

PUBLIC COMMENT
AMERICAN CHAMBER OF COMMERCE IN JAPAN
"JAPAN'S EXPRESSION OF INTEREST IN JOINING THE TRANS-
PACIFIC PARTNERSHIP NEGOTIATIONS"
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Our Position

The American Chamber of Commerce in Japan (ACCJ) would welcome Japan's participation in the Trans-Pacific Partnership (TPP). Given the size of Japan's economy and its role in the Asia-Pacific region, Japan's participation in the TPP would be a game changer, not only creating the world's largest free-trade zone representing 36 percent of global GDP, but also serving to strengthen the U.S.-Japan bilateral relationship both economically and strategically. We strongly support the overriding goal set out by the United States and the other TPP partners to achieve a 21st-century agreement that covers all elements of trade and investment, including tariff and non-tariff barriers to trade and investment in all goods and services, with no product or sub-sector exclusions. As Japan seeks to join the group of likeminded countries negotiating the TPP, Japan's leadership needs to move quickly to demonstrate its "readiness" to embrace that common vision for the highest standard of trade liberalization and to take the hard decisions required to achieve this. We hope that the TPP members will support these efforts and respond affirmatively to a formal Japanese request to join the talks.

The Importance of the U.S.-Japan Relationship

The more than 1,000 member companies of the American Chamber of Commerce in Japan are committed to a strong economic relationship between Japan and the United States. ACCJ members bring innovative products and services to Japan and provide good, high-paying jobs to American and Japanese workers. A healthy Japanese economy is vital to the United States as a market for our goods and services and as a platform for our business activities in the Asia-Pacific region, the fastest growing part of the global economy. Currently, U.S. exports of goods and services to Japan support over 160,000 American jobs; an expanding Japanese economy operating within a TPP regime would create still more jobs.

Japan remains a key market for U.S. goods and services as well as a destination for U.S. investment. In 2010, the U.S. merchandise exports to Japan came to just over \$60 billion, reflecting an increase of 18 percent year on year as the Japanese economy grew four percent bouncing back from the global financial crisis. While the U.S. merchandise trade deficit with Japan in 2010 came to nearly \$60 billion, U.S. service exports to Japan were around \$50 billion and recorded a \$20 billion surplus.

Reflecting the size and strength of the trading relationship between Japan and the United States, Japanese FDI in the United States stood at \$264 billion in 2010, making Japan the second largest foreign investor in the United States after the U.K. The United States has long been the top foreign investor in Japan, with U.S. FDI coming to slightly over \$100 billion. While the overall level of foreign investment in Japan remains under five percent of GDP, the bilateral investment balance is not inconsistent with the relative size of the two economies.

These figures help to put into perspective the relative openness of the Japanese market to U.S. goods and services in comparison with other economies in Asia and elsewhere. Both Japan and the United States depend on external trade to drive growth and innovation in their economies. In 2010, Japanese exports came to 15.2 percent of GDP (with China being the most important destination). The corresponding figure for the United States was 12.5 percent. Japanese imports were 14.1 percent (with the largest part coming from China). U.S. imports as a percent of GDP registered 16.2 percent. Japan ran a current account surplus of 2.8 percent versus a U.S. deficit of 3.4 percent. Both nations share a common interest in finding ways to increase their export competitiveness, especially in the growing Asian market.

One area where the structure of Japan's economy remains significantly different from the United States is the private savings rate. The gross national savings rate in Japan is 23.8 percent compared with 9.5 percent in the United States. In light of the significant and growing budgetary and current account deficits in the United States, Japan is an important source of capital for the purchase of U.S. Treasury securities and U.S. private debt. Currently some 34 percent of U.S. government securities are owned by foreigner investors with Chinese investors holding 25 percent of this total. Japanese investors are next at 20 percent. Amidst signs that Chinese investors are readjusting their portfolio in the United States, continued reliable investment in U.S. debt by our Japanese allies is likely to increase in importance for

the U.S. economy – and with that our stake in the continuing health of the Japanese economy. Japanese confidence in such investments will be reinforced if the United States and Japan participate in the TPP.

An economically healthy Japan is important to the United States beyond its value as a market for U.S. goods and services and a source of needed investment capital. For over half a century, Japan has been a key U.S. diplomatic and security partner, supporting our political and diplomatic agenda in the Middle East and South Asia and on the Korean peninsula. It is home to a U.S. Marine Division and a U.S. carrier battle group. Japan is a democratic country that shares our values and respect for human rights. It works with us closely in international institutions and in tackling the global issues of healthcare, population, energy, biodiversity and poverty.

Citizens in the United States and Japan acknowledge the deep and “special” character of the relationship between the two countries. A 2011 survey by the Pew Research Center found 85 percent of Japanese respondents held a favorable attitude toward the United States. The corresponding figure for China was 34 percent. A 2011 poll commissioned by Japan’s Ministry of Foreign Affairs (MOFA) recorded 84 percent of Americans polled seeing Japan as a “dependable ally” and 92 percent voicing their support for maintaining the U.S.-Japan Security Treaty. Significantly, a separate poll of U.S. opinion leaders had 81 percent of those polled affirming that Japan should participate in a “Trans-Pacific Agreement.”

The Opportunities for the United States and Japan in the TPP

The ACCJ applauded Prime Minister Noda’s announcement prior to the APEC conference of Japan’s interest in joining the TPP and urged that Japan formally join the talks at the earliest juncture and without preconditions. Japan’s business community is likewise united in supporting the TPP. The mainstream Japanese media has also been supportive. The Yomiuri Shimbun, Japan’s largest daily with a circulation of over 10 million readers, editorialized November 15 that “Japan’s TPP participation (is) key to Asia-Pacific economic integration.” The Nihon Keizai Shimbun, Japan’s influential business daily, has campaigned on its front page for Japan’s inclusion in the TPP for more than a year.

Membership in the TPP can be expected not only to spur growth and innovation in Japan through necessary structural reforms, but also to provide competitive Japanese firms with enhanced access to the

rapidly growing Asia-Pacific market through new disciplines in areas such as competition policy, investment, financial services, digital economy, government procurement, intellectual property, and rules of origin. Implementation of the TPP will undoubtedly require economic and other policy reforms and the Japanese Government will therefore have to skillfully manage domestic expectations. But this reality should not be made an obstacle to Japan's entering the negotiations.

The TPP is an ambitious undertaking, bringing together countries at different levels of development and varying market arrangements. As the last several rounds of negotiations attest to, there are many challenges to concluding this ambitious framework – and Japan's joining the process will likely introduce new ones. But the benefits to the United States and other members to this negotiation of Japan's participation are compelling.

The countries currently negotiating the TPP agreement account for only 5.3 percent of U.S. trade and only 17 percent of trade in the Asia-Pacific region. The addition of Japan with its \$5.4 trillion economy (\$1.4 trillion derived from trade) dramatically changes the equation. A TPP agreement including Japan will bring fully 36 percent of the global economy under new and far-reaching trade disciplines. It will also be vastly more influential in shaping future directions for trade in the Asia-Pacific region, which unquestionably holds the key to the future of U.S. economic growth.

In particular, if the United States is to achieve its goal of doubling exports in five years (a 15 percent annual rate), a successful launch of the TPP is critical. Japan's economic muscle and political support will be important to achieving the broad market-opening goals set out by U.S. negotiators in their writ for the TPP. With Japanese firms vigorously moving operations abroad, there are many areas of common concern and interest.

In an April 2011 report, Keidanren laid out a number of areas where Japanese industry had a stake in the success of the TPP negotiations and indicated its expectations regarding possible issues for discussion – while acknowledging that there was a need for more progress domestically in Japan.

Areas for action included rules of origin (development of a common regional definition), customs facilitation (the "single window" concept), intellectual property (measures against piracy and clear standards for transfer pricing), government procurement (elimination of national

preferences and harmonized standards for infrastructure contracts), digital economy (liberalization of “cloud” computing services), investment (opening up of sectors closed to foreign investment and strengthened dispute settlement mechanisms), competition policy (harmonized rules on antitrust and subsidy policies), labor mobility (pension portability and steps to promote secure biometric recognition systems), state-owned and/or run enterprises (ensuring fair conditions of competition with government-run or government-owned companies) and the environment (harmonization of safety standards for smart grid components, electric car batteries and nuclear power).

With a number of notable exceptions – agriculture being the most prominent – the Japanese market is no longer “closed” to U.S. goods and services. The U.S. current account deficit with Japan remains negative but is declining. Japanese exports to the United States tend to be concentrated in four major areas (passenger cars and parts, computers and component parts, office machinery and electronic machinery (video cameras, etc.)) and at \$120 billion in 2010 was significantly down from the high point reached in 2006. Meanwhile, U.S. merchandise exports to Japan have been much more diverse, including computers and parts, gas turbines, electrical machinery (integrated circuits and network components), optical and medical devices and agricultural goods. But they also have been largely stagnant, due to a number of factors including slow economic growth in Japan.

That is why in 2010 the ACCJ published a White Paper entitled “Charting a New Course for Growth.” The White Paper sought to analyze the reasons for Japan’s “lost decades” (1990-2010) when Japan lost millions of jobs and saw its domestic manufacturing base decline to just 20 percent of domestic GDP. The White Paper concluded that Japan’s problems were structural in nature and that it needed a “new growth strategy” based on expanding foreign investment, relaxing regulations and enhancing transparency to increase investment by new entrants and entrepreneurs, revamping the tax system to promote innovation, better utilizing the Internet, improving transparency in the legal and regulatory environment, and undertaking reforms in the labor market and in immigration policy to cope with an aging population and allow for greater mobility in and out of Japan. The White Paper proposed these and other policies based on detailed analysis showing that the vast proportion of net new jobs creation in the Japanese economy now comes from “new entrants” to the

economy, whether they be young entrepreneurial companies or foreign firms.

Today, we would add participation in the TPP to this set of policy prescriptions. Participation in the TPP will further open overseas markets to Japan, and spur competition and innovation in the Japanese market by encouraging long overdue structural reform in Japan's economy. Part of that progress will come from eliminating the few remaining tariffs and quotas that Japan retains, mostly in the agricultural area. Just as importantly, TPP can address regulations and policies that limit business opportunities for both American and Japanese business in Japan.

U.S. Business in Japan Expectations for the TPP

There are other structural issues in Japan's economy beyond agriculture that must be addressed if Japan is to return to the path of growth. Many of these must also be tackled if Japan is to meet the new obligations associated with TPP accession. The ACCJ has polled its members and would encourage Japanese and U.S. government negotiators to consider how the 15 concerns cited below might be taken up and resolved within the TPP negotiation process.

Competition Policy: (*Antitrust Enforcement*) U.S.-Japan cooperation in the antitrust field is long-standing. The United States has strongly supported robust efforts by the Japan Fair Trade Commission (JFTC) to root out cartel behavior in Japan and backed increases in budget and personnel for the Commission. But the record of the Commission in taking antitrust actions has been mixed. There remain areas where stronger JFTC action is necessary, with the construction and distribution sectors being the most problematic. At the same time, many U.S. firms share a concern that JFTC investigations of suspected "unfair trade practices" lack guarantees of due process found in other advanced economies. Most fundamental is the JFTC denial of a "right to counsel" during the investigatory phase of an enforcement action as well as the failure to guarantee the confidentiality of information provided in the course of an investigation or to permit access to evidence held by the JFTC in advance of an enforcement action. Currently, there is also no provision for a hearing on the facts at issue prior to the issue of an administrative order by the JFTC. Some of these problems have been discussed in the context of proposed revisions to the Anti-Monopoly Law, but there is at present no timetable for legislative reform. The ACCJ has released a number of

Viewpoints outlining our concerns over the past several years and met with JFTC representatives to ask for action on the part of the agency – but so far there has not been adequate progress.

Customs Facilitation: (*Expedited Clearance of Goods in and out of Japan*) The ACCJ commends the Japan Customs Bureau's efforts over the years to continuously improve customs procedures for cross-border movement of goods in and out of Japan. In fact, these procedures have often been cited as "best practices" for many Asian countries. We see the TPP negotiations as an opportunity for further improvements domestically and for setting out a high standard for TPP member countries. Specific areas for improvement that we have urged on the Japanese government include: (1) separation of the physical release of goods from the tax collection process through employment of automated risk management and focusing customs officials on the stopping of prohibited goods rather than the collection of tariffs; (2) increasing the *deminimis* limit from JPY 10,000 to JPY 30,000 to streamline clearance procedures and reduce the workload for officials and express carriers; (3) deploying incentives to increase the number of authorized economic operators (AEO); and (4) harmonizing definitions of certain commodities to speed clearance (e.g. supplements are treated as "foods" in the U.S. but viewed as "medicines" in Japan).

E-Commerce/Telecommunications: (*Assuring an Open and Innovative Digital Economy*) Japan has one of the most advanced broadband networks of any country in the world, bringing high-speed Internet to over 90 percent of all households. However, Japan also seriously lags many of its OECD partners in utilization rates for Internet services, especially in rapidly growing areas such as e-commerce and in areas vital to the economy such as e-government, education and healthcare. This has denied Japan the growth and innovation it should be receiving from the Internet Economy and slowed the ability of U.S. firms to bring new business models and innovative technologies to Japan. The uneven growth of IPTV, the slow uptake of electronic health records and remote diagnostic technologies and the lack of a legal framework for digital learning in Japan are illustrative examples. The ACCJ addressed these utilization challenges in a 2009 White Paper pinpointing areas for government and private sector attention. Key areas for action either bilaterally or in the multilateral context of the TPP include: (1) express assurances by the government of non-discrimination with regard to offshore "cloud services" offerings in areas such as financial services and healthcare;

(2) a consistent and coherent government policy with regard to e-commerce services treating them equivalently with their “brick and mortar” counterparts, including safety requirements; (3) development of clear rules governing privacy and security online with input from the foreign business community and close reference to international models and practices; (4) revamping of current regulatory frameworks governing domestic telecommunications and broadcasting to permit the rapid development of converged services mixing voice, images and data on the Internet; (5) transparent and effective administration of spectrum to promote further expansion of mobile Internet service; and (6) a government commitment not to impose “filtering” requirements to network or service providers on the network, relying instead on industry to establish appropriate guidelines and standards.

Environment: (*Harmonization of Standards and Greater Foreign Participation and Input*) Japan brings a lot to the TPP table as a leader in environmental technologies and has a lot to gain in working with TPP partners in building a new trading regime for environmental goods and services. Japan was an early adapter in reducing its reliance on fossil fuels. Prior to the earthquake and tsunami and the Fukushima nuclear disaster, nearly one-third of Japan’s energy mix came from nuclear power. The challenge now for Japan is to develop a new energy framework that is less vulnerable to natural disasters and which uses thermal energy in a more efficient and environmentally friendly fashion. The ACCJ believes that U.S. firms can be a large part of this solution. But this will require attention by the Japanese government to the many non-tariff barriers that currently slow the deployment of internationally successful environmental products in Japan. Greater Japanese harmonization with international standards for environmental goods and services will enhance safety and lower costs to consumers. We are urging the Japanese government to expand foreign participation in its energy forums and advisory groups and to introduce incentive-based mechanisms for the development and deployment of renewable energy technologies. Additionally, the Japanese government needs to consider steps to improve access and movement within the energy grid, which is currently hobbled by reliance on two different and incompatible frequencies.

Financial Services: (*Greater Access by SMEs and Consumers to Financial Services; Tokyo as a Financial Center in Asia*) The ACCJ issued White Papers on the Japanese financial services sector in 2007 and 2011, laying out our recommendations for enhancing the competitiveness of Japan’s financial and capital markets. Over the past

several years, Japan has made substantial progress through the introduction of more principles-based regulation, increased coordination with overseas regulatory authorities, actions by the Tokyo Stock Exchange to improve its technology and the strengthening of standards for corporate governance. However, the global financial crisis of 2008, while not as seriously felt in Japan, dealt a further blow to an economy already hobbled by chronically poor growth, a shrinking population base and a hollowing of its manufacturing capacity. For these reasons, the Democratic Party of Japan in its 2010 New Growth Strategy identified growth in the financial services sector as a key priority for the government. The ACCJ agrees and believes that discussions within the TPP working group on financial services can be an opportunity and a stimulus to further reform in this sector, with particular attention going to the SME and consumer sectors and to continuing efforts to improve Tokyo's standing as a financial center in Asia – something that is strongly in the interest of competitive U.S. firms operating in this market. Improved access to credit for SMEs and consumers can strengthen employment, boost consumption and spark greater innovation and entrepreneurship. We believe that steps to facilitate the approval of new lending products, to encourage a diversity of credit suppliers and to expand the role of non-banks can be helpful here. There is also a need for a better system for searching liens and determining the relative priority of loans. In the consumer finance area, the ACCJ has been calling for a review of the operations of the new Money Lending Law and would like to see the law amended to facilitate development of a full-credit information system and a liberalization of the one-third income lending cap. There is also a need for improvements to the defined contribution plan since uncertainty about future financial security is a clear constraint on consumer spending. Membership in the TPP is clearly the *sine qua non* for Tokyo's continuing role as major financial center in Asia. Among the measures that we recommend are: (1) strengthening of mechanisms within the Japanese government to promote financial industry growth with the full participation of foreign firms; (2) further simplification and consolidation of financial reporting requirements; (3) increased transparency and efficiency in regulation, including through greater use of non-action letters and consolidation of regulatory functions to promote greater consistency and coherence in regulation; (4) establishing a level playing field between foreign banks and insurance companies with Japan's postal financial entities and *kyosai* (mutual aid cooperatives); (5) establishing an integrated exchange to handle securities, financing and commodities; (6) encouragement of more efficient capital markets; and (7) abolishing the "resident/non-

resident” yen transfer system that unfairly burdens U.S. Social Security recipients in Japan. This is a large, multi-year agenda involving both government action and private initiative. Some of it lies outside the mandate of the TPP, although these changes are important if Japan is to fully take advantage of the potential in financial markets in Asia unlocked by the TPP process and for Tokyo to stake its claim as a major financial player and market. U.S. firms active in Japan’s financial markets fully support this ambition and the TPP’s role within it.

Government Procurement: (*Access Issues in Construction, Financial Services, and ICT Sectors*) U.S. companies annually obtain far less than one percent of projects awarded in Japan’s massive public works market, valued at \$195 billion in 2009. Despite the fact that Japan is a signatory to the WTO Agreement on Government Procurement (GPA) and that the United States and Japan have negotiated two bilateral public works agreements, problematic practices continue to limit the participation of U.S. design/consulting and construction firms in Japan’s public works sector. These include bid rigging (*dango*) and excessively narrow Japan-specific qualification and evaluation criteria that preclude U.S. firms from competing for projects. The ACCJ urges that the following concerns be incorporated into discussions with the Japanese government with regards to government procurement in the TPP process: (1) establish common thresholds for procurement of construction services by government entities covered under the GPA (Japan’s threshold is three times higher than that of the United States); (2) develop more effective mechanisms to ensure that all project-related qualification requirements are made public, as required by the GPA and the bilateral agreements; (3) address problems related to the treatment of joint venture members; and (4) remove or narrowly apply the operational safety exemption for railroad procurements covered by the GPA. In the financial services sector, there are problems with the Bank of Japan’s (BOJ) general agent system. The issue involves the licensing procedures, which require that an applicant prove there is a demand for services that cannot be met by existing licensing holders. As a result, to the best of our knowledge, a license to provide these services has never been granted to a foreign bank. Since the license is required to provide financial services to government entities, US firms are effectively excluded from competing in this arena with Japanese banks. The ACCJ has urged that the Japanese government take steps to end this practice and would hope that this issue might be addressed in the TPP context. Opening up the general agent system will improve competitive conditions in the

financial services sector and promote government procurement of the most efficient, cost-effective and convenient services. Finally, although we lack specific figures, U.S. firms in the ICT field have a smaller share of overall government procurement in Japan than might be expected given their strong record of innovation and price competitiveness in other markets. Obstacles to greater U.S. sales include an often non-transparent and non-inclusive standards-setting process that can result in requirements that are unique to Japan, the absence of a national CIO to coordinate government ICT planning leading to ICT system procurements that are high cost and lack interoperability, and the failure to introduce multi-year contracting and international accounting rules, which undercuts competition (particularly from foreign firms) and reinforces the tendency to rely on single source contracting. While not all of these issues can be solved within the TPP process, we see Japan's accession to the TPP as an opportunity for the Japanese government with input from foreign ICT firms to review its practices and take steps to create greater transparency and competition in this area. The ACCJ believes that such reforms will save money and prompt greater innovation in the delivery of government services in Japan.

Insurance: (*Ensuring a Level Playing Field*) Currently, there is not an equal playing field between Japan Post Insurance (JPI) on the one hand and private insurance providers on the other. JPI is not regulated under law in the same manner as private companies and is exempted from certain requirements of the Insurance Business Law that apply to all private companies. JPI also enjoys preferential access to the Japan Post Network to sell its products. The ACCJ Financial Services White Paper provides a more comprehensive overview of these issues. In the TPP, the ACCJ urges the U.S. government to reinforce its longstanding position that the Japanese government take measures to ensure that fair competition and a level playing field are provided for U.S. companies in the insurance marketplace. These measures are already required by Japan's WTO GATS national treatment obligations and its bilateral commitments to the United States and are clearly within the scope of the Japanese government's authority. The commercial stakes for American-owned life insurance companies in Japan are very high. U.S.-owned life insurers recorded a premium income of nearly \$49 billion in 2010 and manage \$335 billion in assets. Addressing the issues noted above would give U.S. companies an opportunity to compete to increase their revenues. Conversely, allowing JPI to expand its scope of business without ensuring a level playing field would significantly reduce business opportunity for all private life insurance companies in Japan, including U.S.-owned firms. To assure U.S.

companies “national treatment” in their competition with Japan Post, the Japanese government needs to take a number of steps that include but are not limited to: (1) JPI should be regulated by the same authority, with the same criteria, and with the same level of rigor applied to U.S. life insurance companies operating in Japan; 2) the Japanese government should apply all provisions of the Insurance Business Law to Japan Post Holdings and its affiliated companies without exceptions or waivers; 3) JPI should not have access to profits of pre-2007 guaranteed products or exclusive access to that customer list; 4) JPI should have an arm’s-length business relationship with the postal network; and 5) U.S. companies should have equal access to Japan’s postal network, in terms of the number of post offices, products to be supplied and conditions of doing business to ensure the quality of that access. Until these and other essential measures are taken to create a level playing field, Japan Post should not be permitted to offer new or modified products or services. Allowing Japan Post to expand without first eliminating the competitive advantage would further distort conditions of competition in its favor, harming U.S. companies that sell competing products.

Intellectual Property: (*Steps to Combat Piracy; Updating the Copyright Law*) Japanese companies lead the world in patent applications and with a software piracy rate of just 21 percent last year Japan leads OECD economies. Japan recently acceded to the provisions of the Anti-Counterfeiting Treaty Agreement (ACTA) and it cooperates closely with the United States in international forums to implement intellectual property enforcement. There are nonetheless potential opportunities for improvements in areas such as the protection of software trade dress. While piracy rates are low, Japanese authorities remain reluctant to undertake criminal prosecution for illegal downloads of software and other protected content or to recognize applications by U.S. firms for trade dress registration. Over the past several years an advisory committee to the Cultural Affairs Agency has reviewed revisions to the Copyright Law with the goal of updating it to reflect the advent of the Internet. But progress has been slow. The availability of Japanese language musical and video content on the Internet is quite low when compared to the United States. In some cases, related to the reluctance of the competition authority to intervene in such matters, Japanese rights holders have refused to license domestic content to U.S. Internet service providers limiting their role and profitability in the Japanese market.

International Express Delivery Services: (*Ensuring a Level Playing Field*) An issue that leaves U.S. firms at a considerable disadvantage to the detriment of consumers and efforts to contain costs is the preferential position that the Japan Post enjoys in the “express mail service” (EMS) area. The Japanese government’s rationale for this special status is that Japan Post has a “basic universal service” requirement. The ACCJ does not believe that this argument adequately reflects the reality in the marketplace as comparable services are now offered by the private sector including U.S. companies. The ACCJ is recommending the following measures as necessary to assure a level playing field and fair competition in the express mail market to the benefit of Japanese consumers: (1) greater transparency in Japan Post accounting to assure that there is no cross-subsidization of its express mail service from its other government protected operations; (2) ending of Japan Post’s provision of EMS under its “basic universal service” requirement – EMS should be treated as a business not a quasi-government service; and (3) provision to private sector firms the same benefits that Japan Post has with regard to quarantine and customs procedures.

Investment: (*Reforms Needed in Corporate Governance and Tax Policies*) The United States is the largest foreign investor in Japan, but there are still opportunities for growth. Overall foreign investment in Japan is still less than 5 percent of GDP despite a strong focus by the Koizumi administration during the 2001-2005 period to expand opportunities for foreign firms. Meanwhile, Japan’s overseas presence has expanded dramatically especially in the past few years. During the first three quarters of 2011, outbound mergers and acquisitions were up 50 percent in volume over the previous year and 100 percent by value. Not surprisingly, Keidanren has become increasingly vocal about the need for harmonized regulation for foreign investments and more transparent dispute settlement procedures in areas such as China where Japanese investment has been concentrated. The ACCJ shares the views of Japanese industry on this, but believes a first step in this direction through the TPP process is ensuring real reciprocity in Japan. A key stumbling block to U.S. investment in Japan is the still unfriendly atmosphere in Japan’s corporate sector and media toward merger and acquisition of domestic enterprises by foreign firms even though this is becoming a major vehicle for Japanese expansion abroad. Areas where attention is needed include improved corporate governance and steps to increase the number of Japanese and foreign legal professionals who can support and assist in the often complex negotiations required to establish an expanded U.S. presence in Japan.

The ACCJ is also urging the Japanese government to use tax policy and incentives to promote greater U.S. and foreign investment. For example, while the government's 2012 tax package extends the net operating loss (NOL) carry forward period in Japan from seven years to nine years, the ACCJ believes that the carry forward period should be extended significantly further in order to compare to world standards and encourage both domestic and foreign investment in new growth. A significant further extension of the NOL carry forward period, particularly if done retroactively for losses incurred during the economic downturn of 2007-09, would not only provide support to businesses in Japan and spur capital investment, but would specifically ease one of the hurdles for foreign firms considering market entry but which need to operate at a loss during a start-up period.

Labor Standards and Mobility: (*Reforms in Domestic Labor Practices and Immigration Rules*) Japan's aging population and concurrent workforce productivity has focused attention on rigidities in Japan's labor practices and immigration policies and the need for a balance between the rights of employees and employers. The ACCJ Growth Strategy White Paper released in 2010 highlighted concerns in these areas as obstacles to foreign business and investment in Japan. The White Paper cited the significantly higher hiring and dismissal costs in Japan as a special problem for small and medium-sized U.S. firms operating in Japan. The patchwork of regulation and often conflicting administrative procedures also deter expansion and increased investment by large U.S. enterprises due to compliance risk. Particularly problematic are the ill-defined rights of employees during probationary periods (limited to two weeks) and the informal procedure of "*naitei*" (unofficial offers of employment to new graduates) reducing the pool of qualified job applicants for competitive U.S. firms. These and other labor practices undercut labor mobility and flexibility in Japan and have resulted in the creation of a large group of "temporary workers," who lack the legal rights and financial security afforded full-time employees. The new Democratic administration has sought to address these issues, but steps taken so far have complicated rather than ameliorated the issues in this area, further raising the cost of doing business in Japan for U.S. firms. The issue of immigration is equally complex for U.S. firms that are seeking the best mix of talent and experience for their operations in Japan. A number of studies have shown that flexible immigration policies are directly related to expansion of foreign investment and trade. Japanese visa regulation governing students, investors and professionals require both reform and greater flexibility in their administration.

Legal System: (*Creating More Opportunities for the U.S. Legal Profession in Japan*) A legal and regulatory environment attractive to foreign investors and which encourages domestic investors and entrepreneurs to enter new markets is essential to generating jobs and growth in Japan. A key factor in ensuring greater transparency and predictability in the legal and regulatory system here is the continued growth in the availability and experience of U.S. and international legal counsel. It was only in 1987 that U.S. lawyers were permitted to offer a limited range of legal services in Japan. Since then there has been a steady expansion in their numbers, but if the goals of the TPP are to be realized greater opening is required. Currently, the regulations governing the registration and practice by *gaiben* (registered foreign lawyers) in Japan impose obligations and restrictions on *gaiben* and *bengoshi* (Japanese lawyers) operating in joint enterprises that are not applied to *bengoshi* operating individually or in *bengoshi* law firms. The ACCJ urges that such discrimination be eliminated and that the Japan Federation of Bar Associations (*Nichibenren*) implement the *Gaikokuho* Joint Enterprise Regulations and Employment Regulations (collectively, the Regulations) consistently and with a goal of promoting greater “openness” in the legal system. Specifically, we recommend: (1) streamlining the procedure for becoming a *gaiben*; (2) crediting all legal practice experience in Japan; (3) eliminating requirements affecting only *gaiben*, including as to third country law advice; (4) allowing *bengoshi* members of *gaikokuhokyojigyo* joint enterprises (GKJs) to become full partners in the international partnership; (5) allowing all law firms (whether *bengoshi*, *gaiben*, or GKJ) in Japan to open branch offices without becoming a legal professional corporation (*bengoshihojin*); and (6) permitting *gaiben*, and *gaiben* and *bengoshi* operating jointly in Japan under the GKJ structure, to use home country limited liability structures or to incorporate their offices in Japan as *bengoshihojin*.

Regulatory Transparency: (*Improvements to the Public Comment Period and Role of Advisory Councils*) Japan is often seen as a global leader in the area of transparency and has made considerable progress in its government decision-making process; however, there are still areas in which greater transparency can be pursued. The ACCJ has called on the Japanese government to implement a number of measures to ensure greater transparency, and requests these issues be addressed bilaterally in the TPP consultations. Specifically, the ACCJ recommends: (1) expanding the public comment process to include government-drafted legislation submitted through the administrative

process; (2) extending the public comment period to a full 60 days; (3) prohibiting ministries from issuing proposed regulations (or legislation submitted through the administrative process) within the first 30 days after closure of the public comment period; and (4) improving the uniformity in implementation of public comment and notice periods. Additionally, to further increase transparency in regulation and regulatory enforcement, ministries and agencies should be required to make public in writing any regulations and any statements of policy that are generally applicable interpretations regarding those implementations. In the development of legislation, interested parties should be provided greater opportunities to provide input to the legislative process at an early stage, including through stakeholder participation in deliberative councils (*shingikai*). Further, greater efforts need to be made to invite leading U.S. companies and organizations conducting business in Japan to serve as full members, not just observers, of relevant *shingikai* deliberating rules or regulations that materially affect their investments and operations in Japan. When implementing new regulations, the Japanese government should ensure a reasonable delay in the effective date of regulation (at least 30 days) to allow regulated entities a fair opportunity to come into compliance with a new regulation. In addition, any clarifying documents, such as implementing guidelines or regulations, should be made available as soon as possible after the publication of regulations.

Sanitary and Phytosanitary Measures: (*Opening the Market for U.S. Beef; Need for a Science-based Approach*) Harmonization of sanitary and phytosanitary regulations in the Asia-Pacific region is a key goal, but these regulations are also among the most sensitive areas under discussion in the TPP. While everyone agrees on the need for common rules, the domestic regulation of potentially harmful substances is a complicated and often sensitive political issue. The continued limitations on the importation of U.S. beef into Japan are an example of where an international science-based approach to resolving differences is urgently required. The ACCJ urges the Japanese government to open the market fully to U.S. beef at the earliest juncture. There are other pending issues in this area, many of which are well summarized in the March 2011 USTR Report on Sanitary and Phytosanitary Measures.

Technical Barriers to Trade: (*Regulation of Toiletries and Cosmetics including Quasi-Drugs*) One problem of particular concern to ACCJ members are rules associated with the Chemical Registration and Pre-market Product Registration regulations that govern the

manufacturing and marketing of Toiletries and Cosmetics (including quasi-drugs) in Japan. The ACCJ is looking to the TPP process to both require and encourage changes in the current regulatory framework that place unnecessary and discriminatory burdens on U.S. firms. Among the issues to be addressed are: 1) Japanese government reluctance to accept health and environment data already successfully submitted to other governments; 2) mutual acceptance of standard test protocols and data and avoidance of unique and excessively high standards of safety, efficacy and quality; 3) enhanced efforts to create a level playing field among domestic and import products by eliminating additional requirements that have the effect of discriminating against imported products; 4) reliance on global best practices in regulating advertisements so consumers can make informed choices; and 5) identification and elimination of sector-specific non-tariff measures through organizing a Working Group on Chemicals and Cosmetics to discuss market conditions and promote cooperation with the participation of relevant Japanese government agencies and ministries.

Conclusion

The ACCJ appreciates the opportunity to present its views on the issue of Japan's participation in the TPP. We believe that it is strongly in the strategic and economic interest of the United States to welcome Japan to this process and are confident that Japan will prove a trusted partner in helping realize a 21st-century agreement. Japan's active participation is absolutely essential to ensuring that TPP becomes a regime capable of shaping the global economy of the 21st century in the Asia-Pacific region in ways that best serve the long-term interests of both the American and Japanese people.