

Japan

[Risk Warning]

In 2009, Japan issued a variety of technical regulations and sanitary and phytosanitary measures covering products such as foodstuffs, pharmaceuticals, toys and chemicals.

Partial Revision of the Ministerial Notification under the Household Goods Quality Labeling Law has revised compliance items on the Quality Labeling Rules for Plastic, Textile and Miscellaneous Goods. This revision involves a wide range of consumer products. Therefore, Chinese exporters are strongly advised to pay close attention to the new requirements on their products.

Revision of the Cabinet Order of the Chemical Substances Control Law has designated many chemical substances which need authorization to manufacture or import. Consequently, Chinese exporters should take heed of this revision and make procedural preparations in advance.

In addition, Japan enacted on 18 June 2008 the Law for Ensuring Safety of Pet Food, and to strengthen the implementation of this Law, Japan promulgated on 6 February 2009 Draft Proposals of Ministerial Ordinance of Law for Ensuring Safety of Pet Food and Ministerial Ordinance of Standards and Specifications for Pet Food, which provide detailed guidelines for pet food safety. To ensure smooth export of pet food to Japan, Chinese firms should make due preparations beforehand and establish a sound quality control system.

1 Bilateral Trade and Investment

According to the statistics from China Customs, the volume of the bilateral trade between China and Japan hit US\$ 228.85 billion in 2009 with a year-on-year drop of 14.2%, among which China's exports to Japan accounted for US\$ 97.91 billion, which saw a year-on-year decline of 15.7%, while China's imports from Japan witnessed a year-on-year decrease of 13.1% to arrive at US\$ 130.94 billion. China ran a trade deficit of US\$ 33.03 billion with Japan. In 2009, China's major exports to Japan included electrical appliances, machinery, knitted and crocheted apparel and accessories, non-knitted and non-crocheted apparel and accessories, optical and medical instruments and equipments, furniture and bedding, other textile made-ups, plastics and articles thereof, vehicles, toys, and sports requisites. China's major imports from Japan were electrical appliances, machinery, optical and medical instruments and apparatus, vehicles, iron and steel, plastics and articles thereof, organic chemicals, copper and articles thereof, articles of iron and steel, and mineral fuels.

As was released by China's Ministry of Commerce (MOFCOM), by the end of 2009, the accumulated turnover of the engineering contracts completed by Chinese companies in Japan had added up to US\$ 180 million, and the accumulated volume of the completed labor service contracts had topped US\$ 1.59 billion.

According to the figures of MOFCOM, China's direct non-financial investment in Japan, approved by or filed with MOFCOM, totaled US\$ 160 million in 2009. Japan invested in 1,275 projects in China in 2009, with an actual capital input of US\$ 4.1 billion.

2 Japan's Trade and Investment Regime

2.1 Trade Administration Regime and Its Developments

2.1.1 Tariff Regime

2.1.1.1 Tariff Administration

Major legislations governing customs tariff in Japan mainly include *Customs Law*, *Customs Tariff Law*, *Temporary Tariff Measures Law* and *Customs Tariff Law Schedule* (hereinafter referred to as Tariff Schedule). Japan's Ministry of Finance (MOF) formulates tariff policies and its affiliated agency Japan Customs implements these policies.

Japan's import tariff rates can be divided into law-based tariff rates and treaty-based tariff rates. The former, also referred to as the state-set tariff rates, include the general rate, the temporary rate and the preferential rate, which are stipulated in the *Customs Tariff Law* and *Temporary Tariff Measures Law*. *Customs Tariff Law* sets out the general (or basic) rate that remains unchanged for a long time and *Temporary Tariff Measures Law* lays down the temporary rate applicable for a certain period of time and the preferential rate (GSP) applicable to developing countries. By 2009, Japan has applied the preferential rate to 154 countries and territories, covering products such as carp, tricholoma matsutake, dried bamboo shoots, spices, mineral and industrial products excluding leather shoes and leather products, paper products, ceramics, iron and steel products. China is granted the preferential rate, but the scope of products under the rate has been decreased by Japan. The least developed countries (LDCs) are generally granted zero tariffs. The state-set tariff rates also include the simplified and combined schedule applicable to personal effects of visitors entering Japan and the simplified tariff schedule on small packages of imported goods.

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The former rate, which lays down the schedule of customs duty, consumption tax and other internal taxes in a combined form, is applicable to personal effects and unaccompanied baggage of visitors coming to Japan; the latter applies to commercially imported goods not exceeding JPY 100,000 in value. The treaty-based tariff rate, also known as the conventional (MFN) rate, is applicable to all WTO member countries. In addition to the WTO conventional rate, there is also the rate set forth in the Economic Partnership Agreements (the EPA rate) which is only applicable to signatories to the agreements with Japan. By 2009, Japan has signed Economic Partnership Agreements (EPA) with Singapore, Mexico, Malaysia, the Philippines, Chile, Thailand, Brunei, Indonesia, the Association of Southeast Asia (ASEAN), Vietnam and Switzerland. Japan's import tariff rate is applied in the priority order of the preferential rate, the conventional rate, the temporary rate and the general rate.

In March 2009, Japan Customs published the amendments to *Customs Tariff Law*. The amendments mainly include: adding revenue stamps and postal stamps which are forged, altered or imitated to the list of prohibited imports (to be enforced on 1 June 2009); eliminating the 7.3% tariff rate on yarn spun from silk waste (HS5005.00) (to be enforced on 1 April 2009); extending the effective period of temporary tariff rates and safeguard measures for specific agricultural products and the effective period of exceptional treatment of safeguard measures on imports of beef and pork by the end of FY2009 (to be enforced on 1 April 2009), all of which were to expire on 31 March 2009.

On 6 July 2009, Japan Customs released a public notice announcing amendments to the descriptions and classifications of the tariff schedule. Amendments to the descriptions of the tariff schedule include: expanding the definition of tea to include "tea of tablet-shaped solid or of any shape and size from condensation"; adding a detailed specification to the definition of leather concerning the process of transforming leather into products of uniform thickness and quality; clarifying that when individually mentioned, indoor unit and outdoor unit of the split-type air conditioner are to be classified as spare parts; vacuum cleaner does not include the cleaner used to absorb liquid cleaning agent on the carpet. Amendments to the classifications of tariff schedule include the listing of protein products under HS code 210610, produces with cocoa milk under HS code 210690, polyfoam board under HS code 321410, screw mastics under HS code 321410, split-type air conditioner under HS code 841590, electric iron under HS code 845130, rectangular electric ironing platforms under HS code 845190, multi-purpose four-wheeled vehicles under HS code 870431, motor-driven multi-purpose four-wheeled vehicles under HS code 870490.

On 10 November 2009, Japan Customs published a notice to announce the amendments to the classifications of tariff schedule, listing flatfish under mackerel fry for fish culture with HS code 030199 and giving a detailed description and classification of flatfish.

2.1.1.2 Tariff Rates and Their Adjustments

In 2008, Japan's simple average applied MFN rate was 5.4%, averaging 23.6% for agricultural products and 2.6% for non-agricultural goods.

In 2009, the rates levied by Japan on certain main products are as follows: a zero tariff rate on watches, optical instruments, musical instruments, record items such as tapes, books and magazines, printings like music scores and posters, artworks, cosmetics, sportswear and leisurewear, and prefabricated houses; a rate of 0-3.9% on dolls and models; 3%-17% on tea; 3.2% on fishing equipment; 5.2%-5.4% on gold, silver and plastic accessories; 8%-16% on leather handbags; 4.4%-20% on clothes; 3.4%-30% on footwear or JPY 4,300 per pair, whichever is greater; 0-3.9% on furniture; 0-8.4% on carpets; 0-4.6% on kitchenware; 3.8%-10.9% on bedding; a zero rate on whiskey, brandy and liqueur, and a specific rate of JPY 45-182 per liter on white spirits.

According to the updated information from Japan Customs in April 2009, Japan excludes the following products of Chinese origin from the preferential rate: other prepared or preserved fish under HS code No. 1604.19ex (excluding eel and arthropod fish), whole or pieces, but not minced; prepared or preserved mollusks under HS code No. 1605.90-2-(3)ex (other than cuttlefish, squid, abalone, scallops and adductors of shellfish), not smoked or in airtight containers; soda ash under HS code No. 2836.20-1; ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china under HS code No. 6912.00; scissors, tailors' shears and similar shears, and blades therefor under HS code No. 8213.00; spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware under HS code No. 8215.99; articles of bedding and similar furnishing under HS code No. 9404.90 (other than mattresses and sleeping bags) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics.

According to its annual review in 2009, Japan terminated the GSP preferential rates on some products originating in China.

Table 1: Elimination of GSP Rates for Products of Chinese Origin in 2009

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Date of Effect	Customs Code	Product Name
May 16, 2009	284910	Calcium
	284990	Substances other than carbide of boron, tungsten, and tantalum
	2852002	Carbide of mercury
	290611	Menthol
	291814	Critic acid
	2918151	Calcium of critic acid
	3604	Fireworks and articles thereof
	300691	Appliances identifiable for ostomy use
	392690021	Woven fabrics obtained from strip, entirely coated or covered on both sides with plastics
	42 & 43	Articles of leather
	44 & 46	Articles of wood
	51, 52, 53, 56, 62, & 63	Articles of textile
	64	Footwear
	66	Umbrellas and parts thereof
	6702	Artificial flowers
	76	Aluminum and articles thereof
	9401901	Parts of seats with outer surface of leather
	940410	Mattress supports
June 16, 2009	282580	Antimony oxide
	3301251	Mints
	44	Articles of wood
	51, 54, 55, 56, 57, 58, & 60	Articles of textile
	7018	Glassware
	72 & 81	Articles of base metals
	96	Miscellaneous manufactured articles
July 16, 2009	290544	D-glucitol (sorbitol)
	54	Articles under the item of man-made filaments
	7117	Imitation jewellery

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	9113902(1)	Watch straps, watch bands and watch bracelets and parts thereof
August 18, 2009	44	Wood, articles of wood and wood charcoal excluding items under HS Code 4412.10.1, 4412.31, 4412.32, 4412.39
	621510	Ties, bow ties and cravats of silk and silk waste
	6307902	Rectangular articles of silk waste
September 16, 2009	420500	Leather
	930599	Leather accessories for arms
	7409	Copper plates, sheets and strips
	7410	Copper foil
	741110	Copper tubes and pipes
October 16, 2009	4408102(2)	Coniferous veneer sheets
	4408312	Veneer sheets of tropical wood
	4408394(2)	Veneer sheets of other wood
	4408902(2)	Coniferous veneer sheets of temperate wood
	4408391(2)	Veneer sheets of other wood
	4408901(2)	Sheets of other temperate non-coniferous wood
November 17, 2009	2922421	Glutamic acid soda
	7113	Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal

2.1.1.3 Tariff Quota System

Japan has implemented its tariff quota system since 1961. Japan levies a zero tariff rate or a comparatively lower tariff rate on in-quota products, and a higher tariff rate on imported goods exceeding the tariff quota. Japan has presently placed tariff quota restrictions on 29 products such as cheese, leather, leather shoes, mixed beans, and konjac and every year the Japanese government issues ordinance to specify the amount of quotas. Japan's Ministry of Agriculture, Forestry and Fisheries (MAFF) and Ministry of Economy, Trade and Industry (METI) are the departments for tariff quota administration.

Presently, METI handles the quotas for dyed horse and cattle leather, other kinds of horse and cattle leather, sheepskin and goatskin, and leather shoes. MAFF sets annual tariff quotas for products like maize (in pellets), cheese, syrup, sugar-free cocoa products, ketch-up, canned pineapples, whey (milk plasma), other dairy products, skim milk, sugar-free condensed milk, butter, groundnuts, konjac, prepared edible oils and fats, and raw silk, and semi-annual quotas on non-pellet maize, malt, mixed beans, inulin, and starch products.

2.1.2 Import Administration

Japan's Ministry of Economy, Trade and Industry (METI) and Japan Customs are the leading departments for import administration. *Foreign Exchange and Foreign Trade Law*, *Customs Law*, *Import Trade Administration Law*, *Import and Export Trading Law* are the major legislations of Japan's import and export administration.

According to *Customs Law*, Japan puts a ban on the import of narcotic drugs, firearms and ammunitions, explosives, precursor materials for chemical weapons, germs which are likely to be used for bioterrorism, IPR infringing products, forged coins and paper money, books and drawings that may harm public safety or morals, and child pornography.

In addition to the import prohibitions as stipulated in *Customs Law*, *Plant Quarantine Law* bans the import of fresh tropical fruit (like papaya and mango), citrus fruit, apple, pear, grape, peach, tomato, persimmon, pepper, haricot bean, cowpea, cucumber, honey melon, cherry, and stems, leaves and roots of sweet potato of Chinese origin. *The Law for the Prevention of Infectious Disease in Domestic Animals* prohibits the import of cattle, horse, sheep and their products from mad cow disease infected areas and poultry and their products from bird flu infected areas.

Besides import prohibitions, Japan has issued many laws on import restrictions. Products subject to import restrictions mainly include: products requiring quota (such as herring); products requiring ex-ante confirmation (such as vaccine); birds and beasts and their products; knives, guns and swords; poisons; marijuana, opium and stimulants; medicines and medical instruments; crucian carp, fish fry and shrimp fry; fertilizers and pesticides; granulated sugar and starch; butter, skim milk, condensed milk; rice and wheat; explosives like gunpowder; chemical substances; crude oil and petroleum; liquor; harmful animals and plants; cloven hoofed animals, poultry and their products. The subordinate organs of Japan's Ministry of Economy, Trade and Industry (METI), Ministry of Agriculture, Forestry and Fisheries (MAFF), Ministry of Health, Labor and

Welfare (MHLW), Ministry of Environment, National Police Agency, and National Tax Agency are the major departments handling import restrictions. In addition, Japan imposes import restrictions on the endangered species specified in *Washington Convention*, such as pets and ornamental animals and plants, specimens, and fur clothes, leather bags, belts, boots, handicrafts, and Chinese herbal medicine made from endangered animals. The import of the endangered species specified in *Washington Convention* is subject to export license issued by the government of the exporter and import certificate issued by Japan's Ministry of Economy, Trade and Industry (METI).

Japan Customs announced that as from 16 February 2009, parcels entering or leaving Japan worth over JPY 0.2 million must be declared in the Customs and accompanied with an entry or exit permit, either by the sender or receiver on their own, or by the post offices or customs clearance agents. International parcels that are not required to declare include parcels from Japan to other countries worth below JPY 0.2 million, parcels and gifts posted to Japan worth below JPY 0.2 million, or parcels with a worth that cannot be determined by the recipient.

Japan implements the Authorized Economic Operator (AEO) system in customs clearance. The AEO system is one of the core elements of WCO's (World Customs Organization) *Framework of Standards to Secure and Facilitate Global Trade* (hereinafter referred to as the *Framework of Standards*). According to the *Framework of Standards*, AEO is defined as a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national customs administration as complying with WCO or equivalent supply chain security standards. Businesses with AEO certification will benefit from expedited processing of goods inspection and documentary examination, which, in turn, translates into savings in time and costs, while those without such a certification will have to go through multiple and complex processes of goods inspection and documentary check, which may possibly delay goods delivery.

In 2008, Japan reached an agreement with China and the Republic of Korea to set up an AEO Working Group. In March 2009, Japan amended *Customs Tariff Law*, in which the amendments to the AEO system are as follows: members of a violence gang should not become an AEO in warehousing and storage, and law-abiding manufacturers could be accepted as an AEO. The above measures took effect as of 1 July 2009.

2.1.3 Export Administration

Japan's Ministry of Economy, Trade and Industry (METI) and Japan Customs are the Japanese

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authorities for 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*.

According to *Customs Law*, the following four categories of exports are prohibited: narcotic and psychotropic substances such as marijuana, opium, poppy powder and stimulants; child pornographic publications; products infringing upon patents, utility models, trademarks, or copyright-related neighboring rights and performers' rights; products with imitation packaging as stipulated in *Unfair Competition Prevention Law*.

Besides export prohibitions, Japan imposes restrictions on the export of the following products: firearms, chemical weaponry, and anesthetics; harmful wastes; important cultural property; birds, beasts and their products; noxious animals and plants; cloven hooved animals, poultry and their products; secondhand vehicles. Japan's Ministry of Economy, Trade and Industry (METI), Ministry of Health, Labor and Welfare (MHLW), Ministry of Environment, Ministry of Land, Infrastructure, Transport and Tourism (MLIT), and Cultural Affairs Agency are the major departments responsible for the administration of Japan's exports.

In addition, Japan adopts a security export control policy. Export controls are enforced on "weaponry" or "pan-high-tech dual-use items that could be diverted to military end-use as agreed between major suppliers." The former mainly refers to military vehicles, vessels and aerial craft specified in *Wassenaar Agreement*, while the latter mainly refers to "weapons of massive destruction (WMD)" and "conventional weapons". "WMD" mainly includes substances of nuclear weapons like natural uranium and plutonium and X-ray generating devices specified by the Nuclear Suppliers Group (NSG); chemical and biological weapons like heat exchangers specified by the Australia Group (AG); missile-launching equipments like rockets, unmanned aerial vehicles and acidifiers specified by the Missile Technology Control Regime (MTCR). "Conventional weapons" mainly refer to sophisticated materials, work equipment, communications equipment, and radar specified in *Wassenaar Agreement*. Export controls on items and technologies are specified in *Foreign Exchange and Foreign Trade Law*, cabinet orders and ministerial ordinances. Any violation of these controls will be subject to criminal prosecution or administrative penalty.

On 30 April 2009, Japan amended *Foreign Exchange and Foreign Trade Law*, the amendments of which mainly include: (1) revising the regulations on technology transfers: for example, all the technology transfers which may threaten security are placed under export controls and subject to

licensing; carrying memories like USB across border must be accompanied with a permit; (2) revising the regulations on intermediary trade: extending the coverage of export controls from the sales of goods to the sales, loans and donations of goods; (3) improving the export control regime by clarifying the competent authorities for export controls and requiring exporters to abide by relevant regulations; and (4) enforcing stricter criminal penalties for illegal exports: a person who exported controlled items without a license could face imprisonment for a term up to 10 years and a fine up to JPY 10 million rather than the previous imprisonment term of up to 5 years and a fine of JPY 2 million, and the amendments also introduce a penalty for a person who acquired an export license by illicit means. The amendments took effect as of 1 November 2009.

On 10 July 2009, Japan's Ministry of Economy, Trade and Industry (METI) issued a decree amending the *Export Administration Ordinance*, which stipulates that the following products must be accompanied with a license from the Minister of METI before being exported, namely, turboprop engines, semi-conductor flat panel materials and substances, and improvised explosive device disposals. The amendments took effect as of 1 October 2009.

2.1.4 Trade Remedies

Japan's laws and regulations on trade remedy regime consist mainly of *Customs Tariff Law*, *Anti-dumping Duty Ordinance*, *Countervailing Duty Ordinance*, and *Ordinance on Implementing Contingency Import Tariff*. In 2002, Japan issued the *Regulation on Contingency Measures on the Import of Chinese Fiber Products*, which expired in April 2009. The Ministry of Finance (MOF), Ministry of Economy, Trade and Industry (METI) and sector-specific ministries are the government agencies responsible for trade remedies, but MOF has the right to issue a final determination. METI, MOF and other sector-specific ministries accept applications for trade remedy investigations and hold consultations before initiating an investigation.

On 4 April 2009, METI and MOF made a joint announcement amending the ordinances and guidelines related to trade remedies with immediate effect. The amended ordinances and guidelines include *Anti-dumping Duty Ordinance*, *Countervailing Duty Ordinance*, *Ordinance on Implementing Contingency Import Tariff*, *Guidelines for Countervailing Duty Procedures*, *Guidelines for Anti-dumping Duty Procedures*, *A Manual of Levying Anti-Dumping Duties*, and *Guidelines for Contingency Tariff Procedures*. The major points of the amendments include: (1) Relaxing the requirements on applying for trade remedy investigations: as long as the necessary evidence submitted by an applicant is based on "reasonably accessible information" regarding dumping and subsidizing, the competent authorities will accept the application and examine

whether to launch an investigation; (2) Setting a time limit on processing an application: the competent authorities should, in principle, decide whether to initiate an investigation within 2 months after the receipt of a written application (or the supplementary materials in case they are needed); (3) Allowing consumer organizations and down-stream enterprises to apply for an investigation: in the process of applying for an anti-dumping investigation, consumer groups and down-stream businesses are given a chance to provide relevant information, and in the future, to have their opinions heard; (4) Releasing the timeframe for an investigation: previously, the overall schedule of an investigation will be made publicly known one year after the investigation is finished, while after the amendments, the deadline for evidence presentation and site investigation will be announced as promptly as possible; (5) Introducing a “provisional decision”: the provisional decision allows temporary measures to be taken to protect the home industries; and (6) Providing a standardized questionnaire: to expedite the administration of questionnaire and increase the transparency of procedures, the competent authorities should provide and release a standardized questionnaire.

2.1.5 New Agencies for Consumer Protection

On 1 September 2009, Japan set up a Consumer Agency and a Consumer Affairs Commission. The Consumer Agency will be responsible for various matters regarding consumer protection formerly handled by relevant ministries, including the investigation into the causes of product liability accidents and the prevention of the reoccurrence of similar accidents. The Ministry of Health, Labor and Welfare (MHLW) has transferred the business of food labeling and the administration of specified health food to the Consumer Agency. The Consumer Affairs Commission, a watchdog for the conduct of the Consumer Agency, is composed of nongovernmental personages, affiliated to the Cabinet, responsible for investigating and reviewing affairs related to the protection of consumer rights, and entitled to put forward suggestions to the Prime Minister and relevant ministers.

2.2 Investment Administration Regime and Its Development

The legal framework of investment administration in Japan consists mainly of *Foreign Exchange and Foreign Trade Law*, *Import and Export Transaction Law*, and the relevant government regulations such as Cabinet Orders, Ministerial Ordinances, Circulars and Announcements.

The Ministry of Economy, Trade and Industry (METI) is Japan’s leading department administering foreign investment. Other government bodies partly responsible for foreign investment matters include the Ministry of Finance (MOF) and its affiliated agency Japan

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Customs, the Ministry of Agriculture, Forestry and Fisheries (MAFF), the Ministry of Health, Labor and Welfare (MHLW), and the Bank of Japan (BOJ). In addition, the Japan External Trade Organization (JETRO) operates “Invest Japan Business Support Centers” (ISBCs), which, in cooperation with the relevant government ministries and agencies, provide business information and consultation services to foreign firms seeking to set up businesses in Japan.

Foreign direct investment (FDI) 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. Generally speaking, Japan adopts an ex-post report system for foreign investment, and an ex-ante approval system in businesses concerning national security, public order and public safety and in businesses on which Japan has expressed reservations to liberalization. According to *Foreign Exchange and Foreign Trade Law*, the Bank of Japan must file an ex-ante or ex-post report about foreign investment in Japan to the Minister of Finance or other relevant ministers.

Major revisions of Japan’s foreign investment policies in 2009 include: (1) Taxation on small and medium-sized enterprises (SMEs): The corporate tax rate for SMEs is to be lowered from 22% to 18% within two years; (2) Social security system: The maximum premium of workers’ accident compensation insurance for newly established enterprises like hydro-electric power plants is to be lowered from 11.8% to 10.3%, and the minimum premium of workers’ accident compensation insurance for businesses such as financial and telecommunications industries is to be lowered from 0.45% to 0.3%; the premium of employment insurance is to be decreased from 1.5% (0.9% for employers and 0.6% for employees) to 1.1% (0.7% for employers and 0.4% for employees); the administrative department of employment insurance will be transferred from the Social Insurance Agency to the Japan Health Insurance Association; the premium for long-term care insurance is to be increased from 1.13% to 1.19%; and the premium for National Pension Insurance is to be increased from JPY 14,410 to JPY 14,660.

In 2009, the Ministry of Economy, Trade and Industry (METI) partially reformed the tax system with the aim to boost foreign investment in Japan through venture capital funds and corporate restructuring funds. Major revisions are outlined below: (1) A non-resident or foreign corporate partner of a limited liability partnership for investment (LPS) which invests in the shares of Japanese companies through the LPS’ general partners and other business bases in Japan shall be deemed to have no permanent establishment (PE) in Japan and shall be exempt from the tax on the proceeds of the transfer of shares, if the non-resident or foreign corporate partner satisfies the

following conditions (the so-called “specified foreign partner”): a) is a limited liability partner of an investment LPS or other similar foreign partnership; b) is not involved in the business of the partnership; c) holds less than 25% of the assets of the partnership; d) does not have any special relationship with the general partners (i.e., not a family member or a contributor of more than 50% of the investment); and e) does not have a PE in Japan other than the one related to the investment partnership. (2) If a non-resident or foreign corporate partner who invests in a partnership holding more than 25% of the shares of a Japanese firm is a “specified foreign partner” or satisfies the following conditions: a) being a limited liability partner of an investment partnership; b) not carrying on the partnership’s activities; c) holding less than 25% of the shares of the partnership; and d) having no PE in Japan, then the proceeds of the transfer of shares shall be exempt from tax when the shares have been held for over one year and the shares are not those in a failed or distressed financial institution.

In 2009, METI revised the notification and reporting procedures for foreign direct investment (FDI) in Japan. Major changes are outlined below: (1) Revising the notification and report procedures of FDI through investment advisory companies: If foreign investors invest through an investment advisory company, the investment shall be deemed FDI, the advisory company shall submit notifications and reports, and foreign investors shall, in principle, be under no obligation to submit such notifications and reports. (2) Extending the period of acceptance of notifications: Notifications are accepted six months before the day of making an inward direct investment, rather than the previous three months. (3) Revising reporting forms and abolishing certain ex-post reports: To simplify the documents required of foreign investors, different reports under the *Foreign Exchange and Foreign Trade Law* and the *Financial Instruments Trade Act* have been merged. (4) Extending the submission deadline of ex-post reports: Previously, an investor had to submit the ex-post report under the *Foreign Exchange and Foreign Trade Law* within 15 days from the day of making an inward direct investment. The deadline of submission is prolonged to the 15th of the following month after the investment. (5) Shortening the period to review prior notifications. The previous 30-day period for reviewing a prior notification has been cut to a 2-week period, and the review may be completed as quickly as within 5 working days upon its receipt. The period of reviews (in cases involving protected industries such as petroleum and leather) that must be submitted to the Minister of Finance and other relevant ministers is 2 weeks, but may be extended to 30 days, if need be.

2.3 Trade and Investment Related Administration Regime and Its Development

2.3.1 Legislations on Intellectual Property

Japan Patent Office (JPO), an agency affiliated to the Ministry of Economy, Trade and Industry (METI), is the competent authorities handling matters on intellectual property. Legislations protecting intellectual property in Japan mainly include the *Patent Law*, the *Enforcement Rules of the Patent Law*, the *Trademark Law*, and the *Enforcement Rules of the Trademark Law*.

In June 2009, the JPO announced an amendment to the law relating to international applications. Major changes are outlined below: (1) Extending the period for international applicants to file an appeal: when an international application is rejected, within 4 months after the date of application, for failure to comply with the relevant specifications, the applicant may file an appeal within 2 months (previously 1 month) after the receipt of the rejection; (2) Submitting documents for post-grant amendments: the applicant should submit documents indicating all the post-grant amendments as to the full scope of claims and a translated version, if any, of the documents; however, there is no need to submit a petition, description and specification if the amendment is made in a floppy disk. The revision shall come into force as of 1 July 2009.

In 2008, Japan launched the “Super Accelerated Examination System” on a pilot basis to process patent applications more rapidly than can be done under the conventional accelerated examination system. In September 2009, the JPO expanded the pilot program to international applications. The main contents of the expanded “Super Accelerated Examination System” include: (1) The main requirements of an application: The application must be an associated application related to the implementation of an invention and related to foreign countries. All application procedures must be completed online four weeks before the application. (2) The waiting period of the preliminary examination: The waiting period is 1 month from the date of application for domestic application and 2 months from the date application for international application. (3) The time limit for an applicant to file an appeal: An appeal must be lodged within 30 days (and within 2 months, in the case of a non-resident applicant) after the receipt of the rejection notice from the JPO. (4) The waiting period for appeal examination is 1 month.

Since September 1997, the JPO has been accepting requests to expedite the examination and re-examination of trademark applications. On 1 November 2009, the JPO launched a new pilot program for accelerated examination and accelerated trial of “green applications,” namely, patent applications for green technologies designed to save energy and reduce emissions. Consequently, the following types of applications are now eligible for accelerated examination: (1) Applications filed by small to medium-sized enterprises (SMEs), individuals or universities; (2) Applications

related to foreign applications; (3) Applications related to exploited inventions and the like; and (4) Applications related to green technologies. Similarly, the following kinds of applications are targeted for accelerated trials: (1) Applications filed by small to medium-sized enterprises (SMEs), individuals or universities; (2) Applications related to foreign applications; (3) Applications related to exploited inventions and the like; (4) Applications related to inventions exploited by a third party; and (5) Applications related to green technologies. In the section “Circumstances” of either of the documents “Explanation of Relevant Circumstances Related to Accelerated Examination” and “Explanation of Relevant Circumstances Related to Accelerated Trial”, the fact that the claimed invention is a green invention having an advantage in reducing energy consumption and CO2 emissions must be presented with reference to the description of the specification of the application. In addition, in the section “Disclosure of and Comparison with Prior Art Reference” of the document “Explanation of Relevant Circumstances Related to Accelerated Examination”, prior art references must be disclosed and compared with the subject invention based on a prior art search.

2.3.2 Visa and Immigration Control System

The legal basis for visa and immigration control in Japan is the 1982 *Immigration Control and Refugee Recognition Act* (or the *Immigration Control Act* for short). The Ministry of Foreign Affairs of Japan (MOFA) is in charge of visa affairs, and the Ministry of Justice (MOJ) is responsible for immigration control. Generally, the issuance of permanent residence visas, employment visas and so on is subject to prior examination.

On 15 July 2009, the Japanese Diet promulgated the *Amendments to the Immigration Control and Refugee Recognition Act*, which will be implemented within three years. Major points of the amendments include:

(1) The introduction of a new residence management system: The previous information co-management system by the immigration authorities and the city, ward, town or village governments will be replaced by a new system whereby the Minister of Justice continuously keeps the necessary information for residence management. In addition, the maximum period of stay for foreign nationals is to be extended from three years to five years, and an application for a re-entry permit is to be exempt when re-entering Japan within one year of departure. The above amendments shall apply within three years from the promulgation date of the amended law.

(2) The abolition of the alien registration system and the issuance of special permanent resident

certificate: These amendments are expected to take effect within three years from the promulgation date of the amended law.

(3) The revision of the training and technical internship program: A new status of residence referred to as “technical intern training” shall be established, which enables such persons to engage in the following activities: activities to acquire knowledge through group training courses and activities to acquire skills through employment agreements; and activities for a person who has acquired knowledge and skills to engage in business that requires such knowledge and skills through an employment agreement. According to the current training and technical internship program, foreign trainees will have to complete one-year training in Japan, and after satisfying the qualification appraisal, become technical interns with a new residence status pursuing “specified activities” for one to two years. Foreign trainees can get paid only in their second year of stay in Japan, while in the first year of stay they are only given a meager subsistence allowance. In contrast, under the newly established “technical intern training” status of residence, foreign technical interns can get paid after receiving 2 months of training sessions. In addition, the amendments contain new provisions such as the integration of the statuses of residence of “College Student” (for those receiving higher education at Japan’s colleges and universities) and “Pre-College Student” (for those receiving education in language schools and vocational schools), exceptions to visa renewal applications, and the establishment of the Immigration Detention Facilities Visiting Committee.

Pursuant to the *Amendments to the Immigration Control and Refugee Recognition Act*, the Immigration Control Bureau of the Ministry of Justice (MOJ) in August 2009 simplified the visa application procedures, abolishing the requirements on the presentation of employment certificates, employment contracts and tax payment certificates.

2.3.3 Sanitary and Phytosanitary System

Sanitary and phytosanitary legislations in Japan mainly include *Food Sanitation Law*, *Pharmaceutical Affairs Law*, *Consumer Products Safety Law*, and *Law on Safety Guarantee and Quality Improvement of Feedstuff*. The Ministry of Health, Labor and Welfare (MHLW) and the Ministry of Agriculture, Forestry and Fisheries (MAFF) are major departments responsible for sanitary and phytosanitary measures.

Imported food in Japan is subject to three types of inspection in the order of increasing strictness: self inspection, monitoring inspection and mandatory inspection. Self inspection is an act of

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self-discipline on the part of importers, who select and send samples to the inspection agencies designated by the MHLW for inspection and report to the MHLW any detects, if found. Monitoring inspection is a routine sampling inspection conducted by the MHLW of general imported food according to its inspection plan based on food categories, defect rates, import quantities (weights), and risk levels. The monitoring inspection plan is announced in March every year. If nonconformity is found in monitoring inspection, intensified monitoring inspection will follow with a higher sampling rate. If nonconformity is found once again, mandatory inspection batch by batch will be launched. However, if the imported food poses a threat to public health or triggers a crisis of public health, mandatory inspection will be put in force immediately after the discovery of a single case of nonconformity. Only after the exporting country identifies the causes of the health threat, institutes an improved supervision and inspection system, and comes up with response measures to prevent the recurrence of defective products can mandatory inspection be lifted.

In March, 2009, the MHLW released the *Guidance for the Supervision of Imported Food for the Fiscal Year 2009*, effective from 1 April 2009 to 31 March 2010. It provides for two major kinds of inspection, namely, monitoring inspection and mandatory inspection. Products subject to monitoring inspection mainly include livestock foods, processed livestock food products, aquatic foods, processed aquatic food products, agro-foods, agro-processed food products, other foodstuffs, alcohols and beverages, and food-packing containers. Items under monitoring inspection fall into seven categories: antibiotics, pesticide residues, additives, component specifications, micro-organisms, genetically modified organisms, and irradiation. Mandatory inspection has been imposed for the first time on aqua-cultured shrimps, loaches, onions, and sesame seeds; and lifted on honey, perilla, litchi, and green soybeans.

Compared with that in 2008, Japan tightened monitoring inspection of imported food in 2009 with more stringent requirements for the testing of more items. The number of monitoring inspection rose from 79,809 to 83,400 batches, an increase of 4.5%. Monitoring inspection grew by 10% on antibiotics and ingredient specifications and by a staggering 94% on irradiation, while monitoring inspection on genetically modified organisms was reduced from 1,461 to 100 batches.

In March, 2009, the MAFF revised its methods of inspection of imported meat, intensified the inspection of imported chicken and pork, and adjusted the currently uniform inspection rate of 0.5% to a rise in inspection rate in case of an outbreak of epidemics abroad to ensure that the products have been sufficiently heated and a relative decline in sampling rate in the absence of

epidemics. Inspection rate of chicken products imported from countries such as China and Thailand will be raised according to the severity of the bird flu endemics to verify whether these products have been subjected to adequate heat treatment.

2.4 Trade-Related Technical Measures in 2009

2.4.1 Technical Regulations

In 2009, Japan enacted a variety of technical regulations, covering foodstuffs, pharmaceuticals, toys, chemicals and other products. The main technical regulations are as follows:

2.4.1.1 Partial Revision of the Standards for Cosmetics

On 14 January 2009, the Japanese Ministry of Health, Labor and Welfare (MHLW) released a notification on “Partial Revision of the Standards for Cosmetics”, adding piroctone olamine to the positive list. The proposed date of adoption and the proposed date of entry into force for the revision is the end of March, 2009. On 21 July 2009, the MHLW issued another notification on “Partial Revision of the Standards for Cosmetics”, which added jujube extract to the negative list. The proposed date of adoption and the proposed date of entry into force for this revision is the end of September, 2009.

2.4.1.2 Revision of Quality Labeling Standard for Soy Sauce

On 24 April 2009, Japan’s Ministry of Health, Labor and Welfare (MHLW) released a notification “Overview to Revisions to the Quality Labeling Standard for Soy Sauce (Syoyu)”. According to the notification, the Quality Labeling Standard for Soy Sauce (Syoyu) will be revised as follows: (1) To allow the use of protease for prevention of cloudiness of extra light color soy sauce (shiro syoyu), and (2) For labelling of ingredients other than the main ones, to abolish the special provisions and apply the Quality Labelling Standard for Processed Foods (Notification No. 513 of the Ministry of Agriculture, Forestry and Fisheries of 31 March 2000). The proposed date of adoption and the proposed date of entry into force for the revision is the end of November, 2009.

2.4.1.3 Revision of Standards for Organic Plants

On 24 April 2009, the Japanese Ministry of Agriculture, Forestry and Fisheries (MAFF) released a notification “Overview of Japanese Standards for Organic Plants”. According to the notification, the Japanese Agricultural Standards for Organic Plants will be revised as follows: (1) To allow agricultural substances derived from used papers and in which seeds are zonally enclosed with tape (limited to one whose ingredients are recycled fiber from cotton linter) for general

management; (2) To add ferric phosphate granulated and potassium bicarbonate wettable powder as permitted substances for plant pest and disease control; and (3) For permitted substances for preparation: a) To revoke DL-tartaric acid, DL-potassium hydrogen tartrate and DL-sodium tartrate, b) To add ripening of kiwifruit to criteria of ethylene use, and c) To add potassium alum for prevention against blackening of cut surface of banana bunch. The proposed date of adoption for this revision is November, 2009, and the proposed date of entry into force will be announced in *KAMPO* (the Official Government Gazette).

2.4.1.4 Law for Keeping Transaction Record and Relaying Place of Origin Information of Rice and Rice Products

On 24 April 2009, Japan enacted the *Law for Keeping Transaction Record and Relaying Place of Origin Information of Rice and Rice Products*. The purpose of the Law is to prevent distribution of rice and rice products (hereinafter referred to as “covered products”) that do not meet the safety standard and to ensure proper labeling and thereby to secure proper and smooth distribution of those products as well as to promote providing information about place of origin of covered products. On 24 June 2009, Japan released a notification “Draft Proposals of Ministerial Enforcement and Ministerial Ordinance of *Law for Keeping Transaction Record and Relaying Place of Origin Information of Rice and Rice Products*”. The Draft Proposal of the Ministerial Enforcement mainly includes products to be covered by the rice traceability and products to be covered by the system for relaying place of origin information of rice ingredients (such as rice, rice flour, preparations of rice flour, rice-koji, groats and meal of rice, and dough for rice products). The Draft Proposal of the Ministerial Ordinance mainly stipulates the details of record keeping (such as product name, place of origin of rice/rice ingredient, quantity, and date), the time limit for keeping transaction record (at least three years from the date of the transaction except as otherwise stipulated), and the methods for relaying place of origin information (by showing it in a prominent place on the package or container). The proposed date of adoption remains to be determined. The proposed date of entry into force is no later than 24 October 2010 for rice traceability and no later than 24 October 2011 for relaying place of origin information of rice/rice ingredients.

2.4.1.5 Revision of Quality Labelling Standard for Fish Ham and Fish Sausage

On 24 June 2009, the Japanese Ministry of Agriculture, Forestry and Fisheries (MAFF) released a notification “Overview of Revisions to the Quality Labelling Standard for Fish Ham and Fish Sausage”. The proposed draft of the Quality Labelling Standard for Fish Ham and Fish Sausage includes the following changes: (1) To delete the definition for “shaomai style fish sausage” due

to its scarce production in recent years; (2) To remove “instruction for preparation” from mandatory items for labelling in regard to hamburger style fish sausage and shaomai style fish sausage; and (3) To use generally recognized fish name instead of names listed in the appendix of the same standard for fish meat in ingredient lists (and hence delete the appendix in accordance with the change described above). The proposed date of adoption and the proposed date of entry into force are to be announced in *KAMPO* (the Official Government Gazette).

2.4.1.6 Revision of the Quality Labeling Standard for Edible Vegetable Oils and Fats

On 24 June 2009, the Japanese Ministry of Agriculture, Forestry and Fisheries (MAFF) released a notification “Overview of Revisions to the Quality Labelling Standard for Edible Vegetable Oils and Fats”. The proposed draft of the Quality Labelling Standard for Edible Vegetable Oils and Fats includes the following change: To change the indication of “high linoleic” or “high oleic” from mandatory to voluntary item for labelling. The proposed date of adoption and the proposed date entry into force are to be announced in *KAMPO* (the Official Government Gazette).

2.4.1.7 Revision of the Household Goods Quality Labeling Law

On 24 June 2009, the Japanese Ministry of Economy, Trade and Industry (METI) released a notification “Partial Revision of the Ministerial Notification under the *Household Goods Quality Labelling Law*”, which introduced revision of compliance items on the Quality Labelling Rules for Plastic, Textile and Miscellaneous Goods with the intention to reflect the request from consumers and industries, technical improvement and changes in circumstances surrounding the products. The revision covers textile goods, “lingerie”, “lace”, “the open end thread made by using waste fibres, noil and recovered fibres, and the fabric made by the open end thread”, “reverse side haired knit fabric,” and miscellaneous manufactured goods such as “thermos bottles”, “gloves that are wholly or partly made of leather or synthetic leather”, “apparel made of leather or synthetic leather”, “pots and pans”, and “kettles”. The proposed date of adoption for the revision is by the end of August 2009 and the proposed date of entry into force is by the end of August, 2010.

2.4.1.8 Revision of the Chemical Substances Control Law

On 30 July 2009, the Japanese Ministry of Economy, Trade and Industry (METI), the Ministry of Health, Labor and Welfare (MHLW) and the Ministry of Environment (MOE) released a joint notification “Revision of the Cabinet Order of the *Chemical Substances Control Law*”. Based on Articles 6 and 11 of the *Chemical Substances Control Law* (hereinafter referred to as “the Law”), the following will be designated as chemical substances which need authorization to manufacture or import: PFOS and its salts, PFOSF, pentachlorobenzene, alpha hexachlorocyclohexane, Beta

hexachlorocyclohexane, lindane (Gamma-hexachlorocyclohexane), chlordecone, hexabromobiphenyl, etrabromodiphenyl ether, entabromodiphenyl ether, hexabromodiphenyl ether, and heptabromodiphenyl ether. Based on Article 13 of the Law, the following will be designated as products prohibited from importation when PFOS and its salts, tetrabromodiphenyl ether or pentabromodiphenyl ether, a Class I Specified Chemical Substance, is used in them: (1) PFOS and its salts: aviation hydraulic fluids, treating agent for yarn, etching agents for compound metals and semiconductors (excluding high-frequency compound semiconductors), metal plating, anti-reflective coating for semiconductors, abrasive compound for industrial use, insecticide and insect baits for ants, and printing paper; (2) tetrabromodiphenyl ether and pentabromodiphenyl ether: paint and adhesive agent. The proposed date of adoption is October, 2009 and the proposed date of entry into force is by the end of April, 2010.

2.4.1.9 Revision of General Specifications and Standards for Infant's Toys

On 28 September 2009, the Japanese Ministry of Health, Labor and Welfare (MHLW) released a notification "Revision of General Specifications and Standards for Infant's Toys". The revision aims to enhance the regulation of the use of the phthalates in designated toys made of plasticized materials. The proposed date of adoption is by the end of March, 2010 and the proposed date of entry into force is one year or three years after the promulgation of the revised specifications and standards.

2.4.1.10 Partial Revision of the Pharmaceutical Affairs Law, Enforcement Regulations

On 30 September 2009, the Japanese Ministry of Health, Labor and Welfare (MHLW) released a notification "Partial Revision of the *Pharmaceutical Affairs Law*, Enforcement Regulations", which excludes the plasters and pressure sensitive adhesives tapes containing diclofenac 1.9% or less from powerful drugs. The proposed date of adoption and the proposed date of entry into force for this revision are January, 2010.

2.4.2 Sanitary and Phytosanitary Measures

2.4.2.1 Revision of Standards for Food Additives

In 2009, Japan's Ministry of Health, Labor and Welfare (MHLW) modified the maximum residue limits (MRLs) of the following food additives in foodstuffs: chlorantraniliprole, metaflumizone, methyl iodide, paromomycin, flucetosulfon), acetamiprid, cadusafos, thiamethoxam, clothianidin, 1-naphthaleneacetic acid), fenbuconazole, eprinomectin, etiproston, acequinocyl, prohydrojasmon, pencycuron, brotizolam, rifaximin, imicyafos, pyrasulfotole, destomycin A, terdecamycin,

imidacloprid), tefuryltrione, EPN, oxaziclomefone, pretilachlor, sodium chlorite, simeconazole, pyraclostrobin, mesotrione, lepimectin, isotianil, fentrazamide, and boscalid.

In addition, the MHLW approved the use of neotame, 2-ethylpyrazine, 2-methylpyrazine, calcium sorbate, 2-methylbutyraldehyde, 2-pentanol, propionaldehyde, and 6-methylquinoline as food additives, setting standards and specifications for their use in foods.

2.4.2.2 Amendment to the Enforcement Regulations of the Food Sanitation Law

On 4 June 2009, the Ministry of Health, Labor and Welfare (MHLW) issued a Ministerial Ordinance concerning Partial Amendment to the *Food Sanitation Law* (Ministerial Ordinance No. 119 of the MHLW in 2009) and a Notification concerning the Revision of Specifications and Standards for Foodstuffs and Food Additives (Notification No. 325 of the MHLW in 2009). Based on Article 10 of the *Food Sanitation Law*, 5 substances such as isovaleraldehyde were added to Appended Table 1 of the Ministerial Ordinance and the substance of sodium starch phosphate was removed from the table. Pursuant to Paragraph 1 of Article 11 of the Law, maximum residue limits (MRLs) in food were adjusted for 19 pesticides such as ametryn and for certain veterinary drugs such as isoprothiolane, oxolinic acid, and benzocaine; standards and specifications of 5 substances such as isovaleraldehyde were established; and standards and specifications for sodium starch phosphate were deleted.

2.4.2.3 Adding Taurine to the List of Exempted Substances

On 23 June 2009, the Ministry of Health, Labor and Welfare (MHLW) released a notification, adding taurine to the list of “exempted substances” with immediate effect in accordance with Paragraph 3 of Article 11 of the *Food Sanitation Law* regarding “exempted substances that have no potential to cause damage to human health”. The term “exempted substances” refers to agricultural chemicals whose residues in food in normal conditions of use will not pose adverse human health effects. The MHLW will decide on a list of “exempted substance” according to risk assessment conducted by Japan, other countries and areas, as well as the Joint FAO/WHO Expert Committee on Food Additives (JECFA) and the Joint FAO/WHO Meeting on Pesticide Residue (JMPR) administered jointly by the Food and Agricultural Organization of the United Nations (FAO) and the World Health Organization (WHO). Japan sets no maximum limits for the use of “exempted substances”. At present, there are 65 “exempted substances” established by Japan, covering mainly nutritional feed additives and natural insecticides such as vitamins, amino acids and minerals.

2.4.2.4 Revision of the Law for Ensuring Safety of Pet Food

On 18 June 2008, Japan enacted the *Law for Ensuring Safety of Pet Food*. On 6 February 2009, the Ministry of Health, Labor and Welfare (MHLW) released its Draft Proposals of “Ministerial Ordinance of *Law for Ensuring Safety of Pet Food*” and “Ministerial Ordinance of Standards and Specifications for Pet Food”. The main contents of the Ministerial Ordinance of *Law Ensuring Safety of Pet Food* are as follows: “supplying pet food for sale” and “supplying pet food to general public by other means than sale” is regarded as “selling pet food” defined in the Law and shall meet the requirements provided in it; domestic pet food manufacturers and importers shall notify to the Minister of Agriculture, Forestry and Fisheries and the Minister of Environment prior to the commencement of their business. The main contents of the Ministerial Ordinance of Standards and Specifications for Pet Food mainly include: setting standard values for mycotoxins, pesticides and additives; drafting manufacturing standards; and proposing labeling standards. The proposed date of entry into force for the draft proposals is 1 June 2009. As a leading importer of pet food, Japan has placed strict requirements on the production, sale and import of pet food. The new pet food law has tightened the import management of pet food. Chinese pet food manufacturers exporting to Japan should note the rising threshold of market access. To ensure smooth export of pet food to Japan, Chinese enterprises should make due preparations in advance and establish a sound quality control system.

2.4.2.5 Amendment to the List of Regulated Living Organisms under the Invasive Alien Species Act

On 24 September 2009, the Japanese Ministry of Environment (MOE) issued a notification “Amendment to the List of Regulated Living Organisms under the *Invasive Alien Species Act*”, designating banded mongoose (*mungos mungo*) as invasive alien species (LAS) which is at present designated as uncategorized alien species (UAS). The proposed date of entry into effect for the amendment is 1 February 2010.

3 Barriers to Trade

3.1 Tariff and Tariff Administration Measures

3.1.1 Tariff Peaks

In 2009, Japan continued to impose high tariffs on the imports of agricultural products, processed products, leather products and footwear. For example, the tariff duty rate is 38.5% for beef, 35% for milk and dairy products, 25% for wheat flour, barley flour, rice flour, and starch, 25% for

coffee, 29.8% for glucose and fructose, 40% for seaweed, 12%-16% for horse, cattle and pig skins, 16% for leather handbags, 20%-25% for bananas, 35% for sugar, 16%-32% for citrus, 23.8% for frozen pineapples, 17.3%-24% for footwear, and 10.9% for certain textiles.

3.1.2 Tariff Escalation

Japan imposes corresponding tariff rates on certain products according to the depth of processing and the rule of tariff escalation. The differences in tariff rates between raw materials and semi-finished or finished products are so large that they blunt the competitive edge of relevant Chinese semi-finished and finished articles (such as agricultural produce, textiles and wood products) in the Japanese market. For example, the tariff rate is 4.3% for raw pork, but 8.5% for processed pork products; zero for coffee, but 25% for processed coffee products; 5.6% for cotton fabrics, but 10.9% for cotton garments; zero for softwood, but 5% for softwood sticks.

3.1.3 Tariff Quotas

Japan administers tariff quotas on the imports of agricultural products (such as sugar-free cocoa, rice, barley, wheat, maize, dairy products and raw silk) and finished products (such as leather and leather shoes). A higher tariff rate would be levied on the imports exceeding tariff quotas. For example, the above-quota tariff rate for cattle hide and horse hide reaches as much as 30%. In name, free trade is allowed for the import of products exceeding tariff quotas, but the exorbitant out-of-quota tariffs have greatly weakened the competitiveness of imported products, thus leading to very small amount of such imported products beyond quota restrictions. Moreover, the import of in-quota products is subject to restrictions as to their variety, price, country and use. Take public procurement of rice for example, the Japanese government tenders mainly for long grain rice, which makes up a small proportion of Chinese rice production, while accounts for 50%-60% in American rice production, thereby making it difficult for Chinese rice to be exported to Japan.

Japan's tariff quota administration regime is complex and non-transparent. For example, the Japanese government only releases the names of enterprises to which certain quota has been granted, but does not specify the amount of the quota distributed, thus making it difficult for enterprises participating in the tender to make comparison to judge whether the quota allocation process is equitable. The Chinese side hopes that Japan will increase transparency of its tariff quota administration regime.

3.2 Technical Barriers to Trade

3.2.1 Strict Standards for Food Additives

Many food additives which have been used worldwide are banned in Japan, and the standards for authorized food additives are very stringent. The process of authorizing food additives in Japan is time-consuming. Although some food additives have been approved by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO) and thus widely used across the world, they still fail to be included on the Japanese authorized list of food additives, or even if approved for use, they are subject to strict criteria. Therefore, the export to Japan of food products containing these additives may confront many difficulties.

Japan classifies pesticides approved for use on certain crops after harvest as food additives, which runs counter to the international practice. As a rule, risk assessment of a pesticide is based on either pre-harvest or post-harvest use, but in Japan not only pre-harvest but also post-harvest microbiological risk assessment is made. This is because Japan categorizes pesticides used after harvest as food additives, which poses difficulties for exporters to use pesticides effectively in the process of production. In addition, inspection of food additives is costly in Japan, which hinders the export of foreign food products to the Japanese market.

3.2.2 Complicated Requirements on Food Labeling

It is mandatory in Japan to list all the food ingredients, their respective ratios and the main production process on food labels. This practice not only places a great burden on food producers, but also leads to the leak of business secrets. Japan also applies food labeling requirements inconsistently to domestic and foreign food producers. Imported foods are subject to strict labeling rules in accordance with relevant laws and regulations, but to protect home industries, Japan only exposes the conduct of domestic firms which is proved “malicious” or which cannot be corrected without taking stringent measures.

3.2.3 Ill-Defined Standards of Wood Products Inspection

Japan does not have clearly defined standards about fire safety test of imported wood products and hands over inspection of wood products to fire testing laboratories. For these reasons, foreign manufacturers do not have a coherent and clear understanding of inspection standards of forest products in Japan, which poses no small difficulties for them to pass the fire safety test.

3.3 Sanitary and Phytosanitary Measures

3.3.1 Positive List System

3.3.1.1 Uniform Limit

On 29 May 2006, Japan started to put into effect the Positive List System for agricultural chemical residues in food products. During its enforcement for more than three years, the Positive List System has adversely affected the export of Chinese agricultural products and foodstuffs to Japan. Japan also sets the so-called “Uniform Limit”, that is, the 0.01 ppm level is applicable for the residues of all agricultural chemicals (including pesticides, feed additives and veterinary drugs) for which no compositional specification for foods is established. However, the prevailing international practice is set different maximum residue limits (MRLs) for different agricultural chemicals in foods based on the results of toxicological evaluation along with considerations of acceptable daily intakes (ADI) and good agricultural practices (GAP). Different pesticides have different ADI values, different foods have different ADI contributions, and consequently pesticide exposure and safety risk are different. The Japanese practice of determining a “Uniform Limit” for the residues of different agricultural chemicals in foods, which accords neither with the principles of the pertinent international rules, nor with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), has severely damaged the normal bilateral trade in agricultural products. In 2009, the inspection of Chinese pork, fresh onions and fresh tricholoma matsutake was increased in sampling rate and followed with mandatory inspection; the inspection of Chinese fresh mustards, potatoes and asparaguses was increased to a sampling rate of 30%. The above decisions were largely made in accordance with the enforcement of the “Uniform Limit”.

In addition, product names in the Positive List System are subject to different interpretations. In February, 2009, Japan’s Ministry of Health, Labor and Welfare (MHLW) decided to subject Chinese spring onions to mandatory inspection regarding the residues of mepanipyrim, i.e., every batch of spring onions has to be tested before customs clearance. The residue level applied is the so-called “Uniform Limit” of 0.01 ppm. As for mepanipyrim, Japan sets a MRL of 2 ppm for onions only, but no MRL for spring onions in the Positive List System. In line with the Positive List System, the “Uniform Limit” of 0.01 ppm shall apply to all substances without MRLs. The MHLW argues that spring onions do not count as onions included in the Positive List System, so the MRL of mepanipyrim in onions is not applicable to that in spring unions. The practice of fixing markedly different residue levels of the same pesticide in the same category of agricultural products brings many uncertainties to Chinese producers and exporters, thus exerting an adverse effect on the Sino-Japanese trade in agricultural products.

3.3.1.2 Other Residue Limits

Agricultural chemical residue limits in the Japanese Positive List System include customary limits,

provisional MRLs, banned substances, exempted substances and uniform limit. An ever tightening residue limits will be imposed on various kinds of chemicals with each amendment made each year.

At the beginning of the implementation of the Positive List System, there were only 15 banned substances (i.e., agricultural chemicals prohibited for use in foods), and in 2009 the number was increased to 19. Malachite green is a newly added banned substance, and furan antibiotics are replaced by four kinds of metabolites: furadantin, furacilinum, furaltadone hcl, and furanzolidone. It is prescribed that provisional MRLs can be adopted as official MRLs only after assessment. At first, Japan promised to complete the assessment of all the provisional MRLs and to establish official MRLs within five years, but the process is slow during the past three years since the Positive List System was implemented, and only half of the provisional MRLs have been revised. It seems very unlikely for Japan to meet its deadline to finish all the revisions. Moreover, many of the revised residue limits have been sharply lowered. For example, in 2009, Japan reduced the residue limits of acequinocyl, prohydrojasmon, pencycuron, brotizolam, rifaximin, imidacloprid, tefuryltrione, EPN, oxaziclomefone, pretilachlor in various food products.

3.3.2 Sanitary and Phytosanitary Procedures

3.3.2.1 Random Extension of the Scope of Inspection and Quarantine

The inspection and quarantine procedures in Japan are very strict indeed. If a food product of an exporter is once found to contain a chemical substance above the residue limit, the Ministry of Health, Labor and Welfare (MHLW) will raise the inspection frequency to 30% for this product from the exporter; if such a case is found once again within 12 months, the inspection frequency of the product from the exporter's country will be increased to 100%. In 2009, Japan continued to strengthen surveillance and inspection of imported food, setting more inspection items and establishing higher inspection standards. In the course of inspection, Japan randomly expands its monitoring scope, frequently subjecting Chinese products to stricter inspection procedures. For example, in April, 2009, Japan detected irradiation in dry chili originating in China, and it soon announced to put all food products from China to mandatory inspection of irradiation. In April, 2009, pork imported from China was found in inspection to fail to comply with the relevant requirements, Japan decided to further tighten monitoring inspection on Chinese pork and soon declared mandatory inspection on Chinese pork. In June, 2009, Japan extended the scope of mandatory inspection from Chinese pork and its simple processed goods to various pork products such as "pork chops", "pork shashlik" and "cooked pork". In addition, the Ministry of Health,

Labor and Welfare (MHLW) hands over the inspection of such items as mould content and transgenic organisms and such imports as equipments and toys to registered inspection agencies in Japan. Improper management of some of the registered inspection agencies has led to the issuance of wrong inspection certificates, which frustrates the exporters.

The Chinese food exporters are strongly advised to pay close attention to Japan's ever stricter monitoring inspection plans, to further strengthen self inspection, to strictly control the use of pesticides, feed additives and veterinary drugs, and to improve product quality, safety and hygiene.

3.3.2.2 Problems in Irradiation Inspection

In 2009, Japan increased its irradiation inspection of food imports by 94% as compared with 2008. In practice, if a particular product from a country is found to have undergone irradiation treatment, then the inspection scope would be extended to cover all the food products from the same country, which has taken a heavy toll on Chinese enterprises. In 2007, Japan successively carried out irradiation inspection on imported spicy sauces, dried vegetables, tea and so on. In April, 2009, Japan further included marine products in its irradiation inspection. In 2009, mushrooms, dried vegetables, dried chili, dried onions, oolong tea and frozen boiled shrimps imported from China were detected to have been irradiated, and as a result, food products from the relevant Chinese exporters were subjected to mandatory inspection. Food irradiation is the process of exposing food to ionizing radiation through the use of gamma rays, x-rays, and electron to sterilize products by destroying microorganisms, bacteria, viruses or insects that might be present in the food and to inhibit germination of root crops so as to improve food quality and extend the durable life of perishable produce. In 1983, the Codex Alimentarius Commission (CAC) of the United Nations issued the General Standard for Irradiation Foods and the Recommended International Code of Practice for Radiation Processing of Food, which provides that the maximum absorbed dose delivered to a food should not exceed 10 kiloGray (kGy). In 2003, the Codex Standard was revised, allowing irradiation doses greater than 10 kGy when "necessary to achieve a legitimate technological purpose." So far, food irradiation technology has been accepted by more than 60 countries and the United States regards it as an effective method of controlling food-borne diseases. However, Japan only approved irradiation treatment of Hokkaido potatoes more than 30 years ago and does not allow irradiation on other foods. Japan's irradiation standard is much stricter than the international code. According to Article 3.3 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), Japan may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or

phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendation, but Articles 2.2 and 5.5 of the SPS Agreement also stipulate that a country shall ensure any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles, is not maintained without sufficient scientific evidence, and does not result in discrimination or a disguised restriction on international trade. At present, Japan has no regulation or standard on food irradiation other than Hokkaido potatoes. The Chinese side hopes that Japan will improve its irradiation standard as soon as possible on the basis of scientific analysis and not impose unnecessary restrictions on the international trade in irradiated foods.

3.3.2.3 Unreasonable Requirements on Plant Fumigation

Japan requires that each new horticultural variety should be subject to fumigation testing and evaluation separately before entering the Japanese market. This practice does not conform to the principle of sufficient scientific evidence in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and has placed a tremendous burden on the exporters.

3.4 Trade Remedy Measures

Up to the end of 2009, Japan has launched 2 anti-dumping investigations and 3 safeguard mechanism investigations (however, no safeguard measures were adopted in the end) against China. In 2009, Japan did not initiate any trade remedy proceedings against Chinese imports.

3.5 Barriers to Trade in Services

3.5.1 Legal Services

Japan sets many restrictions on foreign lawyers who provide in Japan legal services on international laws. For example, it restricts the establishment of professional companies by foreign lawyers on the one hand, and forbids those foreign lawyers who have not established a professional company to set up branches in Japan on the other hand. It requires that foreign lawyers who apply for the license of legal adviser on foreign laws should have at least a three-year working experience, but it does not count in all the working years of foreign lawyers. The registration procedures for foreign legal advisers can be very lengthy. Japanese laws and Japan Bar Association place restrictions on the partnership between Japanese lawyers and foreign lawyers engaging in international legal services. Currently, foreign legal advisers are not allowed to provide alternative dispute resolution (ADR) and hence cannot act as an agent for their clients

in the non-litigation ADR procedures in Japan.

3.5.2 Port Cargo Handling Services

Under the current port and harbor administration regime in Japan, foreign shipping companies could enter cargo handling services market only after they have established a long-term cooperative relationship with specific Japanese cargo handling service companies. This regulation obstructs the entry of new service suppliers and increases the costs of foreign companies. As a result, there are currently no foreign invested companies engaging in terminal handling services in most ports of Japan. The Japanese laws and regulations related to port and harbor administration pose obstacles to market access for foreign service providers and lack transparency. China hopes that Japan could review its pertinent laws and regulations and allow the entry of new practitioners to promote fair competition in the cargo handling service industry.

3.5.3 Shipping Services

According to the pertinent stipulations in the *Vessels Law*, Japan's domestic maritime shipping market is, in principle, open only to vessels registered in Japan. Foreign companies are permitted to invest in Japan's domestic shipping market only after they have established a company in Japan.

3.6 Other Barriers

There are flaws in unemployment compensation under the current Japanese training and technical internship system. Laid-off trainees and interns find themselves in a difficult situation after losing their jobs and unable to protect their legitimate rights and interests. Some of the unemployed trainees and interns still staying in Japan have to live in temporary shelters prepared for homeless people.