

## **IV. TRADE POLICIES BY SECTOR**

### **(1) INTRODUCTION**

1. Since Japan's previous Trade Policy Review, the Government has continued to implement structural reforms; progress has been made especially in the services sector, including financial services and telecommunications.

2. In agriculture, there have been few policy changes since the previous Review. In 2001, the Government announced a Priority Plan for a Stable Food Supply and Aesthetic Land Development, which calls for directing measures and resources towards productive sectors, and at the same time providing safety measures to address risks associated with structural reform. Since March 2001, certain stock companies have been allowed to participate in farming (effectively limited to companies formed by farmers). The average applied MFN tariff for agriculture (WTO definition) decreased slightly from 18.9% in FY2000 to 18.6% in FY2002. Total transfers to agriculture exceed the sector's contribution to GDP. Japan's food self-sufficiency ratio has remained stable at around 40% since the previous Review; Japan remains the world's largest net importer of food.

3. Japanese manufacturing has traditionally been much more exposed to international competition than agriculture and certain services.<sup>1</sup> Tariffs on manufactured goods are usually low; moreover, non-tariff barriers are few and the sector receives relatively little financial or other support from the Government. As in most other industrialized countries, manufacturing's contribution to Japan's GDP has been declining steadily; it accounted for 21.6% of GDP in 2000, compared with 23.0% in 1995.

4. By contrast, the share of services in Japan's GDP has been growing steadily; it accounted for 70.1% of GDP in 2000, up from 68.8% in 1995. Reforms have continued, especially in financial and telecommunications services. Against the background of a heavy debt overhang, financial services reforms have concentrated on strengthening prudential norms and eliminating non-performing loans (NPLs). Over-the-counter sale of some insurance products by banks has been permitted since 1 April 2001, and the "third sector" (e.g. personal accident and liability) was liberalized in July 2001. In the telecommunications industry, the limit on foreign ownership restrictions of NTT was relaxed from 20% to one third, and an independent dispute-settlement commission was established.

### **(2) AGRICULTURE**

#### **(i) Overview**

5. Since its previous Trade Policy Review, Japan's regulatory environment for agriculture has remained generally unchanged, except for some initiatives, such as the relaxation of land ownership restrictions introduced in 2001. The sector continued to receive substantial government support; provisional estimates by the OECD indicate that total transfers to agriculture amounted to 1.4% of

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<sup>1</sup> The degree of openness to competition varies among manufacturing industries. For example, according to a recent study by the Policy Research Institute of the Ministry of Finance, the degree of government intervention, such as subsidization, entry regulations, and authorization of cartels, was lower for what the authors regard as "successful" industries than for "unsuccessful" ones. Successful industries included semiconductors, VCRs, satellite transmitters, musical instruments, robots, automobiles, and trucks, while unsuccessful industries included civil aircraft, chemicals, computer software, apparel, and confectionery (see <http://www.mof.go.jp/jouhou/soken/kenkyu/zk056.htm#01> (in Japanese)).

GDP in 2000<sup>2</sup>, compared to the sector's 1.1% share of GDP, although it should be noted that total transfers are measured on a gross basis, while GDP is on a value-added basis.<sup>3</sup> The cost of agricultural inputs may have been a factor in encouraging Japan's food processing industries to relocate offshore<sup>4</sup>; "development and import" schemes, which are conducted by Japanese trading corporations contracting with foreign agricultural producers with a view to exporting the products to Japan are apparently increasing.<sup>5</sup> According to the authorities, the average retail prices of food in Tokyo in 2000 were 25% to 100% higher than in other major cities in the world, although food prices in Tokyo decreased in 2001. The authorities attribute high food prices in Tokyo to high transportation and distribution costs, and other factors reflecting differences in consumer buying behaviour; high tariffs also undoubtedly contribute to high food prices.<sup>6</sup> In FY2000, Japan's food self-sufficiency ratio was 40% on a calorie basis.<sup>7</sup>

6. The Basic Law on Food, Agriculture and Rural Areas, and the Basic Plan for Food, Agriculture and Rural Areas, which implements the policy direction stipulated in the law, have continued to provide the framework and policy direction for agriculture in Japan since its previous Trade Policy Review. In addition, in August 2001, the MAFF announced a Priority Plan for a Stable Food Supply and Aesthetic Land Development, which calls for focusing measures and resources on productive sectors, and at the same time providing safety measures to address risks associated with structural reform.<sup>8</sup> Japan has notified the Committee on Agriculture of its direct payment programme as well as two other measures, on rice and dairy farming.<sup>9</sup>

7. The ownership of farms is restricted to agricultural cooperatives, unlimited partnerships, limited partnerships, or limited liability companies, or, since March 2001, joint-stock companies that require approval by the board of directors to transfer the stocks; a majority of the members of a corporation must be farmers, and over three quarters of the total voting rights of the corporation and the majority of directors must be full-time farmers. To legally own farmland, the main activities of the corporations must be agriculture and related activities and more than 50% of sales must be from agriculture and related business.

## (ii) Border measures

8. The average applied MFN tariff for agriculture (WTO definition) is 20.1%<sup>10</sup> (FY2002) compared with an overall average of 6.9% (Chapter III(2)(iii)); some 15% of duties applied to agricultural goods are non-*ad valorem*. Many agricultural subsectors (particularly dairy products, edible vegetables and certain roots and tubers, products of the milling industry, sugar and sugar

<sup>2</sup> OECD (2002c).

<sup>3</sup> Data on GDP are available online at: <http://www.esri.cao.go.jp/jp/sna/h14-nenpou/3main/3gdp/1nominl/1nominl-j.html> (in Japanese).

<sup>4</sup> WTO (2001), p. 81. In general, the cost of agricultural inputs, the cost of labour, exchange rates, harvest, and the export policies of exporting countries may affect the behaviour of Japan's food processing industries in terms of relocating offshore.

<sup>5</sup> [http://www.greenjapan.co.jp/topic2001\\_4\\_1.htm](http://www.greenjapan.co.jp/topic2001_4_1.htm) (in Japanese).

<sup>6</sup> MAFF (2001).

<sup>7</sup> Japan's food self-sufficiency ratio since FY1998 has remained unchanged, at 40%. The Basic Plan for Food, Agriculture and Rural Areas, decided by the Cabinet in March 2000, contains a guideline to achieve a food self-sufficiency ratio of 45% by 2010.

<sup>8</sup> The Plan includes measures such as assistance for expanding farm size for the scale expansion of farms to motivated and capable farmers. Japan is also investigating the possibility of introducing safety-net measures to alleviate the effect of risks from price fluctuations on farm income.

<sup>9</sup> WTO document G/AG/N/JPN/62, 1 March 2001.

<sup>10</sup> The average applied MFN tariff for agriculture (HS 1-24) is 18.6% (FY2002).

products) benefit from relatively high levels of MFN tariff protection (Table IV.1); several of these subsectors are also subject to a number of tariff peaks (defined here as tariff rates exceeding three times the simple applied MFN average). Some of the average tariffs for the subsectors may be underestimated, owing to the lack of estimates for AVEs of some specific duties (which tend to conceal relatively high tariffs).<sup>11</sup> For example the duty rate payable on out-of quota imports of rice is one of the highest rates in Japan's customs tariff, at 406% in terms of *ad valorem* equivalent.<sup>12</sup>

9. Tariff quotas apply mainly to agricultural products, including dairy products, rice, wheat and barley, silk-worm cocoons and raw silk, prepared edible fat, and starches (Chapter III(2)(iii)); they cover 2.1% of all tariff lines.<sup>13</sup> The extent to which tariff quotas are filled varies by product (Table AIII.3). Eligibility for quota allocations sometimes requires prior approval by the MAFF. The procedure for MAFF approval tends to be intricate; it may require various end-use restrictions, the opinions of other organizations, such as industry associations, and many documents, such as accounts and business plans. In-quota imports of rice, wheat, barley, certain milk products, and raw silk are handled mainly by state-trading entities; certain amounts of all but raw silk may be imported by private entities (e.g. the simultaneous buy-sell system for rice (see below)).<sup>14</sup>

**Table IV.1**  
**Applied MFN tariff protection in agriculture, FY2002**  
(Per cent)

HS Chapter/Description		Simple average tariff	Maximum tariff	Tariff peaks <sup>a</sup> (% of lines)	Non- <i>ad valorem</i> tariff (% of lines)
01	Live animals	2.4	44.8	2.1	12.5
02	Meat and edible meat offal	11.9	66.1	17.7	19.5
03	Fish and crustaceans, molluscs and other aquatic invertebrates	5.5	15.0	0.0	0.0
04	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	91.7	1,738.7	91.8	63.0
05	Products of animal origin, not elsewhere specified or included	0.3	3.5	0.0	0.0
06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	0.5	3.0	0.0	0.0
07	Edible vegetables and certain roots and tubers	34.4	875.8	6.3	8.1
08	Edible fruit and nuts; peel of citrus fruit; melons	7.7	24.0	6.4	0.0
09	Coffee, tea, maté and spices	3.5	17.0	0.0	0.0
10	Cereals	17.7	134.7	24.4	31.7

Table IV.1 (cont'd)

<sup>11</sup> In the interests of transparency, the Japanese authorities have provided the Secretariat with AVE estimates, where available. The simple average of all specific tariff rates whose AVEs were available was 44.2%, roughly ten times the simple average of purely *ad valorem* tariff rates, which was 4.5%.

<sup>12</sup> Imports of rice under in-quota duties (and state-trading requirement) were 680,343 tonnes in FY2000; 457 tonnes were subject to out-of-quota duties. As part of Japan's minimum access commitments, a certain amount of rice can be purchased and marketed directly under the simultaneous buy-sell (SBS) system. Details of the SBS system can be found in WTO (2001), Chapter IV(2)(iii). In FY2000, a total of 119,804 tonnes were imported under SBS. Data on actual bids can be found in MAFF online information. Available at: <http://www.syokuryo.maff.go.jp/archives/index.htm#class3>.

<sup>13</sup> Notification of tariff quota administration in FY2001 is available in G/AG/N/JPN/1/Add.1, G/AG/N/JPN/8/Add.1, G/AG/N/JPN/23/Add.2, and G/AG/N/JPN/57/Add.1, 27 June 2001.

<sup>14</sup> Rice, wheat, and barley are imported by the Food Agency attached to the Ministry of Agriculture, Forestry and Fisheries; milk products and raw silk by the Agriculture and Livestock Industries Corporation; leaf tobacco by the Japan Tobacco Inc.

HS Chapter/Description		Simple average tariff	Maximum tariff	Tariff peaks <sup>a</sup> (% of lines)	Non-ad valorem tariff (% of lines)
11	Products of the milling industry; malt; starches; inulin; wheat gluten.	39.2	640.3	40.5	38.0
12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	30.4	819.9	5.6	5.6
13	Lac; gums, resins and other vegetable saps and extracts	2.9	17.0	0.0	4.5
14	Vegetable plaiting materials; vegetable products not elsewhere specified or included	3.1	8.5	0.0	0.0
15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	6.0	29.8	4.7	42.4
16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	13.5	50.0	27.7	3.0
17	Sugars and sugar confectionery	29.6	137.5	63.8	55.3
18	Cocoa and cocoa preparations	20.3	60.0	63.0	7.4
19	Preparations of cereals, flour, starch or milk; pastrycooks' products	24.4	343.8	53.8	26.5
20	Preparations of vegetables, fruit, nuts or other parts of plants	17.2	46.8	34.3	6.7
21	Miscellaneous edible preparations	24.7	501.8	48.4	16.1
22	Beverages, spirits and vinegar	18.1	95.9	32.7	38.8
23	Residues and waste from the food industries; prepared animal fodder	1.4	23.9	2.4	9.5
24	Tobacco and manufactured tobacco substitutes	5.1	29.8	9.1	0.0
1-24	Agriculture	18.6	1,738.7	23.9	15.4

a Three times the simple average of applied MFN rates.

Note: All indicators are based on Japan's MFN applied tariff schedule and AVEs provided by the Japanese authorities for the year 2000; the indicators were calculated excluding in-quota tariff lines.

Source: WTO calculations, based on data provided by the Japanese authorities.

10. Special safeguard (SSG) actions were taken during FY2000-02 for a number of products including butter, wheat flour, inulin, milk and cream, food preparations of flour, meal or starch, and rice (Table IV.2).<sup>15</sup> Both price-based and volume-based SSGs, which are applicable only to above-quota imports, have been imposed. Japan also invoked separate emergency measures on pork products between 1 August 2001 and 31 March 2002, by raising farm gate price levels; for example, for cut meat, the farm gate price was raised from ¥524/kg. to ¥653/kg.<sup>16</sup>

<sup>15</sup> Japan is among three OECD countries that have notified the use of SSG in 2001.

<sup>16</sup> The Government applies higher gate price levels for the a quarter of a fiscal year if imports of pork and its processed products during the preceeding three quarters exceed 119% of the average quantity of imports during the corresponding periods in the three preceding years.

**Table IV.2**  
**Special safeguard (SSG) actions in agriculture, FY2000-02**

Description	Type of action	Date or period of application
<b>FY2000</b>		
Wheat flour	Price-based	27 April 2000
Butter (of a fat content, by weight, not exceeding 85%)	Price-based	29 May 2000
Wheat flour	Price-based	14 June 2000
Inulin	Volume-based	1 December 2000 to 31 March 2001
Buttermilk, curdled milk and cream, kephir and other fermented or acidified milk and cream, sterilized, frozen, preserved, concentrated or containing added or other sweetening matter, flavoring, fruits or nuts:	Volume-based	1 January 2001 to 31 March 2001
Of a fat content, by weight, not exceeding 1.5%.		
Of a fat content, by weight, exceeding 1.5% but not exceeding 26%.		
Of a fat content, by weight, exceeding 26%.		
<b>FY2001</b>		
Food preparations of flour, meal or starch, containing one or more of those groats, meal, pellets of rice, wheat, triticale, barley, which total weight is not less than 85% of the articles and mostly containing starch.	Volume-based	1 July 2001 to 31 March 2002
Milk and cream, not concentrated nor containing added sugar or other sweetening matter.	Volume-based	1 November 2001 to 31 March 2002
Of a fat content, by weight, exceeding 6%: sterilized, frozen or preserved;		
Other cream of a fat content, by weight, of 13% or more (other than sterilized, frozen or preserved).		
Milk and cream, not concentrated not containing added sugar or other sweetening matter.	Volume-based	1 December 2001 to 31 March 2002
Of a fat content, by weight, exceeding 1%, but not exceeding 6%: sterilized, frozen or preserved.		
Buttermilk, curdled milk and cream, kephir and other fermented or acidified milk and cream, sterilized, frozen, preserved, concentrated or containing added or other sweetening matter, flavoring, fruits or nuts:	Volume-based	1 February 2002 to 31 March 2002
Of a fat content, by weight, not exceeding 1.5%.		
Of a fat content, by weight, exceeding 1.5% but not exceeding 26%.		
Of a fat content, by weight, exceeding 26%.		
<b>FY2002</b>		
Rice (semi-milled or wholly milled, whether or not polished or glazed)	Price-based	31 May 2002

Source: WTO notifications.

### (iii) Domestic measures and support programmes

11. The support received by farmers and the consumer prices of agricultural products in Japan remain above the OECD average. Japan's net producer support estimates (PSE) and consumer support estimates (CSE) for 2001 have been provisionally estimated at 59% and 53%, against an

OECD average of 31% and 24%.<sup>17</sup> In the same year, the producer nominal assistance coefficient (NAC) of 2.46 indicates that gross farm receipts (including support) were more than twice as high as they would have been if generated at world prices without support.<sup>18</sup> Likewise, the consumer NAC of 2.12, indicates that consumers were implicitly taxed, paying on average more than twice as much as they would have paid in the absence of market price support to producers (and consumer subsidies). These producer and consumer NACs were, on average, 1.7 and 1.6 times the respective OECD averages.<sup>19</sup> Current price support schemes and their magnitudes are tabulated in Table IV.3. According to the OECD, more than 95% of total support to producers has consisted of measures that potentially distort production, namely market price support, payments based on output, and input subsidies (such as interest, water, fertilizer, and energy subsidies); this has remained the case since the period 1986-88.<sup>20</sup>

Table IV.3

Procurement prices for all major crops subject to pricing and/or marketing arrangements/price controls

(¥)

	1999	2000	2001
Rice, official purchase price (unpolished rice, 60 kg.)	15,528	15,104	14,708
Wheat, official purchase price (60 kg.)	8,893	8,824	8,693
Soybeans, standard price (60 kg.)	14,011	..	..
Sweet potatoes, trading guideline price (1 tonne)	31,520	31,430	31,430
White potatoes, raw material standard price (1 tonne)	14,050	13,960	13,960
Sugar beets, lowest producer price (1 tonne)	16,960	17,040	17,040
Sugar cane, lowest producer price (1 tonne)	20,490	20,370	20,370
Milk for processing, guaranteed price (1 kg.)	73.36	71.13	..
Calves for beef, guaranteed standard price (black cattle) (per head)	304,000	304,000	304,000
Beef, stable standard price (1 kg.)	795	785	780
Pork, stable standard price (1 kg.)	370	365	365
Raw silk, stable standard price (1 kg.)	..	..	..

.. Not available.

Source: Information provided by the Japanese authorities.

### (3) MANUFACTURING

12. Manufacturing accounted for 21.6% of Japan's GDP in 2000 and 22% of employment in 2000 (Table I.2). In 2001, manufactured products accounted for about 93% of Japan's total merchandise exports and about 57% of its merchandise imports. Office machinery and telecommunications equipment, and automotive products are the main export industries; machinery and transport equipment account for about half of manufactures.

13. Japan's manufacturing has traditionally been much more exposed to international competition than agriculture. The simple average applied MFN tariff for imported industrial products (HS 25-97) was 3.9% in FY2002, compared with 20.1% for agricultural imports (WTO definition). Simple

<sup>17</sup> OECD (2002c).

<sup>18</sup> Japan's producer nominal protection coefficient was 2.34 in 2001, indicating that average price received by producers (at farm gate) was 2.34 times higher than the border price.

<sup>19</sup> As noted WTO (2001), caution is necessary in interpreting PSEs, CSEs, and NACs as changes in exchange rate may produce significant fluctuations in the three indicators, and border prices may be artificially reduced owing to the presence of export subsidies in international agricultural trade.

<sup>20</sup> OECD (2002c).

average tariffs are considerably higher for footwear, headgear, and prepared food than for other manufactured goods (Chart III.2).

14. The regulatory environment concerning manufacturing in Japan has remained largely unchanged since its previous Trade Policy Review.

#### **(4) SERVICES**

15. The services sector is the largest contributor to output and employment in the Japanese economy, and the sector's importance has continued to grow recently. Japan's services sector accounted for 70.1% of Japan's GDP in 2000, and for 68.6% of employment in 2000.

16. Japan's Schedule of Specific Commitments under the General Agreement on Trade in Services (GATS), unchanged since 2000, covers 121 of the 160-odd sectors; Japan has not taken any MFN exemptions.

##### **(i) Financial services**

17. Trade in financial services (except for insurance) increased in 1999, after two consecutive years of decline. In 2001, Japanese banking and securities firms generated cross-border exports of ¥329 billion, up from ¥232 billion in 1999; imports declined to ¥200 billion in 2001, from ¥309 billion in 1999.

18. Changes in Japan's regulatory framework for financial services since its previous Trade Policy Review are mainly associated with the establishment of the Financial Services Agency (FSA) in January 2001. The FSA is responsible for policy planning, regulatory control, inspection, and supervision as well as for the resolution of failed banks, and capital injections into financial institutions. By contrast, the responsibility of MOF, which used to be the main regulator for the sector, is restricted, *inter alia*, to part of financial failure resolution, financial crisis management, management of Deposit Insurance Corporation and other public insurance schemes for deposits and investment, as well as exchange rate policies and foreign investment. The Bank of Japan has responsibility for the smooth settlement of transactions between banks and other financial institutions with a view to contributing to the maintenance of "an orderly financial system". Under the Foreign Exchange and Foreign Trade Law, cross-border capital transactions are not regulated, and free entry and exit is guaranteed for foreign exchange business.

19. Since October 2000, mutual entry between the insurance and banking sectors in the form of subsidiaries or holding companies has been permitted, completing the Big Bang programme, announced in November 1996.<sup>21</sup> Since April 2001, over-the-counter sale of some insurance products by banks has been permitted.<sup>22</sup>

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<sup>21</sup> For details of measures under the "Big Bang" programme, see FSA online information. Available at: [http://www.fsa.go.jp/p\\_mof/english/big-bang/big-bang.htm](http://www.fsa.go.jp/p_mof/english/big-bang/big-bang.htm). "Subsidiary" means a company in which another company owns shares, etc. equivalent in number or value to more than 50% of its total issued shares, etc. (Article 2 (8) of the Banking Law); "branch" means an establishment (a business office) that is subordinate to the head office, and conducts banking business in its name and on its account (Article 8 (3) of the Enforcement Regulations of the Banking Law); and "agency" means an office that acts as a proxy of a bank to conduct the whole or a part of its business by its commission and on its behalf (Article 8 (5) of the Enforcement Regulations of the Banking Law)".

<sup>22</sup> These concern long-term fire insurance, insurance to support debt service payment, and credit life insurance relating to home mortgage, as well as overseas travellers' personal accident insurance.

## (b) Banking

20. The banking sector has undergone a substantial reorganization since Japan's previous Trade Policy Review. Five holding companies were established and a merger between two commercial banks took place, consolidating Japan's largest banks into several major groups.<sup>23</sup> As well as commercial banks, there are Government Financial Institutions, which include two non-commercial banks<sup>24</sup> and six finance corporations.<sup>25</sup>

21. The authorities maintain that foreign banks with Japanese branches or agencies are subject to regulations no less favourable than those applied to domestic banks.<sup>26</sup> The requirement that foreign banks had to obtain a separate licence for each branch or agency was abolished in 2001.<sup>27</sup> In addition, in 2001, Japan abolished prior approval for establishing branches or agencies, and a "demand-supply" provision required in licensing; allowed ordinary banks, long-term credit banks, and the Norinchukin bank to engage in trust business; lifted the prohibition of business related to financial services (such as credit card services) by banks' subsidiaries engaging in subordinate business, and vice versa (i.e. a single bank's subsidiary may now engage in both subordinate business and business related to financial services).

22. At the same time, Japan tightened control of certain shareholders to prevent inappropriate management of banks (thereby improving corporate governance).<sup>28</sup> To ensure the soundness of banks, the Law for Limitations on Shareholding by Banks was enacted in November 2001; the law aims, *inter alia*, to limit the shareholding of banking groups to the amount equal to their "tier 1" capital, in principle (the limit is to enter into force in September 2004); the law also stipulates the establishment of the Banks' Shareholding Purchase Corporation.<sup>29</sup> The authorities consider that prudential requirements are no more onerous for nationally licenced subsidiaries of foreign banks than for domestic banks.

23. As of 31 March 2002, Japan's Postal Savings System had ¥239.5 trillion in deposits, or about 16.8% of total household financial assets in Japan.<sup>30</sup> In April 2001, as a consequence of a major

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<sup>23</sup> These include Mizuho Holdings Inc., Mitsubishi Tokyo Financial Group Inc., UFJ Holdings Inc., Daiwa Bank Holdings Inc., Mitsui Trust Holdings Inc., and Sumitomo Mitsui Banking Corporation.

<sup>24</sup> The Development Bank of Japan and the Japan Bank for International Cooperation.

<sup>25</sup> Policy-based finance by Government Financial Institutions involves various incentives to induce private-sector activities; the main incentive involves the provision of long-term loans, at fixed and low interest rates, directed to, for example, areas characterized by low profitability, high-risk, and long periods for recovery of investment.

<sup>26</sup> While the Banking Law includes "reciprocity" provisions with regard to licensing, the authorities maintain that these do not apply to WTO Members, given that Japan has made no MFN exemptions in its GATS Schedule of Commitments.

<sup>27</sup> Moving the location of branches is subject to *ex post facto* notification. *Ex post facto* notifications are also required for Japanese banks to either establish, move or abolish branches or agencies. Prior approval is required for Japanese banks to establish subsidiaries.

<sup>28</sup> These include the introduction of an approval system for the holding of voting rights for shareholders with more than 20% of the total shares, and a notification system regarding shareholders with more than 5% of the total shares.

<sup>29</sup> The Banks' Shareholding Purchase Corporation has been established with a view to providing a safety net to complement market sales of shares by banks. For more details, see the Financial System Council's report concerning shareholdings of banks, dated 26 June 2001, and press release by the Financial Services Agency on 26 June 2001 concerning the establishment of the Banks' Shareholding Purchase Corporation.

<sup>30</sup> The authorities maintain that the Postal Savings System fulfils roles that are not met by the market or by private financial institutions; it aims to provide financial services throughout Japan, including in unprofitable



reform of the FILP, the mandatory re-depositing of postal saving funds with the Fiscal Loan Fund of the Ministry of Finance was terminated; the Postal Savings System now has full discretion in the management of its funds.<sup>31</sup> The planning and management body of Postal Businesses has been separated from the operational body since 6 January 2001; this includes the Postal Savings System, which is to become a new state-run public corporation in 2003.

(c) Insurance

24. Like banking, Japan's insurance sector has undergone substantial change in the past two years. Since 2000, five life insurance companies and two non-life insurance companies have become insolvent, and four merger deals have been concluded. At the end of FY2000, assets held by the top five life insurance companies accounted for about 70% of the total assets of all life insurance companies; similarly, the share of net premiums written by the top five non-life insurers accounted for about 55% of the total net premiums written by all non-life insurers.

25. Changes in the regulatory regime for Japan's insurance sector are mainly associated with the establishment of the Financial Services Agency.<sup>32</sup>

26. Regulatory reform in the Japan's insurance sector since its previous Trade Policy Review includes an amendment to the Enforcement Regulation of Insurance Business Law, in March 2002, to increase the number of insurance products subject to mere notification, instead of prior approval. Mutual entry into the "third-sector"<sup>33</sup> by life and non-life insurance companies has been liberalized since January 2001, and banks have been allowed to engage in over-the-counter sales of certain insurance products since April 2001. Commission charged by agencies for non-life insurance has been liberalized since April 2001 through the partial abolition of FSA's operational guidelines concerning agencies' commission. Obligatory reinsurance by the Government for the compulsory automobile third-party liability insurance was abolished in April 2002.

27. Responding to recent developments concerning new entrants from other business sectors, the 2001 amendment of the Insurance Business Law introduced control on certain shareholders to prevent inappropriate management of insurance companies.<sup>34</sup> In 2001, Japan amended certain

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remote areas. Postal savings, except for deposits in postal money transfer accounts, are subject to a ¥10 million deposit-ceiling per person.

<sup>31</sup> The Postal Savings is required by law to establish an investment plan for postal savings funds, based on deliberations of the Postal Services Council, and to publicly release the plan. According to the Investment Plan for the Postal Savings Fund in FY2001, a guideline for medium- to long-term asset composition recommends the allocation of 80% of funds to domestic bonds, 5% to foreign bonds, 5% to domestic stocks, 5% to foreign stocks, and 5% to short-term investments.

<sup>32</sup> Accordingly, a licence from the FSA is required to conduct insurance business in Japan. Insurance policies, both for new products and modifications to existing ones, as well as premium rates, require approval by the FSA. Life and non-life insurance companies may enter each other's markets only by means of subsidiaries or holding companies. Commercial presence, licensed by FSA, is required in order to offer insurance services in Japan, except for such cross-border insurance contracts as reinsurance, commercial aviation insurance, and international marine hull, satellite and overseas travel accident insurance. The criteria for granting licences and the requirement of solvency margins are the same for Japanese and foreign insurance providers.

<sup>33</sup> The "third sector" includes insurance for personal accident, liability, sickness, nursing care, and hospitalization.

<sup>34</sup> These include the introduction of an approval system for the holding of voting rights for shareholders with more than 20% of the total shares, and a notification system regarding shareholders with more than 5% of the total shares.

enforcement regulations of the Insurance Business Law with a view to introducing more stringent solvency margin standards and disclosure requirements.<sup>35</sup>

28. Since October 2001, defined contribution pension schemes have been allowed in Japan; companies subject to the Employees' Pension Law may establish defined contribution (corporate type) pension plans with the approval of the Minister of Health, Labour and Welfare in order to qualify for special tax treatment.<sup>36</sup> The paid-in funds for an individual are managed separately, enabling pension portability; the funds can be invested in savings plans, public corporation bonds, investment trusts, insurance products, stocks and trusts; these include financial products of foreign financial institutions and foreign bonds. Institutions managing the pension schemes must offer at least three financial products as essential options to the participants; "high risk" products may also be offered as additional options. Under the defined contribution pension plan, financial products of Japanese or foreign financial institutions, and Japanese or foreign bonds are ranked the same. National bonds and bonds of public institutions can be part of the essential options, but bonds of private companies are classified as "high-risk".

(d) Securities

29. Under the Law on Foreign Securities Firms, a foreign broker-dealer is normally required to register its main branch in Japan to be allowed to engage in securities transactions with residents in Japan. On the other hand, non-registered foreign broker-dealers may engage in securities transaction if they receive orders from investors in Japan without direct "solicitation". In response to market development involving the use of ICT technologies, the FSA decided on a Guideline on Cross-Border Securities Transaction via Internet by Foreign Securities Firms on 11 December 2000, with a view to clarifying which types of Internet advertisement constitutes "solicitation" of Japanese investors.<sup>37</sup>

(ii) Telecommunications

30. Since its previous Trade Policy Review, Japan has implemented further regulatory reform in the telecommunications sector with a view to enhancing competition. Telecommunications charges have come down, although the JFTC has indicated that the Japanese market for telecommunications services remains oligopolistic (Chapter III(5)(vii)). With regard to cross-border trade in telecommunication services, during the period 1999-2001 exports decreased slightly from ¥87 billion to ¥86 billion, and imports fell from ¥160 billion to ¥127 billion.

31. In January 2001, the authority and jurisdiction of the Ministry of Posts and Telecommunications (MPT) was transferred to the new Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT).<sup>38</sup>

<sup>35</sup> These include (1) the extension of the application of appraised profits and losses to non-listed equities, domestic bonds, and foreign securities; (2) the introduction of calculation of risk values based on appraised market prices; (3) the introduction of price fluctuation risk criteria for bonds; (4) the introduction of restriction on the amount of "future profit"; (5) disallowment of double gearing with banks, etc. in the same group; (6) the creation of a new measurement to gauge the status of the basic revenues that provide flow of insurance companies; and (7) the introduction of guidance on supporting materials for disclosure documents.

<sup>36</sup> For self-employed and employees of corporations that do not establish corporate pension plans, personal-type defined contribution pension plans have been allowed since January 2002.

<sup>37</sup> FSA Press release dated 11 December 2000, "The Guideline on Cross-Border Securities Transaction via Internet by Foreign Securities Firms based on Article 3 of the Law on Foreign Securities Firms".

<sup>38</sup> Details of Japan's regulatory framework for telecommunications can be found in WTO (2001), Chapter IV(5)(iii).

32. Recent regulatory reform initiatives, associated with the amendment of the TBL in 2001<sup>39</sup>, include the introduction of additional asymmetric regulations prohibiting particular types of conduct<sup>40</sup> by what the authorities regard as "dominant" telecommunications carriers<sup>41</sup>, the introduction of wholesale telecommunications service system, the establishment of the Telecommunications Business Dispute-Settlement Commission, the establishment of a universal services fund, and the introduction of legal firewall restrictions between certain telecommunications carriers that have special relations<sup>42</sup>, such as parent-subsidiary companies. To correct violation by carriers possessing regional fixed system promptly, fines and suspension orders were also introduced under the TBL. On 30 November 2001, the limit on foreign ownership restrictions of NTT was relaxed from less than 20% to less than one third. Telephone number portability when changing contracted telephone carriers was made possible in March 2001, and a dialling parity system was introduced in May 2001.<sup>43</sup>

33. Permission is required for entry into and exit from Type-I businesses.<sup>44</sup> Prior notification is required for entry into General Type-II businesses and ex-post notification for exit. Special Type-II businesses require registration upon entry and ex-post notification upon exit; registration may be denied, *inter alia*, if the MPHPT Minister determines that the applicant does not possess enough financial and technical capability to conduct the business properly.

34. Prior authorization is required for compiling and changing tariffs that stipulate interconnection charges and conditions of interconnection, and facility-sharing agreements of "essential facilities" carriers; while prior notification is required for formulating and changing interconnection agreements and facility-sharing agreements of other carriers. In addition, establishing and amending end-user charges of all telecommunication services require prior notification. A price-cap system is applied to the telephone, ISDN and leased-circuit charges by the essential facilities carriers; authorization is required only when these charges exceed the standard charge index. End-user charges of all telecommunication services normally require prior notification; authorization is required when the telephone, ISDN or leased circuit charges of essential facilities carriers exceed

<sup>39</sup> The TBL classifies telecommunications services into Type-I and Type-II services; Type-II services are further classified into "Special" and "General" subcategories. Type-I carriers install and operate their own telecommunications circuit facilities, and Type-II carriers provide services with the use of circuit facilities equipment leased from Type-I carriers. Special Type-II are defined as carriers offering services to many unspecified users through the interconnection at both ends of leased circuits with public switched networks, or with providers of facilities for international communications. All other Type-II carriers are classified as General Type-II carriers.

<sup>40</sup> These are: the abuse or provision of proprietary information obtained from competitors through interconnection for other purposes; unduly favourable or unfavourable treatment of specific telecommunications carriers; and undue compulsion or interference with other carriers, manufacturers/suppliers of telecommunication equipment or content providers. Measures, such as orders to suspend or change behaviour, with a view to enabling prompt correction of violation thereof were introduced under the revised laws.

<sup>41</sup> These are: a Type I telecommunications carrier that possesses the Category I-designated telecommunications facilities (regional fixed system), and a Type I telecommunications carrier that possesses the Category II-designated telecommunications facilities (mobile system) and that is designated by the MPHPT Minister on account of the carrier's market shares, the movement of its shares, and other aspects.

<sup>42</sup> These include the prohibition of concurrency of board members, and equal treatment on the use of buildings/facilities and on the provision of information necessary for interconnection.

<sup>43</sup> Dialling parity systems involve pre-selection and registration of a telecommunication service provider that a subscriber wishes to use as the main provider (i.e. this provider will be selected each time phone calls are made if a company-specific prefix is not used before dialling usual phone numbers).

<sup>44</sup> The criteria for approving entry include sound and proper financial and technical capability, predictable and rational business plans, and that commencement of the business is deemed proper for the sound development of the telecommunications sector.

the standard charge index. The MPHPT may order Type-I and special Type-II telecommunications carriers to revise their charges if the charges fall under any of the items of Article 31(2) of Telecommunications Business Law (e.g. charges include provisions that unfairly discriminate against any person). A Type-I telecommunications carrier that holds more than 25% of subscribers in the mobile market (except for PHS) must compile, notify and publicize its interconnection tariffs.

35. The Government held about 46% of the NTT Corporation's total stock at the end of March 2002.<sup>45</sup> The two local NTT companies have more than 90% of the local communications market. In accordance with the NTT Law, the NTT Corporation is required to provide universal service.<sup>46</sup> In February 2001, the MPHPT approved the long-run incremental cost (LRIC)-based interconnection rate (related to telephone and ISDN services) of NTT East and NTT West from FY2000 to FY2002. Data provided by the authorities show that this resulted in a 22.5% reduction for "group-call" interconnection and a 60.1% reduction for "zone-call" interconnection in April 2002, compared with FY1998.

36. Ministerial authorization may be required for Type-I and Special Type-II carriers to conclude, modify or abolish contracts between foreign governments, foreign citizens or foreign corporations.<sup>47</sup> There is no foreign ownership or management restriction in telecommunications services, except in the case of the NTT Corporation. Along with a series of regulatory reforms (paragraph 32), the TBL added "promotion of fair competition in the field of telecommunications business" in its purposes.<sup>48</sup>

37. The Strategic Headquarters for the Promotion of an Advanced Information and Telecommunications Network Society was established within the Cabinet in January 2001; the "e-Japan" Strategy was adopted at its first meeting in January 2001 as a national strategy for information technology. Further, the e-Japan Priority Policy Programme<sup>49</sup>, implementing the e-Japan Strategy, was adopted in March 2001. The programme includes measures to formulate advanced information and communications networks, to promote education and human resource development, to facilitate electronic commerce, to promote the use of information technology in public areas, and to promote research and development activities.

### (iii) Transport

#### (a) Maritime transport

38. In 2000, the volume of Japan's seaborne cargo increased by 4.6%, accounting for 16.6% of the world's total. Almost all of Japan's internationally traded goods are shipped by maritime transport.

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<sup>45</sup> The NTT Corporation must, at all times, hold all stocks issued by the East and West NTT regional companies, according to the NTT Law, Article 5. The issuance of stocks by the regional companies requires ministerial authorization.

<sup>46</sup> Bank of Japan, *Monthly Statistics*, various issues.

<sup>47</sup> This requirement is confined to contracts that include "substantial" provisions, as defined by relevant Ministerial Orders.

<sup>48</sup> The TBL stipulates that Type-I carriers installing "designated telecommunications facilities" must maintain the accounts of costs associated to interconnection with such facilities, and establish a "model agreement" that must be authorized by the MPHPT Minister. Designated telecommunication facilities are defined under TBL Article 38-2 (and its relevant ordinances) as transmission facilities, held by a carrier, that exceed half of existing relevant facilities in a prefecture. The TBL also stipulates a price-cap regulation over carriers that possess more than a certain fraction of the number of subscriber lines in a region (paragraph 77).

<sup>49</sup> Prime Minister of Japan's online information. Available at: <http://www.kantei.go.jp/foreign/it/network/priority-all/index.html>.

39. Since the restructuring of the central government ministries and agencies in January 2001, the Maritime Bureau and the Ports and Harbour Bureau of the Ministry of Land, Infrastructure and Transport have been the main authorities regulating Japan's maritime transport. Cabotage restrictions allow only Japanese-flag carriers to carry cargo and passengers between Japanese ports.

40. The authorities state that there are no monopolies in the maritime services sector; moreover, there are no quotas for suppliers or arrangements for cargo allocation. Agreements between operators on freight rates or other conditions of transportation (e.g. routes) are exempt from the Anti-Monopoly Act (AMA) provided such agreements do not involve "unfair transactions" or adversely affect competition. The authorities maintain that there are no discriminatory measures preventing foreign participation in international maritime services. The authorities are of the view that Japan's bilateral agreements on passenger or cargo shipping provide national treatment to partners on a reciprocal basis.<sup>50</sup>

41. According to the authorities, no exclusive rights or subsidies are given to Japanese-flag carriers. Nonetheless, support measures for Japanese-flag carriers (the "International Ship Regime") have been unchanged since Japan's previous Review.<sup>51</sup> According to the authorities, the International Ship Regime does not distort trade in maritime transport services; it aims to place Japanese vessels on an equal footing with those of other countries that provide preferential tax treatment for their registered ships.

42. According to the authorities, there are no discriminatory measures preventing foreign participation in auxiliary services. Japan relaxed requirements concerning entry into the port transport sector in November 2000, replacing the previous licensing requirements (involving an economic needs test) with the obligation to seek permission for entry into port transport business in nine major ports<sup>52</sup>; the fee approval system concerning certain port services was replaced by a registration system involving prior notification.

43. It is common practice in Japan's ports for carriers to notify the harbour workers' union, in advance, through the Japan Harbour Transport Association (JHTA), of changes in stevedore works that may affect employment (prior consultations).<sup>53</sup> According to the authorities, the number of consultations has decreased by more than 80% since 1997. Unified charges are applied in the major container terminals. As a result of an agreement between management and labour on 29 November 2001, 24-hour operation at terminals has been made possible throughout the year (except for New Year's Day).

(b) Air transport

44. In FY1999, Japanese airlines accounted for 38% of Japan's scheduled international passenger market and 40% of its international freight market, in terms of number of passengers and tonnes of

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<sup>50</sup> Japan has bilateral agreements related to maritime transport with: Argentina, Bulgaria, China, Cuba, Denmark, El Salvador, Finland, France, Germany, Greece, Haiti, Hungary, Italy, India, Malaysia, the Netherlands, Norway, the Philippines, Poland, Portugal, Romania, Russian Federation, Spain, Sri Lanka, Sweden, Thailand, Turkey, the United Kingdom, and the United States.

<sup>51</sup> These measures include tax breaks in ship-registration tax and local property tax.

<sup>52</sup> These are: Keihin Ports (Tokyo, Yokohama and Kawasaki Ports), Chiba Port, Shimizu Port, Nagoya port, Yokkaichi Port, Osaka Port, Kobe Port, Kanmon Ports (Shimonoseki and Kitakyushu Ports), and Hakata Port.

<sup>53</sup> According to the authorities, this practice is based on an agreement among private operators, i.e. the JHTA, the Japanese Shipowners' Association, and the Japan Foreign Steamship Association.

freight. Exports of air transportation services in 2001 were ¥0.92 trillion, 2% higher than in 1999. Imports in 2001 amounted to ¥1.4 trillion, 14.8% higher than in 1999.

45. There have been no changes in Japan's regulations governing international air transport since 2000.<sup>54</sup> Japan's international air transportation market is mainly regulated by its Civil Aeronautics Law (CAL) and numerous bilateral agreements. The Civil Aviation Bureau of the MLIT administers the entry, pricing, and routes of airlines, as well as safety regulations. As in most other countries, the provision of domestic air services is restricted to Japanese carriers (cabotage restrictions). An ownership restriction prohibits foreign investors from holding more than one third of voting rights in domestic airlines.

46. Japan has not concluded any air service agreements since 2000; there were 55 as at 1 January 2002. Japan has not accepted "open skies" air services agreements. The authorities believe that such arrangements may entail oligopoly and, as a consequence, have adverse effects on competition in Japan's international air services market. In addition to traffic rights, Japan has concluded bilateral arrangements on code sharing with many countries. These and other agreements between airline companies for improving user convenience on international routes from/to Japan are exempted from the Anti-Monopoly Act (AMA), provided they do not involve "unfair transactions" or adversely affect competition. There is no requirement for Japanese civil servants to use Japanese carriers for official travel.

47. The two major international airports, New Tokyo (Narita) and Kansai, are mainly government owned. Narita airport is a government corporation, Kansai airport has a majority government shareholding, and other major airports are operated through Special Accounts for Airport Development. Landing fees are significantly higher than at major airports in other developed countries.<sup>55</sup>

48. According to the authorities, Japan's airport slot-allocation system for international civil aviation services, including the one applied for the second runway of Narita Airport, is based upon guidelines issued by the IATA.<sup>56</sup> Japan Airlines is the coordinator (as stipulated in the IATA Worldwide Scheduling Guidelines). The allocation of slots takes place twice yearly. As of the fourth week of October 2002, 37% of slots are to be allocated to Japanese airlines.

#### (iv) Other services

49. Regulatory reform has also progressed in other services including professional services, medical services, and education services.

50. In legal services residency and nationality requirements for patent attorneys (Benrishi) were abolished on 6 January 2001. Self-regulation by the Japan Patent Attorneys Association on the setting of patent attorneys' fees and advertisement of their business was also implemented on 6 January 2001.

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<sup>54</sup> See WTO (2001), Chapter IV(5)(iv)(b) for a summary of Japan's regulations concerning international air transport.

<sup>55</sup> According to the Ministry of Transport, the landing fee levied on international air transport for a B747-400 aircraft, for example, is ¥948,000 for Narita, ¥908,500 for Kansai, ¥389,075 for Hong Kong, ¥133,144 for Bangkok, ¥276,046 for Charles de Gaulle (Paris) and ¥382,369 for JFK (New York) airports.

<sup>56</sup> The IATA guidelines include, *inter alia*, general criteria for allocating slots, such as the use of historical precedence, where appropriate, allocation of slots to incumbent and new airlines, and reallocation of unused slots.

A Patent Corporate Body, composed of two or more partners that are qualified as Benrishi, has been allowed under Japanese law, since 6 January 2002.

51. In medical services, as indicated in the TPPRR, the Government has decided to review the current restrictions that medical institutions must be "non-profit" organizations, and requirements that board chairpersons of medical corporations must normally be medical doctors.

52. In education services, the Government has decided to review current regulations concerning establishment of universities and faculties with a view to eliminating the prior authorization requirement for certain items specified in the University Establishment Standard and other standards, including the establishment of sub-faculties. It will also review the current policies restricting the increase of universities and faculties and the ownership and use of land during FY2002. Introduction of an accreditation system by third parties, to partially replace ministerial permission requirements for the establishment of universities and faculties, will also be considered. It has also been decided to consider increasing access for graduates of international schools to higher education.<sup>57</sup>

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<sup>57</sup> Currently, graduates of international secondary schools and high schools are usually required to pass certain examinations in order to apply for Japanese high-schools and universities.

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