Japan totally stopped the import of Chinese poultry and birds and their products thereof as a result of the outbreak of the highly pathogenic bird flu in some parts of China. Later, Japan agreed to conditionally lift the import restriction of Chinese cooked poultry meat and in two successive times allowed China's 91 cooked poultry meat companies to export to Japan. On January 18, 2007, China's General Administration of Quality Supervision, Inspection and Quarantine negotiated with Japan's Ministry of Agriculture, Forest and Fisheries in hope that Japan could restore its import of frozen poultry products from the excellent companies in China's area without prescriptive epidemic diseases. Japan stated that after the formulation of specific applied code concerning the Compartments in the non-affected areas listed in OIE, it would do its best to solve the problem as soon as possible. However, Japan hasn't lifted the ban until now because of the food quality and safety problem represented by "the incident of dumpling".

3.3.3 Positive List System

On May 29, 2006, the Positive List System for managing food and the chemical residue on agricultural products came into effect. Since nearly three years of its official implementation, the Positive List System has severely affected the export of Chinese agricultural products and foodstuff to Japan. Japan is China's largest exporting market and the implementation of the Positive List System directly affected China's about

U.S. $8 billion export value, involving more than 6, 000 export companies and the economic development of the main producing regions and the avenue increase of farmers.

Although Japan's Positive List System was formulated in the name of protecting the interest of domestic consumers, there exist obvious irrationality and discrimination in its enactment and actual implementation, making it an actual trade barrier. This is characterized by the following two features:

Firstly, the setting of the standard is unreasonable and unscientific with obvious discrimination. According to the *SPS Agreement* of WTO, members shall ensure that their technical standards affecting the flow of products among countries must be formulated on a scientific and reasonable level, and this level must be subject to risk assessment. But, among the more than 50, 000 items of pharmaceutical residue standards on Japan's Positive List, only about 10, 000 are formal standards(called Current Standards by Japan) that have been approved by scientific experiments. The remaining more than 40, 000 standards(called Temporary Standards by Japan) can be transformed into formal standards only after passing the evaluation. Japan promised to finish the examination and verification of all the temporary standards within 5 years and transform them into formal standards. However, as things stand, Japan has progressed very slowly in this aspect. After more than two years of the implementation of the system, only a few hundred standards have been adjusted. Even if Japan revises them on an annual basis of 1, 000 items in the future, it will take more than 40 years for Japan to finish all the examination and verification of all the temporary standards. This far exceeds the time limit that Japan has promised before.

Japan has also set the so-called "Uniform Standard", that is the 0.01 ppm standard is applicable for all pharmaceutical residues that have no specific standard. But, the current international practice is to evaluate the results according to toxicology with consideration of ADI and GAP. Different pesticides have different ADI, so different foods have different ADI contributions, and pesticide exposure content and safety risk are different. Such a practice of "Uniform Standard" has no justified scientific grounds, and accords neither with the principles in the pertinent international rules, nor with the *SPS Agreement*.

In addition, there exists obvious discrimination during Japan's formulation of the standard. As for those agricultural products that can be produced in large amount domestically, Pesticide and Veterinary Drug standards are relatively loose. As to those agricultural products mainly imported from China, Japan employs stricter residue limit standard even if the pesticides and veterinary drugs are the same. This violates the non-discrimination principle of WTO, forming an actual trade barrier.

According to the pertinent regulations of Japan, if the violation cases of a kind of agricultural products reach to a certain level, Japan can at once activate the supervision investigation or mandatory inspection. However, Japan doesn't make pertinent regulations on the batches of the violating case and the conditions and procedures of removing the supervision investigation or mandatory investigation. Judging from the present situation, it is often the case that after two cases of pesticide residue violation, Japan would begin the supervision investigation or mandatory investigation, the implementation of which is too hasty. Furthermore, Japan acts

slowly to remove the mandatory investigation even if the Chinese government, industries and companies, have promptly taken effective measures to root out the happening of such cases, which has severely affected the normal development of bilateral trade.

Secondly, the inspecting measures for the domestic products differ from those for import commodities, which hinders the development of fair trade. Although Japan claims over and over again to treat the domestic products and import commodities with no discrimination, yet Japan actually resorts differentiated treatment of "loose to domestic products and strict with import commodities". This is manifested mainly in the following regards: First, the proportions of selective inspection are different. The average selective inspection proportion for imported foods is 10%, some reaches 50% or even 100%. But for the domestic foods, taking Tokyo as an example, the proportion is less than 1%. Second, the items of inspection are different. In 2006, Japan launched a total number of 556 items of inspection, including 448 items of pesticide inspection, 105 items of veterinary drug inspection and 3 items of feed additive inspection, while the number of inspecting items for domestic foods is rather small. For example, Tokyo inspected only 50 items of pesticides and 49 items of veterinary drugs not including malachite green and furazolidone, important items which are also used in Japan. Third, the supervision modes are different. If the domestic foods are found short of the standards, only this batch of foods is dealt with and Japan doesn't adopt enhanced inspection measures toward foods of the same kind. However, Japan will immediately launch mandatory inspection on foods of the same kind if two batches of import foods exceed the limits. Fourth, the forms of information disclosure of foods below the standards are different. Local governments often don't publicize the information of foods inspected to have exceeded limits or publicize the information after delaying for a long time. For instance, the standard information of Tokyo can only be traced back to 2003. This is quite different from the practice of publicizing the information immediately on a large scale when import foods are found short of the standards.

3.4 Trade Remedy Measures

Up to 2008, Japan has launched two anti-dumping investigations and three safeguard measure investigations(the safeguard measures were not carried out) against China.

On April 27, 2007, Japan Customs announced that at the application of its 2 domestic companies, it would launch anti-dumping investigation on electrolytic dioxide manganese originated from South Africa, Australia, China, and Spain. The respondents included more than 20 companies in China with the investigation period of one year. In August 2008, Japan announced a final determination, which upheld the investigating results and the anti-dumping tax rate of the preliminary determination, and decided to impose 34.3%-73.8% anti-dumping tax on Chinese companies in the next five years. The related measures were implemented as of September 1, 2008. The determination had much negative effect on China's electrolytic dioxide manganese exporters.

3.5 Export Restrictions

Catch-All Controls is an export control system established by Japan to prevent the

outflow of weapons and techniques of mass destruction. From 2002, the Japanese government collected the information, and then formulated and published Foreign End-User List of Catch-All Export Controls (hereinafter simplified as "the List"), which was to be revised every April. The Japanese export companies must "consult in advance" the Japan's Ministry of Economy, Trade and Industry before exporting the concerned sensitive goods and techniques to companies and organizations on the List. The measure equals, in fact, examination and approval. Without the approval of the Ministry, goods or techniques cannot be exported.

Since 2002, Japan has placed many Chinese companies, research institutes and universities on the List. In June 2008, Japan's Ministry of Economy, Trade and Industry published the 2008 List. Five Chinese companies were added and two deleted, with the total number of Chinese companies on the List reaching 17, an increase of three companies over the previous year. Some of the enlisted Chinese entities have engaged in Sino-Japanese trade for a long time, and some are the long-term clients of Japanese companies. Because of catch-all controls, the Chinese entities on the List have been forced to terminate the relevant import and export trade with Japanese counterparts, even their trade activities with other countries have been adversely affected. For example, the U.S. government has put the List on relevant website, and therefore the U.S. companies refused to conduct or continue business with the Chinese entities on the List. Such a consequence not only impedes the long-term steady growth in bilateral trade, but also incurs tremendous and unnecessary costs to Japanese as well as Chinese enterprises. China hopes that Japan will adopt effective measures to strike the names of Chinese entities off the List as soon as possible.

3.6 Service Trade Barriers

Japan set many market admission barriers in service trade. For example, foreign enterprises would find it difficult to enter Japan's construction industry, because Japan has not opened its market for labor service yet, and has its own innate contract and sub-contract system. Japan's marine industry is another example. Under the current port transportation system, foreign shipping companies could only rent the dock, but are not permitted to enter service market of loading and unloading. According to the pertinent stipulations in the *Vessels Law*, Japan's domestic maritime shipping market is open only to vessels registered in Japan in principle, although there are no restrictions on the direct investment by the foreign enterprises in the domestic maritime industry. Foreign companies are permitted to invest in Japan's domestic shipping market only after they have established a company in Japan.

3.7 Other Barriers

3.7.1 It Is Difficult for Local Legal Persons Established by of Chinese Companies to Get Visa

With the increase of the number of local legal persons established by Chinese companies in Japan, it is difficult for the Chinese staff members to get visa. For

example, some Chinese company planned to dispatch technical personnel to Japan, but the application was refused for many times without any reason, so the companies' technical staff couldn't arrive in Japan in time. As a result, the company could not be operated normally. Finally the Chinese companies had to assume high daily expenditures.

3.7.2 Increase of Violations of Japanese Companies' Receiving Chinese Trainees

According to the 2008 statistics from the Immigration Bureau of Japan's Ministry of Law, trainee-receiving entities and companies were awarded 449 cases of violation operations in 2007, about twice as many as the cases in the previous year(229 cases in 2006), the most severe year since the relevant investigations were started in 2003. Among them, arrears of wages that violated the *Labor Law* were the most common, reaching up to 178 cases; 115 cases of sending the trainees to work in other spots under false pretences; 70 cases of detaining passports and bankbooks by force. The Immigration Bureau claimed that it strengthened the inspection intensity due to the increase of receiving number, so the total number of violations increased correspondingly.

3.7.3 Situation of the Payments of Various Social Insurances by Chinese Employees in Japan

China hasn't signed the reciprocal exemption agreement on social security with Japan. It is a commonplace that Chinese employees in Japan(especially those in Japanese-Chinese joint ventures) have to pay doubly for social security. In terms of insurance, Chinese employees in Japan need to pay for National Annuity Insurance, Employee Pension Insurance, Health Insurance, Care Insurance, Employment Insurance, and Laborers' Compensation Insurance. As to taxation, Chinese employees in Japan need to pay for Residents' Tax and Income Tax.

Japanese Social Insurance Administration prescribes that foreigners who pay for National Annuity and Employee Pension Insurance for more than 6 months in Japan can apply for refunding of part of the paid annuity if relevant written materials are provided within two years of returning to their countries. But in practice there are few returns. Firstly, application and drawing system is unsound. Secondly, the authority bears no duty to inform the individuals. As a result, if individuals don't apply for the returns on his own initiative, he would get nothing back. Few staff members at the Social Insurance Administration know a foreign language, which fails to meet the needs of providing service to foreigners. Fourthly, tedious formalities result in many people's giving up applying. China hopes that Japan will simplify the complex and tedious application and drawing formalities to provide convenience for Chinese employees in Japan.