

**Joint Study Report**  
**for an FTA among**  
**China, Japan and Korea**

**December 16, 2011**

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## Abbreviation List

ACLGP	Act on Contracts to which the Local Government is a Party (Korea)
ACSP	Act on Contracts to which the State is a Party (Korea)
ACTA	Anti-Counterfeiting Trade Agreement
AD	Anti-Dumping
AEO	Authorized Economic Operator
AMPI	Act on the Management of Public Institutions (Korea)
APEC	Asia-Pacific Economic Cooperation
AQSIQ	General Administration of Quality Supervision, Inspection and Quarantine (China)
ASEAN	Association of Southeast Asian Nations
ASEM	Asia-Europe Meeting
AVE	Ad-valorem Equivalent
CAA	Consumer Affairs Agency (Japan)
CBD	Convention on Biological Diversity
CCC	China Compulsory Certification
CEPA	Closer Economic Partnership Arrangements
CEPA	Comprehensive Economic Partnership Agreement
CIGF	Catalogue for the Guidance of Foreign Investment Industries (China)
CJK FTA	Free Trade Agreement among China, Japan and Korea
CNCA	Certification and Accreditation Administration of the People's Republic of China (China)
CTC	Change in Tariff Classification
CTC	Customs Tariff Commission of the State Council (China)
CVD	Countervailing Duty
DDA	Doha Development Agenda
DRC	Development Research Center (China)
DS	Dispute Settlement
DSM	Dispute Settlement Mechanism
ECMC	Electronic Commerce Mediation Committee (Korea)
EFTA	European Free Trade Association

EPA	Economic Partnership Agreement
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
FIPA	Foreign Investment Promotion Act (Korea)
FTA	Free Trade Agreement
FTC	Fair Trade Commission
GAP	Good Agricultural Practice
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GGGI	Global Green Growth Institute (Korea)
GPA	Agreement on Government Procurement
GPEG	Government Procurement Experts Group
GVA	Gross Value Added
HACCP	Hazard Analysis and Critical Control Points
HS	Harmonized Commodity Description and Coding System
IBSC	Invest Japan Business Support Centers (Japan)
ICN	International Competition Network
IEA	International Energy Agency
IEF	International Energy Forum
IK	Invest Korea (Korea)
IP	Intellectual Property
IPEEC	International Partnership for Energy Efficiency Cooperation
IPR	Intellectual Property Rights
IQ	Import Quota
IRENA	International Renewable Energy Agency
ISDS	Investor-State Dispute Settlement
ISIC	International Standard Industrial Classification
IUU	Illegal, Unreported and Unregulated
JAS	Japan Agricultural Standards (Japan)
JETRO	Japan External Trade Organization (Japan)
JFTC	Japan Fair Trade Commission (Japan)
JIS	Japan Industrial Standards (Japan)

JSC	Joint Study Committee
KATS	Korean Agency for Technology and Standards (Korea)
KCC	Korea Communications Commission (Korea)
KFDA	Korea Food and Drug Administration (Korea)
KFTC	Korea Fair Trade Commission (Korea)
KIEP	Korea Institute for International Economic Policy (Korea)
KONEPS	Korea Online E-Procurement System (Korea)
KORUS FTA	Korea-US FTA
KOTRA	Korea Trade-Investment Promotion Agency (Korea)
KSs	Korean Industrial Standards (Korea)
KTC	Korean Trade Commission (Korea)
LP	Local Presence
NAFTA	North American Free Trade Agreement
NIRA	National Institute for Research Advancement (Japan)
NT	National Treatment
MA	Market Access
MAFF	Ministry of Agriculture, Forestry and Fisheries (Japan)
MCO	Multi-Component IC
MCS	Monitoring, Control and Surveillance
ME	Ministry of Environment (Korea)
METI	Ministry of Economy, Trade and Industry (Japan)
MFN	Most-Favoured-Nation (Treatment)
MIC	Ministry of Internal Affairs and Communications (Japan)
MIIT	Ministry of Industry and Information Technology (China)
MHLW	Ministry of Health, Labour and Welfare (Japan)
MFAFF	Ministry for Food, Agriculture, Forestry and Fisheries (Korea)
MKE	Minister of Knowledge Economy (Korea)
MLIT	Ministry of Land, Infrastructure, Transport and Tourism (Japan)
MOEP	Ministry of Environmental Protection (China)
MOFAT	Ministry of Foreign Affairs and Trade (Korea)
MOFCOM	Ministry of Commerce of the People's Republic of China (China)
MOH	Ministry of Health (China)

MOHW	Ministry of Health and Welfare (Korea)
MRA	Mutual Recognition Arrangement
MRFTA	Monopoly Regulation and Fair Trade Act
MTN	Multilateral Trade Negotiations
ODR	Online Dispute Resolution
OECD	Organization for Economic Co-operation and Development
OPEC	Organization of Petroleum Exporting Countries
PR	Performance Requirements
PSR	Product Specific Rules
QIA	Animal, Plant and Fisheries Quarantine and Inspection Agency (Korea)
R&D	Research and Development
RFMOs	Regional Fisheries Management Organizations
RKC	Revised Kyoto Convention
ROO	Rules of Origin
RRP	Resource Recovery Plan (Japan)
RTA	Regional Trade Agreements
RVC	Regional Value Content
SAC	Standardization Administration of the People's Republic of China (China)
SACU	Southern African Customs Union
SAFE	SAFE Framework of Standards
SFDA	State Food and Drug Administration (China)
SMEs	Small and Medium Enterprises
SP	Specific Processes
SPS	Sanitary and Phytosanitary Measures
TAC	Total Allowable Catch
TBT	Technical Barriers to Trade
TDGM	Tripartite Director Generals' Meeting on Dust and Sandstorms
TEMM	Tripartite Environment Ministers' Meeting
TPES	Total Primary Energy Supply
TRIMs	WTO Agreement on Trade-Related Investment Measures
TRIPs	WTO Agreement on Trade-Related Aspects of Intellectual Property Rights
TRQ	Tariff Rate Quota



UNCLOS	United Nations Convention on the Law of Sea
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
WCO	World Customs Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

## **I. Introduction**

From 2003 to 2009, a Trilateral Joint Research Project on a Free Trade Agreement (FTA) among China, Japan and Korea (CJK FTA) was conducted jointly by the Development Research Center (DRC) of the State Council of China, the National Institute for Research Advancement (NIRA)<sup>1</sup> of Japan, and the Korea Institute for International Economic Policy (KIEP). The reports of this Research Project said that a trilateral FTA would bring macroeconomic benefits to all three countries, leading to a win-win-win situation. The institutions also analyzed sectoral implications, covering the agricultural sector, fishery sector, and major manufacturing and services sectors. Rules of origin and sensitive sectors were examined as well. The researchers recommended that discussion on a CJK FTA should be commenced among government officials of the three countries, by reforming the mechanism of discussion to an official discussion at a governmental level.

Building on the Trilateral Joint Research Project, the leaders of the three countries reached a consensus during the Trilateral Summit held in Beijing, China on October 10, 2009 that the Joint Study for a CJK FTA would start among government officials, business and academic participants. At the Trilateral Economic and Trade Ministers' Meeting held in Hua Hin, Thailand on October 25, 2009, the three countries decided to task senior government officials to start discussions and considerations at the earliest time in 2010 on how to proceed with the Joint Study with a view to launching the first Joint Study meeting in the first half of 2010, before the Trilateral Summit. Following the preparatory meeting held on January 26, 2010, the Joint Study Committee (JSC) for a CJK FTA was launched, and its first meeting was held in Seoul, Korea on May 6 and 7, 2010.

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1. The Japanese institution was replaced from NIRA to the Japan External Trade Organization (JETRO) in 2009.

## **II. General Trade and Economic Relations among the Three Countries**

### **1. the Importance of the Economies of China, Japan and Korea in the World**

China, Japan and Korea are major economic players in the world which recorded a total GDP of US\$12,344 billion, 19.6% of the world's total GDP in 2010.<sup>2</sup> The three countries are also major trading nations, which accounted for 18.5% of the world's exports and 16.3% of the world's imports in 2010.<sup>3</sup> Their shares of the world's inward and outward FDI (flows) represented 9.2% and 12.8%, respectively in 2010.<sup>4</sup>

The JSC has noted that even though East Asia is an important major economic player in the world, substantial economic integration has not yet evolved in this region. The JSC also noted that given the region's economic power and competitiveness, economic integration in the region will certainly bring tremendous benefits not only to the region, but also to the world.

### **2. Trade in Goods and Services of China, Japan and Korea**

From 1992 to 2010, the exports and imports of the three countries increased rapidly. In 2010, China, Japan and Korea accounted for 10.4%, 5.1% and 3.1% of the world's total exports, respectively, and represented 9.1%, 4.5% and 2.8% of the world's total imports, respectively.<sup>5</sup>

The share of intra-regional trade among the three countries has increased steadily. It increased from 12.3% in 1990 to 19.0% in 1996 up until the Asian Financial Crisis of 1997. It increased again and amounted to 24.1% in 2004 before dropping to 21.7% in 2008.<sup>6</sup> During 2010, China was the largest trading partner of Japan and Korea, and the two countries were regarded as the second and third largest trading partners of China. In the same year, Japan was Korea's second largest trading partner and Korea was Japan's third largest trading partner.<sup>7</sup>

However, intra-regional trade levels were still much lower than those of the EU and

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2 IMF, World Economic Outlook Database.

3 WTO Statistics Database(time series).

4 UNCTAD, World Investment Report 2011.

5 WTO Statistics Database(time series).

6 IMF, Direction of Trade Statistics.

7 KITA

NAFTA, which were 64% and 40%, respectively, in 2010.<sup>8</sup> The JSC has noted that low intra-regional trade among the three countries showed the potential for a CJK FTA to further boost intra-regional trade, and bring prosperity to the region as a whole.

There is some convergence and complementarity in the trade structures of the three countries, demonstrating a similar layout of industries engaging in exports and imports and considerable flows of intermediate goods. The intra-regional trade patterns among the three countries have also evolved significantly in recent years. This may constitute a good rationale for a trilateral FTA, since it can enhance the competitiveness and efficiency of the three countries by increasing competition, thereby facilitating the restructuring of industries and making a vertical and horizontal division of labor more efficient. In addition to this, there will be benefits for the consumers as well in the form of lower prices and access to a wider range of products, and the improved opportunities afforded to exporters through access to markets will in turn stimulate greater economic activity.

Regarding trade in services, China, Japan and Korea attach great importance to the development of trade in services. At present, with respect to the total value of trade in services, China, Japan and Korea ranks 4th, 5th and 13th respectively in the world.<sup>9</sup> Bilateral trade in services among the three countries has witnessed steady and rapid growth in recent years. Bilateral trade in services between China and Japan has increased from US\$6.527 billion in 2000 to US\$24.700 billion in 2009, between China and Korea from US\$4.255 billion in 2000 to US\$15.700 billion in 2009, and between Korea and Japan from US\$12.843 billion in 2000 to US\$16.075 billion in 2009; with an annual growth rate of 15.94%, 15.61% and 2.5% respectively.<sup>10</sup>

### **3. Investment of China, Japan and Korea**

The FDI flows of China, Japan and Korea experienced great changes. In general, China's FDI inflows and outflows have seen rapid growth during the period of 1998-2010 and the overseas investment of Japan has picked up speed since 2004, but annual FDI inflows of Japan and Korea remained at a low level, compared to those of China during the same period. In this regard, the share of the three countries in the global FDI flows is relatively low in light of the important status of the three countries in the world GDP and trade.

The intra-regional investment ratio in the three countries is prominently low and displayed sharp fluctuations compared with the rather stable intra-regional trade ratio.

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<sup>8</sup> WTO Statistics Database, UN COMTRADE

<sup>9</sup> WTO Statistics Database.

<sup>10</sup> UN Service Trade Statistics Database.

The main investment flows among the three countries so far have been from Japan and Korea to China. However, neither Japan nor Korea has been a major investment destination for China despite the fact that China has recently become a provider of FDI. Taking into consideration the experiences of NAFTA and the EU, the JSC has noted that there is still more room for the three countries to increase FDI flows within the region by improving their investment environment and by enhancing investment protection and liberalization.

#### **4. Consultative Mechanisms among China, Japan and Korea**

Mechanisms for cooperation among the three countries have been in operation across a whole spectrum of areas. There are currently 17 ministerial meetings as well as a number of mechanisms for exchanges and dialogue among the three countries. In the economic area, trilateral consultative mechanisms have been operating well in the fields such as trade, finance, environment, technology, communications, energy, customs, transportation, patent and tourism. The JSC has noted that there is still a great scope for further cooperation among the three countries. In this regard, the JSC welcomed the formal launch of the Trilateral Cooperation Secretariat, which started operation in Seoul on September 1, 2011. The JSC has shared the view that the secretariat can be an important framework for promoting trilateral cooperation along with a possible CJK FTA.

#### **5. FTA Policies of the Three Countries**

The three countries attach great importance to the multilateral trade liberalization process, and have been contributing to the ongoing negotiations under the Doha Development Agenda for their early and successful conclusion. At the same time, they have been actively pursuing FTAs as a complementary avenue for further liberalization.

In the case of China, following its accession to the WTO in 2001, China has been pursuing FTA negotiations with various partners on the basis of the principles of mutual benefits, win-win cooperation and common development. It has concluded FTAs with New Zealand, ASEAN, Chile, Singapore, Peru, Pakistan and Costa Rica, and also signed Closer Economic Partnership Arrangements with Hong Kong SAR and Macao SAR. Meanwhile, the Cross-Straits Economic Cooperation Framework Agreement between China and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu was also signed. China is currently negotiating FTAs with the GCC, the SACU, Australia, Switzerland, Norway and Iceland. Preliminary discussions with Korea are underway to foster a favorable environment prior to formal bilateral FTA negotiations.

In the case of Japan, supporting the core role of the WTO, Japan is pursuing Economic Partnership Agreements (EPAs) as complementary tools for trade liberalization. It has 12 EPAs currently in force, namely those with Singapore, Mexico, Malaysia, Chile, Thailand, Indonesia, Brunei, ASEAN, the Philippines, Switzerland, Vietnam and India, has signed one with Peru, and is negotiating EPAs with the GCC and Australia. Consultations are underway between Japan and Korea to resume the bilateral EPA negotiations, which have been suspended since 2004.

Korea is pursuing FTAs with three objectives: trade promotion, economic efficiency and welfare enhancement. Seven FTAs, namely those with Chile, Singapore, EFTA, ASEAN, India, the EU and Peru, are currently in force, and one FTA with the US has been concluded. In addition to this, Korea is now negotiating with 12 countries for seven FTAs with Australia, New Zealand, the GCC, Colombia, Turkey, Canada and Mexico. Consultations are underway between Japan and Korea to resume the bilateral FTA negotiations, which have been suspended since 2004. Preliminary discussions with China are underway to foster a favorable environment prior to formal bilateral FTA negotiations.

### III. Trade in Goods

Trade in goods among China, Japan and Korea has grown rapidly and substantially during the past two decades. The three countries are the most important trading partners to each other at present. In 2010, China was the biggest trading partner of both Japan and Korea.

As shown in Table 1, customs tariffs of China, Japan and Korea are compiled on the basis of the Harmonized Commodity Description and Coding System (HS) of the World Customs Organization (WCO) in accordance with the WTO definition of agricultural and non-agricultural products (See Annex Table 1). The simple average applied Most-favoured-nation (MFN) tariff rates for China, Japan and Korea were 9.6%, 4.4% and 12.1%, respectively, in 2010, whereas the weighted average applied MFN tariff rates for China, Japan and Korea were 4.1%, 2.7% and 7.9%, respectively, in 2009.

The simple average applied MFN tariff rates for agricultural products of China, Japan and Korea were 15.6%, 17.3% and 48.5%, respectively, in 2010, whereas the weighted average applied MFN tariff rates for agricultural products were 8.0%, 15.8%, and 99.8%, respectively, in 2009. The simple average applied MFN tariff rates for non-agricultural products of China, Japan and Korea were 8.7%, 2.5% and 6.6%, respectively, in 2010, whereas the weighted average applied MFN tariff rates for non-agricultural products were 3.8%, 1.4% and 3.5%, respectively, in 2009.

Table 3-1. Applied MFN Tariff Rates of China, Japan and Korea

(Unit: %)

		China	Japan	Korea
Simple (2010)	Total	9.6	4.4	12.1
	Agriculture	15.6	17.3	48.5
	Non-agriculture*	8.7	2.5	6.6
Weighted (2009)	Total	4.1	2.7	7.9
	Agriculture	8.0	15.8	99.8
	Non-agriculture*	3.8	1.4	3.5

Source: WTO World Tariff Profiles (online).

Notes: According to the WTO's definition of products groups used in World Tariff Profiles, non-agricultural products include fishery products, wood, minerals, metals, and industrial goods.

In addition to this, interim or temporary tariff rates are applied by all three countries. In the case of China, the interim tariff rates are applied for a specific period of time to certain goods. Where there are interim tariff rates on import goods to which the MFN tariff rates are applicable, such interim tariff shall apply; where there are interim tariff rates on import goods to which the agreement tariff rates or the special tariff rates are applicable, the lower tariff

rates shall apply; where there are interim tariff rates on import goods to which the tariff quota rates are applicable, such interim tariff rates shall apply. Interim tariff rates shall not apply to the import goods to which the general tariff rates are applicable. In 2010, China implemented lower interim MFN rates on 619 tariff lines at HS 8-digit level, including agricultural, fishery and industrial products.

In the case of Japan, there is a domestic tariff system other than the WTO bound rates, named as “temporary tariff rates,” provided in the *Temporary Tariff Measures Law*. Temporary tariff rates are applied to certain import goods from all countries on an MFN basis. After an EPA comes into effect, the temporary tariff rate is applicable to the goods where the temporary tariff rate to the good in question is not higher than the EPA rate or where the good in question is not the subject of elimination or reduction of customs duties under the EPA. In 2010, Japan set temporary tariff rates on 474 tariff lines (agricultural, fishery and industrial products) at HS 9-digit level.

Korea implements autonomous tariff quotas and the adjustment tariff scheme for several agricultural, forestry, fishery and industrial products and which are consistent with the WTO Agreement, in that they are operated within the scope of Korea’s WTO bound rates and on an MFN basis. Autonomous tariff quotas are applied to some specific products to increase or decrease tariff rates. In 2010, the autonomous tariff quotas were applied to 231 tariff lines at HS 10-digit level, which lowered the tariff rates of all tariff lines applied. Adjustment tariff scheme is designed to prevent disruption of the domestic market or collapse of the relevant industries. In 2010, the adjustment tariff scheme was applied to 41 tariff lines at HS 10-digit level. The tariff rates under autonomous tariff quotas or the adjustment tariff scheme are always applied in preference to the general tariff rates. In cases where there are these tariff rates on imported goods to which the WTO (MFN) tariff rates or the agreement tariff rates are applicable, the lower tariff rates shall apply.

Apart from tariffs, the three countries have all implemented non-tariff measures. Although non-tariff measures are difficult to define precisely, it is widely understood that quantitative restrictions, technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS), distribution barriers and others could be included.



# 1. Agriculture, Fishery and Forestry<sup>11</sup>

## 1.1 Agriculture

### 1.1.1 Domestic Production and Trilateral Trade

Production volumes of the three countries are statistically significant for some agricultural products. For instance, the three countries produced 30.8% of the world's rice and 47.6% of pork in 2008, as shown in Table 3-2 below. This table also reveals the yields of some agricultural products of the three countries in 2000 and in 2008. In China, production of all listed items increased over the aforementioned period. In Japan, except the cases of barley, wheat and soybeans, listed items were produced less in 2008 than in 2000. In Korea, except wheat, soybeans, maize and pig meat, listed items were produced less in 2008 than in 2000.

Table 3-2. Agricultural production of China, Japan and Korea

(Unit: 1,000M/T, %)

Products	Year	World	China		Japan		Korea	
		Production	Production	Share	Production	Share	Production	Share
Rice	2000	599,355	189,814	31.7	11,863	2.0	7,197	1.2
	2008	685,875	193,354	28.2	11,029	1.6	6,919	1.0
Barley	2000	133,116	2,646	2.0	214	0.2	227	0.2
	2008	155,054	3,100	2.0	217	0.1	170	0.1
Wheat	2000	585,691	99,636	17.0	688	0.1	2	0.0
	2008	683,407	112,463	16.5	881	0.1	10	0.0
Soybeans	2000	161,291	15,411	9.6	235	0.1	113	0.1
	2008	230,581	15,545	6.7	262	0.1	133	0.1
Maize	2000	592,475	106,178	17.9	0.2	0.0	64	0.0
	2008	826,224	166,032	20.1	0.2	0.0	93	0.0
Cattle meat	2000	56,266	4,795	8.5	530	0.9	306	0.5
	2008	61,670	5,841	9.5	520	0.8	246	0.4
Pig meat	2000	89,787	40,752	45.4	1,256	1.4	916	1.0
	2008	103,983	47,190	45.4	1,249	1.2	1,056	1.0

Source: FAO STAT(online)

Note: The figure of rice, barley and wheat are weight-based with husks, and that of cattle meat and pig meat are weight-based of carcasses.

As partly shown in Table 3-2, China, Japan and Korea accounted for a large portion of the

<sup>11</sup> Food products and beverages, tobacco and wood listed in 2.Manufacturing are to be treated jointly in the context of 1.Agriculture, Fishery and Forestry.

world's agricultural production, mainly due to China's large production. China is one of the biggest producers and consumers of agricultural products in the world, with the production of several kinds of primary agricultural products ranked first, such as rice, wheat, cotton, pork, poultry, fruits and vegetables.<sup>12</sup>

However, as Table 3-3 shows, the per capita agricultural natural resources of China are relatively limited. The per capita cultivated land and water resources of China are about 40% and 26% of the world average, and the per capita forest resources are only 14% of the world average. In recent years, China's natural ecological environment has been seriously destroyed, resulting in the decline of the capacity of sustainable development of China's agriculture. Meanwhile, there is also a big gap between China and the developed countries in the level of technology use, degree of specialization and market-orientation of agriculture.

Japan's agricultural sector is facing some difficulties: persisting small-scale farming; limited and decreasing farmland; growing aging labor forces in rural areas, and a decreasing number of farmers. In 2009, the rural population aged 65 or over reached as high as 34.1%, whereas the national population of the same age range was 22.7%. In addition, Japan's agricultural trade deficit has been on the rise from US\$59.6 billion in 2000 to US\$64.2 billion in 2009. In reflecting these situations, Japan's food self-sufficiency ratio declined to 40% in 2009, the lowest among developed countries.

Korea's agricultural sector is still saddled with difficulties: among others, persisting small-scale farming due to limited and decreasing farmlands; growing aging labor forces in rural areas, and painful adjustments after agriculture market liberalization. In 2009, the rural population aged 65 or over reached as high as 34.2%, whereas the national population of the same age range was 12.5%. In addition, Korea's agricultural trade deficit has been expanding every year from US\$5.7 billion in 1999 to US\$15.0 billion in 2009.

As stated above, Japan and Korea have similar problems in agriculture such as decreasing agricultural land and farmers as well as growing aging farmers, and these problems cast a shadow over the agriculture of these countries, which provides food and can contribute to other multi-functionality such as conserving national land, fostering water resources, preserving landscape and protecting biodiversity. Especially, in these countries, in the Asian monsoon climate, the paddy field plays a key role for land conservation. In addition, food security is a common concern for the countries as food is an absolute necessity for human survival.

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12 FAO STAT (online).

Table 3-3. Agricultural population and farming land in China, Japan and Korea  
(2009)

Item	Unit	China	Japan	Korea
Population	1,000	1,334,740	128,056	48,747
Population in rural areas	1,000	712,880	6,503	3,117
Percentage of population in rural areas	%	53.4	5.1	6.4
Households of farmers	1,000	259,750	2,528	1,195
Cultivated farming land	1,000ha	158,639	4,593	1,737
Cultivated farming land per household	ha	0.61	1.82	1.45
Cultivated farming land per farmer	ha	0.22	0.71	0.56

Resources: Chinese Statistics(2009); Japanese Statistics(2009); Korean Statistics(2009).

As for China, the total agricultural output was RMB 5,008 billion in 2009, recording a 135% increase compared to that in 2000. During the same period, however, the agricultural portion in total GDP decreased approximately 4.8%p from 15.1% to 10.3%.

As for Japan, the total agricultural output decreased by about 30% to 8.2 trillion yen in 2009 after its peak of 11.7 trillion yen in 1984, and also decreased by about 10% from 9.1 trillion yen in 2000.

In the case of Korea, in 2009, the total agricultural output was 41.4 trillion won, recording a 29% increase compared to that in 2000. During the same period, however, the agricultural portion in total GDP decreased approximately from 5.3% to 3.9%.<sup>13</sup>

The relative competitiveness of the three countries is reflected in their trilateral trade of agricultural products. In agriculture, China recorded a trade surplus vis-à-vis both Japan and Korea, whereas Korea recorded a surplus vis-à-vis Japan. According to the statistics classified by the WTO's definition of agricultural products based on the HS 2007, China's agricultural exports to Japan and Korea in 2009 reached US\$5,088.7 million and US\$1,834.3 million, respectively, while its agricultural imports from Japan and Korea reached US\$247.2 million and US\$193.6 million, respectively. In 2009, Korea's agricultural exports to Japan amounted to US\$899.9 million, while its imports from Japan represented US\$304.2 million.

According to the statistics classified by the WTO definition of agricultural products, China's agricultural imports from Japan consisted of fruits, vegetables, plants(48.3%); oilseeds, fats and oils(32.2%); sugars and confectionery (18.5%); and animal products(1.03%); while

<sup>13</sup> In terms of the total agricultural Gross Value Added (GVA), in 2009, the total agricultural GVA was 21.9 trillion won, recording a 1.5 % increase compared to the figure in 2000. During the same period, however, the agricultural portion in total GVA decreased from 4.0% to 2.3%.

sugars and confectionery (34.2%); cereals and preparations(21.2%); fruits, vegetables, plants(16.7%); beverages and tobacco(15.1%) were China's major imports from Korea. Japan's agricultural imports from China consisted mainly of fruits, vegetables, plants(42.8%); other agricultural products(15.8%); animal products(15.6%); oilseeds, fats and oils(9.0%); while Japan's major imports from Korea were fruits, vegetables, plants(37.3%); cereals and preparations(36.5%); and other agricultural products(14.8%). Korea's agricultural imports from China consisted mainly of fruits, vegetables, plants (30.8%); cereals and preparations (22.0%); other agricultural products (20.0%); oilseeds, fats and oils (18.1%); while Korea's major imports from Japan were cereals and preparations (39.5%); beverages and tobacco (16.5%); other agricultural products (16.0%); and oilseeds, fats and oils (13.1%).

### 1.1.2 Tariff and Other Trade Policies

Table 3-4 shows tariff rates of each agricultural product group: the highest applied MFN tariff rates for agricultural products in China, Japan and Korea were 65%, 640% and 887%, respectively in 2010.

Table 3-4 Tariffs by agricultural product groups of China, Japan and Korea (2010)

(Unit: %)

	Product Groups	Final bound duties				MFN applied duties		
		Average	Duty-free in %	Max	Binding in %	Average	Duty-free in %	Max
China	Animal products	14.9	10.4	25	100	14.8	10.1	25
	Dairy products	12.2	0	20	100	12	0	20
	Fruit, vegetables, plants	14.9	4.9	30	100	14.8	5.9	30
	Coffee, tea	14.9	0	32	100	14.7	0	32
	Cereals & preparations	23.7	3.3	65	100	24.3	3.4	65
	Oilseeds, fats & oils	11.1	7.1	30	100	11.0	5.3	30
	Sugars and confectionery	27.4	0	50	100	27.4	0	50
	Beverages & tobacco	23.2	2.1	65	100	22.3	2.2	65
	Cotton	22	0	40	100	15.2	0	40
	Other agricultural products	12.1	9.2	38	100	11.4	9.4	38
Japan	Animal products	14.3	45.7	271	100	18.9	43.8	271
	Dairy products	118.1	0	660	100	93.3	9.5	640
	Fruit, vegetables, plants	10.2	19.6	394	100	10.6	19.7	394
	Coffee, tea	14.3	22.2	184	100	15.3	22.7	184

	Cereals & preparations	69.7	8.2	618	100	42.0	16.3	618
	Oilseeds, fats & oils	10.0	46.2	613	100	9.0	41.9	613
	Sugars and confectionery	44.7	7.3	225	100	27.2	12.7	94
	Beverages & tobacco	16.4	19.1	54	100	14.6	32.3	54
	Cotton	0	100	0	100	0	100	0
	Other agricultural products	5.3	66.6	562	100	4.4	70.6	562
Korea	Animal products	26.1	0.4	89	100	22.1	2.4	89
	Dairy products	69.8	0	176	100	67.5	0	176
	Fruit, vegetables, plants	63.6	0	887	100	57.4	0.2	887
	Coffee, tea	74.1	0	514	100	53.9	0	514
	Cereals & preparations	161.1	0	800	100	134.5	0.3	800
	Oilseeds, fats & oils	44.1	2.6	630	100	37.0	4.1	630
	Sugars and confectionery	32.2	0	243	100	16.8	12.5	243
	Beverages & tobacco	42.5	0	270	100	31.7	0	270
	Cotton	2	0	2	100	0	100	0
	Other agricultural products	20.8	9.3	754	100	16.1	18.3	754

Source: WTO World Tariff Profiles (online)

China applies the tariff rate quotas (TRQs) to imported goods which are subject to the tariff quota administrative regulations. In 2010, TRQs applied by China on agricultural products involved 42 tariff lines at the HS 8-digit level, which are wheat(6 lines), maize(5), rice(14), sugar(6), wool(6), wool tops(3) and cotton(2). The in-quota rate applied on the above lines ranges from 1% to 15%, while the out-of-quota rate ranges from 10% to 65%.

In accordance with the results of the Uruguay Round negotiations, Japan operated TRQs for 175 lines at the HS 9-digit level in 2010, which are dairy products (87 lines), prepared edible fat (2), dried leguminous vegetables (7), wheat (25), barley (13), rice (17), starches (15), ground nuts (2), tubers of Konnyaku (1), and silk-worm and cocoons and raw silk (6). The in-quota rates of those products range from 0% to 40%. The highest rate of out-of-quota is 640%.<sup>14</sup>

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14 That rate is a specific duty and the figure shown above is ad-valorem equivalent (AVE) estimated by the WTO Secretariat based on the trade data in 2010. In the WTO's data, only the max AVE is available to the public.

In 2010, Korea applied TRQs on 63 products which amount to 203 tariff lines at the HS 10-digit level. TRQ-applied products include mainly rice (16 lines), barley (8), pepper (5), garlic (4), and onion (2). The in-quota rates of those products range from 0% to 50% and the out-of-quota rate ranges from 9% to 887.4%. Among those products, rice is imported only by the amount of scheduled Minimum Market Access under the “special treatment” provision of the WTO.

## 1.2 Fishery<sup>15</sup>

### 1.2.1 Domestic Production and Trilateral Trade

The three countries account for a large share in fishery production as shown in Table 3-5 below. In 2009, the total share of the three countries in the world’s fishery production recorded 42.3%, mainly because of China’s large production.

Table 3-5. Fishery production of China, Japan and Korea

(Unit: 1,000M/T, %)

	World	China		Japan		Korea	
	Production	Production	Share	Production	Share	Production	Share
<b>2000</b>	136,255	43,284	31.8%	6,485	4.8%	2,506	1.8%
<b>2001</b>	136,045	44,273	32.5%	6,419	4.7%	2,677	2.0%
<b>2002</b>	139,229	46,289	33.2%	5,888	4.2%	2,498	1.8%
<b>2003</b>	139,516	48,263	34.6%	6,095	4.4%	2,502	1.8%
<b>2004</b>	148,148	50,728	34.2%	5,707	3.9%	2,543	1.7%
<b>2005</b>	151,102	52,466	34.7%	5,672	3.8%	2,719	1.8%
<b>2006</b>	152,224	54,265	35.6%	5,657	3.7%	3,050	2.0%
<b>2007</b>	156,018	56,161	36.0%	5,688	3.6%	3,287	2.1%
<b>2008</b>	159,406	57,827	36.3%	5,616	3.5%	3,359	2.1%
<b>2009</b>	162,821	60,475	37.1%	5,196	3.2%	3,199	2.0%

Source: FAO STAT (online)

In China, the fishery sector is a key area in agriculture. In 2009, the fishery production of China reached RMB 562.6 billion, with a total output of 51.1 million tons, including aquatic products of 36.2 million tons and capture products of 14.9 million tons. Although China has a large output of fish and fishery products, the development of this sector still depends on the expansion of production scale and the extensive input of natural resources. Furthermore,

<sup>15</sup> This report defines the fishery products in accordance with the definition of “fish and fish products” under the WTO world tariff profile (See Annex Table 1).

China faces challenges related to limited resources, environmental degradation, increasing competition in the market and less advanced technology. Compared with its major competitors in the world, China is far behind in the fields of fishery processing and materials recycling.

Japan's production value of fisheries and aquaculture declined by about 50% to 1.5 trillion yen in 2009 compared to its peak of 3.0 trillion yen in 1982, and also decreased by about 20% from 1.9 trillion yen in 2000. In the seas around Japan, 40% of fish species are at low level of their resources, which has raised concern regarding appropriate fishery resources management.

In the case of Korea, in 2009, the total fishery output was 6.9 trillion won (coastal and offshore (52.6%); aquaculture (26.7%); distant water (16.8%); and, inland (3.9%)), recording a 5.9% increase compared to that in 2005. During the same period, however, the fishery proportion in total GDP decreased from 0.3% to 0.2%.<sup>16</sup>

In fisheries, China recorded a trade surplus vis-à-vis both Japan and Korea, whereas Korea recorded a surplus vis-à-vis Japan. According to the statistics classified by the WTO definition of product groups, China's fishery exports to Japan and Korea amounted to US\$2,781.0 million and US\$1,002.8 million in 2009, respectively, while its imports from Japan and Korea represented US\$203.5 million and US\$118.9 million, respectively. In 2009, Korea's fishery export to Japan amounted to US\$651.3 million, while its imports from Japan represented US\$193.8 million.

### 1.2.2 Tariff and Other Trade Policies

As Table 3-6 shows, in 2010, the simple average MFN applied tariff rates for fishery products of China, Japan and Korea were 10.9%, 5.5% and 16.1%, respectively. The maximum MFN applied tariff rates for fishery products of China, Japan and Korea were 23%, 15% and 50%, respectively.

Table 3-6. Tariff rates of China, Japan and Korea for fish and fish products (2010)

(Unit: %)

	Final bound duties				MFN applied duties		
	Average	Duty-free in %	Max	Binding in %	Average	Duty-free in %	Max
China	11.0	6.2	23	100	10.9	6.3	23

<sup>16</sup> In 2009, the total fishery GVA was 3.28 trillion won, increasing by about 1.13 trillion won compared to that of 2000. During the same period, meanwhile, the fishery proportion in total GVA decreased from 0.4% to 0.3%.

Japan	4.9	3.5	12	91.2	5.5	3.3	15
Korea	14.9	0	32	53.1	16.1	0.7	50

Source: WTO World Tariff Profiles (online)

Except for MFN tariffs, China does not apply other quantitative import restriction measures such as quotas to fishery products. Japan operates import quota (IQ) on several fishery products.

## 1.3 Forestry<sup>17</sup>

### 1.3.1 Domestic Production and Trilateral Trade

In 2009, the gross output value of forestry of China reached RMB 235.9 billion. Log, timber, paper products, etc. are among the main forestry products of China. In recent years, the forestry products trade of China has witnessed rapid growth.

Japan's forestry output, including timber and some non-timber products, has been in a downward trend for a long time. It was 412.2 billion yen in 2009, down by 64% from its peak in 1980, 1,158.2 billion yen. The self-sufficiency ratio of wood has also declined, remaining at 27.8% in 2009.

In 2009, Korea's gross output value of forestry recorded 4.83 trillion won, which has continuously increased since 2005. The net growing stock accounted for about 41% of the total output.

In forestry, China recorded a trade surplus vis-à-vis both Japan and Korea, whereas Japan recorded a surplus vis-à-vis Korea. According to the statistics classified by HS 2007 (WTO definition), China's forestry products exports to Japan and Korea amounted to US\$3,912.6 million and US\$970.8 million in 2009, respectively, while its imports from them represented US\$1,882.8 million and US\$576.9 million, respectively. In 2009, Korea's forestry products exports to Japan amounted to US\$310.9 million, while its imports from Japan represented US\$398.9 million.

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<sup>17</sup> The coverage of forestry products in each country may differ. The WTO classification (Wood, Paper, etc.) is used to indicate statistics of trilateral trade and tariff rates of the forestry products in this report other than those of domestic production of forestry products.



### 1.3.2 Tariff and Other Trade Policies

As Table 3-7 shows, in 2010, the simple average MFN applied tariff rates for forestry products of China, Japan and Korea were 4.4%, 0.8% and 2.2%, respectively. The maximum MFN applied tariff rates for forestry products of China, Japan and Korea were 20%, 10% and 10%, respectively.

Table 3-7. Tariff rates of China, Japan and Korea for forestry products (2010)

(Unit: %)

	Final bound duties				MFN applied duties		
	Average	Duty-free in %	Max	Binding in %	Average	Duty-free in %	Max
China	5	22.3	20	100	4.4	35.3	20
Japan	1	78.8	10	97.6	0.8	80.9	10
Korea	2.8	73.5	13	89.0	2.2	67.5	10

Source: WTO World Tariff Profiles (online)

## 1.4 Impacts of a Future CJK FTA on Agriculture, Fishery and Forestry

### 1.4.1 Agriculture

With a possible CJK FTA, removing and reducing tariffs and other barriers to trade in the agricultural sector will bring the three countries potential benefits, including access for consumers to a wider range of agricultural products with lower prices and improved access for exporters to the partners' markets. China may increase the export of labor-intensive primary products such as vegetables and fruits to Japan and Korea, while Japan and Korea would possibly increase the export of value-added processed products to China.

However, Japan and Korea indicated that it would probably have asymmetrical effects on the trilateral agricultural trade and possibly lead to an uneven distribution of benefits in the agricultural sector of the three countries. A possible CJK FTA would raise concerns in Japan and Korea for serious impacts on domestic agricultural production. Meanwhile China indicated that, with a possible CJK FTA, the coverage and volume of agricultural products trade among the three countries would be expanded, from which consumers of the three countries would benefit. However, it should be noted that China's competitiveness in the agricultural sector would be constrained by those factors such as low and decreasing per capita resources available for agriculture, increasing pressure for China to meet domestic demand, and a shrinking price advantage in agriculture due to the rapidly increasing labor and input cost.

In pursuing a possible CJK FTA, due consideration should be given to sensitive products of each country. If the issues related with sensitive products are appropriately addressed, the three countries will enjoy improved welfare generated by a CJK FTA. In order to cope with a more competitive environment under a possible CJK FTA, it is important for each country to realize sustainable and strong agriculture by further improving domestic agricultural production capacity, and to revitalize its agriculture.

#### **1.4.2 Fisheries**

China, Japan and Korea have a complementary relationship with each other in the fishery sector. For instance, China is more competitive in fresh water fishery, while Japan and Korea are more competitive in marine capture fisheries. With a possible CJK FTA, trade in fish and fish products among the three countries would be expanded, which would benefit consumers and improve the overall national welfare of the three countries. China may increase the export of labor-intensive fishery products to Japan and Korea, while Japan and Korea would increase the export of value-added fishery products to China. However, the positive effect of a CJK FTA would be attenuated by those factors such as a decline of fishery resources, increasing cost of capturing and aqua-culturing, and stronger competition from the other FTA partners.

Japan suggests that due consideration should be given to the effect of an appropriate fishery resources management to ensure sustainable development of fishery industries, given the fact that the three countries share specific fishing ground and fishery resources and there are some species decreasing in number in the fishing ground around the three countries. China suggests that the future negotiation on fishery sectors is mainly dealing with market access issues, therefore, the discussion on fishery resources management is more appropriate to be handled by fishery management authorities among three countries through existing channels.

It is also noted by the three countries that such measures should not unreasonably prevent trade flows of fishery products.

#### **1.4.3 Forestry**

In forestry, a CJK FTA will bring potential benefits, including access to a wider range of forestry products with lower prices for consumers and improved access for exporters to the partners' markets.

Meanwhile, concern has been raised that, along with the growth of trade flows in forestry products, the risks for degradation in sustainable forest management, which is the basis for maintaining various positive functions, may increase, given the fact that the three countries are sharing geographical proximity and similarity in flora.

As China, Japan and Korea import about a quarter of timbers globally traded, Japan has raised its concern that a possible CJK FTA may increase this ratio, and indicated that consideration should be given to promoting trade in legally harvested forest products to combat illegal logging. China indicated that such efforts to combat illegal logging should not constitute unreasonable barriers to trade.

### **1.5 Suggestions for a Future CJK FTA**

A future trilateral FTA will contribute to sustainable development, addressing the concerned issues aforementioned appropriately as well as facilitating trade and investment in the agricultural, forestry and fishery sectors so that the three countries can enjoy mutual and consistent benefits of a future CJK FTA.

In order to enhance the competitiveness of agriculture, fisheries and forestry of China, Japan and Korea, and to elevate their consumers' welfare, the three countries should not only reduce tariff and non-tariff measures which have adverse effects to trade but also deepen and strengthen economic linkages among the three countries to establish a win-win-win relationship through forming a CJK FTA, with due consideration to the sensitivities of each country in these sectors.

## 2. Manufacturing<sup>18,19</sup>

### 2.1 Domestic Production and Trilateral Trade

Overall, by trade volume, all three countries are regarded as large manufacturers in the world market. They occupy a predominant position in the world's export of the key manufacturing products such as radio, television and communication equipment (32.8%); office, accounting and computing machinery (36.3%); and textile (33.0%). (see Annex Table 3). The gross domestic production by economic activity at current prices is as follows.

Table 3-8. Gross domestic production by economic activity at current prices

(Unit: %)

Description	China	Japan	Korea
Food, beverages and tobacco	9.7	14.7	5.1
Textiles and leather	7.8	1.9	4.2
Wood, paper, publishing and printing	3.3	8.8	3.4
Petroleum, coal and chemicals	21.8	14.9	15.7
Non-metallic mineral products except petroleum and coal	5.3	2.8	3.8
Metal, fabricated metal products	16.8	7.2	14.4
Machinery equipment	8.6	10.2	8.5
Electrical and electronic equipment	15.3	14.1	24.0
Precision instruments	1.9	1.7	1.7
Transport equipment	8.2	13.0	17.7
Furniture and other manufacturing	1.2	10.7	1.5
<b>Manufacturing</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Calculated using China Statistical Yearbook 2010.

Economic and Social Research Institute, Cabinet Office, Government of Japan 2009

Korean Statistical Information Service KOSIS 2009 (online).

In 2009, in terms of manufacturing goods, Japan recorded a trade surplus vis-à-vis both China and Korea, while Korea recorded a trade surplus vis-à-vis China.

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18 The definition of the product grouping in the manufacturing sector is described in Annex Table 2.

19 Food products and beverages, tobacco and wood listed in 2.Manufacturing are to be treated jointly in the context of 1.Agriculture, Fishery and Forestry.

China's manufacturing exports to Japan and Korea represented US\$61.6 billion and US\$43.7 billion, respectively, while its manufacturing imports from Japan and Korea amounted to US\$96.3 billion and US\$83.1 billion, respectively.

Japan's manufacturing exports to Korea represented US\$43.3 billion, while its manufacturing imports from Korea amounted to US\$19.2 billion.

In recent years (2005-2009), China's major import products from Japan were radio, television and communication equipment (20.6%); machinery and equipment (17.5%); chemicals (13.7%); basic metals (9.3%); and medical, precision and optical instruments (8.8%); electrical machinery and apparatus (8.4%); and motor vehicles, trailers and semi-trailers (7.0%); while China's major import products from Korea consisted of radio, television and communication equipment (29.9%); chemicals (18.0%); medical, precision and optical instruments (14.9%); basic metals (7.1%); machinery and equipment (6.1%); and coke, refined petroleum and nuclear fuel (6.0%) (see Annex Table 4).

During the same period, China's major export products to Japan were textiles, apparel and fur; machinery and equipment; office, accounting and communication machinery; and radio, television and communication equipment, while China's major export products to Korea consisted of radio, television and communication equipment; basic metals; and chemicals.

From 2005 to 2009, Japan's major import products from China were apparel and fur (12.0%); radio, television and communication equipment (11.6%); office, accounting and computing machinery (10.8%); machinery and equipment (8.6%); textiles (8.2%); and electrical machinery and apparatus (7.2%), while Japan's major import products from Korea consisted of radio, television and communication equipment (25.0%); basic metals (12.6%); coke, refined petroleum and nuclear fuel (12.4%); chemicals (9.9%); machinery and equipment (8.8%); and medical, precision and optical instruments (6.3%) (see Annex Table 5).

During the same period, Japan's major export products to both China and Korea included machinery and equipment; chemicals; radio, television and communication equipment; and basic metals.

From 2005 to 2009, Korea's major import products from China were basic metals (18.6%); radio, television and communication equipment (15.1%); electrical machinery and apparatus (12.6%); office, accounting and computing machinery (7.9%); chemicals (7.5%); and machinery and equipment (5.6%); while Korea's major import products from Japan consisted of chemicals (18.7%); basic metals (17.7%); machinery and equipment (17.2%); radio, television and communication equipment (12.3%); medical, precision and optical instruments (7.8%); and electrical machinery and apparatus (6.6%) (see Annex Table 6).

During the same period, Korea's major export products to China were chemicals; radio, television and communication equipment; and medical, precision and optical instruments; while Korea's major export products to Japan consisted of radio, television and communication equipment; coke, refined petroleum and nuclear fuel; basic metals; and chemicals.

## **2.2 Tariff and Other Trade Policies**

The simple average applied MFN tariff rates for manufacturing products of China, Japan and Korea in 2009 were 8.7%, 2.4%, and 6.6%, respectively, whereas the weighted average applied MFN tariff rates for manufacturing products were 3.7%, 1.0%, and 3.2%, respectively.

As of 2009, in terms of simple average tariff rates, China's high tariff industries were tobacco products (41.0%); food products and beverages (17.0%); apparel and fur (16.2%); leather and footwear (14.7%); motor vehicles, trailers and semi-trailers (14.3%); and other non-metallic mineral products (12.1%); while in terms of weighted average tariff rates, China's high tariff industries were tobacco products (33.1%); motor vehicles, trailers and semi-trailers (16.7%); apparel and fur (15.4%); other non-metallic mineral products (11.4%); and food products and beverages (10.6%) (see Annex Table 7).

As of 2009, in terms of simple average tariff rates, Japan's high tariff industries were leather and footwear (12.9%); food products and beverages (10.9%); apparel and fur (9.4%); and tobacco products (6.3%); while in terms of weighted average tariff rates, Japan's high tariff industries were leather and footwear (11.9%); apparel and fur (9.7%); food products and beverages (9.3%); and textiles (7.5%) (see Annex Table 8).

As of 2009, in terms of simple average tariff rates, Korea's high tariff industries were food products and beverages (39.9%); tobacco products (39.4%); apparel and fur (12.3%); textiles (9.3%); and leather and footwear (8.1%); while in terms of weighted average tariff rates, Korea's high tariff industries were tobacco products (39.8%); food products and beverages (27.0%); apparel and fur (12.7%); textiles (9.4%); and leather and footwear (9.3%) (see Annex Table 9).

## **2.3 Impacts of a Future CJK FTA on Industrial Goods**

A CJK FTA would produce many positive economic effects. Although the tariff level is not that high in many industries where the trade is most active among the three countries, further liberalization of trade following a CJK FTA will likely increase the trade volumes and enhance production networks among them. On top of that, liberalization of trade among the

three countries will permit consumers of the three countries to purchase various goods with lower price and wider choice. It will also promote the development of the regional supply chain of industrial products.

On the other hand, a CJK FTA would reveal sensitive sectors in all three countries. In general, the current tariff rates of each country reflect the degree of its sensitivity in terms of trade liberalization. In particular, with regard to a CJK FTA, all three countries will be particularly sensitive to eliminating/reducing tariff rates in the industries where their import dependency vis-à-vis the two Northeast Asian trading partners is relatively high.

For China, among the above-mentioned major import products from Japan and Korea, only motor vehicles, trailers and semi-trailers (whose simple average tariff rate is 14.3%), which are major import products from Japan, belong to the high tariff rate category, while the simple average tariffs of the other major import products range from 5.0% for basic metals to 9.4% for electrical machinery and apparatus. However, given that within many of these industries, the tariff rates of some items go as high as 25% (medical, precision and optical instruments) to 50% (chemistry), these high tariff items could be sensitive.

In this regard, a CJK FTA could result in further accelerated increase of imports from Japan and Korea, thus bringing bigger pressure on China's domestic enterprises in such sensitive industries as petroleum and chemicals; automobiles; machinery and electronics; iron and steel; and ship-building, etc., especially in those engaged in high-end products.

For Japan, among the major import products from China, food products and beverages (whose simple and weighted average tariff rates are 10.9% and 9.3%, respectively), apparel and fur (whose simple and weighted average tariff rates are 9.4% and 9.7%, respectively) and textiles (whose simple and weighted average tariff rates are 5.8% and 7.5%, respectively) belong to the high tariff rate category, while no major import products from Korea belong to the high tariff rate category.

As for exports, major Japanese interests include automobiles and related parts; industrial machinery and related parts; steel; chemical products; televisions and related parts; audio-visual equipment and related parts; MCO (multi-component IC); electrical machinery and related parts; home electrical appliances and related parts; batteries and related parts; and paper and paperboard.

For Korea, no major import products from China and Japan belong to the high tariff rate category. This does not necessarily mean that Korea has no sensitive industries or commodities in trade with China and Japan. From the Korean business sectors' point of view, textiles, consumer goods, and electrical and electronics equipments are deemed sensitive in trade with China, while machineries, electrical and electronics equipments and non-ferrous metals are considered sensitive in trade with Japan.

In addition, vis-à-vis China, most industries in the high tariff category such as food products and beverages, apparel and fur, textiles, and leather and footwear are likely to be sensitive, while vis-à-vis Japan, motor vehicles, trailers and semi-trailers and other transport equipment industries are likely to be sensitive.

## **2.4 Suggestions for a Future CJK FTA**

A possible trilateral FTA will contribute to further elevating the competitiveness of manufacturing industries of the three countries by improving market access in a broad and undistorted way that enables manufacturers and service providers in the region to expand production networks and supply chains, and that also enables consumers to enjoy the resulting benefits.

In order to enhance the competitiveness of the manufacturing industries of China, Japan and Korea and to elevate their consumers' welfare, the three countries should not only reduce tariff and non-tariff measures which have adverse effects to trade, but also deepen and strengthen economic linkages among the three countries to establish a win-win-win relationship through forming a CJK FTA, with due consideration to the sensitivities of each country in these areas.



## ANNEX I

Annex Table 1. Definition of product groups used in WTO World Tariff Profiles (online)

Product Group	MTN <sup>1</sup>	Harmonized System Nomenclature 2007
<i>Agricultural products (Ag)</i>		
Animal products	17	Ch. 01, Ch. 02, 1601-02
Dairy products	21	0401-06
Fruits, vegetables, plants	12	Ch. 07, Ch. 08, 1105-06, 2001-08
	19	0601-03, 1211, Ch. 13, Ch. 14
Coffee, tea	13	0901-03, Ch. 18 (except 1802), 2101
Cereals and preparations	x15	0407-10, 1101-04, 1107-09, Ch. 19, 2102-06, 2209
	16	Ch. 10
Oilseeds, fats & oils	18	1201-08, Ch. 15 (except 1504), 2304-06, 3823
Sugars and confectionery	14	Ch. 17
Beverages and tobacco	20	2009, 2201-08
	22	Ch. 24
Cotton	x23	5201-5203
Other agricultural products	x15	0904-10
	x23	Ch.05, 0604, 1209-10, 1212-14, 1802, 230110, 2302-03, 2307-09, 290543-45, 3301, 3501-05, 380910, 382460, 4101-03, 4301, 5001-03, 5101-03, 5301-02
<i>Non-agricultural products (Non-Ag)</i>		
Fish and fish products	11	Ch. 03, 1504, 1603-05, 230120
Minerals and metals	4	2601-17, 2620, Ch. 72-76 (except 7321-22), Ch. 78-83 (except 8304-05)
	9	Ch. 25, 2618-19, 2621, 2701-04, 2706-08, 2711-15, Ch.31, 3403, Ch. 68-71 (except 6807, 701911-19, 701940-59), 911310-20
Petroleum	97	2709-10
Chemicals 2	5	2705, Ch. 28-30 (except 290543-45, 300590), Ch. 32-33 (except 3301, 330620), Ch. 34 (except 3403, 3406), 3506-07, 3601-04, Ch. 37-39 (except 380910, 3823, 382460, 392112-13, 392190)
Wood, paper, etc.	1	Ch.44, 45, 47, 48, 49, 9401-04 (except 940490)
Textiles	x2	300590, 330620, 392112-13, 392190, 420212, 420222, 420232, 420292, Ch. 50-60 (except 5001-03, 5101-03, 5201-03, 5301-02), Ch. 63, 640520, 640610, 640699, 6501-05, 6601, 701911-19, 701940-59, 870821, 8804, 911390, 940490, 961210

Clothing	x2	Ch. 61-62
Leather, footwear, etc.	3	Ch. 40, Ch. 41 (except 4101-4103), 4201-05 (except 420212, 420222, 420232, 420292), 4302-04, Ch. 64 (except 640520, 640610, 640699), 9605
Non-electrical machinery	7	7321-22, Ch. 84 (except 846721-29), 850860, 852841, 852851, 852861, 8608, 8709
Electrical machinery	8	846721-29, Ch. 85 (except 850860, 852841, 852851, 852861, 8519-8523 but including 852352)
Transport equipment	6	Ch. 86 (except 8608), 8701-08 (except 870821), 8711-14, 8716, 8801-03, Ch. 89
Manufactures, not elsewhere specified	10	2716, 3406, 3605-06, 4206, Ch. 46, 6506-07, 6602-03, Ch. 67, 6807, 8304-05, 8519-24, 8710, 8715, 8805, Ch. 90-93(except 9113), 9405-06, Ch. 95-97 (except 9605, 961210)

As the definition of agricultural, fishery and forestry products in each country differs from each other, the three countries agreed to use those categorization based on sub-categories, such as “agricultural products,” “fish and fish products” and “wood, paper, etc.” in the table 1 above to calculate statistics in 17<sup>th</sup>, 18<sup>th</sup>, 27<sup>th</sup> and 33<sup>rd</sup> para.

1. Multilateral Trade Negotiations (MTN) categories were first defined in the Tokyo Round and adapted for the Harmonized System in the Uruguay Round. The product group breakdown in this publication deviates slightly from the previous definition, which was based on the HS 1992 nomenclature.
2. The part of HS subheading 330210 which relates to products originally classified as agricultural has not been taken into account in the Chemicals product group.

## ANNEX II.

Annex Table 2. Product grouping for the description of the manufacturing sector based on the structure of International Standard Industrial Classification (ISIC) Revision 3

Description	Code
<b>Agriculture, Hunting, Forestry and Fishing</b>	<b>01-05</b>
Agriculture, hunting and related service activities	01
Forestry, logging and related service activities	02
Fishing, operation of fish hatcheries and fish farms	05
<b>Mining and quarrying</b>	<b>10-14</b>
Mining of coal and lignite; extraction of peat	10
Extraction of crude petroleum and natural gas	11
Mining of uranium and thorium ores	12
Mining of metal ores	13
Other mining and quarrying	14
<b>Manufacturing</b>	<b>15-37</b>
Food products and beverages	15
Tobacco products	16
Textiles	17
Apparel and fur	18
Leather and footwear	19
Wood and cork	20
Pulp, paper and paper products	21
Printing and publishing	22
Coke, refined petroleum products and nuclear fuel	23
Chemicals	24
Rubber and plastics	25
Other non-metallic mineral products	26
Basic metals	27
Fabricated metal products	28
Machinery and equipment	29
Office, accounting and computing machinery	30
Electrical machinery and apparatus n.e.c.	31
Radio, television and communication equipment	32
Medical, precision and optical instruments	33
Motor vehicles, trailers and semi-trailers	34
Other transport equipment	35
Manufacturing n.e.c.	36
Recycling	37

Source: U.N.'s Classifications Registry (online)

### ANNEX III.

Annex Table 3. Share of CJK in world's exports of manufacturing products (2005-2009)

(Unit: %)

<b>Manufacturing</b>	<b>CJK</b>	<b>China</b>	<b>Japan</b>	<b>Korea</b>
Food products and beverages	5.0	4.0	0.5	0.5
Tobacco products	4.6	1.5	1.2	1.9
Textiles	33.0	27.9	1.9	3.2
Apparel and fur	32.8	32.2	0.1	0.5
Leather and footwear	29.5	28.3	0.2	1.0
Wood and cork	10.7	10.5	0.1	0.1
Chemicals	12.3	4.5	5.0	2.8
Rubber and plastics	19.1	9.8	6.7	2.6
Other non-metallic mineral products	21.0	14.1	5.8	1.1
Basic metals	17.3	7.4	6.5	3.4
Fabricated metal products	21.0	14.8	3.6	2.6
Machinery and equipment	21.4	9.1	9.7	2.6
Office, accounting and computing machinery	36.3	29.8	3.2	3.3
Electrical machinery and apparatus	23.8	13.4	7.6	2.8
Radio, television and communication equipment	32.8	17.5	8.3	7.0
Medical, precision and optical instruments	23.1	8.9	8.8	5.4
Motor vehicles, trailers and semi-trailers	19.7	2.5	13.2	4.0
Other transport equipment	22.5	6.8	7.6	8.1

Source: Calculated using COMTRADE Database (online)

Annex Table 4. China's trade structure of manufacturing products (2005-2009)

(Unit: %)

<b>Description</b>	<b>Import</b>			<b>Export</b>		
	<b>World</b>	<b>Japan</b>	<b>Korea</b>	<b>World</b>	<b>Japan</b>	<b>Korea</b>
Food products and beverages	2.6	0.3	0.2	2.1	6.5	3.7
Tobacco products	0.0	0.0	0.0	0.0	0.0	0.0
Textiles	2.1	2.3	2.1	7.3	9.3	5.5
Apparel and fur	0.2	0.1	0.1	7.1	12.2	4.5
Leather and footwear	0.7	0.1	0.6	3.4	3.1	1.7
Wood and cork	0.4	0.0	0.0	1.0	1.6	0.8
Pulp, paper and paper products	1.3	0.6	0.4	0.5	0.6	0.4
Printing and publishing	0.3	0.2	0.0	0.3	0.2	0.1
Coke, refined petroleum products and nuclear fuel	3.1	1.8	6.0	1.3	1.2	1.3
Chemicals	14.3	13.7	18.0	5.5	5.9	7.6

Rubber and plastics	1.8	3.0	1.9	2.6	2.5	1.1
Other non-metallic mineral products	0.6	1.1	0.3	1.8	1.7	2.7
Basic metals	8.1	9.3	7.1	5.2	3.6	20.0
Fabricated metal products	1.3	2.0	1.2	3.8	3.1	3.2
Machinery and equipment	11.0	17.5	6.1	9.2	9.6	5.5
Office, accounting and computing machinery	5.4	2.2	3.7	12.7	9.8	6.6
Electrical machinery and apparatus n.e.c.	6.1	8.4	4.4	6.1	6.8	6.5
Radio, television and communication equipment	25.4	20.6	29.9	16.4	10.5	20.5
Medical, precision and optical instruments	9.3	8.8	14.9	3.4	3.6	2.9
Motor vehicles, trailers and semi-trailers	3.5	7.0	2.6	2.4	2.3	1.9
Other transport equipment	1.9	0.7	0.1	2.4	1.5	1.5
Manufacturing n.e.c.	0.7	0.7	0.3	5.6	4.4	2.2

Source: Calculated using COMTRADE Database (online)

Annex Table 5. Japan's trade structure of manufacturing products (2005-2009)

(Unit: %)

Description	Import			Export		
	World	China	Korea	World	China	Korea
Food products and beverages	9.4	5.2	3.9	0.5	0.4	0.5
Tobacco products	0.8	0.0	0.0	0.0	0.0	0.0
Textiles	3.2	8.2	1.3	0.9	2.7	0.5
Apparel and fur	4.4	12.0	0.8	0.0	0.1	0.1
Leather and footwear	2.2	4.5	0.2	0.0	0.1	0.0
Wood and cork	2.4	1.4	0.1	0.0	0.0	0.0
Pulp, paper and paper products	0.9	0.6	0.7	0.4	0.6	0.4
Printing and publishing	0.5	0.2	0.4	0.2	0.3	0.2
Coke, refined petroleum products and nuclear fuel	6.8	0.9	12.4	1.5	2.2	1.6
Chemicals	11.4	5.2	9.9	10.3	14.4	19.2
Rubber and plastics	2.1	2.8	2.8	3.1	3.0	5.7
Other non-metallic mineral products	1.2	1.7	1.1	1.3	1.2	3.4
Basic metals	7.1	3.0	12.6	7.8	10.4	17.7
Fabricated metal products	2.1	3.2	3.5	1.6	1.9	1.3
Machinery and equipment	7.5	8.6	8.8	16.9	18.3	18.0

Office, accounting and computing machinery	5.6	10.8	3.6	2.3	2.0	0.9
Electrical machinery and apparatus n.e.c.	4.7	7.2	3.4	5.9	9.0	6.5
Radio, television and communication equipment	11.4	11.6	25.0	12.9	16.8	11.7
Medical, precision and optical instruments	5.8	3.4	6.3	5.7	6.7	7.4
Motor vehicles, trailers and semi-trailers	3.6	1.3	2.1	22.8	8.5	3.5
Other transport equipment	2.8	0.9	0.2	4.6	0.3	0.4
Manufacturing n.e.c.	4.0	7.2	1.1	1.3	1.0	0.9

Source: Calculated using COMTRADE Database (online)

Annex Table 6. Korea's trade structure of manufacturing products (2005-2009)

(Unit: %)

Description	Import			Export		
	World	China	Japan	World	China	Japan
Food products and beverages	4.3	3.2	0.5	0.8	0.4	3.8
Tobacco products	0.0	0.0	0.0	0.1	0.0	0.0
Textiles	1.8	4.4	0.5	2.6	2.5	1.3
Apparel and fur	1.3	4.3	0.1	0.4	0.4	1.0
Leather and footwear	0.9	2.0	0.0	0.4	0.8	0.3
Wood and cork	0.6	0.8	0.0	0.0	0.0	0.1
Pulp, paper and paper products	1.1	0.4	0.4	0.7	0.4	0.7
Printing and publishing	0.4	0.1	0.2	0.1	0.0	0.4
Coke, refined petroleum products and nuclear fuel	6.7	1.3	1.0	6.9	6.9	14.4
Chemicals	13.5	7.5	18.7	10.8	19.7	10.0
Rubber and plastics	2.0	1.5	5.1	2.2	1.6	3.3
Other non-metallic mineral products	1.9	2.9	3.2	0.4	0.3	1.0
Basic metals	14.4	18.6	17.7	7.5	7.5	12.7
Fabricated metal products	2.1	3.7	1.7	2.1	1.1	4.3
Machinery and equipment	11.8	5.6	17.2	8.2	7.6	8.2
Office, accounting and computing machinery	3.1	7.9	1.0	4.4	7.2	3.4
Electrical machinery and apparatus n.e.c.	6.4	12.6	6.6	3.9	6.7	4.5
Radio, television and communication equipment	15.8	15.1	12.3	20.3	19.5	18.2
Medical, precision and optical instruments	5.5	2.9	7.8	6.5	12.4	8.4
Motor vehicles, trailers and semi-trailers	2.9	1.1	3.5	12.4	4.2	2.2
Other transport equipment	2.1	1.0	1.6	8.9	0.3	0.4

Manufacturing n.e.c.	1.4	3.2	0.9	0.6	0.6	1.3
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Source: Calculated using COMTRADE Database (online)

Annex Table 7. China's applied MFN tariff rates for manufacturing products (2009)

(Unit: %)

<b>Description</b>	<b>Simple</b>	<b>Weighted</b>	<b>Min.</b>	<b>Max.</b>
Food products and beverages	17.0	10.6	0.0	65.0
Tobacco products	41.0	33.1	25.0	57.0
Textiles	10.1	9.4	2.0	40.0
Apparel and fur	16.2	15.4	10.0	25.0
Leather and footwear	14.7	8.8	3.0	24.0
Wood and cork	4.3	0.4	0.0	20.0
Pulp, paper and paper products	5.6	2.2	0.0	10.0
Printing and publishing	4.2	4.5	0.0	7.5
Coke, refined petroleum products and nuclear fuel	5.2	5.2	0.0	11.0
Chemicals	6.4	5.9	0.0	50.0
Rubber and plastics	10.7	8.4	0.0	25.0
Other non-metallic mineral products	12.1	11.4	0.0	28.0
Basic metals	5.0	2.7	0.0	10.5
Fabricated metal products	10.5	8.9	1.0	30.0
Machinery and equipment	8.7	6.2	0.0	35.0
Office, accounting and computing machinery	2.2	0.1	0.0	14.0
Electrical machinery and apparatus n.e.c.	9.4	6.3	0.0	24.5
Radio, television and communication equipment	5.4	2.0	0.0	35.0
Medical, precision and optical instruments	9.1	7.2	0.0	25.0
Motor vehicles, trailers and semi-trailers	14.3	16.7	2.0	25.0
Other transport equipment	8.6	3.3	0.0	45.0
Manufacturing n.e.c.	14.6	10.0	0.0	35.0

Source: UNCTAD TRAINS (online)

Annex Table 8. Japan's applied MFN tariff rates for manufacturing products (2009)

(Unit: %)

<b>Description</b>	<b>Simple</b>	<b>Weighted</b>	<b>Min.</b>	<b>Max.</b>
Food products and beverages	10.9	9.3	0.0	52.5
Tobacco products	6.3	0.1	0.0	29.8
Textiles	5.8	7.5	0.0	14.2
Apparel and fur	9.4	9.7	3.2	20.0

Leather and footwear	12.9	11.9	0.0	30.0
Wood and cork	2.5	1.4	0.0	10.0
Pulp, paper and paper products	0.1	0.0	0.0	5.3
Printing and publishing	0.0	0.0	0.0	0.0
Coke, refined petroleum products and nuclear fuel	0.9	1.0	0.0	7.9
Chemicals	2.4	1.5	0.0	17.0
Rubber and plastics	2.2	2.8	0.0	6.5
Other non-metallic mineral products	1.0	1.0	0.0	8.0
Basic metals	1.0	0.5	0.0	7.5
Fabricated metal products	1.1	0.8	0.0	8.4
Machinery and equipment	0.3	0.2	0.0	8.4
Office, accounting and computing machinery	0.0	0.0	0.0	0.0
Electrical machinery and apparatus n.e.c.	0.3	0.6	0.0	4.8
Radio, television and communication equipment	0.0	0.0	0.0	0.0
Medical, precision and optical instruments	0.1	0.1	0.0	5.3
Motor vehicles, trailers and semi-trailers	0.0	0.0	0.0	0.0
Other transport equipment	0.0	0.0	0.0	0.0
Manufacturing n.e.c.	1.9	1.3	0.0	16.0

Source: UNCTAD TRAINS (online)

Annex Table 9. Korea's applied MFN tariff rates for manufacturing products (2009)

(Unit: %)

<b>Description</b>	<b>Simple</b>	<b>Weighted</b>	<b>Min.</b>	<b>Max.</b>
Food products and beverages	39.9	27.0	0.0	800.3
Tobacco products	39.4	39.8	32.8	40.0
Textiles	9.3	9.4	0.0	51.7
Apparel and fur	12.3	12.7	5.0	16.0
Leather and footwear	8.1	9.3	2.0	13.0
Wood and cork	6.5	5.6	0.0	10.0
Pulp, paper and paper products	0.1	0.0	0.0	8.0
Printing and publishing	0.3	0.0	0.0	8.0
Coke, refined petroleum products and nuclear fuel	3.8	2.5	0.0	8.0
Chemicals	6.0	4.9	0.0	754.3
Rubber and plastics	7.2	6.7	0.0	8.0
Other non-metallic mineral products	7.5	7.5	0.0	8.0
Basic metals	2.6	1.2	0.0	8.0
Fabricated metal products	7.2	6.1	0.0	8.0
Machinery and equipment	6.3	6.7	0.0	13.0
Office, accounting and computing machinery	1.5	0.1	0.0	8.0



Electrical machinery and apparatus n.e.c.	7.2	5.6	0.0	13.0
Radio, television and communication equipment	4.0	1.8	0.0	8.0
Medical, precision and optical instruments	6.6	5.7	0.0	8.0
Motor vehicles, trailers and semi-trailers	8.0	7.9	0.0	10.0
Other transport equipment	4.1	1.3	0.0	8.0
Manufacturing n.e.c.	7.0	5.3	0.0	13.0

Source: UNCTAD TRAINS (online)

### **3. Rules of Origin**

#### **3.1 Overview**

##### **3.1.1 Introduction**

Rules of origin on trade in goods can be divided into two types: (i) non-preferential rules of origin and (ii) preferential rules of origin. Non-preferential rules of origin are used in non-preferential commercial policy instruments, such as in the application of anti-dumping and countervailing duties, safeguard measures, origin marking requirements and tariff quotas.

Preferential rules of origin, on the other hand, are employed in Regional Trade Agreements (RTAs) to define specific conditions under which preferential tariff treatment will be provided to imported products from an RTA member.

In FTA/EPAs, a Chapter on Rules of Origin (ROOs) typically covers: (i) the rules for determining whether imported goods are eligible for preferential tariff treatment, as well as (ii) procedures related to certification and verification of the originating status of imported goods.

China, Japan and Korea have concluded a series of FTA/EPAs with other economies. The ROOs in their existing FTA/EPAs serve as important precedents to a possible future CJK FTA. China has formulated a model text of preferential ROOs on the basis of all the existing FTAs of China and international practices. Japan and Korea also have developed their own ROO provisions through negotiating FTA/EPAs with various other countries. The experiences and knowledge obtained during the negotiation process of the existing FTA/EPAs are valuable assets for negotiating future CJK FTA ROOs.

##### **3.1.2 Wholly Obtained and Substantial Transformation Criteria**

The WTO Agreement on Rules of Origin and the Kyoto Convention recognize two basic criteria to determine origin for non-preferential purposes: “wholly obtained” and “substantial transformation.” The two criteria are widely recognized and adopted in the existing RTAs for preferential treatment. The “wholly obtained” criterion basically tests whether imported goods have been entirely grown, harvested, or extracted from the soil in the territory of an RTA member. “Substantial transformation” is a generally accepted concept as a criterion for the origin of non-wholly obtained goods using non-originating materials in the production. There are three main methods (or a combination of these) that are used to test whether “substantial transformation” occurs: (i) a change in tariff classification (CTC), (ii) a minimum regional value content (RVC), and/or (iii) the conduction of specific processes (SP).

For both “wholly obtained” criterion and the three main methods for “substantial transformation”, China, Japan and Korea seem to have adopted similar patterns under their existing FTA/EPAs. In general, the three countries adopted CTC, RVC and SP as primary methods for determination of origin when imported goods are not wholly obtained.

### **3.1.3 Product Specific Rules (PSR)**

Under the Harmonized Commodity Description and Coding System (HS) nomenclature, products are classified into more than 5,000 tariff lines at the HS six-digit level. In order for an FTA/EPA to apply to all sorts of products, applicable origin rules for more than 5,000 tariff lines should be somehow negotiated. There are two ways to prescribe origin rules for each and every tariff line under an ROO Chapter.

One way is stipulating a general rule, “CTH or RVC 40 %” for example, which is to be applied to a substantial portion of the entire set of tariff lines and to attach a limited number of specific rules which are to be applied to the rest of the tariff lines. Having a general rule common for many tariff lines has merits in that it could lead to simplification of the rule, which reduces some burden in its implementation. However, factors such as diverse characteristics of products classified under the HS and the structure of the HS make it difficult to introduce a general rule applicable to all products and thus many products will be set aside.

The other way is setting out product specific rules (PSRs) for every tariff line without stipulating a general rule. The full list of tariff lines is incorporated as a list of PSRs into a ROOs chapter. Under this approach, users may easily compare applicable origin rules between adjacent tariff lines without referring back to the full list of tariff lines. One more advantage of this is that the characteristics of each and every product may be taken into due account to the maximum extent possible. The downside is that the contents of PSRs could be complicated and the list of PSRs could be quite long.

China, Japan and Korea have experiences in both ways and are well aware of the advantages and disadvantages of each approach. The ROOs under China’s FTAs with ASEAN, Pakistan, Chile, and Singapore adopted “RVC 40%” as a general rule, while China’s more recent FTAs with New Zealand, Peru and Costa Rica established PSRs for all tariff lines. Japan basically established PSRs for each tariff line in its EPAs, but there is a general rule in EPAs, such as the Japan-ASEAN Comprehensive EPA, Japan-Viet Nam EPA and Japan-Swiss FTEPA. Korea’s FTAs with the US, the EU, and Peru established PSRs for each tariff line, while Korea’s FTAs with India and ASEAN have a general rule.

### **3.1.4 Supplementary Rules**

Supplementary rules complement the basic substantial transformation criteria either by

relaxing the stringency of the rules or by clarifying other provisions on ROOs. Accumulation, *de minimis* criteria, intermediate goods, indirect materials or neutral elements, non-qualifying operations, and direct transport are examples of supplementary rules.

For purposes of a possible future CJK FTA, accumulation could play a significant role, given the global supply chain which requires close cooperation among China, Japan and Korea. A provision on accumulation describes the condition under which inputs imported from an RTA member other than the exporting member could be considered as domestic contents of the exporting member.

A provision on intermediate goods, also known as a “roll-up” provision, concerns how to deal with inputs of non-originating intermediate materials. A typical formulation of this provision is that, when a product that consists of both originating and non-originating materials has acquired originating status under a relevant origin rule, it should be considered 100% originating when the product is used in the subsequent production of another product for the purposes of determining the originating status of the subsequently produced product. Korea has incorporated this concept into some of its FTAs so that traders may have a clearer understanding of the concept. Japan also adopted the “roll-up approach” in its EPAs. In the case of China, no specific provision concerning intermediate materials is provided for as such in the FTAs China has concluded with other economies.

The *de minimis* rule allows for a specified maximum percentage of non-originating materials to be used without affecting the origin. It alleviates the rigidity inherent in CTC and is to minimize disputes where a small portion of imported intermediate inputs are used. With respect to the *de minimis* rule, the three countries have adopted different positions in their FTA/EPAs. For example, Japan and Korea have normally excluded agricultural and fishery products (Korea: classified in HS Chapters 1 through 14, Japan: classified in HS Chapters 1 through 24) from the application of the *de minimis* rule, whereas China did not exclude these products. For textile and apparel goods, Japan and Korea have normally adopted the weight of textile materials as a basis for the *de minimis* rule, whereas China adopted the value of materials as a *de minimis* rule basis with no exception.

While most of the FTAs that Korea has concluded contain certain provisions on the products produced in its outward processing zones, none of the FTA/EPAs of China and Japan have a provision of a similar nature. Throughout the discussion within the framework of the Joint Study, Korea has taken the view that the recognition of outward processing zones is necessary.

### **3.1.5 Origin Procedures**

Smooth operation of origin procedures is a key element for effective implementation of a possible future CJK FTA. The role of customs administration is particularly important and

close cooperation among the customs and relevant authorities of the three countries is required.

China, Japan and Korea have introduced an authorized certification system in FTA/EPAs. In the case of China, the authorized certification system has been adopted across the board in all of its FTAs. In addition to the authorized certification system, Japan and Korea have introduced an approved-exporter system in certain FTAs to supplement the self-certification system. Under the approved-exporter system, the customs or relevant authority in Japan and Korea approves the ability of the exporters to prove the origin of goods.

For origin verification, China, Japan and Korea have experiences in adopting an indirect verification system, which allows the importing party to request the exporting party to verify the origin of goods on behalf of the importing party. Besides, in the case of Japan and Korea, the importing party is allowed to visit the facilities used in the production of the good along with the exporting party as an observer. However, when it comes to verification visit, the three countries have adopted different positions under their existing FTA/EPAs. In China, verification visit is provided in certain FTAs but such visit has not yet been implemented in practice.

China, Japan and Korea introduced a limited electronic certification system in their certification systems. In Korea, exporters may electronically submit relevant documents to apply for and receive a certificate of origin. In China and Japan, exporters may electronically apply for a certificate of origin but may not receive it online. In the three countries, however, exporters should provide importers with a hard copy of a certificate of origin.

Regarding the denial of preferential tariff treatment, China, Japan and Korea have experiences in listing specific grounds under which the importing party may deny such treatment in their existing FTA/EPAs. However, the three countries provide different grounds for denying preferential tariff treatment. In some FTAs, Korea provided for the violation of a rule as general criteria to deny preferential tariff treatment instead of listing specific grounds.

### **3.2 Suggestions for a Future CJK FTA**

#### **3.2.1 Overall Direction**

ROOs properly designed to accommodate the interests of the trading partners can maximize the benefits of an FTA/EPA. Accordingly, it is crucial to come up with an effective set of origin rules based on the actual needs of China, Japan and Korea for a possible future CJK FTA. In this respect, a future CJK FTA should build upon both prior experiences and present needs of the three countries.

### **3.2.2 Simple Rules**

ROOs under a future CJK FTA should be as simple as practicable, although the importance of preventing circumvention of goods from third countries should be taken into consideration. Simpler ROOs will help reduce the compliance and administrative costs, and ultimately, will promote regional trade and international competitiveness of the three countries. Given the proliferation of RTAs and the growth of overlapping rules of origin in the Northeast Asian region, a CJK FTA should take the simplification of ROOs into its consideration.

### **3.2.3 Alternative CTC and RVC Rules**

Choosing between CTC and RVC rules could be an option in considering the rules, as it makes it easier for producers and exporters to consider the origin of products. Similarly, the option between build-up and build-down methods for calculating RVCs could be taken into consideration.

### **3.2.4 Supplementary Rules Elaborated**

*De minimis*, accumulation, intermediate goods, and other supplementary rules should be included and sufficiently elaborated in a future CJK FTA. The three countries share the view in essence that the use of these rules will strengthen the economic partnership among them and lower the cost of doing business in this region.

### **3.2.5 Outward Processing Zones**

Recognition of outward processing zones is one of the issues where the three countries have different views. After intense discussions among the three countries, they shared the view that such issues should be discussed in the negotiations toward a possible future CJK FTA.

### **3.2.6 Proof of Origin**

Since the three countries have common experiences in adopting an authorized-certification system, the authorized-certification system would be a feasible option under a future CJK FTA. In this case, the possibility of exploring an electronic certification system could be discussed in order to reduce administrative burdens. A self-certification system and an approved exporter system would also be considered in terms of striking a good balance between trade facilitation and customs control among the three countries.

### **3.2.7 Origin Verification**

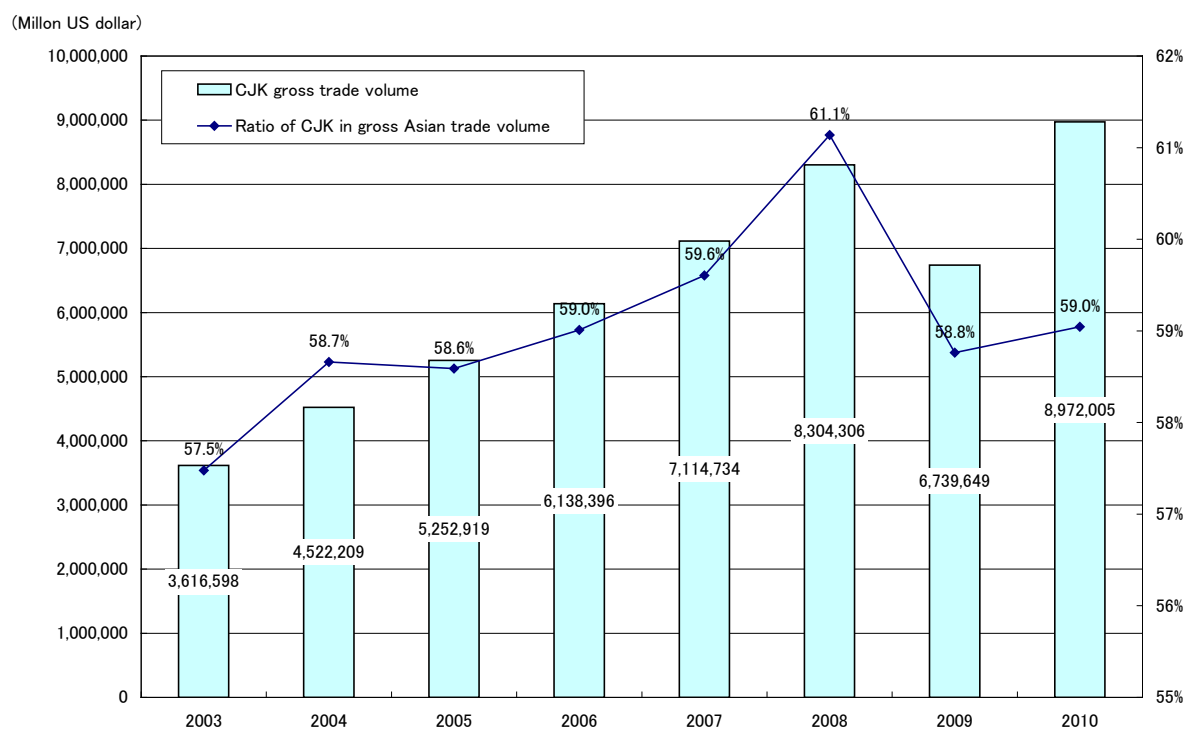
As for verification, it is important to consider diverse approaches to strike a balance between securing efficiency and effectiveness in origin verification.

## 4. Customs Procedures and Trade Facilitation

### 4.1 Overview

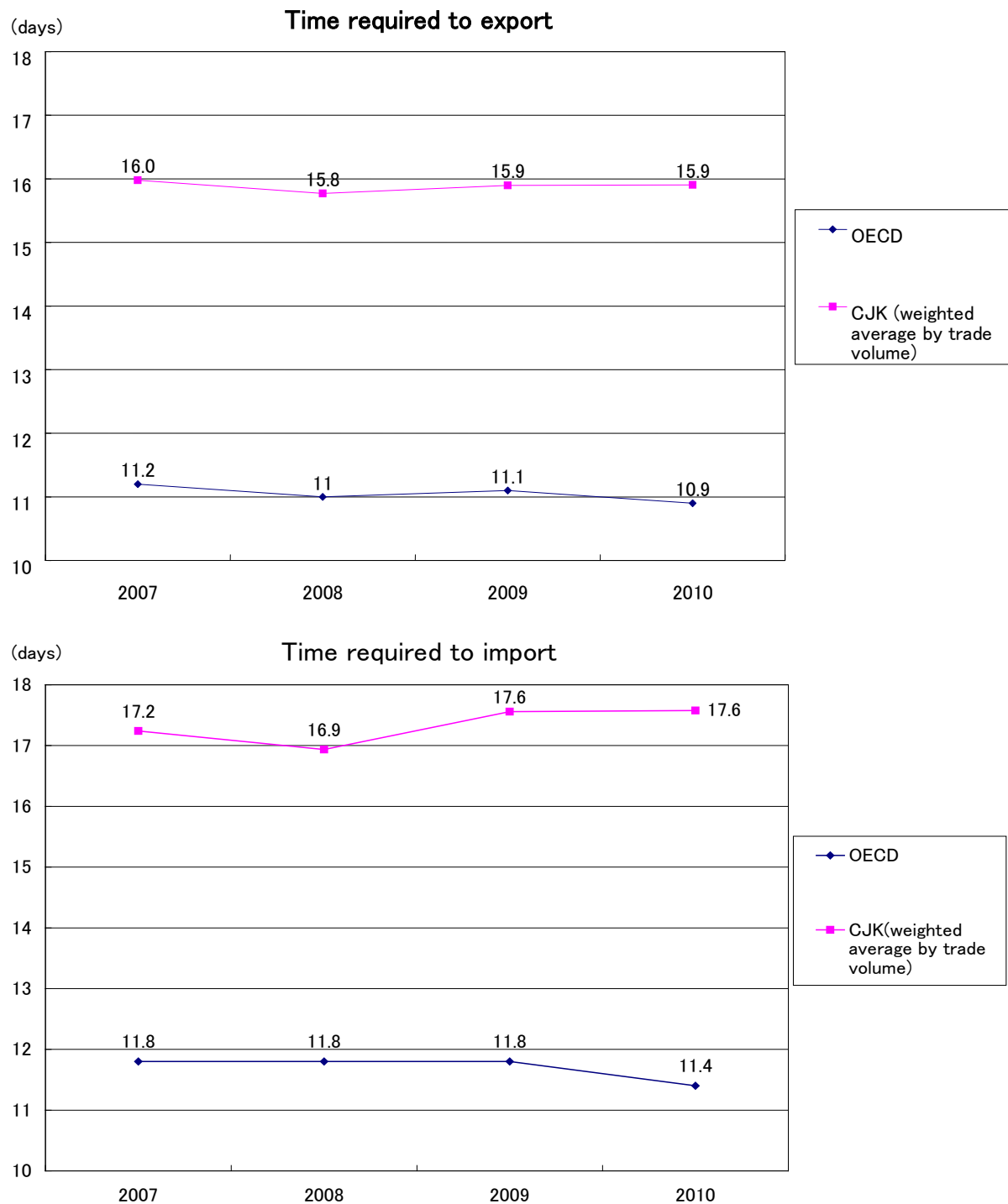
In recent years, trade volume among the three countries is on the increase accounting for about 60% of that of the Asian region. This indicates that trade facilitation among the three countries is essential for economic vitalization not only among the three countries but also in the whole Asian region (refer to Graph 3-1). However, a survey of time required to export/import by the World Bank, for instance, shows that the three countries' average time required to export/import is much longer than that of OECD members and generally remains unchanged (refer to Graph 3-2). Therefore, setting rules which contribute to further trade facilitation through improvement of customs procedures is a major issue in a possible future CJK FTA.

Graph 3-1 Transition of CJK Trade Volume



(Source: IMF World Economic, Direction of Trade Statistics)

Graph 3-2. Average Time Required to Export/Import



A chapter for customs procedures and trade facilitation is a key component in a possible future CJK FTA to simplify and harmonize the customs procedures in the three countries. The existing FTA/EPAs cover provisions aiming to harmonize and simplify customs procedures for trade facilitation on the basis of expeditious and advanced procedures. First,



provisions for expeditious customs procedures consider an immediate release of goods, application of information technology and adoption of a risk management approach as primary goals to achieve. Second, advanced customs procedures refer to systems for efficiency such as an Authorized Economic Operator (AEO) program.

In addition to these schemes for harmonization and simplification of customs procedures for trade facilitation, “transparency” is an important issue to be discussed for a possible future CJK FTA. Provisions for transparency in the existing FTA/EPAs refer to public availability of customs legislation and relevant information.

The three countries are further requested to develop harmonized and simplified customs procedures and transparency in customs administration for trade facilitation with each other, and trilateral customs cooperation among the three countries would contribute to it.

## **4.2 Suggestions for a Future CJK FTA**

### **4.2.1 Harmonization and Simplification of Customs Procedures**

In order to adopt expeditious and advanced customs procedures, it is important to harmonize customs procedures with the international standards. Major international standards for customs procedures are the Revised Kyoto Convention (RKC) and the SAFE Framework of Standards (SAFE) developed by the World Customs Organization (WCO). China, Japan and Korea have already acceded to the RKC and expressed their intention to implement the SAFE. To improve the current situation and further promote trade facilitation among the three countries, it is necessary to examine the current situation carefully and to identify necessary measures to promote trade facilitation in a possible future FTA. A possible future CJK FTA may take into account the following items as candidate measures to promote harmonization and simplification of customs procedures.

#### **\* Consistent Implementation Nationwide**

A chapter for customs procedures and trade facilitation under a possible future CJK FTA purports to harmonize customs procedures among the three countries. As a precondition to realize harmonization of customs procedures among the three countries, it is necessary to ensure consistent implementation nationwide.

#### **\* Application of Information Technology**

To harmonize and simplify customs procedures, application of information technology is

essential. A single-window system is one of the highly advanced systems, which may be discussed for a possible future CJK FTA.

#### **\* Risk Management**

A risk management approach is imperative to ensure effective and efficient customs control while facilitating trade. The three countries should try to promote the risk management approach in line with the RKC and the SAFE Framework.

#### **\* AEO**

An AEO program in line with the SAFE adopted by the WCO contributes to effective customs control. An AEO program is an essential element for a possible future CJK FTA to secure and facilitate the flow of goods in the supply chains connecting the countries. The three countries have already developed the program domestically and discussed the possibility to mutually recognize AEOs of each country, and the mutual recognition arrangement of AEO programs between Japan and Korea was signed in May 2011.

### **4.2.2 Transparency**

To promote trade facilitation through customs procedures in terms of transparency, it is essential to examine the procedures from the viewpoint of user-friendliness. Customs procedures should be more transparent and consistent to accelerate business transactions among the three countries. To achieve transparency, a future CJK FTA should include the following items in the customs administration.

#### **\* Publication of Customs Legislation**

For exporters and producers in the other party to FTA/EPAs, it is particularly important to publish customs laws, regulations and relevant information such as customs procedures in detail on the website in a timely manner. Furthermore, it is more desirable to publish these materials in English whenever possible so that exporters and producers of the other party can practically access the information published by the customs authority of the importing party and this should be discussed for a possible future CJK FTA.

#### \* Advance Ruling

In the perspectives of importers, exporters and producers, an advance ruling system is important to ensure transparency. This system allows the traders to apply for advance rulings when they are not confident about tariff classification, and the origin of goods, etc. Implementing an advance ruling in a nationwide unified manner under a possible future CJK FTA will ensure transparency of customs administration. Publication of advance rulings may contribute to transparency.

#### **4.2.3 Customs Cooperation**

Cooperation among the customs authorities of China, Japan and Korea would be useful and beneficial for harmonization and simplification of customs procedures and transparency in customs administration. The three countries have already concluded bilateral agreements with each other in customs cooperation. It seems that these past achievements are important stepping stones for possible future customs cooperation under a CJK FTA.

In addition to general statements of customs cooperation under the existing mutual assistance agreements in customs administration, a possible future CJK FTA should be discussed in detail, particularly to emphasize the exchange of information and cooperation in law enforcement. It is essential to take appropriate measures along with cooperation among the three countries that can strengthen control against contrabands, such as illicit drugs, weapons and goods infringing intellectual property rights in order to facilitate legitimate trade. Therefore, customs cooperation under a future CJK FTA will be important for effective implementation of a future CJK FTA.

Exchange of enquiry points will also enhance customs cooperation under a possible future CJK FTA. It is important for the customs authorities to be in close communication with one another and a designated enquiry point is necessary for efficient communication. The enquiry points may serve as contact points when a customs committee is organized after entering into force of a possible future CJK FTA.

#### **4.2.4 Other Issues**

A customs committee should discuss issues related to implementation of a possible future CJK FTA. The three countries will discuss effective ways of holding the committee in a possible future CJK FTA.

The customs committee should be composed of officials of customs authorities of the three countries. If necessary, other relevant government officials may participate and specialists

may be invited to the committee so that the committee can practically contribute to effective implementation of a possible future CJK FTA.

## 5. Trade Remedy

### 5.1 Overview

Trade remedy measures include anti-dumping, countervailing, and safeguard measures. The principal objective of a trade remedy system is to correct unfair trade practices such as dumping and subsidies, or to provide remedies to the industries of the importing country for the injury suffered or the threat thereof. Trade remedy measures are rule-based and WTO permissible under the multilateral trade regime. Therefore, initiation and implementation of trade remedy measures should strictly comply with the rules and spirits of the relevant WTO Agreement. Based on such strict compliance with the WTO Agreement, trade remedy measures could be prevented from being abused and thus, a fair trade system could be effectively maintained and prevented from being impaired by trade protectionism. In the context of the FTA, the three countries believe that trade remedy provisions play an important role which provides certain relief to import-competing industries to the extent that they could cope with unanticipated circumstances as the consequences of the FTA. At the same time, the three countries also note that trade remedy issues are gaining more importance, given that trade liberalization through the FTA may create an environment where uncompetitive industries in the importing country tend to resort to a trade remedy system to protect themselves from competitive import products. Since the abuse of trade remedy measures is likely to result in the erosion of positive trade effects of the FTA, it is vital to prescribe trade remedy rules that strike a balance between keeping the effect of trade liberalization and providing proper relief to the domestic industry. With regard to the WTO Doha Development Agenda (DDA), the three countries have been actively participating in the negotiations of the rules with the aim of clarifying and improving disciplines of the WTO's trade remedy-related rules.

China promulgated *Regulations on Anti-Dumping and Anti-Subsidy of the PRC* in 1997, which provided the practicable rules for China's Anti-Dumping (AD) investigations and measures. After China's accession into the WTO, China, in accordance with the WTO Agreements, re-enacted *Anti-Dumping Regulations of the PRC* (AD Regulations), *Countervailing Regulations of the PRC* (Countervailing Regulations) and *Safeguard Regulations of the PRC*. To make the above regulations more practicable, and to ensure transparency and due process, China promulgated more than 20 department rules covering aspects such as application, investigation questionnaire, on-the-spot investigation, products scope adjustment, industry injury investigation and interim review. According to these regulations and rules, the Ministry of Commerce of the People's Republic of China (MOFCOM) is in charge of the investigation of trade remedy measures. If trade remedy measures are determined to be applied as forms of imposing AD duties, countervailing duties or safeguard measures, MOFCOM may suggest as such to the Customs Tariff Commission of the State Council (CTC) and the CTC is responsible for making approvals. After the

MOFCOM's public notice of the final determination, the PRC Customs is responsible for the implementation of trade remedy measures.

Japan's laws and regulations regarding anti-dumping, countervailing and safeguard measures are *the Customs Tariff Law, Foreign Exchange and Foreign Trade Act* (only for import restrictions as the WTO safeguard measures), relevant Cabinet orders and Guidelines. Under this framework, investigations for these trade remedy measures are basically proceeded based on the request of domestic industries, which are co-initiated by the Ministry of Finance, the Ministry of Economy, Trade and Industry and the ministry which has jurisdiction over the industry subject to an investigation. The decision on the implementation of trade remedy measures is made by these ministries after the consultation with the *Council on Customs, Tariff, Foreign Exchange and other Transactions*.

Korea administers trade remedy measures pursuant to the relevant WTO Agreements and domestic laws and regulations. Trade remedy measures are authorized under the *Act on the Investigation of Unfair International Trade Practices and Remedy against Injury to Industry* and its *Enforcement Act*, the *Foreign Trade Act* and its *Enforcement Act*, and the *Customs Act*. Under this legal framework, the Korean Trade Commission (KTC) is authorized to implement trade remedy measures such as anti-dumping, countervailing and safeguard measures. The KTC investigates unfair trade practices and recommends appropriate trade remedy measures, where it finds necessary. The ultimate decision on the imposition of anti-dumping and countervailing duties is taken by the Ministry of Strategy and Finance. In the case of safeguard measure, the measure includes adjustment of customs duty and quantitative restrictions on the importation of goods. Based on the recommendation of the KTC, either the Ministry of Strategy and Finance or the Ministry of Knowledge Economy decides whether or not to take the safeguard measures, as the case may require.

According to WTO statistics, during the period from January 1995 to June 2010, China initiated 182 anti-dumping investigations and applied 137 measures, among which 30 initiated AD investigations and 25 applied measures were with respect to the products imported from Japan and 31 initiated investigations and 25 applied measures were with respect to the products imported from Korea. Meanwhile, China was the target of 784 AD investigation cases worldwide and ranked first among the WTO member countries in terms of both the number of AD initiations and the number of AD measures taken. During the period from January 1995 to October 2010, China initiated three countervailing investigations and adopted one measure and initiated one safeguard investigation and applied one measure. There were no countervailing duty (CVD) investigations against products from Japan or Korea.

During the period from January 1995 to June 2010, Japan initiated six anti-dumping investigations and applied seven measures. Among them, one initiated anti-dumping investigation and one applied measure were toward electrolytic manganese dioxide from China, while one initiated anti-dumping investigation and one applied measure were toward certain polyester staple fibre from Korea. As for countervailing measures, Japan implemented one investigation and took one measure, both of which were toward Korea. During the period from March 1995 to October 2010, Japan initiated one global safeguard investigation and exercised a provisional safeguard measure accordingly, but did not take the final measure.

According to statistics of the WTO, during the period from January 1995 to June 2010, Korea initiated 111 anti-dumping investigations and applied 70 measures. Among them, 23 initiated anti-dumping investigations and 19 applied measures were toward China, while 16 initiated investigations and 12 applied measures were toward Japan. During the same period, Korea was under 268 investigation cases of alleged dumping and thus stood 2nd after China among WTO member countries in terms of the number of investigations of alleged dumping. During the period from January 1995 to October 2010, Korea initiated four global safeguard investigations and applied two measures on dairy products and garlic. The details are listed below.

Table 3-9 Current statistics on anti-dumping, countervailing and safeguard measures taken by the three countries

	Measure	Initiation of investigation	Application of final measure
China	Anti-dumping measure	182	137
	(China against Japan)	30	25
	(China against Korea)	31	25
	Countervailing measure	3	1
	Safeguard measure	1	1
Japan	Anti-dumping measure	6	7*
	(Japan against China)	1	1
	(Japan against Korea)	1	1
	Countervailing measure	1	1
	Safeguard measure	1	0

Korea	Anti-dumping measure	111	70
	(Korea against China)	23	19
	(Korea against Japan)	16	12
	Countervailing measure	0	0
	Safeguard measure	4	2

Source: WTO

\* One of the measures was imposed as a result of an investigation initiated before 1995.

China recognizes the WTO Agreements as the basic guidance in designing trade remedy provisions under a future CJK FTA. For the sake of improvement in fairness and transparency in applying trade remedy measures, China is willing to discuss the possibility of the inclusion of some WTO-plus elements in a future CJK FTA. China also notes that CJK FTA negotiations should fully address and resolve technical issues such as clarification and improvement of disciplines when any incorporation of any WTO-plus elements is being considered, recognizing the importance of non-discriminatory application in accordance with the relevant WTO Agreements.

Japan is of the view that the trade remedy measures should not be misused for protection of domestic industries. Japan considers that bilateral or trilateral safeguard measures among the three countries are an essential factor of a CJK FTA and detailed procedures to take bilateral safeguard measures (such as conditions, investigation, notification, duration of the measures, consultation, compensation and countermeasures) should be provided in a CJK FTA to avoid misuse. Japan considers that rights and obligations regarding the safeguard measures based on the WTO Agreements should be maintained under a CJK FTA. As for anti-dumping duties and countervailing duties, Japan's position for previous EPAs is that the reaffirmation of the rights and obligations under the WTO Agreements should be sufficient. However, WTO-plus elements such as notification prior to the investigation or other elements such as explicit prohibition of zeroing could be a subject for consideration.

Korea is of the view that trade remedy measures should not be applied in a manner that nullifies or impairs benefits from improved market access through an FTA. In that regard, Korea supports the inclusion of WTO-plus elements in FTAs, which enhances fair and transparent application of trade remedy measures. In previous FTAs, Korea tried to incorporate WTO-plus elements such as explicit prohibition of zeroing, the lesser duty rule and consultation requirements prior to the investigation, succeeding in the inclusion of some of those elements. With respect to global safeguard measures, Korea supports discretionary exemption of FTA partners from applying the global safeguard measures. Lastly, in some



FTAs, Korea has included product-specific bilateral safeguards for agricultural products in addition to bilateral safeguard measures, addressing the sensitivity of agriculture.

The JSC shares a common understanding that it is critical to note the importance of an effective and transparent trade remedy system which will guarantee not erode, trade liberalization and benefits of a future CJK FTA. It is also crucial to ensure that the system will ultimately result in the promotion of trilateral trade. Therefore, in future CJK FTA negotiations, the three countries need to explore various ways to address this issue, including the establishment of a cooperation mechanism.

## **5.2 Suggestions for a Future CJK FTA**

The JSC suggests that China, Japan and Korea should take into consideration the following elements for a future CJK FTA.

First, the three countries, as members of the WTO, should reaffirm their rights and obligations under the WTO Agreements with due regard to their basic principles and effectiveness.

Second, the three countries should also discuss the possibility of adopting safeguard measures applied under a CJK FTA to address concerns of certain sectors.

Third, the three countries should discuss the possibility of incorporating WTO-plus elements to enhance transparency and to provide more clarification of the trade remedy measures, recognizing the importance of addressing technical issues, such as non-discriminatory application in accordance with the relevant WTO Agreements.

Lastly, the three countries should develop effective communication channels and cooperative mechanisms to efficiently deal with matters relating to trade remedies.

## **IV. Trade in Services**

### **1. Overview of Services Industry and Trilateral Services Trade**

#### **1.1 General Outline**

The services sector is an important part of the Chinese, Japanese and Korean economies and is taking a progressively bigger role in the economic growth of the three countries. It contributes to over 40% of GDP in China,<sup>20</sup> about 80% in Japan,<sup>21</sup> and above 60% in Korea.<sup>22</sup>

In light of this fact, China, Japan and Korea have been attaching great importance to the development of services trade. At present, with respect to the total value of services trade, China, Japan and Korea ranks 4th, 5th and 13th respectively in the world.<sup>23</sup> The bilateral services trade among the three countries has also been witnessing steady and rapid growth in recent years.

The share of services both in GDP and trade is expected to grow even further and it is of prime importance that such upward trend continues and further accelerates as the services sector is an important infrastructure underpinning the growth of the entire trade and investment.

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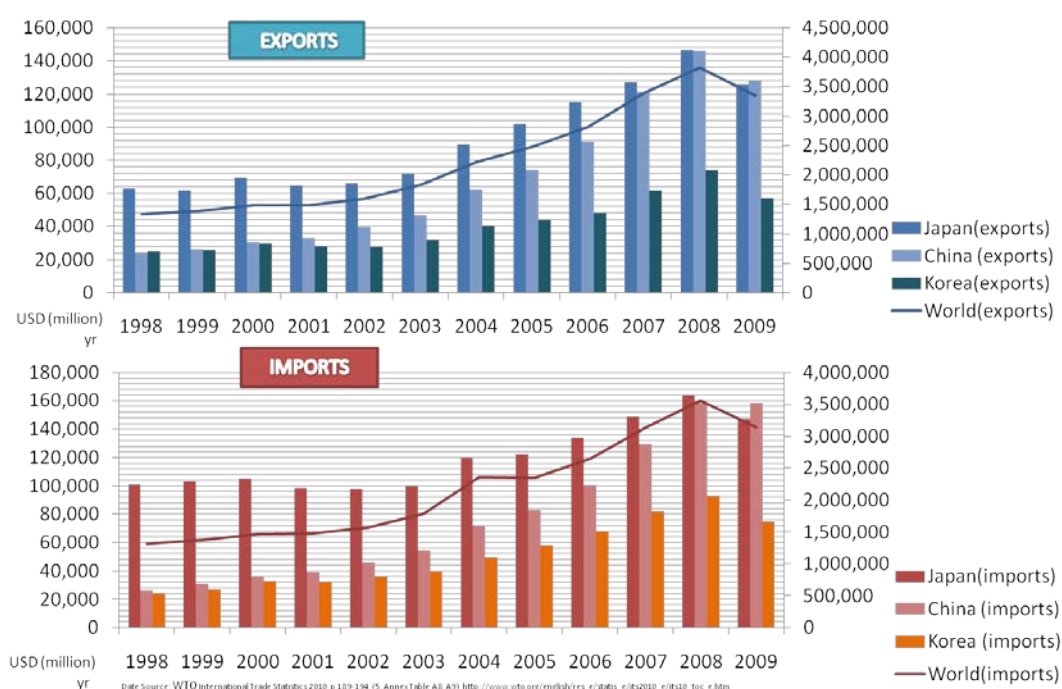
20 Chinese National Bureau of Statistics.

21 OECD StatExtracts.

22 OECD StatExtracts.

23 WTO Statistics Database.

**Graph 4-1 : Services Trade of the three countries**



Among various services sectors, rapid growth is seen particularly in the exports of financial services from Japan and Korea, and those of computer and information services from China. These areas are fast expanding their shares and this trend is expected to continue.

Nevertheless, despite the growth in the total value of trade in services of the three countries, statistics show that they all possess trade deficits in services, unlike other countries with strong services exports. This fact suggests that there is yet room for improvement in the services sectors of the three countries. Each country is more than capable of such improvement, considering the size of economy, the level of technology and the variety as well as the quality of services that they can provide.

## 1.2 China's Services Industry and Services Trade with Japan and Korea

The proportion of the services sector in China's GDP increased from 21.6% in 1980 to 43.4% in 2009.<sup>24</sup> The employment in this sector was 266.03 million persons in 2009, nearly 34.1% of China's total employment.<sup>25</sup>

The total value of trade in services grew from US\$66.4 billion in 2000 to US\$364.5 billion in 2010. However, China's trade in services has been in deficit since 1992, with 1994 as the only exception. In 2009, because of the global financial crisis, the deficit reached its peak at

<sup>24</sup> China Statistical Yearbook 2010.

<sup>25</sup> China Statistical Yearbook 2010.

US\$29.4 billion, and then decreased to US\$22.1 billion in 2010.

Table 4-1. China's trade in services (2004-2010, US\$ billion)

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total	66.4	72.6	86.2	102.0	134.5	158.2	192.8	252.3	306.0	288.4	364.5
Import	36.0	39.3	46.5	55.3	72.1	83.8	100.8	130.1	158.9	158.9	193.3
Export	30.4	33.3	39.7	46.7	62.4	74.4	92.0	122.2	147.1	129.5	171.2
Balance	-5.6	-6.0	-6.8	-8.6	-9.7	-9.4	-8.8	-7.9	-11.8	-29.4	-22.1

Source: Balance of Payments, State Administration of Foreign Exchange.

The proportion of China's trade in services to total trade was only 10.67% in 2008,<sup>26</sup> much smaller than the proportion of trade in services in the world trade.

In 2009, China's export value of commercial services was US\$129 billion, accounting for 3.8% in the world export, while the import value of commercial services was US\$147 billion, accounting for 4.7% in the world import. In the same year, China's export and import value of commercial services ranked 5th and 4th in the world respectively.<sup>27</sup>

China's trade in services is concentrated on traditional sectors, such as tourism, transport and other business services, which accounted for 27.63%, 26.75% and 14.49% respectively of the total import and export value of trade in services in 2010. In comparison, trade volume in knowledge-intensive services sectors, such as financial, communications, computer and information services is still tiny and at an infant stage, accounting for 0.74%, 0.63% and 3.37% respectively of the total import and export value of trade in services in 2010.

The bilateral trade in services between China and Japan increased from US\$6.527 billion in 2000 to US\$18.006 billion in 2008, with an annual growth rate of 13.52%. In 2008, the bilateral services trade between China and Japan accounted for 5.88% of the total services trade of China. Prior to 2005, China had been in surplus in the bilateral services trade but has remained in deficit from then on.

Table 4-2. Bilateral trade in services between China and Japan (2000-2008, US\$ billion)

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total	6.527	6.302	7.086	8.981	13.069	15.069	14.685	16.322	18.006
Import	2.350	2.346	2.758	4.146	6.440	7.065	7.577	8.168	9.082
Export	4.177	3.956	4.328	4.835	6.629	8.004	7.108	8.154	8.924

Source: United Nations Service Trade Statistics Database, <http://unstats.un.org/unsd/ServiceTrade>.

26 United Nations Service Trade Statistics Database, <http://unstats.un.org/unsd/ServiceTrade>.

27 WTO, International Trade Statistics 2010.

The bilateral services trade between China and Korea also increased steadily and sharply from US\$4.255 billion in 2000 to US\$22.547 billion in 2008, with an annual growth rate of 23.18%. In 2008, the bilateral services trade between China and Korea accounted for 7.37% of the total services trade of China. China had been in surplus in the bilateral services trade before 2006, and has kept in deficit from then on.

Table 4-3. Bilateral trade in services between China and Korea (2000-2008, US\$ billion)

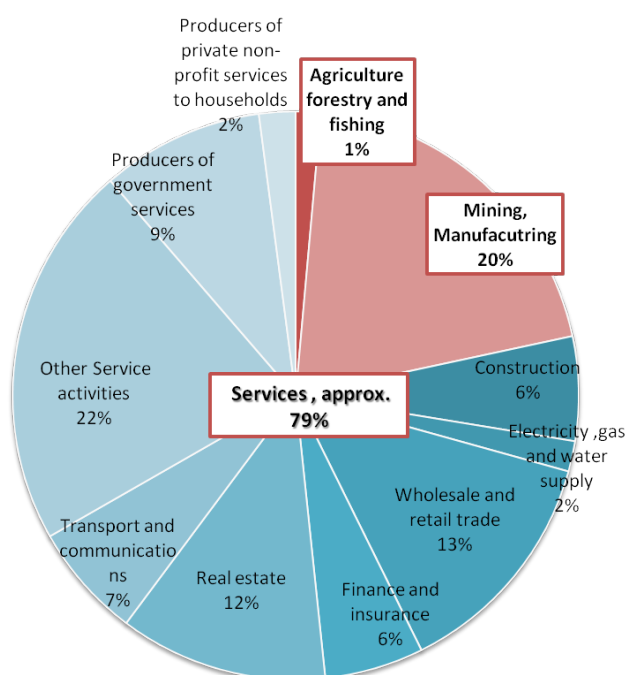
Year	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total	4.255	4.586	6.028	7.400	9.987	12.127	14.302	17.926	22.547
Import	1.948	2.154	2.514	3.638	5.028	5.725	6.725	8.974	12.269
Export	2.307	2.432	3.514	3.762	4.959	6.402	7.577	8.952	10.278

Source: United Nations Service Trade Statistics Database, <http://unstats.un.org/unsd/ServiceTrade>.

### 1.3 Japan's Services Industry and Services Trade with China and Korea

Japan's services industry makes up approximately 80% of Japan's total GDP. Within the industry, the categories with big shares are wholesale and retail trade services, financial and insurance services, transport and communication services, and other services activities.

**Graph 4-2 Share in GDP classified by economic activities (2008 at current price)**

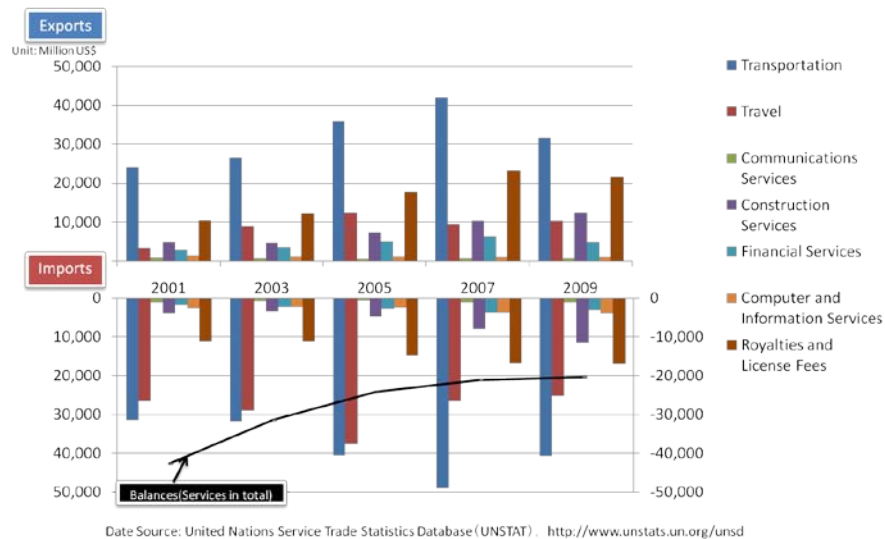


Date Source: Economic and Social Research Institute (ESRI), Cabinet Office, Government of Japan.  
National Accounts for 2008, 4-(3) Gross Domestic Product classified by Economic Activities, (chain-linked method) in real terms.  
Calendar Year  
<http://www.esri.go.jp/en/oma/h29-haku/22annual-report-e.html>  
(Exclude taxes and duties on imports, consumption taxes, imputed bank service charge)

When looking at changes in Japan's services trade by category in the past decade, the exports of transportation, royalties and license services, and construction are on the increase. From

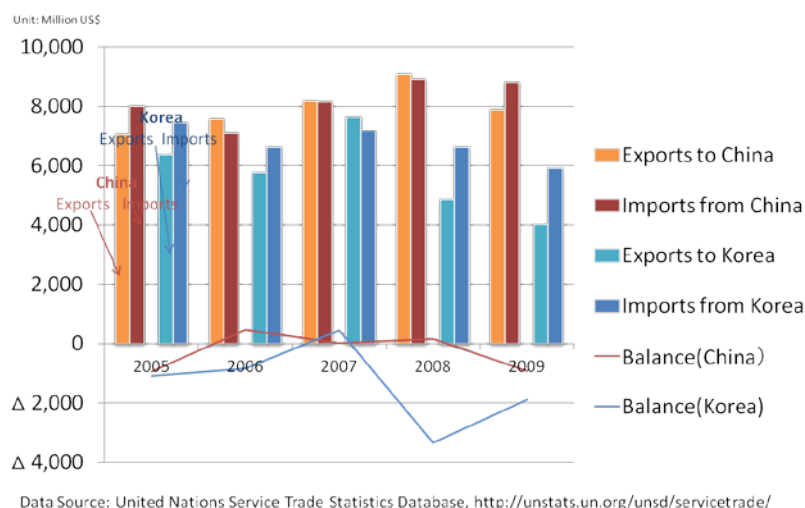
the imports side, transportation, travel, and royalties and license fees are on the decrease. In any case, Japan's balance of payment in services has stayed constantly in the red, though the deficit has had a decreasing trend in recent years.

**Graph 4-3 Japan's services trade by category**



On the other hand, Japan's imports and exports in services from/to both China and Korea have significantly expanded in the past eight years, showing notable growth of trade in services with China. However, Japan's trade in services with both China and Korea shows deficit.

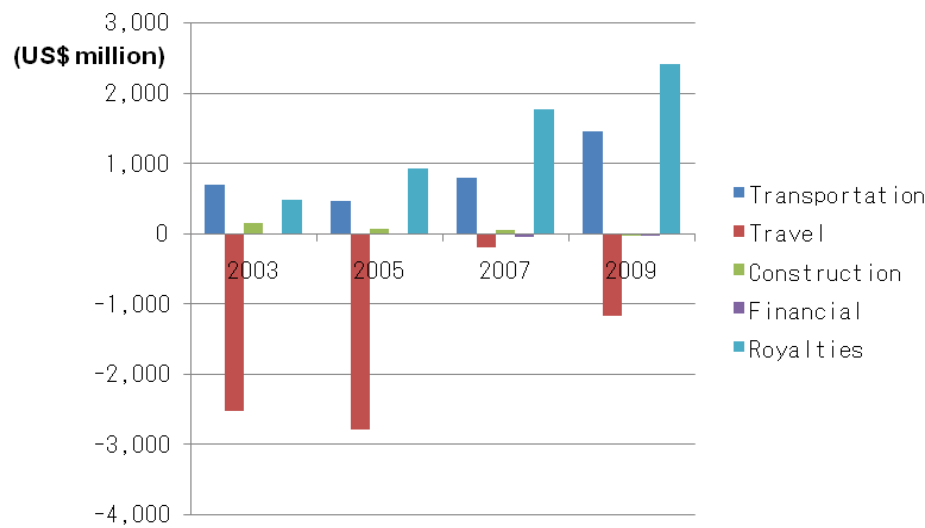
**Graph 4-4 Japan's bilateral services trade (exports, imports and balances of payment)**



Japan's trade in services with China by category shows surplus in such sectors as royalties and license fees or transportation, while showing deficit in such sectors as travel or financial

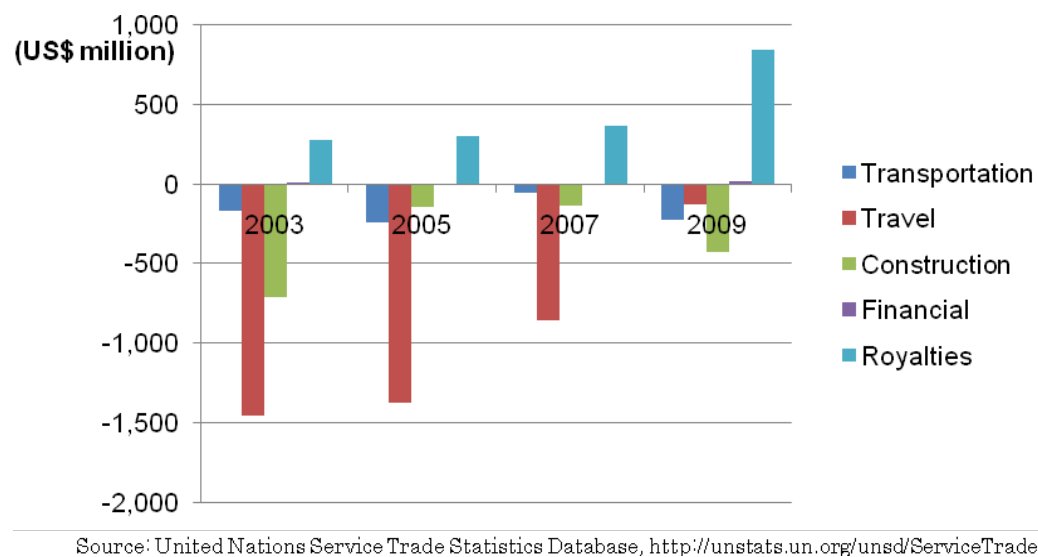
services.

**Graph 4-5 Japan's balance of payment by category, China**



When looking at Japan's trade in services with Korea by category, the sectors such as royalties and license fees and financial services are in the black, while the sectors such as travel, construction and transportation services are in the red.

**Graph 4-6 Japan's balance of payment by category, Korea**



## 1.4 Korea's Services Industry and Services Trade with China and Japan

The proportion of the Korean services sector to GDP increased to 60.7% in 2009 from 57.3%

in 2000 and the services industry accounts for around 75% of the total employment. Korea's trade in services rose sharply from US\$63.9 billion to US\$134.2 billion during the same period. In 2009, Korea's services exports and imports recorded US\$58.5 billion and US\$75.7 billion respectively. Since 2000, the services trade value has continuously posted a deficit trend. Korea's main services sectors in trade were transportation (US\$52.3 billion), business services (US\$38.6 billion), and travel (US\$22.8 billion) in 2009.

China and Japan are very important partners in Korea's trade in services as they are ranked as the third and the fourth largest trading partners. Korea's trade in services with China and Japan amounted to US\$17.7 billion and US\$15.5 billion in 2009 respectively. The two top major trade partners in services for Korea are the US (US\$32.2 billion) and the EU (US\$23.9billion). The weight of trade with China and Japan in Korea's entire trade in services held around 25% in 2009.

**Table 4-4. Trade in Services vis-à-vis China and Japan (2005-2009)**

Partner		2005	2006	2007	2008	2009
China	Balance of Trade	-677	-852	22	2,070	1,126
	Export	5,724	6,725	8,974	12,671	9,441
	Import	6,402	7,577	8,951	10,600	8,315
	Trade Volume	12,127	14,302	17,925	23,272	17,756
Japan	Balance of Trade	-730	-1,841	-3,146	-195	1,148
	Export	6,619	6,466	6,719	9,515	8,351
	Import	7,349	8,307	9,865	9,711	7,203
	Trade Volume	13,969	14,774	16,584	19,227	15,555

Source : The Bank of Korea (Million dollars)

## **2. Trade Policies Affecting Trade in Services of the Three Countries**

### **2.1 China's Trade Policy Affecting Trade in Services of the Three Countries**

Since China's accession to the WTO, the Chinese government has taken effective measures to liberalize the services market. China has substantially reformed its legal managerial framework in trade in services. All the market access commitments in the WTO in the field of trade in services have been implemented through the revision and adoption of sector-specific laws, administrative regulations and department rules. The level of market access for foreign services suppliers has been significantly increased. China has committed 93 services sectors



out of 155 sectors,<sup>28</sup> accounting for 60% of the WTO's Service Sectoral Classification List. Considering China's status as a developing economy, China has made notable efforts and progress in liberalizing its services sectors.

The provisions in the *Protocol on the Accession of the People's Republic of China to the WTO* have established primary principles for Chinese legislation concerning the services sectors, including detailed regulations on cross-border supply, consumption abroad, commercial presence and movement of natural persons. It is noted that further liberalization on services in China is anticipated to continue in a progressive and manageable way.

Meanwhile, foreigners who enter, transit or reside in China shall follow the procedures stipulated in the *Law on Administration over Foreigners' Entry and Departure*. For foreign employees, applications shall be submitted for employment approval in accordance with the *Regulations on the Management of Employment of Foreigners in China*.

## **2.2 Japan's Trade Policy Affecting Trade in Services of the Three Countries**

Japan has always committed strongly to an open market policy under the WTO, and achieved a high level of liberalization in the services sector, making commitments in 112 out of 155 sectors,<sup>29</sup> accounting for 72% of the W/120 classification list.

Regulatory reforms are one of the most urgent agendas for promoting competitiveness and growth in all sectors of industries, especially in services. In order to accelerate discussions for necessary regulatory reforms, the Subcommittee on Regulatory and Institutional Reform, established in March 2010 under the Government Revitalization Unit has been promoting discussions for necessary regulatory reforms in sectors including human resources, transportation, finance, IT, housing and land. In light of the results of the discussions, the Cabinet has decided in April 2011 the "Principle on Regulatory and Institutional Reform" which sets out short- and mid-term plans for regulatory and institutional reform in five sectors, including Green-Innovation (environment and energy sectors) and Life-Innovation sectors (medical and long-term care services sectors). The implementation of this Principle will be reviewed and reported in due course to the Government Revitalization Unit.

From the viewpoint of vitalizing and internationalizing the Japanese economy and society, Japan is actively promoting acceptance of foreign nationals in professional or technical fields. In accepting such foreign nationals, Japan does not apply any quota on the number of foreign workers nor conduct prior labor market tests.

Moreover, Japan is now considering the possibility of introducing a "point system" under the

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28 <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=CN,JP,KR>.

29 <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=CN,JP,KR>.

“New Growth Strategy” (Cabinet Decision in June 2010), which provides preferential treatment in terms of the immigration procedure to foreign nationals who have excellent job careers and performance. This system is expected to attract a larger number of eligible and skilled professional workers to Japan.

Meanwhile, foreigners who enter, transit or reside in Japan shall follow the procedures stipulated in the *Immigration Control and Refugee Recognition Act*. Based on this Act, in principle, a foreign national wishing to enter and work in Japan is required to have a valid visa issued by the Government of Japan in accordance with the type of activities in which the national is going to engage.

### **2.3 Korea’s Trade Policy Affecting Trade in Services of the Three Countries**

Korea has significantly deregulated its services regime and opened its services market following a series of important events, such as the Uruguay Round negotiations, the country’s accession to the OECD, and the Asian Financial Crisis. Under the GATS, Korea has made commitments in 98 services sectors out of 155<sup>30</sup> enumerated in the W/120 classification list, accounting for 63% of total sectors. In accordance with its commitments under various bilateral FTAs and the WTO Doha Development Agenda (DDA) negotiations, Korea is also trying to streamline or lift, as necessary, many of the remaining limitations and restrictions.

Korea has liberalized its services sectors based on a negative list approach since the *Foreign Investment Promotion Act (FIPA)* was introduced in 1998. In accordance with the Act, the Korean government annually announces the so-called “consolidated public notice for foreign investment,” a list of sectors in which foreign investment is restricted or prohibited. As Korea takes a negative list approach in its domestic laws on foreign investment, services sectors that are not explicitly excluded from it are open to foreign investors and service suppliers. Services sectors such as professional, medical, health, communications, distribution, educational, a number of financial and transport are included in those restricted or prohibited.

Foreigners who enter, depart from or reside in Korea shall follow the procedures stipulated in the *Immigration Control Act* and its enforcement decree and regulations. All foreign employees are required to obtain work visas issued in accordance with the same Act.

## **3. Trade in Services in Other FTAs/EPAs**

### **3.1 Trade in Services in China’s FTAs**

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30 <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=CN,JP,KR>.

Currently, China has signed 10 FTAs,<sup>31</sup> five with commitments on trade in services as an essential component of them. The agreements with New Zealand, Singapore, Peru and Costa Rica were following the single-undertaking practice, in which trade in services was included as an integral chapter, while other agreements were negotiated step by step in different phases, and services agreements were concluded after the agreement of trade in goods entered into force.

In comparison to China's WTO accession commitments, all the commitments on services under the framework of an FTA embodied further progressive liberalization of services, including more liberalized commitments on commercial presence in specific sectors or sub-sectors, such as business services, construction and related engineering services, environmental services and transport services. Furthermore, China also made commitments in some services sectors or sub-sectors which were not included in the WTO accession commitments, such as sports and recreation services, management consulting services, market research and public opinion polling services, maintenance and repair services of transport equipment.

Meanwhile, according to the agreements, other FTA partners also granted more preferential treatments in some sectors and sub-sectors compared to their WTO commitments, to facilitate the movement of capital, persons and professional expertise. It should be noted that, in the China-New Zealand FTA, mode 4 (movement of natural persons) was treated as a separate self-standing chapter, which provided working permits for certain professions.

China's services agreements with its FTA partners followed a positive list approach in commitment schedules, in which the limitations and barriers were listed under the column of Market Access (MA) and National Treatment (NT). Sample texts of trade in services agreement/chapter of China's FTAs were also in alignment with the GATS model.

### **3.2 Trade in Services in Japan's EPAs**

Japan has signed and/or ratified 13 EPAs,<sup>32</sup> 12 of which are in effect. All those EPAs, except the agreement with ASEAN, include a services chapter. The services chapter of the EPA with ASEAN is currently under negotiation.

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31 The 10 FTAs are as follows: China-ASEAN FTA, China-New Zealand FTA, China-Chile FTA, China-Pakistan FTA, China-Singapore FTA, China-Peru FTA, China-Costa Rica FTA, two CEPAs with Hong Kong SAR, China and Macao SAR, China, and ECFA with Chinese Taipei.

32 The 13 EPAs/FTAs are as follows: Japan-Singapore EPA, Japan-Mexico EPA, Japan-Malaysia EPA, Japan-Chile EPA, Japan-Thailand EPA, Japan-Indonesia EPA, Japan-Brunei EPA, Japan-ASEAN CEPA, Japan-Philippines EPA, Japan-Vietnam EPA, Japan-Switzerland EPA, Japan-India CEPA and Japan-Peru EPA.

All those services chapters provide for most-favoured-nation treatment (MFN), NT, MA and/or local presence (LP) (prohibition of a commercial presence requirement). Among Japan's EPAs which adopt a negative list approach, the EPAs with Mexico and Chile provide for LP instead of MA obligation as these EPAs came into force in the early phase of Japan's efforts in concluding EPAs. In the context of Japan's EPAs which adopt a negative list approach, the EPA with Switzerland introduced the obligation of MA for the first time, and this obligation is also covered by the list of non-conforming measures. In the EPA with Peru, both MA and LP obligations are provided for in the services chapter, and the non-conforming measures with these obligations as well as NT and MFN obligations are specified in the list of reservations.

Japan prefers a negative list approach with an integrated list of reservations on trade in services/investment chapters in order to make EPAs as transparent and user-friendly as possible with sufficient coverage for the business community. Moreover, Japan has proposed to have separate chapters or annexes on telecommunication services and financial services in the past EPAs in order to consolidate the chapter on trade in services as business infrastructures. Japan also places importance on introducing a built-in evolving mechanism to respond to changes and needs arising from the future economic growth of the partners, through setting a standstill and a ratchet-clause on obligations such as NT, MA and MFN in order to assure a long-lasting partnership among the parties.

### **3.3 Trade in Services in Korea's FTAs**

Korea has concluded FTAs with Chile (entry into force: April 2004), Singapore (entry into force: March 2006), EFTA States (entry into force: September 2006), ASEAN (entry into force: May 2009 for trade in services), the US (signed on June 30, 2007), India (entry into force: January 2010), the EU (entry into force: July 2011), and Peru (entry into force: August 2011). With respect to the modality of liberalization, Korea has taken a flexible approach. In the FTAs with ASEAN, EFTA and the EU, Korea adopted the GATS approach, while in the FTAs with Chile, Singapore, Peru and the US, it adopted a negative list approach.

In its FTAs, Korea seeks obligations such as MA, NT, MFN and LP for the cross-border trade in services chapters. Furthermore, recognizing the importance of facilitating trade in services, Korea has included specific provisions covering this matter in its FTAs.

Korea has endeavored to pursue, at the minimum, a WTO DDA level of liberalization based on reciprocity, with a view to maximizing the mutual benefits of liberalization of trade in services. Although levels of liberalization achieved in its FTAs differ to a certain extent, it has been Korea's fundamental position to pursue services sector liberalization through FTAs not only to increase trade in services, but also to enhance the competitiveness of its services industries.

## **4. Overall Impacts of a Future CJK FTA on Trade in Services**

### **4.1 General Impact Expected from a Future CJK FTA on Trade in Services**

The trade volume of services in the global economy is growing rapidly. Services have emerged as the largest dynamic component in world trade, taking up 19.2% of the world's entire trade volume in 2008. Therefore, trade in services is becoming more and more important. It is for this reason that WTO members are participating actively in multilateral negotiations to further expand trade in services within the context of the WTO DDA negotiations, while many countries including China, Japan and Korea are doing the same through negotiating FTAs/EPAs.

Liberalizing trade in services could provide a catalyst, in the three countries' domestic economies, for improving competitiveness, for accumulating general welfare of consumers and producers, and for shifting of factors of production. As a corollary, liberalization of trade in services within the context of an FTA should be negotiated in such a way as to remove barriers imposing additional costs on exporters and eroding competitiveness. If interests and concerns are appropriately addressed during the negotiations, an FTA among the three countries would serve to increase trade in services for the common benefit.

By reducing barriers and enhancing transparency, a possible CJK FTA might contribute to and enhance the momentum of mutual cooperation, MA, movement of goods, capital, persons and technology and trade facilitation. A future CJK FTA will help bring down costs and prices, increase efficiency and innovation, and broaden the range of services being offered, thus improving the quality of services through maximization of cross-border resource allocation processes. The facilitation of movement of business personnel will also promote the overall development in the services sectors.

In addition, the benefits of rising productivity in the services sector trickle down to other industrial sectors. Manufacturing, in particular, would benefit greatly from the liberalization of trade in services, as this would significantly bring down the costs of services functioning as intermediate goods – professional services, business services, communication services, financial services and transport services. Meanwhile, with the improvement of access conditions related with the movement of natural persons, including more convenient arrangements of visas for entry and temporary stay for business purposes, the flow of talent and human resources would be expanded, and thus, bring common benefits for the three countries.

On the other hand, given that the three countries record an overall deficit in trade in services, it should be pointed out that China, Japan and Korea share relative disadvantages in services. Under the framework of a CJK FTA, further liberalization is expected to strengthen competition in the services sectors in each country's domestic market, particularly in those

sectors providing both public and business services, such as financial, telecommunications and construction services. Future cooperation within the framework of a CJK FTA may also encourage the services sectors of the three countries to grow into export-oriented sectors.

Strengthened economic cooperation through a CJK FTA would contribute not only to the three countries' welfare but also to the efforts being made for the liberalization and facilitation of trade and investment in regional cooperation mechanisms such as APEC and could thus serve as an important path toward an economically-integrated community.

#### **4.2 Impacts of a CJK FTA on Individual Services Sectors and Enhancement of Regional Cooperation**

In order to generate economic benefits which can be shared by all three countries under a CJK FTA, it is important that the three countries recognize not only their competitive relations but also their interdependent and complementary relations among each other. For example, in the past Joint Study on a CJK FTA, China was reported to have a comparative advantage in travel and communications services; Korea, in construction, financial and transportation services; and Japan, in royalties and license fees. This suggests that trade in services among the three countries can mutually reinforce the competitive sectors of each country.

Moreover, in light of increasing transparency and user-friendliness, it is important that the three countries become aware of each other's business environment through identifying elements which may affect sound trade in services among the three countries. In this sense, it would contribute to facilitating trade in services among the three countries if business sectors can identify relevant laws and regulations for accessing the markets of other members and conducting their business and enjoy their stability and predictability.

At the same time, in order to consolidate the basis of a strong partnership among the three countries, it is essential to introduce a built-in reviewing mechanism and that the partner countries endeavor to provide to the business sectors of the others the level playing fields with those of a third country.

Furthermore, making high-level commitments in the services sectors would support promoting trade in goods as well as investment. Liberalization of trade in services among the three countries would lay a foundation for expanding markets for trade in goods and boosting investment flows.

By promoting some key areas such as travel, cultural, and entertainment services, a CJK FTA would help deepen mutual understanding and friendship among the three countries' people.

### **4.3 Priority Sectors for Further Liberalization and Sensitive Sectors under a Future CJK FTA**

As for the priority areas for further liberalization under a CJK FTA, China places importance on professional services, environmental services, space-transportation and medical services. China also attaches great importance on seeking more preferential treatment for qualified service providers under the mode 4. By taking into consideration the development stage of China's economy as well as the domestic services sector, China considers that due consideration should be given to sensitive sectors such as financial services, telecommunications services, computer-related services, construction services, broadcasting and publishing services, and audio-visual entertainment services.

Meanwhile, Japan places importance on financial services, ICT and its related services (including telecommunications and computer-related services), audio-visual, entertainment services (movie, music, game, animation, drama and content services), distribution services, construction services, architectural services, engineering services, maritime transport services and private education industry since Japan considers these sectors to have much potential to growth in terms of services trade among the three countries and could further contribute to their economic growth. Nonetheless, Japan also considers that due consideration should be given to sensitive sectors such as broadcasting services, public education services including those provided by private institutions, healthcare and medical services, space launching services and services incidental to energy.

Korea emphasized that it places high importance on the liberalization of professional services including legal services, financial services, telecommunications services, audio-visual and entertainment services (movie, music, game, animation, drama and content services), distribution services and construction services. However, Korea considers that, in the process of liberalization of the services sectors, due consideration should be given to sensitive sectors such as healthcare and medical services, social services, environmental services, energy services, broadcasting and publishing services, and education services.

## **5. Suggestions for a Future CJK FTA**

Given the positive economic impacts of reducing barriers to trade in services on all three countries, the Joint Study recommends that China, Japan and Korea strengthen cooperation and promote trilateral trade in services by concluding a CJK FTA.

In view of the enormous potential for growth in the trade in services sector among China, Japan and Korea, and in light of the importance of establishing a CJK FTA as a model economic partnership agreement of the 21st century and a strong platform for trilateral cooperation, the JSC came to a shared view that inclusion of substantial provisions regarding

non-discriminatory treatment based on nationalities in a future CJK FTA could be in the economic interest of the three countries.

It is also suggested that trade in services within the context of an FTA should be negotiated in such a way as to remove existing trade barriers, such as imposition of additional costs on exporters and barriers against competition, taking into due consideration the sectors of special sensitivity to the respective parties.

The commitments of each country and rules under a future CJK FTA should be “GATS-plus”. The scope of a CJK FTA should be as comprehensive as possible, covering a wide range of services sectors and modes of supply.

Concerning the scheduling approach, the JSC conducted intensive discussions and fully exchanged their views on potential benefits which might be reaped by different types of methodology.

Japan and Korea suggest that a negative list approach equipped with a ratchet clause is considered more favorable for liberalization of trade in services, since it will create more incentives for the business sector to invest in the partner countries through increasing transparency on existing measures and ensuring legal predictability.

Furthermore, in order to make the agreement as user-friendly as possible, Japan and Korea suggest it is important to make an integrated list of reservations between trade in services and investment, based on the premise that the three countries are committed to a negative list approach in the investment chapter.

China suggests that a positive list approach is considered more suitable for a future CJK FTA, in view of the substantial differences among the three countries in economic structure, development stage and supervision system of trade in services. Furthermore, China indicates that taking the GATS approach as the template for a future CJK FTA will be more favorable since this can serve as a common base for further liberalization in the services sectors.

Moreover, Japan and Korea suggest adopting separate chapters or annexes on telecommunications/ICT and financial services, in order to consolidate the chapter on trade in services as business infrastructures. Especially, making efficient rules in the telecommunications/ICT sector, which has experienced significant progress due to technological advance, is vital in order to facilitate trade in services of the 21st century. China suggests that a separate chapter on movement of natural persons would be essential to make additional commitments to further stimulate the flow of personnel and service providers, since the movement of natural persons will act as a catalyst for further promoting the trilateral trade and investment.



It is also of great importance that a CJK FTA is equipped with a built-in evolving mechanism which enables the partnership to respond to changes and needs arising from the future economic growth of the region. In this regard, the JSC acknowledged the importance of containing a built-in review process for further liberalization and a mechanism by which the progress of liberalization will be shared on an equal basis amongst the three countries.

Japan and Korea suggest that such mechanisms can be materialized by such disciplines as NT, MA, LP, MFN, and the ratchet clause on these obligations, assuring a long-lasting partnership among the three countries. Meanwhile, China suggests that the review clause will provide the partners with adequate chances to enlarge the liberalization scope in a progressive manner.

It is also recommended that, during the negotiation stage, the three countries should try to set up a long-term goal, which would not only deliver a positive message to the outside world, but also further promote domestic reforms towards further liberalization of trade in services in the three countries.

The JSC thus suggests that the three countries continue discussion on the above-mentioned issues alongside the negotiation. Meanwhile, in order to enrich the knowledge of each other's market realities and commitments, domestic law and regulations, and liberalization process, it is encouraged that competent authorities and industries should conduct frequent information exchange and strengthen mutual understanding through the course of the negotiation.

## **V. Investment**

### **1. Overview of Investment Flow**

#### **1.1 China**

FDI in China increased to a record US\$105.7 billion in 2010. By the end of 2010, the total accumulated actual utilized FDI in China reached US\$ 578.8 billion,<sup>33</sup> which made China the largest FDI host country in the developing world. The top 10 countries and regions with the largest amount invested in China (calculated by the actual amount of foreign capital investment) are Hong Kong, the British Virgin Islands, Japan, the US, Taiwan, Korea, Singapore, the Cayman Islands, Germany and the UK (as of December 2010).

Both Japan and Korea are among the most important sources of FDI in China. According to the latest statistics from MOFCOM of China, Japan's FDI in China peaked in 2004 (US\$6.25 billion) and has experienced a general downward trend since then. In 2009 and 2010, Japan's FDI in China was US\$4.11 billion and US\$4.08 billion respectively. By the end of 2010, the accumulated FDI from Japan in China amounted to US\$73.6 billion. The trend of Korea's FDI in China was similar to that of Japan, peaking in 2005 (US\$5.17 billion) and has been shrinking since then. In 2009 and 2010, Korea's FDI in China was US\$2.70 billion and US\$2.69 billion respectively. By the end of 2010, the accumulated FDI from Korea in China amounted to US\$47.30 billion.

While most FDI has flown into China, the outward FDI of China has also been witnessing rapid growth in recent years. China's net outward FDI flows reached US\$56.53 billion in 2009. By the end of 2009, nearly 12,000 domestic investment entities had established about 13,000 overseas enterprises, spanning 177 countries and regions around the world and the accumulated outward direct investment stock volume stood at US\$245.75 billion. The World Investment Report 2011<sup>34</sup> indicated that China's outward FDI flows and stocks in 2010 took global shares of 5.1% and 1.4% respectively, ranking China 6th (excluding Hong Kong) in all economies and 1st among developing economies. By the end of 2009, the top 10 countries and regions with the largest amount of accumulated outward direct investment stock volume of China were Hong Kong, the British Virgin Islands, the Cayman Islands, Australia, Singapore, the US, Luxemburg, South Africa, Russia and Macao.

Compared with FDI inflow from Japan and Korea, the amount of China's outward FDI to the two countries is quite small, especially that to Japan. According to the statistics from MOFCOM of China, China's FDI in Japan in 2008 and 2009 was US\$58.62 million and

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<sup>33</sup> The World Investment Report 2011

<sup>34</sup> UNCTAD (2011).

US\$84.10 million respectively. By the end of 2009, the accumulated FDI from China in Japan reached US\$692.86 million. In 2008 and 2009, China's FDI in Korea was US\$96.91 million and US\$265.12 million respectively. By the end of 2009, the accumulated FDI from China in Korea amounted to US\$1,217.80 million.

## **1.2 Japan**

In 2010, the total of Japan's inward FDI flows was US\$1.25 billion, and the total inward FDI stock was US\$214.8 billion.<sup>35</sup> The Government of Japan has been making efforts to promote FDI in Japan. The accumulated inward FDI to Japan in 2010 is about four times bigger than that in 2000. In 2010, the top five investors to Japan in terms of stock were the US (US\$72.5 billion); the Netherlands (US\$36.9 billion); France (US\$19.2 billion); Cayman Islands (US\$18.8 billion) and Singapore (US\$13.9 billion).<sup>36</sup> FDI from China and Korea remain minor; US\$0.4 billion from China and US\$1.8 billion from Korea in the same year.

Japan has also been active in investing abroad. In 2010, the total outward FDI of Japan by flow was US\$56.3 billion, and the total outward FDI by stock was US\$831.0 billion.<sup>37</sup> Japan's outward investment plays a more important role than trade, since its income balance has been exceeding its trade balance<sup>38</sup> for the last six consecutive years.

Japan's top five investment destinations in terms of stock were the US (US\$251.8 billion); the Netherlands (US\$76.0 billion); China (USD66.5 billion); Cayman Islands (US\$62.6 billion) and Australia (US\$39.9 billion) in 2010.<sup>39</sup>

Japan's FDI to Korea has dramatically increased since the entry into force of the Japan-Korea investment treaty in 2003. In 2009, it amounted to US\$14.0 billion in terms of stock, which is 2.3 times larger than that in 2003.

Though China and Korea have already become important FDI destinations, Japan's outward FDI to each country accounted for 12.7% (to China) and 1.9 % (to Korea) of Japan's total FDI in 2010, which is still low in view of the geographical proximity and trade relations.

## **1.3 Korea**

In 2010, the inflow of FDI to Korea amounted to US\$13.1 billion. The major investors to

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35 UNCTAD, World Investment Report 2011 ANNEXES p187-191.

36 JETRO, Japan's Total Inward FDI by Country/Region (International Investment position) .

37 UNCTAD, World Investment Report 2011.

38 FY2010, Japan's income balance was approximately 12.1 trillion yen, while then trade balance was 6.5 trillion yen.

39 JETRO, Japan's Total Outward FDI by Country/Region (International Investment position) .

Korea in terms of accumulated amount are the US (US\$48.8 billion); Japan (US\$26.0 billion); the Netherlands (US\$20.0 billion); the UK (US\$10.7 billion); and Germany (US\$9.2 billion). China has also become an important investor for Korea, recording US\$414 million in 2010, which is a remarkable increase from US\$76 million in 2000. The total accumulation of investment from China amounts to US\$3.1 billion (1962-2010).<sup>40</sup>

Korea's outward FDI in 2010 amounted to US\$33.1 billion. China is Korea's biggest investment destination. Since the establishment of diplomatic relations in 1992, Korea's FDI to China has grown enormously from US\$85 million in 1991 to US\$3.9 billion in 2010. The total outflow of investment to China for the past 30 years (1980 to 2010) amounts to US\$45.4 billion. The other major investment destinations are the US (US\$42.8 billion); Hong Kong (US\$13.3 billion); Vietnam (US\$13.1 billion) and the UK (US\$9.6 billion). Japan is also an important investment destination. Korea's accumulated amount of FDI to Japan for the past 30 years amounts to US\$4.1 billion. In addition, during the last decade, Korea's investment to Japan showed stable growth, from US\$95.8 million in 2001 to US\$345 million in 2010.

#### **1.4 Trilateral Investment Flow**

Despite the economic size and geographical proximity of the three countries, the intra-regional investment has not reached a commensurate level. In 2009, the intra-regional investment in terms of flow accounted for US\$11.3 billion, representing 1% of the world total FDI.<sup>41</sup> The intra-regional investment ratio among the countries also remained at a low level and displayed sharp fluctuations compared with the rather stable intra-regional trade ratio. It once amounted to 19.8% by inflows and 22.7% by outflows in 2004, but in 2009, the ratio of inflows dropped to 6.3% and that of outflows, to 6.8%. These statistics indicate a great potential to increase FDI within the region.<sup>42</sup>

In general, the following patterns are found in each bilateral investment flow among the three countries.

First, in the case of China, by the end of 2010, China's FDI in Japan amounted to US\$1.11 billion, and from January to October in 2011, China's FDI in Japan reached US\$95.9 million, most of which is focused on the retailing, manufacturing, transport and warehousing business service. For China's FDI in Korea, by the end of 2010, the accumulated FDI from China in Korea amounted to US\$637 million, and the flows of

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40 Korea EXIM Bank, Ministry of Knowledge Economy of Korea.

41 World's total FDI in 2009: US\$1,114 billion (UNCTAD stat).

42 E.g., the intra-regional investment of the US, Canada and Mexico has reached 40% after the conclusion of NAFTA which adopted the liberalization-model investment Chapter. The intra-regional investment of the EU, which formed a unified market ensuring free movement of capital, rose from 40% to 55.7% in the period of 1998-2008.

FDI from January to October in 2011 amounted to US\$39.7 million, most of which is concentrated in trade, shipping, banking and some manufacturing.

As for Japan's FDI in China, it again increased by 17.4% in 2010, despite the sluggish trend in 2009, and showed positive development in non-manufacturing sectors, such as real estate, wholesale, retail, and leasing and business services. The share of manufacturing sectors decreased to 46.9%.<sup>43</sup> Japan's FDI in Korea increased by 45.6% in the first half of 2011. Main sectors are not only manufacturing sectors (20.3% increase) for materials/components of electric appliances or electronics, but also services sectors (62.3% increase), such as finance and insurance, wholesale and retail.<sup>44</sup>

In Korea's case, by the end of 2010 Korea's FDI in China amounted to US\$44.8 billion, and 75.5% of total FDI was concentrated in manufacturing sectors. The proportion of non-manufacturing sectors, which accounted for 19.4% in 2006, continued to increase to 29.5% in 2010. Major services sectors are finance and insurance, distribution and construction services. Korea's FDI in Japan, by the end of 2010, amounted to US\$3.9 billion and 86.8% of the FDI was in the services sectors including real estate, distribution, transportation and warehousing services.

## **2. Legal Framework for Foreign Investment in the Three Countries**

### **2.1 China**

During the past three decades, the Chinese government has gradually set up a comprehensive and transparent legal framework on foreign investment, which has particularly improved since China's accession to the WTO. FDI in China falls into three major categories which are Chinese foreign equity joint ventures, Chinese foreign contractual joint ventures and wholly foreign-owned enterprises. The detailed industry policies on FDI are mainly represented in the Industrial Catalogue for Guidance of Foreign Investment. According to the Catalogue, foreign invested projects in China should be divided into those that are to be encouraged, restricted and forbidden. Projects not within these lists are foreign investments projects of the permitted category. Through timely and proper amendment of the Catalogue, China tries to actively and rationally direct the foreign investment flows, aiming to improve the level of opening up and the quality of foreign investment utilization.

At present, foreign invested projects in China are required verification by the central or local government in accordance with the investment category and value. Continuing

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<sup>43</sup> China Monthly Statistics.

<sup>44</sup> Ministry of Knowledge Economy, Korea.

effort has been made to simplify the verification processes in recent years.

Aiming to guarantee impartial taxation, promote fair competition and create a sound market and investment environment, China realized the unification of taxation of domestic and foreign investment enterprises on December 1, 2010. Meanwhile, China still has implemented various forms of foreign investment promotion policies and activities. For instance, foreign invested projects in advantaged industries in the Central Western region may enjoy preferential policies. The enterprise income tax regarding the incomes of foreign invested enterprises generated from the engagement in agriculture, forestry, husbandry and fisheries, business operations of important public infrastructure, environmental protection, energy and water saving, as well as technologies transfer may be reduced or exempted. Some provincial and local governments have also been making great efforts to improve the investment environment, through establishing foreign investment service centers, economic and technical development areas, and bonded areas, and providing foreign invested enterprises with more facilities and preferential policies in local taxes, research and development (R&D), human resources, usage of land, etc.

## 2.2 Japan

In general terms, Japan has been welcoming foreign capital principally in most industrial sectors. In terms of Japan's legal framework for FDI, the *Foreign Exchange and Foreign Trade Act* stipulates horizontal procedures for inward FDI to Japan, which is fully compatible with OECD rules. The general rule is the *ex post facto* reporting system, meanwhile prior notification is required in a limited number of sectors, namely, in cases of: (i) those pertaining to national security, public order and public safety; or (ii) those pertaining to sectors where there could be "significant adverse effect on the smooth management of the national economy."

Other than the above procedures, sector-specific restrictions on FDI are stipulated in the relevant laws and regulations, such as the *Law concerning Nippon Telegraph and Telephone Corporation*, *Ship Law*, *Mining Law*, *Civil Aeronautics Law*, *Freight Forwarding Business Law*, *Radio Law* or *Broadcast Law*.

The Government of Japan has been promoting inward FDI since the beginning of the 2000s, by providing opportunities for local government officials to meet foreign investors to promote local industries, or establishing relations between public authorities and foreign investors through seminars or visiting programs to Japan.

JETRO, Japan's organization for the promoting of investment, has been supporting FDI to Japan through: (i) provision of information on laws and regulations concerning specific business activities of foreign companies, and (ii) provision of initial services for newcomers,

such as lending office spaces or gathering information on market-research through the Invest Japan Business Support Centers (IBSC) operated by JETRO, located in six cities in major Japanese industrial areas. Some financial incentives have also been available for assisting companies in setting up their new businesses, regional headquarters or R&D facilities.

The Government of Japan adopted the “*New Growth Strategy*” in 2010. It describes Japan’s investment policy for the future to attract foreign companies to establish high value-added businesses in Japan. The plan to provide broader policy options for foreign companies, including more effective incentives which are to be covered by the new legislation, will be developed.

## **2.3 Korea**

Since 1998, followed by the onset of the Asian Financial Crisis, Korea has proactively liberalized its investment regime in order to accelerate Korea’s recovery from the crisis by inducing foreign capital. As a basic law in the investment area, the *Foreign Investment Promotion Act (FIPA)* was enacted in 1998 to ease regulations. The FIPA provides for the protection and liberalization of foreign investment, by stipulating investment procedures, some measures to provide assistance and incentives for foreign investors, designation of Foreign Investment Zones, etc.

The procedures to establish a foreign investment consist of foreign investment notification, remittance of the investment capital, registration of the incorporation and business registration, and the FDI company registration. The procedures applied to foreigners are basically the same as those applied to Koreans except for two steps, that is, foreign investment notification and FDI company registration. However, in the case of registration as a private business, the step of registration of the incorporation is not required.

A Foreign Investment Zone can be designated to attract foreign investments. Businesses that are located in the area shall be provided with incentives. The zone is largely divided into two types: complex and stand-alone. The complex-type foreign investment areas refer to sites of national or local industrial complexes that have been pre-designated for lease or sale, for the purpose of attracting small- and medium-sized foreign-invested companies. In practice, these sites are for lease. On the other hand, the stand-alone type foreign investment zones are designated in sites for individual businesses of foreign-invested companies based on the consideration of the investor’s requests in region, timing, incentives, etc., for the purpose of attracting large-size investments.

In 2003, the Korean Government also established “Invest Korea (IK)”, Korea’s national investment promotion agency, established within the Korea Trade-Investment Promotion Agency (KOTRA), with the sole purpose of supporting the entry and successful establishment of foreign businesses in Korea. With assistance extending to comprehensive

post-establishment services, IK helps foreign corporations materialize their rapid settlement in Korea.

### **3. Major Constraints on Investment in Partner Countries**

#### **3.1 China**

China outlines its specific foreign investment objectives primarily through the Catalogue for the *Guidance of Foreign Investment Industries (CIGF)*. Foreign-invested projects that fall into one of the following categories are restricted: projects that have been well developed domestically or well introduced technology from outside and already acquired a production capacity well satisfying domestic demand; projects that are still under experiments by the State for the absorption of foreign investment or are under monopoly of the State for franchise; projects that involve prospecting and exploiting rare and precious mineral deposits; projects that involve industries of the State unified planning; and other projects that are restricted by the State laws and administrative regulations.

Foreign investment is prohibited for projects that fall into one of the following categories: projects that endanger the country's security or social and public interest; projects that would cause environmental pollution or bring harm to natural resources and human health; projects that have to occupy large tracts of farm land, are harmful to environmental protection and development of land resources, and/or endanger the security of military facilities and their effective use; projects that have to use China's own special craftsmanship or indigenous skill for production; and other projects which are banned by the State law and administrative regulations.

#### **3.2 Japan**

Under the *Foreign Exchange and Foreign Trade Act*, the general rule is the *ex post facto* reporting system. On the other hand, prior notification is required for investments in industries which (i) pertain to national security, public order and public safety; or (ii) could have "significant adverse effect on the smooth management of the national economy". The former category of notifications is consistent with Article 3 of the OECD Code of Liberalization of Capital Movements (the Code). The latter category is to safeguard the national economy and is lodged in accordance with Article 2b of the Code. The *Foreign Exchange and Foreign Trade Act* stipulates that the latter category is strictly limited to such sectors as agriculture, forestry, fisheries, mining, crude oil, leather and leather products, air and maritime transport, and telecommunications sector. If the investment falls under certain circumstances provided under the *Foreign Exchange and Foreign Trade Act* (such as jeopardizing national security), the Minister of Finance and minister having jurisdiction may recommend and order change or discontinuation of the inward direct investment after hearing



opinions of the Council on Customs, Tariff, Foreign Exchange and other Transactions.

As is described in 2.2., sector-specific restrictions on FDI are stipulated in such laws as the *Law concerning Nippon Telegraph and Telephone Corporation*, *Ship Law*, *Mining Law*, *Civil Aeronautics Law*, *Freight Forwarding Business Law*, *Radio Law* and *Broadcast Law*.

### **3.3 Korea**

Korea has liberalized its service sectors based on a negative list approach since the *FIPA* was introduced in 1998. In accordance with the Act, the Korean government annually announces the so-called “consolidated public notice for foreign investment,” a list of sectors in which foreign investment is restricted or prohibited. As Korea takes a negative list approach in its domestic laws relating to foreign investment, service sectors that are not explicitly excluded from it are open to foreign investment.

Out of a total of 1,145 categories under the Korean Standard Industrial Classification, the *FIPA* protects 62 categories including public administration, diplomacy, national defense, etc., from foreign investment (protected categories). Although foreigners may invest in all of the 1,083 investment categories, 28 categories have restrictions on the foreign investment ratio (restricted categories).

### **3.4 Concerns Raised by Investors**

Although China, Japan and Korea generally hold a welcoming attitude towards foreign investment and have been making continuous efforts in promoting investment liberalization and facilitation, the JSC was informed of various concerns which investors in the three countries regard as constraints, including but not limited to restrictions on the ratio of foreign ownership of a company, remittance of foreign currency, procedures for visa application, technology transfer contracts, liquidation of companies, as well as performance requirements including those on local contents, and technology transfer and R&D.

Understanding the fact that countries have the right to regulate the mode and flow direction of foreign investment in their territories, the three countries expect that the existing constraints on foreign investment could be reduced or adjusted in a feasible and efficient manner, while taking into full account the national security, social and public benefits, and the interests of investors.

## **4. Investment Rules in Previous FTAs/EPAs and BITs of the Three Countries**

### **4.1 China**

China has signed FTAs that contain a separate investment chapter with ASEAN, Pakistan, New Zealand, Singapore, Peru and Costa Rica. The main articles of the investment chapter usually include definition, scope and coverage, investment treatment, investment protection and promotion, expropriation, compensation for losses, transfers, subrogation, dispute settlement between parties, and investment dispute settlement between a party and investor of any other party. All these FTA agreements state that each party should accord to investments of investors of another party fair and equitable treatment and full protection and security. National treatment (NT) and most-favoured-nation treatment (MFN) are also to be given to each other.

The China-Singapore FTA states that the provisions of the ASEAN-China Investment Agreement were incorporated into and formed an integral part of the bilateral FTA. For greater certainty, any rights, obligations, restrictions or exceptions contained in the ASEAN-China Investment Agreement that do not relate to either party shall accordingly be inapplicable under the China-Singapore FTA. In the event of any inconsistency between the ASEAN-China Investment Agreement and the China-Singapore FTA, the provisions of the latter shall prevail.

China concluded the Investment Encouragement and Reciprocal Protection Agreement with Japan and the Investment Promotion and Protection Agreement with Korea in 1988 and 1992 respectively. The China-Korea Investment Promotion and Protection Agreement was amended in September 2007. Under these agreements, investment protection mainly covers direct and indirect expropriation, compensation for damages and losses, transfers, dispute settlement between investors and contracting parties, transparency, performance requirements, etc.<sup>45</sup>

## **4.2 Japan**

Japan has pursued a high-level of liberalization and protection of investment, as well as promotion. Most of Japan's recent EPAs/BITs contain a wide range of substantive and procedural commitments for liberalization, promotion and protection of foreign investments, which were embodied in the following provisions;

- NT and MFN covering both post- and pre-establishment phases,
- prohibition of performance requirements (PR) beyond the WTO Agreement on Trade-Related Investment Measures (TRIMs),
- reservations of NT, MFN and prohibition of PR are arranged in a negative list approach with standstill and ratchet obligations,
- transparency which ensures legal predictability and stability with regard to investment-related measures,
- freedom of transfer,

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45 The Japan-China BIT does not have transparency and performance requirements provisions.

- ◆ investor-state dispute settlement (ISDS) procedures including international arbitration, and
- ◆ comprehensive coverage including investment in service sectors.

In addition to the above, from Japan's point of view, other substantive commitments, such as fair and equitable treatment, or the so-called umbrella clause, are equally essential to investment rules.

## **4.3 Korea**

### **4.3.1 Korea's Basic Position on the Investment Agreement**

In Korea's previous FTA negotiations on investment chapters, Korea's objectives were to facilitate foreign investment flows between the FTA partners and to improve the investment environment for business persons entering and operating in the host country.

In order to achieve such policy objectives, Korea would like to conclude a high quality investment agreement, which includes core provisions of investment agreements, such as obligations of NT, MFN, prohibition of PR and nationality requirements for senior management and boards of directors, transfers, safeguard measures, expropriation and compensation, compensation for losses, minimum standard of treatment, and ISDS.

### **4.3.2 Investment Chapters in Korea's FTAs**

All of the FTAs that Korea has concluded include separate investment chapters containing both liberalization and protection elements. Exceptionally, the Korea-ASEAN FTA Investment Agreement stipulates a provision obligating both parties to conclude negotiations on the reservations lists within five years from the date of the entry into force of the Agreement, and the Korea-EU FTA does not include protection-related provisions since the EU Commission has no authority to deal with investment protection issues. Instead, the Korea-EU FTA stipulates an article on review of the legal framework for investment on a regular basis.

Among the aforementioned FTAs, Korea considers the Korea-US FTA (signed in June 2007) as a model in the area of investment. The investment chapter of the Korea-US FTA comprises three sections and annexes.

Section A stipulates rights of foreign investors of the other party and obligations of the host country government such as NT, MFN, minimum standards of treatment, expropriation and compensation, transfers, prohibition of PR and nationality requirements for senior management and boards of directors, and exceptions. Section B prescribes ISDS procedures in cases where such obligations and investment agreements have been violated. Section C

stipulates the definitions. The annexes cover exceptional cases or concretize the aforementioned sections. For example, there are annexes on customary international law, expropriation, transfers, etc.

## **5. Overall Impacts of a Future CJK FTA on Investment**

With a comprehensive CJK FTA, which focuses on enhancing market access by eliminating restrictions against foreign investment in an appropriate manner, more active trade and investment in Northeast Asia would ensue. Liberalization of investment would also enable investors to mobilize their resources for further development in this region, thus leading to a mutually beneficial cooperative partnership among the three countries in the future.

Considering the above benefits of a possible CJK FTA in the investment area, a future CJK FTA would result in greater transparency of investment regulations and laws, a more stable policy framework and more liberalized regimes for foreign investors, which would provide an improved investment environment for businesses of the three countries. All three countries would benefit from an increase in trilateral investment flows, the exchange and transfer of knowledge, technology, ideas, and business personnel, and export opportunities accompanied by increased investments. Furthermore, a future CJK FTA would be expected to promote trilateral investment not only by strengthening investor confidence, but also by positively affecting market perceptions and lead to increased investor interests in new business opportunities in the partner countries. In the long run, more integrated markets forged by a CJK FTA could improve the competitive capacity of enterprises, the efficient distribution and utilization of resources, and further promote investment among the three countries.

## **6. Suggestions for a Future CJK FTA**

The JSC has confirmed that a possible CJK FTA should be an effective vehicle to facilitate three-way investment flows and to reinforce protection of investors and investments among the three countries. The Joint Study shows that close investment linkages have already been formed among China, Japan and Korea. A future CJK FTA is expected to further promote trilateral investment. In this regard, the JSC reaffirms that a future CJK FTA's investment chapter should include elements such as NT, MFN, prohibition of PR and nationality requirements for senior management and boards of directors, transfers, safeguard measures, expropriation and compensation, compensation for losses, fair and equitable treatment, and ISDS, and any other elements which may be agreed among the three countries.

In view of assuring a high level of investment liberalization and protection, Japan and

Korea emphasized with regard to the above elements that it is essential to include NT and MFN at the pre- and post-establishment phases, ISDS procedures for a wide range of scope, prohibition of PR beyond the TRIMs level, a negative list approach integrated with the services chapter, and any other facilitating elements in a future CJK FTA. With respect to the scope and coverage, Japan and Korea proposed that the investment chapter of a CJK FTA should cover all industry sectors, including services sectors, and measures adopted or maintained not only by central governments but also by regional and local governments. Japan and Korea further suggested that a future CJK FTA's investment chapter should surpass the level of then existing BITs among the three countries including the CJK trilateral investment agreement.

China suggested that a possible CJK FTA should look for an investment chapter which would provide better protection, greater transparency and a more effective dispute resolution mechanism, and any other facilitation and promotion elements which could further promote intra-investment flow, including information exchange on investment opportunities and information sharing on laws and regulations in the field of investment. China also emphasized that investment promotion and liberalization depend much more on the specific needs of individual countries, their state of economic and legal maturity, and their own development strategies. In future negotiations on the investment chapter, more flexibility should be given to China for adaption and modification in its liberalization process. China further stressed that the scope and coverage of the investment chapter should be discussed at the negotiation stage being consistent with TRIMs, including possible approaches adopted for the negotiations.

Japan stressed that the three countries should conclude as soon as possible the trilateral investment agreement which is being negotiated but far less ambitious in its substance than what the investment chapter of a CJK FTA is expected to be and should then launch negotiations on the investment chapter of a CJK FTA in terms of a high level of investment liberalization, building on the concluded trilateral investment agreement.

The JSC suggests that the three countries should continue to discuss matters and interests raised by the parties to this Joint Study or opinions presented in this chapter of the JSC report with a view to creating a common ground for future CJK FTA negotiations.

## **VI. Other Issues**

### **1. Technical Barriers to Trade (TBT)**

#### **1.1 Overview**

As WTO members, China, Japan and Korea prepare, adopt and apply technical regulations, standards and conformity assessment procedures<sup>46</sup> in compliance with the rights and obligations under the WTO/TBT Agreement, though they have different domestic administration systems. Under the framework of the WTO, the three countries keep close communication on their concerns and frequently exchange views on relevant issues in the WTO/TBT Committee. The three countries have enhanced bilateral cooperation through such means as information exchange and dialogues. In some of the FTAs signed with other trade partners, the three countries have reaffirmed the rights and obligations under the WTO/TBT Agreement and have established committees or other consultative mechanisms as communication channels on TBT measures.

##### **1.1.1 Overview of Domestic Administration System**

###### ***China***

The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), together with the Certification and Accreditation Administration of the People's Republic of China (CNCA) and the Standardization Administration of the People's Republic of China (SAC), is in charge of quality, metrology, entry-exit commodities inspection, certification, accreditation and standardization.

China carries out inspection on import and export commodities, as well as compulsory certification for some products (now including 22 categories) according to relevant laws. AQSIQ is responsible for formulating, adjusting, promulgating and implementing the catalog of import and export commodities subject to mandatory inspection (hereinafter referred to as "the Catalog"). AQSIQ carries out mandatory inspection of import and export commodities in the Catalog and exercises random inspection on those beyond the Catalog; and carries out export commodity registration for key exports in the Catalog which may pose risk to personal

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46 In order to avoid long, repetitive expressions in this section, "TBT measures", "TBT issues" and "TBT affairs" are used. In this text, the term "TBT measures" refers to technical regulations, standards and conformity assessment procedures, while the terms "TBT issues" and "TBT affairs" mean issues and affairs relating to technical regulations, standards and conformity assessment procedures. It should be noted, however, that the long expression "technical regulations, standards and conformity assessment procedures" may be used if it seems more appropriate in the context.

and property safety and human health. CNCA is responsible for organizing the implementation of China Compulsory Certification (CCC) system, and promoting voluntary certification. SAC undertakes unified management of formulating and promulgating national standards. China encourages the adoption of international standards.

Other government departments related to TBT measures include the Ministry of Commerce (MOFCOM), the Ministry of Public Security, the Ministry of Industry and Information Technology (MIIT), the Ministry of Health (MOH), the Ministry of Environmental Protection (MOEP), and the State Food and Drug Administration (SFDA). The following table shows some of the major laws and regulations related to TBT measures and the relevant responsible government bodies.

Laws and Regulations	Relevant Government Bodies
<i>The Law on Import and Export Commodity Inspection, the Regulations for the Implementation of the Law on Import and Export Commodity Inspection</i>	AQSIQ
<i>The Law on Food Safety, the Regulations for the Implementation of the Law on Food Safety</i>	MOH, AQSIQ, SFDA
<i>The Law on Product Quality</i>	AQSIQ
<i>The Law on the Prevention and Control of Environmental Pollution by Solid Waste</i>	MOEP
<i>The Standardization Law, the Regulations for the Implementation of the Standardization Law</i>	AQSIQ, SAC
<i>The Drug Administration Law, the Regulations for the Implementation of the Drug Administration Law, the Regulations on Supervision and Management to Medical Instruments</i>	SFDA
<i>The Regulations on Certification and Accreditation</i>	AQSIQ, CNCA
<i>The Telecommunications Regulations</i>	MIIT

The MOFCOM is China's WTO/TBT notification authority, and the TBT National Enquiry Point is located in the AQSIQ.

### ***Japan***

In Japan, a number of government bodies are responsible for TBT-related affairs. Those relevant authorities, including the Ministry of Internal Affairs and Communications (MIC), the Ministry of Health, Labour and Welfare (MHLW), the Ministry of Agriculture, Forestry and Fisheries (MAFF), the Ministry of Economy, Trade and Industry (METI), and the Ministry of Land, Infrastructure, Transport and Tourism (MLIT), are responsible for establishing and applying regulations.

Technical regulations are established, amended or abolished through procedures as required

by relevant laws and the *Administrative Procedure Act*. These procedures include deliberations of relevant Councils, consultation with the industries concerned and the public, regulatory impact assessment, and notifications to the WTO for comments or questions by WTO member countries. The regulations adopted are promulgated by the official gazette and most of them are available on the websites of authorities concerned.

With regard to national standardization, the *Law Concerning Standardization and Proper Labeling of Agricultural and Forestry Products (JAS Law)* and the *Industrial Standardization Law (JIS Law)* are relevant. Based on these laws, the Japan Agricultural Standards (JAS) and the Japan Industrial Standards (JIS) are established as national standards. Regarding the relationship between international standards and national standards, the JAS Law stipulates that, in order to establish or revise JAS standards, international standards (such as Codex) must be “taken into account”; accordingly, relevant parts of international standards are referred to as a basis for establishing or revising JAS. Also, Japan has been aligning the JIS to international standards if corresponding international standards exist, with a view to ensuring compliance with the TBT Agreement. Consequently, 96 % of the JIS are equivalent to international standards.

The following table shows some of the main laws relating to TBT measures and some relevant government bodies that are responsible for administering the laws.

Laws	Relevant Government Bodies
<i>Fire Service Law, Radio Law, Telecommunications Business Law</i>	MIC
<i>Industrial Safety and Health Law</i>	MHLW
<i>Food Sanitation Law</i>	MHLW, Consumer Affairs Agency(CAA)
<i>Pharmaceutical Affairs Law</i>	MHLW, MAFF
<i>Law concerning Examination and Regulation of Chemical Substances and Regulation of their Manufacture</i>	MHLW, METI, Ministry of Environment
<i>Fertilizer Control Law, Law concerning the Safety Assurance and Quality Improvement of Feed</i>	MAFF
<i>Law Concerning Standardization and Proper Labeling of Agricultural and Forestry Products (JAS Law)</i>	MAFF, CAA
<i>Electrical Appliance and Material Safety Law</i>	METI
<i>Consumer Product Safety Law</i>	METI,CAA
<i>Rational Use of Energy Law</i>	METI, MLIT
<i>Road Vehicle Law</i>	MLIT
<i>Industrial Standardization Law(JIS Law) (as a law for</i>	METI



voluntary standards as described above)	
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Japan's enquiry points under the WTO/TBT Agreement are the Standards Information Service within the International Trade Division of the Ministry of Foreign Affairs, and the Standards Information Service within the Information Service Department of the Japan External Trade Organization (JETRO). The Ministry of Foreign Affairs is Japan's notification authority under the WTO/TBT Agreement.

### ***Korea***

The *Framework Act on National Standards*, first enacted in 1999, is the overarching legal basis for Korea's TBT measures. It stipulates that the Government shall endeavor to harmonize national standards with international standards. Accordingly, regulatory authorities in Korea are to adopt, where possible, international standards when setting up or modifying national standards.

The Act established the Committee for Deliberation on National Standards. The Committee, chaired by the Minister of Knowledge Economy (MKE), is in charge of harmonization between domestic and international standards, deliberation of a National Standards Basis Plan and coordination of national standards.

The Korean Industrial Standards (KSs), set by the Korean Agency for Technology and Standards (KATS), are the most notable voluntary standards of Korea. The legal basis of the KSs is the *Industrial Standardization Act*, first enacted in 1961 and most recently revised in 2010. It is widely believed that KSs have contributed to enhancing industrial efficiency and developing the economy. KSs have been a useful industrial policy tool for promoting fair trade practices and protecting consumer rights.

Responsibility for TBT affairs is diversified over several ministries and other government bodies. KATS, established under MKE, sets, administers, and disseminates KSs. Responsibility for food safety, pharmaceuticals and cosmetics rests with the Ministry of Health and Welfare (MOHW) and its agency, the Korea Food and Drug Administration (KFDA). Agricultural and fishery products are handled by the Ministry for Food, Agriculture, Forestry and Fisheries (MIFAFF). The Ministry of Environment (ME) addresses environmental issues. The Korea Communications Commission (KCC) is in charge of telecommunications devices. The following table shows some of the major acts related to TBT measures and the ministries and government bodies that are responsible for administering the acts.

Acts	Relevant Government Bodies
<i>Framework Act on National Standards, Industrial Standardization Act</i>	KATS

<i>Electrical Appliances Safety Control Act, Quality Control and Safety Management of Industrial Products Act</i>	
<i>Energy Use Rationalization Act, High-Pressure Gas Safety Control Act, Safety Control and Business of Liquefied Petroleum Gas Act, Act on The Promotion of The Development, Use And Diffusion of New And Renewable Energy</i>	MKE
<i>Pharmaceutical Affairs Act, Medical Devices Act, Food Sanitation Act, Cosmetic Act</i>	MOHW and KFDA
<i>Environment-Friendly Agriculture Fosterage Act, Agricultural Product Quality Control Act</i>	MIFAFF
<i>Clean Air Conservation Act, Act on The Promotion of Saving and Recycling of Resources</i>	ME
<i>Radio Waves Act, Framework Act on Telecommunications</i>	KCC
<i>Automobile Management Act</i>	MLTM

The WTO/TBT notification authority for Korea is the Ministry of Foreign Affairs and Trade (MOFAT). KATS, MIFFAF and MOHW are official WTO enquiry points.

### **1.1.2 Provisions in Existing Bilateral Agreements**

#### ***China***

China has developed cooperation in relevant fields with its trade partners under the framework of the WTO/TBT Agreement. Up to now China has signed seven FTAs respectively with Chile, Pakistan, New Zealand, Costa Rica, Singapore, ASEAN and Peru. All of these FTAs have a TBT chapter. Specific provisions include objectives and scope, reaffirmation of the rights and obligations under the WTO/TBT Agreement, competent authorities, transparency, fields of cooperation, equivalence, regionalization and technical assistance.

#### ***Japan***

Japan has 12 EPAs already entered into force, and 10 of them include a chapter on technical regulations, standards and conformity assessment procedures or a chapter or section on mutual recognition (MRA). EPAs with Mexico, Malaysia, Chile, ASEAN, Viet Nam, Switzerland and India have a chapter or section on technical regulations, standards and conformity assessment procedures. The main elements of their provisions are reaffirmation of the rights and obligations under the WTO/TBT Agreement, establishment of a consultative mechanism and the non-application of the dispute settlement procedures. Some chapters include articles on technical regulations, acceptance of results of conformity assessment procedures, and mutual recognition arrangements. EPAs with Singapore, the Philippines and

Thailand have a chapter on MRA.

### ***Korea***

Korea has now seven FTAs which have entered into force: those with Chile, Singapore, EFTA, ASEAN, India, the EU and Peru. The Korea-US FTA (KORUS FTA) has been signed. Most of Korea's FTAs have a TBT chapter. The main elements of the TBT chapter are reaffirmation of the WTO/TBT Agreement, scope and definitions, transparency, technical cooperation, TBT committee (or TBT coordinator), conformity assessment and mutual recognition.

### **1.1.3 Current TBT Cooperation**

#### **Trilateral Cooperation**

China, Japan and Korea have established a mechanism for information exchange, cooperation and consultation in standardization, metrology and other fields, and signed China-Japan-Korea Joint Statement on Standards Cooperation in 2010. In the Joint Statement, the three countries have committed to strengthen trilateral cooperation on standards, promoting international standardization and coordination in standards in Northeast Asia.

#### **Bilateral Cooperation**

The three countries have also established mechanisms for information exchange, cooperation and consultation on TBT measures in a bilateral way, which can help properly address the product quality problems during the trading process, and strengthen information exchange and cooperation in standardization, conformity assessment and product quality management, as well as promote further development of bilateral relationships.

A possible CJK FTA may take into account the existing arrangements among the three countries relating to TBT issues.

### **1.1.4 Strengthening Cooperation on TBT Issues**

The significance of technical barriers to trade has increased considerably over the past years, as tariffs steadily declined and governments worldwide introduced more and more regulatory requirements to address, inter alia, health, safety or environmental concerns. To eliminate the unnecessary obstacles to trade, in addition to reaffirmation of rights and obligations under the WTO/TBT Agreement, the three countries could strengthen cooperation by attaching importance to (i) increasing transparency, (ii) consultative mechanisms such as working groups and committees, (iii) technical cooperation, (iv) information exchange, etc.

## **1.2 Suggestions for a Future CJK FTA**

In a possible CJK FTA, China, Japan and Korea will have opportunities to strengthen cooperation on TBT issues.

A possible CJK FTA will help to realize the following goals:

- To promote the trilateral trade in goods and avoid and eliminate unnecessary barriers to trade resulting from developing, adopting and implementing technical regulations, standards and conformity assessment procedures;
- To promote information exchange among relevant government departments, and enhance transparency in the fields of technical regulations, standards and conformity assessment and understanding of relevant administration systems;
- To promote cooperation in the fields of technical regulations, standards and conformity assessment; and
- To properly handle TBT issues among the three countries through cooperation and consultation.

## **2. Sanitary and Phytosanitary Measures (SPS)**

### **2.1 Overview**

As WTO members, China, Japan and Korea have rights to adopt and enforce sanitary and phytosanitary measures (SPS) necessary to protect human, animal or plant life or health while minimizing the negative trade effects. China, Japan and Korea apply SPS measures in compliance with the WTO/SPS Agreement while their SPS management systems are slightly different. All three countries are active participants in the WTO/SPS Committee, and keep a close communication on their mutual and common concerns.

China, Japan and Korea have established mechanisms for trilateral and bilateral cooperation and consultation on SPS issues, which can help to deal with a number of issues, such as food safety, inspection and quarantine, arising from trade among the three countries. These mechanisms also play important roles in helping to maintain and promote development of the trilateral and bilateral relationship among the three countries in a healthy manner.

In some of the FTAs concluded with other trade partners, the three countries have reaffirmed the rights and obligations under the WTO/SPS Agreement and have established committees or other consultative mechanisms or fora as communication channels on SPS issues.

#### **2.1.1 Overview of SPS Administration System**

##### ***China***

The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) of the People's Republic of China is in charge of entry-exit animal and plant quarantine and supervision of imported and exported food safety.

Other agencies involved in SPS affairs include the Ministry of Agriculture, the Ministry of Health (MOH), the State Administration of Traditional Chinese Medicine, the State Food and Drug Administration (SFDA), the State Forestry Administration, etc.

Based on risk analysis, AQSIQ, together with other ministries, drafts, adopts and implements SPS measures, establishes requirements for entry-exit inspection and quarantine, and negotiates with competent government authorities of trade partners on SPS issues with regard to information exchange, technical cooperation, and market access of specific products.

China's laws and regulations related to SPS include: the *Law of the People's Republic of China on Entry and Exit Animal and Plant Quarantine*; the *Regulations for the Implementation of the Law of the People's Republic of China on Entry and Exit Animal and*

*Plant Quarantine; the Food Safety Law of the People's Republic of China; the Regulations for the Implementation of the Food Safety Law of the People's Republic of China; and other relevant laws and regulations.*

China's WTO notification authority for SPS measures is the Ministry of Commerce (MOFCOM). The SPS enquiry point is located in AQSIQ.

### ***Japan***

In Japan, the Ministry of Health, Labour and Welfare (MHLW) and the Ministry of Agriculture, Forestry and Fisheries (MAFF) are risk managers for SPS issues. In addition, the Food Safety Commission conducts assessments of food safety by official requests from the risk managers or on its own initiatives.

The MAFF is responsible for the food chain approach for food safety, plant health and animal health within the framework of several legislations including the *Plant Protection Law* and the *Domestic Animal Infectious Diseases Control Law*; the MHLW is responsible for final product specification for food safety within the framework of the *Food Sanitation Law*.

Japan's WTO/SPS enquiry point and notification authority is the Ministry of Foreign Affairs (MOFA) (e-mail: enquiry@mofa.go.jp).

### ***Korea***

Korea's SPS-related affairs are basically dealt with by four major governmental bodies: the Ministry for Food, Agriculture, Forestry and Fisheries (MFAFF), the Ministry of Health and Welfare (MOHW), the Korea Food and Drug Administration (KFDA) and the Animal, Plant and Fisheries Quarantine and Inspection Agency (QIA).

The MFAFF is responsible for the health and safety of animals, plants, fisheries and their products. The MOHW is in charge of establishing laws, regulations and policies for safety on food, food additives, health functional food, apparatus and containers or packages. The KFDA is in charge of establishing policies and specific regulations on food safety as well as standards and specifications for food, food additives, health functional food, apparatus and containers or packages, inspecting imported food products, and monitoring their quality control in the market. The QIA is in charge of quarantine and inspection of animals, plants, fisheries and their products as well as research on related diseases.

Korea's laws and regulations on SPS issues include the *Contagious Animal Diseases Prevention Act*, the *Livestock Products Sanitary Control Act*, the *Plant Protection Act*, the *Food Sanitation Act*, and the *Health Functional Food Act*, etc.

Korea's WTO notification authority for SPS measures is the Ministry of Foreign Affairs and Trade (MOFAT). Korea's official WTO enquiry points are the MFAFF (for animals, plants, fisheries and related products) and the MOHW and the KFDA (for food safety).

### **2.1.2 Provisions of SPS in Existing Bilateral Trade Agreements**

#### ***China***

China has developed cooperation in relevant areas with its trade partners under the framework of the WTO/SPS Agreement. Up to now China has signed seven FTAs respectively with Chile, Pakistan, New Zealand, Costa Rica, Singapore, ASEAN and Peru. All these FTAs have an SPS chapter. Specific provisions include objectives and scope, reaffirmation of the rights and obligations under the WTO/SPS Agreement, competent authorities, transparency, fields of cooperation, equivalence, regionalization and technical assistance.

#### ***Japan***

Japan's basic position is that, as the WTO/SPS Agreement provides basic and essential principles on SPS measures, any discrepancy between SPS-related texts in EPAs and the WTO/SPS Agreement should be avoided. As a result, not all of Japan's existing EPAs have an SPS chapter, but this does not mean to undermine the importance of SPS measures. Whenever an SPS chapter is included in the existing EPAs, the text is concise and contains only several simple provisions in compliance with the WTO/SPS Agreement.

The existing SPS texts include:

- (i) Scope of the text covering SPS measures as defined in the WTO/SPS Agreement;
- (ii) Reaffirmation of the rights and obligations under the WTO/SPS Agreement;
- (iii) Designation of enquiry points to facilitate exchange of information; and
- (iv) Non-application of dispute settlement procedures in EPAs.

#### ***Korea***

Today, Korea has seven FTAs in effect: those with Chile, Singapore, EFTA, ASEAN, India, the EU and Peru. The Korea-US FTA (KORUS FTA) has been signed. Korea and its FTA partners share the view that the WTO/SPS Agreement fully reflects the rights and obligations of WTO members with regard to SPS measures, and thus Korea's FTA/SPS texts are clear and concise. The texts include scope, objectives, reaffirmation of the rights and obligations under the WTO/SPS Agreement, communication channels and non-application of FTA dispute settlement procedures.

## **2.2 Suggestions for a Future CJK FTA**

In a possible CJK FTA, China, Japan and Korea will have opportunities to further strengthen cooperation on SPS issues, giving due consideration to the existing trilateral and bilateral arrangements or cooperative framework among the three countries. The cooperation among the three countries will help to realize the following goals:

- To protect human, animal or plant life or health while avoiding and eliminating unnecessary barriers to trade among the three countries;
- To strengthen the understanding of relevant SPS measures and management systems;
- To enhance the implementation of the WTO/SPS Agreement, taking into account relevant international standards, guidelines and recommendations developed by the relevant international organizations;
- To properly handle SPS issues of common interest that may directly or indirectly affect trade among the three countries through consultation and cooperation based on scientific principles as well as relevant scientific evidence; and
- To contribute to the sound development of trade among the three countries and smooth implementation of a possible CJK FTA, based on the principles of the WTO/SPS Agreement.



### 3. Intellectual Property Rights

The protection and enforcement of intellectual property rights (IPR) should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. The establishment and maintenance of effective IPR regimes provides incentives to innovate and to disseminate ideas and information. IPR also help to create an attractive environment for investment and technology transfer. Their importance will continue to grow as the global knowledge economy evolves.

#### 3.1 Current Situation and Policies

##### *China*

China regards the protection of IPR as an important component of its reform and opening-up policies as well as legal construction. With years of development, China has been gradually improving its system of laws and regulations on intellectual property (IP) and constantly strengthening the enforcement level. Meanwhile, the IP quantity has increased rapidly and their performance has constantly improved. Market entities have also made steady progress in improvement of their capacity to utilize IP. The establishment and implementation of the IP system have helped standardize China's market order, stimulated inventions and cultural creations, promoted China's opening up and importation of knowledge resources, and played an important role in China's economic and social development.

Since the 1980s, China has promulgated and amended dozens of laws and regulations for IPR protection including, *inter alia*, the *Trademark Law* (1982, amended in 2001), the *Patent Law* (1984, amended in 1992, 2000 and 2008), the *Copyright Law* (1990, amended in 2001), the *Regulations for Protection of Computer Software* (1991, amended in 2002), the *Regulations on the Protection of New Varieties of Plants* (1997), the *Customs Regulations for Protection of IPR* (1995, amended in 2003 and 2010), and the *Judicial Interpretation for Implementing the Criminal Law on Anti-IPR Crimes* (2004).

In addition to improvement of the legislative framework, administrative measures have also been strengthened in China's IPR regime. The Chinese government has devoted a huge amount of manpower and material resources to IPR enforcement in cracking down severely on counterfeiting and pirating, and has attained remarkable results.

With the approval of the State Council, China launched a special campaign on fighting against infringing IP and manufacturing and selling counterfeiting and shoddy commodities, which lasted from October 2010 to June 2011. During the special campaign, effective

measures were adopted to investigate and address batches of major cases of both IPR infringement and counterfeiting which have attracted high attention both at home and abroad. Efforts have also been made to guide enterprises and individuals to run their businesses upon credibility and help consumers improve abilities to identify pirated and counterfeited products, so as to create a sound social environment for IPR protection. Enforcement efforts and both administrative and judicial means have been strengthened to improve IPR protection and market supervision in various localities and agencies in an all-round manner.

Considering the highly technical nature and special expertise involved in handling IPR cases, China has begun since 1992 to set up IPR Trial Chambers or Tribunals within the Supreme People's Court and the local people's courts at different levels. So far, all of the 31 provincial people's courts of China have established IPR courts. The basic task of IPR courts is to protect the legal rights of the IP owner, in order to push forward the progress of science and technology as well as culture and art, following the principle of basing decisions upon facts and taking the law as the key criterion.

For the purpose of improving China's capacity to create, utilize, protect and administer IP and making China an innovative country, the State Council of China issued the *Outline of the National Intellectual Property Strategy* in 2008. Taking the high position of programming China's IP development at the national level, the Outline has summarized China's current situations and challenges, determined guiding principles, clarified strategic emphases and key measures, and put forward the grand goal of building China into a nation with a high level of IP creation, utilization, protection and administration by the year 2020. The strategic measures listed in the Outline include increasing the capacity to create IP, encouraging the commercialization and utilization of IPR, expediting the development of the legal system for IP, improving IP law enforcement, strengthening the administration of IP, developing intermediary services for IPR, developing IP human resources, promoting the cultivation of an IP culture, and expanding international exchange and cooperation in IP.<sup>47</sup>

## ***Japan***

For Japan, IP has been of critical importance in its social and economic development. In recent years Japan has renewed and further strengthened its commitment to an adequate and effective protection of IP, based on a belief that a strategic approach that embraces both protection and exploitation of the fruits from innovations and creative works is vital with a view to enriching the society, energizing the economy and improving the international competitiveness of the industries.

It was in the 1950's that Japan enacted a set of industrial property rights laws, namely, the

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<sup>47</sup> The full English version of the Outline is available at  
[http://english.sipo.gov.cn/laws/developing/200906/t20090616\\_465239.html](http://english.sipo.gov.cn/laws/developing/200906/t20090616_465239.html).

*Patent Act* (1959), the *Utility Model Act* (1959), the *Design Act* (1959) and the *Trademark Act* (1959). Together with other IP laws such as the *Copyright Act* (1970), the *Act on the Circuit Layout of Semiconductor Integrated Circuits* (1985), the *Unfair Competition Prevention Act* (1993) and the *Plant Variety Protection and Seed Act* (1998), they constitute Japan's basic legal framework of IP. These laws have gone through a number of revisions to be adapted to the rapidly changing social, economic or industrial needs. Some of the recent amendments include those to the *Patent Act* in 2011, which improved the protection of license agreements and inventors regarding the results of joint researches; to the *Copyright Act* in 2010, designed to facilitate the use of copyrighted works on the Internet while preventing the distribution of pirated works; and to the *Unfair Competition Prevention Act* in 2009 and 2011, which strengthened the criminal penalties in case of infringement of trade secrets, ensured protection of trade secrets in criminal procedures and strengthened the rules on the distribution of devices and programs to circumvent technological restriction measures. Also noteworthy with regard to enhanced enforcement are a series of amendments to the *Customs Act* and the enactment of the *Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers* (2001), among others.

In addition to the legislation that deals with a specific category of IP, Japan is equipped with a comprehensive institutional framework on IP. In 2002, Japan established the Strategic Council on Intellectual Property and enacted the *Intellectual Property Basic Act*, with a view to realizing the concept of "an IT- and knowledge-based society of the 21st century." In the following year the Intellectual Property Strategy Headquarters was created within the Cabinet Office. This organization annually formulates an Intellectual Property Strategic Program, which outlines a variety of measures that the government should take in a planned and focused manner. Furthermore, the Intellectual Property High Court was established in 2005 to ensure more effective and expeditious trial proceedings concerning IP.

At the international level, Japan has been active in promoting dialogues, consultations and cooperation with other countries, concluding EPAs which include the IP chapter, and leading and participating in multilateral discussions. The international cooperation among competent authorities includes mutual utilization of examination results for patents. The IP chapter of EPAs usually encompasses streamlining and harmonization of procedural matters, transparency, broad and high-level protection of various IP and effective enforcement. One notable example of Japan's international initiatives on IP is the Anti-Counterfeiting Trade Agreement (ACTA), which was adopted in April and opened for signature in May 2011, for improved enforcement measures to combat counterfeiting and piracy.

## ***Korea***

Korea believes that the protection of IPR is crucial for enhancing national and corporate competitiveness in the knowledge-based economy. The importance of IPR protection has increased in recent years with the significantly enhanced digitization of the Korean economy.

Korea has strengthened efforts to improve its legal and regulatory framework and provided enforcement mechanisms for IPR protection that are fully in line with global IPR standards.

A comprehensive legal framework for IPR protection has existed in Korea since the late 1940s. The laws and regulations for IPR protection include the *Patent Act*, the *Trademark Act*, the *Copyright Act*, the *Utility Model Act*, the *Unfair Competition Prevention and Trade Secret Protection Law*, the *Industrial Design Protection Act*, the *Act on Layout Designs of Semi-conductor Integrated Circuits*, the *Seed Industry Law*, the *Agricultural Product Quality Control Act*, the *Act on the Investigation of Unfair International Trade Practices* and the *Customs Act*.

Korea's extensive IP policy has been strengthened as the laws and regulations for IPR protection have been amended. One of the key driving forces in amending the laws and regulations is the FTAs of Korea. All areas of IPR protection such as copyrights, trademarks, patents and IPR enforcement are covered in the FTAs Korea has concluded. In the Korea-US FTA and the Korea-EU FTA, the strengthened protection of copyright and related rights is stipulated. Korea extended the term of copyright protection to the life of an author plus an additional 70 years for works. Strong protection for copyright in the digital era is also provided, including the technological protection measures. With regard to trademarks, patents, designs and geographical indications, the standards of protection and enforcement have also been enhanced.

In the area of "enforcement", a concept which includes strengthened civil, administrative and criminal IPR enforcement, the ACTA reflects Korea's stance. As one of the countries that took part in the ACTA negotiations, Korea expects that the ACTA will establish an international framework for enforcement measures to more effectively combat the proliferation of counterfeiting and piracy. Internally, to step up its enforcement measures, Korea has run the Special Judicial Police Squad for copyright or related rights piracy since 2008 and for trademark counterfeiting since 2010. Granted with special judicial police authority, the squad can directly crack down on IPR infringers and refer them to prosecutors for criminal procedures.

On April 29, 2011, the new *Framework Act on Intellectual Property*, which reflects Korea's determination to fully recognize the value of IPR, was passed by the National Assembly of Korea and brought into effect on July 20, 2011. The Act, which serves as an umbrella for IPR laws, aims to establish a system by which the government can implement and promote the basic principles related to IP for creation, protection and utilization of IPR. The Act obliges the Korean government to devise and implement a National Intellectual Property Basic Plan every five years. The plan provides IP policy directions and IPR-related legislative proposals, if any, for rendering the IP legal framework more compliant with the aims and basic principles of the Act.

### **3.2 Suggestions for a Future CJK FTA**

Being parties to the existing international agreements, including the TRIPs Agreement, and members of international agreements concluded under the auspices of the World Intellectual Property Organization (WIPO), China, Japan and Korea share a common understanding on the importance of reinforcing IPR protection as well as enhancing trilateral IPR cooperation under the framework of a future CJK FTA in the following aspects:

- Streamlining IPR administrative procedures and enhancing transparency and access to information in the system for applications, registrations and judicial procedures in terms of IPR protection as well as the enforcement efforts;
- Reaffirming and strengthening cooperative arrangements between respective government agencies, educational institutions and other organizations, in relation to the protection, enforcement and development of IPR;
- Strengthening information and personnel exchanges to facilitate developing a greater understanding of and improving the operation of their respective IP systems, including enforcement and administration;
- Sharing relevant information in order to enhance the effectiveness of border enforcement of IPR; and
- Promoting public awareness of the importance of respecting IPR

The three countries also exchanged opinions on a possible coverage and level of ambitions for a future FTA in terms of the IPR disciplines and rules. Taking into account the progress in IPR protection in the three countries since TRIPs Agreement, the JSC recognized the importance of strengthening the protection of IP in a future FTA, while reflecting the respective national situations, as well as keeping balance of rights and obligations. The JSC also encouraged the three countries both to reinforce the enforcement of IPR laws and regulations, especially to combat counterfeiting and piracy in a digital environment, and to reinforce cooperation in this context through dialogues.

## 4. Transparency

Transparency plays an important role in assuring predictability and is fundamental for ensuring stable economic activities among the three countries. Transparency provisions and a separate chapter on transparency in a possible CJK FTA will provide traders and investors of the three countries with confidence in relation to business transactions and investment decisions by enhancing transparency of the laws, regulations, administrative procedures, etc.

### 4.1 Current Situation and Policies

#### *China*

The Chinese government has always attached great importance to improving the framework of transparency, and ensuring the timely publication of information on the laws and regulations related to foreign trade and investment. Making good use of electronic technologies, the Government Online Project started in 1999. With the help of the Internet, a prompt and efficient communication and feedback mechanism has been established between the government and the public, which is of great significance for improving transparency. The *Legislation Law of China*,<sup>48</sup> which came into force on July 1, 2000, prescribes that timely public availability of new laws and administrative regulations must be part of legislative procedures. On July 1, 2004, the *Law on Administrative Permission*<sup>49</sup> came into force, in which the procedures of administrative permission are specifically spelled out.

To make government affairs transparent, effective measures have also been taken to establish or improve a range of processes including administrative decision-making systems, consultation systems, public hearing systems, and administrative supervision systems. While beneficial to the implementation of the transparency principle, these efforts have also promoted rationalization of the government administrative management system.

Since China's accession to the WTO, the Chinese government has taken effective measures to further enhance transparency. The Ministry of Commerce (MOFCOM) has set up a special agency, named the China WTO Notification and Enquiry Centre in charge of consultation and notification. The responsibilities of the agency include fulfilling notification obligations required by the WTO and providing responses to other WTO members' enquiries on China's trade policies and WTO-related foreign trade issues. The General Office of the MOFCOM is also responsible for compilation and circulation of the China Foreign Economic and Trade Cooperation Gazette (Gazette). The Gazette collects and publishes relevant information on laws, regulations, rules, other measures and the legal drafts concerning trade in goods, trade

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<sup>48</sup>The full English version of the law is available at <http://www.npc.gov.cn>.

<sup>49</sup>The full English version of the law is available at <http://www.chinalawedu.com/news/23223/23228/22357.htm>.

in services, trade-related intellectual property rights (TRIPs) and foreign exchange control. There are 80 issues of the Gazette compiled and published each year and presented to the central and local governmental organs, major libraries and news media. At the same time, the governmental website of the MOFCOM publishes the Gazette in full.

## ***Japan***

For the purpose of assuring justice and enhancing transparency in administrative management, the *Administrative Procedure Act* came into effect in October 1994. The Act includes the provisions on the procedures of administrative guidance and registration, administrative punishment, rules of examination in the process of registration, setting up of standard processing period of time and other common subject matters.

All of Japan's previous EPAs have provisions related to transparency in the chapter on general provisions, although not as an independent chapter. Transparency-related provisions could also be included in specific chapters/parts such as trade in goods, trade in services, investment, customs procedures, intellectual property, government procurement, competition, etc. Stipulating these provisions in EPAs is important because ensuring transparency of relevant laws and regulations is a basic requirement to facilitate trade and investment and provide predictability in business activities.

In general, provisions on transparency in Japan's EPAs provide for prompt publication of laws, regulations, administrative procedures, judicial decisions and administrative rulings of general application as well as international agreements which pertain to or affect the operation of the EPAs, and responding to specific questions raised by the other party with respect to the matters referred to in the above and providing information to the other party within a reasonable period of time, upon request by the other party.

## ***Korea***

Korea attaches high priority to making laws transparent and readily accessible. Many Korean laws are available in English on the Internet.<sup>50</sup> The Ministry of Government Legislation publishes a monthly periodical, "Legislation,"<sup>51</sup> which contains information on all laws and regulations enacted or amended during the month as well as any other important news relating to legislation. The Ministry of Knowledge Economy also publishes regulations affecting foreign trade in the *Consolidated Public Notice on Guidelines of Exports and Imports*,<sup>52</sup> which is revised whenever required.

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50 Please refer to the website at <http://www.moleg.go.kr/english/korLawEng>.

51 Please refer to the website at <http://www.moleg.go.kr/knowledge/monthlyPublication>.

52 The latest version of the Notice is available at <http://www.mke.go.kr>.

All the FTAs Korea has concluded have a separate chapter or general provisions on transparency. These provisions demonstrate Korea's commitments to improve the business environment and to create a potential to foster Korea's trade and investment with its FTA partners. In particular, both the Korea-US and Korea-EU FTAs contain extensive and comprehensive transparency provisions in the areas of customs administration, pharmaceutical pricing and reimbursement, technical regulations, financial services, telecommunications and dispute settlement procedures. In addition to these provisions, they also respectively have a separate chapter on transparency which requires, for example, each Party to establish or maintain procedures for providing review and appeal opportunities to any entities that would be affected by actions, rulings, measures or procedures under the FTA.

#### **4.2 Suggestions for a Future CJK FTA**

With the establishment of a future CJK FTA, China, Japan and Korea could carry out anall-directional cooperation in order to enhance transparency including information exchange on trade and investment laws, regulations and policies. Elements under the framework of a CJK FTA may include, but not be limited to:

- Ensuring the publishing or making publicly available relevant laws, regulations and administrative procedures, administrative rulings and judicial decisions of general application as well as international agreements of each country in a timely manner;
- Making easily available to the public the names and address of the competent authorities, and endeavoring to create enquiry or contact points for each country with the task of seeking to effectively resolve problems that may arise from the application of measures covered by a CJK FTA;
- Providing information and response to questions raised by the other two countries on relevant laws, regulations and administrative decisions of the three countries that may affect the operation of a CJK FTA within a reasonable period of time;
- Giving the public a prior notice and an opportunity to comment on relevant laws, regulations and administrative decisions of the three countries before adopting, amending or repealing any of such measures covered by a CJK FTA;
- Ensuring transparency of regional and local governments, measures as well as those of central governments;
- Ensuring the availability of domestic procedures for a prompt review and correction where necessary for administrative actions;
- When introducing or changing its laws, regulations and administrative procedures, endeavoring to provide, except in emergency situations, a reasonable interval between



the time of publication and that of entry into force; and

- Establishing regularization and transparency of domestic administrative procedures for applications.

## 5. Competition Policies

Competition policies play an important role in promoting free and fair competition in the market, facilitating trade and investment flows, and enhancing the interests of consumers. In the context of an FTA, therefore, a comprehensive framework of competition policy will be of great significance to foster competitive markets and improve market access.

### 5.1 Current Situation and Policies

#### *China*

Recognizing the important role of fair competition in creating an orderly market and defending the lawful rights and interests of operators and consumers, China has made great efforts over the past three decades to improve its legislation and enforcement of competition laws and regulations to provide a transparent and fair competition environment.

The *Law for Countering Unfair Competition*<sup>53</sup> and the *Anti-Monopoly Law*<sup>54</sup> are two major laws in China's competition policy regime. In addition, there are also certain provisions regulating unfair competition in other economic laws and regulations, including the *Price Law*, the *Advertisement Law*, the *Product Quality Law*, the *Trademark Law*, the *Patent Law*, the *Law of Corporation*, the *Law on Protection of Consumers' Rights and Interests*, the *Law on Bid and Tender*, the *Regulations on Telecommunications*, the *Regulations on Prohibition of Implementation of Regional Blockage on Market Economic Activities*, the *Provisions on the Takeover of Domestic Enterprises by Foreign Investors*, etc.

The *Law for Countering Unfair Competition of China*, which was promulgated on September 2, 1993 and came into force on December 1 of the same year, aims to encourage and protect fair competition, defend the lawful rights and interests of operators and consumers, and safeguard the healthy development of the socialist market economy. The Law regulates not only unfair competitive practices which violate the principles of honesty and trust, but also some practices restricting competition.

The *Anti-Monopoly Law* of the People's Republic of China was promulgated on August 30, 2007 and came into force on August 1, 2008. Besides the general provisions and supplementary provisions, the *Anti-Monopoly Law* stipulates the prohibition of monopoly agreements, prohibition of abuse of dominant market status, regulation of concentration of

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53 The full English version of the law is available at

[http://www.saic.gov.cn/english/LawsRegulations/Laws/200602/t20060225\\_55245.html](http://www.saic.gov.cn/english/LawsRegulations/Laws/200602/t20060225_55245.html).

54 The full English version of the law is available at

<http://english.mofcom.gov.cn/article/policyrelease/announcement/200712/20071205277972.html>.

business operators, prohibition of abuse of administrative power to eliminate or restrict competition, investigation into suspicious monopolistic conduct, legal liabilities, and other issues. The Law is applicable not only to monopolistic conduct in economic activities within the territory of China, but also to monopolistic conduct outside the territory of China that has the effect of eliminating or restricting competition in the domestic market of China. It should be pointed out that the Law shall not apply to the allied or concerted actions of agricultural producers and rural economic organizations in economic activities such as production, processing, sales, transportation and storage of agricultural products. The Law also shall not apply to the conduct of business operators to exercise their intellectual property rights in accordance with the laws and relevant administrative regulations on intellectual property rights.

In August 2008, the State Council of China established the Anti-Monopoly Committee which is responsible for organizing, coordinating and guiding anti-monopoly works and performs the following functions: (i) studying and drafting relevant competition policies; (ii) organizing investigation and assessment of the overall competition situation, and releasing an assessment report; (iii) formulating and releasing anti-monopoly guidelines; and (iv) coordinating administrative enforcement of the *Anti-Monopoly Law*. Meanwhile, a comprehensive administrative system related to market competition at the ministerial-level has also been established.

In the last three years, the Ministry of Commerce (MOFCOM) has been actively enforcing the *Anti-Monopoly Law* by reviewing transactions notified by relevant companies and took actions to intervene when necessary. For example, on August 13, 2010, the proposed acquisition of Alcon, Inc. (Alcon) by Novartis AG (Novartis) was approved by MOFCOM with conditions. Novartis and Alcon are global suppliers of pharmaceutical products. MOFCOM was of the view that there were competition concerns in the following relevant markets: (i) the market for ophthalmic anti-inflammatory and anti-infective combination products; and (ii) the market for contact lens care products. As a condition of clearance, MOFCOM made it mandatory that Novartis cease to supply Infectoflam in China by the end of 2010. MOFCOM also stipulated that Novartis was not to supply Infectoflam in China for a period of five years. In addition, Novartis is also not to supply a different version or type of product like Infectoflam under a different brand-name in China.

## ***Japan***

Japan, recognizing that competition plays an essential role in ensuring the efficient functioning of a market, attaches great importance to the promotion of competition with a view to invigorating its economy and enhancing consumers' interests and hence enacted the *Antimonopoly Act* (officially called the “*Act on Prohibition of Private Monopolization and Maintenance of Fair Trade*”) in July 1947. With the recent progress of globalization and significant technological innovations, securing fair and free competition is more important

than ever. It is against this backdrop that Japan has been strengthening and improving competition rules through a number of its amendments as well as supporting regulations.

The *Antimonopoly Act* has been serving for more than six decades as an economic foundation for supporting a democratic society. Its aim is to promote the democratic and sound development of the national economy as well as to assure the interests of general consumers by promoting fair and free competition through the prohibition of private monopolization, unreasonable restraint of trade (such as cartels and bid riggings) and unfair trade practices. Its most recent amendment took effect in January 2010 to regulate anti-competitive conducts more effectively. This latest amendment has (i) introduced a surcharge system for an exclusionary type private monopolization and certain unfair trade practices, (ii) raised the surcharge rate applicable to enterprises playing leading roles in unreasonable restraints of trade, (iii) enabled two or more violators belonging to the same company group to jointly file an application under the leniency program, (iv) increased maximum jail terms for certain crimes, and (v) reviewed the notification system on business combination.

The legal framework concerning competition policy has been administered by an independent administrative commission known as the Japan Fair Trade Commission (JFTC). The JFTC, headed by the chairman and four commissioners appointed by the prime minister with the consent of the Diet, vigilantly supervises the functions of the market and economic and business activities in order to prevent or detect acts against the *Antimonopoly Act*, and strictly regulates and takes measures against any illegal acts.

In 2010 the JFTC made significant progress in both policy and enforcement areas. In addition to the enforcement of the newly revised *Antimonopoly Act*, the JFTC, among others, released guidelines concerning abuse of superior bargaining positions for improved transparency and predictability of law enforcement, and issued surcharge payment orders to 178 enterprises amounting to approximately 70 billion yen, reaching an all-time yearly high.

In the field of international cooperation, the JFTC has been committed to reinforcing the relationship with its foreign counterparts through holding bilateral dialogues and consultations and implementing bilateral agreements (concluded either independently or as part of an EPA) as well as its contributions to multilateral fora. A typical bilateral agreement provides for details and procedures for the cooperation between competition authorities against anti-competitive activities, which may take the form of, *inter alia*, exchange of information, notification, coordination of enforcement activities, technical cooperation and consultation. The JFTC also engages in technical assistance activities within international frameworks such as the International Competition Network (ICN) and Asia-Pacific Economic Cooperation (APEC), providing useful information to recently established agencies.

## ***Korea***

In the context of an FTA, competition policy plays a key role in ensuring that competitive markets are promoted and that benefits of trade liberalization are not undermined by over- or under-regulation in the domestic economy. Korea introduced in 1980 the *Monopoly Regulation and Fair Trade Act* (MRFTA) which came into effect in 1981 and has provided an institutional basis for Korea's comprehensive competition policy.

The MRFTA framework, based on the ultimate goal of pursuing balanced development of the national economy, is designed to support competitive and efficient markets, while also prohibiting anti-competitive business practices. With this in mind, the MRFTA stipulates deregulation and improvement of anti-competitive market systems, improvement of monopolistic and oligopolistic market structures, prohibition of anti-competitive mergers and restraining of excessive concentrations of economic power. It also prohibits the abuse of dominant market positions, cartels or unfair business practices, and limits resale price maintenance, anti-competitive or unfair business practices of business associations and improper international contracts. The MRFTA basically applies to all activities or behaviors of enterprises in the domestic market, and is also applicable to any activity taking place overseas that has influence on the domestic market.

The competition authority of Korea is the Korea Fair Trade Commission (KFTC), a ministerial-level central administrative organization under the authority of the prime minister, which also functions as a quasi-judiciary body. The MRFTA gives the KFTC the authority to formulate and administer competition policies, and to deliberate, decide and handle anti-trust cases. The KFTC performs its roles and duties independently without intervention or supervision from an outside organization. Since its establishment in 1981, the KFTC has been implementing competition and consumer policies to develop and maintain market economy order, enforcing the MRFTA and 11 other acts. The 11 other acts are: the *Framework Act on Consumers*, the *Product Liability Act*, the *Consumer Cooperatives Act*, the *Fair Labeling and Advertising Act*, the *Consumer Protection in Electronic Commerce, etc. Act*, the *Door-to-Door Sales, etc. Act*, the *Installment Transactions Act*, the *Adhesion Contract Regulation Act*, the *Fair Subcontract Transactions Act*, the *Fair Franchise Transactions Act* and the *Omnibus Cartel Repeal Act*.

## **5.2 Suggestions for a Future CJK FTA**

China, Japan and Korea all recognize that competition policy is one of the key elements for the establishment of a fair market competition environment that needs to be included in a future CJK FTA. It would be desirable to promote competition policy and further enhance trilateral cooperation on competition policy in the following aspects:

- Reaffirming commitments to take measures against anti-competitive activities, based on

fundamental principles of competition policy, which include non-discrimination, procedural fairness and transparency;

- Cooperating in the field of controlling anti-competitive activities, and developing details and procedures of such cooperation;
- Enhancing information exchange to better understand each other's competition law and its enforcement;
- Strengthening trilateral cooperation in the competition area through activities such as seminars and training programs; and
- Strengthening cooperation and coordination in other regional organizations and fora such as APEC.

## **6. Dispute Settlement Mechanism**

Under a trade agreement including an FTA/EPA, a chapter on dispute settlement would provide transparent, timely, efficient and effective procedures for settling disputes arising among parties to the agreement and avoid the disputes being complicated among the parties. Further, an effective dispute settlement mechanism (DSM) will make a trading system more robust and credible by resolving ambiguity, enforcing rules, and clarifying provisions. Under the framework of a future CJK FTA, a well designed DSM will be essential for the three countries to foster a secure and predictable business environment.

### **6.1 Current Policies**

#### ***China***

China has signed a number of FTAs that incorporated provisions on dispute settlement (DS). The general approach for DS under FTAs where China is a signatory is a combination of consultation and arbitration.

The DS process under China's FTAs generally involves consultation, good offices, conciliation and mediation, arbitral tribunals and implementation of a final report. During the process, the parties to the dispute may at any time agree to conciliation or mediation. They may begin at any time and be terminated by the parties concerned at any time. If consultations are unsuccessful, a party may request the establishment of a three-member panel to consider the matter in dispute. Each party shall appoint one panelist, and the parties shall endeavor to designate a panel chair. If the parties are unable to agree on the chair, the chairperson shall be appointed by the Director General of the WTO. Non-violation rules are not included in the FTAs to which China is a signatory.

#### ***Japan***

DS procedure is an important mechanism to assure the enforcement of the EPAs, and all of Japan's previous EPAs have a chapter on DS, which sets out procedures on the settlement of dispute relating to the interpretation and/or application of EPA. DS provisions of Japan's EPAs are based on the WTO DS system (Understanding on Rules and Procedures Governing the Settlement of Dispute). Though it is desirable to resolve disputes through consultations before establishing arbitral tribunals, having a clear DSM in an EPA provides stability and assurance to its enforcement.

The basic ideas under the DS provisions of Japan's existing EPAs can be summarized as follows:

- An award issued by the arbitral tribunal will be final and binding.
- DS provisions do not apply to some of the chapters, such as TBT, SPS, competition and cooperation, because these are more cooperation-oriented provisions rather than discipline.
- “Non-violation rules” are not included, in principle.

In Japan’s existing EPAs, the DSM generally has the three distinct phases: (i) an initial consultation phase, (ii) an arbitration, and (iii) an implementing phase, and includes specified time periods for various actions (which may be adjusted upon agreement of the parties).

### ***Korea***

The DSM mechanisms in Korea’s previous FTAs generally consist of four main procedural stages: (i) consultation, (ii) joint committee, (iii) panel procedures, and (iv) implementation. Where a dispute arises, the complaining party could choose the forum between the WTO DS procedures or the FTA procedures for settling the matter. If a party requests consultations and the consultation fails to resolve the matter, either party could refer the matter to the Joint Committee. Once a panel constituted under the chapter presents its final report, the report must be made public and the Parties would be obliged to agree on the resolution. If the parties are unable to agree on a resolution, compensation could be negotiated and if the parties fail to agree on the terms of compensation, or the report-agreed resolution is not implemented, a suspension of benefits of equivalent effect could be undertaken or the party complained against could pay a monetary assessment.

Korea’s FTAs with Chile, Singapore, the US and India contain non-violation complaint provisions. Through these provisions, any party of the FTAs can bring matters to the DSM when expected benefits under some chapters (mainly trade in goods and services) are nullified or impaired as a result of measures consistent with the FTAs.

Some chapters are excluded from the application of the DSM. Economic cooperation and SPS chapters are usually excluded from the DSM. Some chapters have their own DSM, for investor-state dispute settlement (ISDS) for investment or the mediation mechanism for non-tariff measures. Until now, Korea has not used its FTA DSM.

## **6.2 Suggestions for a Future CJK FTA**

Establishment of a DSM with clear, simplified and transparent procedures will be an important element for facilitating the resolution of disputes in a positive way under the framework of a future CJK FTA.



At the same time, it is also essential to assure that parties may choose a DSM between the two DSMs for matters arising under both a CJK FTA and the WTO. Once a forum is settled by the complaining party, the selected forum should be used to the exclusion of other fora.

For an effective DSM, elements which should be included in a chapter on DS in a possible CJK FTA are as follows:

- Consultations;
- Good Offices, Conciliation or Mediation and Arbitral Tribunals or Panels (including establishment, functions, proceedings, suspension or termination of proceedings and implementation of award or report;)
- To ensure implementation of the award or report by Arbitral Tribunals or Panels.

## **7. Industrial Cooperation**

China, Japan and Korea are major economies playing significant roles in the world economy. Even though the three countries have maintained substantial economic relations over the years, in light of their respective comparative advantages and industrial structures as well as the needs arising from business communities, there is great potential for industrial cooperation under the framework of a future CJK FTA.

### **7.1 Current Situation**

China, Japan and Korea have repeatedly stressed the importance of industrial cooperation, and have carried out related activities in recent years. For example, the information and telecommunications industry was identified as one of the key sectors for trilateral cooperation at the Trilateral Summit in 2002. The ministerial meeting mechanism was set up in the same year. Currently, several working groups have been established under the ministerial meeting, being responsible for related cooperation issues. Besides, in order to promote the development of various industries, the three countries have also issued the Joint Statement on Strengthening Science and Innovation Cooperation.

Considering the closer bilateral economic relationship, the Governments of China and Japan attach great importance to industrial cooperation and have established various forms of dialogue and cooperation mechanisms. As one of the most important bilateral cooperation mechanisms, the China-Japan High-Level Economic Dialogue, jointly launched by Chinese Premier Wen Jiabao and Japanese Prime Minister Shinzo Abe, was first convened in 2007 in Beijing, and then held in 2009 and 2010 respectively. Industrial cooperation has played an important role in the dialogue. The two sides have reached consensus on strengthening cooperation in the areas of ICT and other industries. Besides, the two sides signed a Memorandum on Cooperation for the Facilitation of the Overseas Operations of Small and Medium Enterprises.

China and Korea also have made active achievements in industrial cooperation. The “Joint Study Report on the Vision for Korea-China Economic and Trade Cooperation” as modified in 2009 was signed at the Korea-China Summit on October 10, 2009. The report provides strategic guidance for cooperation in the fields of economy and trade, and describes specific directions for cooperation in the fields of 23 industries and technologies such as IT, telecommunications, finance, energy. The two sides have signed bilateral agreements or Memorandums on the cooperation of science and technology, environment, fisheries, and other industries. Considering the rapid development of information technology, IT industry cooperation has become a priority of bilateral industrial cooperation. China and Korea have been actively holding IT Ministerial Meetings since 1993. In particular, the two countries concluded a Cooperation Memorandum in the IT Area in 2002 and have been discussing

bilateral cooperation regarding third- and fourth-generation communication in a working-level commission since that time.

Japan and Korea have also enjoyed a strong economic relationship to date. One of the key fora that has contributed to supporting the strong relationship is the “Japan-Korea Business Conference”. It started in 1969 and has a history of more than 40 years. Since its inception, it has provided a platform for the business communities as well as the governments of both countries, to deepen mutual understanding and give policy and business recommendations in broad areas, including those to initiate concrete activities for enhanced industrial and economic cooperation between the two countries.

## **7.2 Suggestions for a Future CJK FTA**

According to the Trilateral Cooperation VISION 2020, published at the 3rd Trilateral Summit among China, Japan and Korea in May 2010, the three countries would further explore to promote cooperation in industry, information and telecommunication, culture industry and other sectors in the next decade. So there would be plenty of industrial cooperation opportunities in a future CJK FTA. In order to improve the efficiency of cooperation, and to create and facilitate a transparent policy environment, the three countries should promote communication among public and private sectors and share policy opinions and information of key areas for industrial cooperation. The three countries can also encourage the development of SMEs, and extend cooperation in science and technology. Through close industrial cooperation, the three countries could better define their roles and positions in the global industrial structure, and increase their economic integration. The governments of the three countries can also facilitate industrial cooperation by creating a business-friendly environment among the three countries through solving difficulties faced by the business community.

For this purpose, specific mechanisms could be established, comprising of representatives from governments, as well as the business community, to discuss issues on how to facilitate industrial cooperation and improve the business environment in a future CJK FTA.

## 8. Consumer Safety

Consumers' safety has no national boundaries, nor does the protection of consumers' rights. The importance of consumer safety cooperation among China, Japan and Korea is becoming more and more remarkable with the ever-deepening trilateral economic and trade relationship. The Consultative Meeting on Consumer Policy among China, Japan and Korea has been held for information exchange and discussion on consumer protection policies of each country, participated by the designated authorities: the State Administration for Industry and Commerce of the People's Republic of China, and the Consumer Affairs Agency of Japan, and the Fair Trade Commission of the Republic of Korea. In a future CJK FTA, the three countries are expected to strengthen consumer safety cooperation in a practical manner.

### 8.1 Current Situation and Policies

#### *China*

In the past decades, China's consumer safety protection has seen substantial development and scored remarkable achievements with the advance of reform and opening-up and the development of the market economy.

At present, China has basically developed a comprehensive legal framework for consumer safety protection with the *Law on Protection of Consumer Rights and Interests*<sup>55</sup> at its core, and supported by the *Product Quality Law*, the *Law Against Unfair Competition*, the *Advertisement Law*, the *Food Safety Law*, the *Standardization Law*, the *Pharmaceutical Administration Law* and the *Pricing Law*. This system also includes the implementing rules for the *Law on Protection of Consumers Rights and Interests* formulated by provinces, autonomous regions and municipalities as well as the regulations and regulatory documents issued by the State Council and its departments.

According to the *Law on Protection of Consumer Rights and Interests*, local governments have actively performed their duties to "strengthen leadership, organization, coordination and supervision of the departments concerned in protecting the legal rights of consumers". The departments of industrial and commercial administration, pricing, technological supervision, commodities inspection and hygiene, as well as the agricultural, railway, communication, postal, civil aviation and tourism departments, have attentively assumed their responsibilities entrusted by the law and made their efforts in rights protection within their scope of duties. According to a plan approved by the State Council, the State Administration of Industry and Commerce established the Department of Consumers' Rights Protection in 1998, which

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<sup>55</sup> The full English version of the law is available at

[http://www.saic.gov.cn/english/LawsRegulations/Laws/200602/t20060227\\_55251.html](http://www.saic.gov.cn/english/LawsRegulations/Laws/200602/t20060227_55251.html).

undertook the law enforcement and supervision of consumers' rights protection. It has set up a complaint and tipping network to better investigate and punish the actions that infringe upon consumers' rights. On March 15, 1999, a nationwide "12315" hotline was set up to take consumers' complaints.

The social groups, represented by the consumers' associations, are exerting greater and greater influence and becoming a mainstay for the protection of consumer safety. As a national level consumers' rights protection organization, the China Consumers' Association was established in 1984. Since then, the association has been actively engaging in international cooperation. At present, the association has set up working contacts with the consumers' groups in more than 30 countries and regions including Japan and Korea. At present, China has more than 3,000 consumers' associations above the county level, which help build a supervision and service network covering both rural and urban areas in the country.<sup>56</sup> These associations have been actively engaging in the protection work and assisting the departments concerned in drafting the laws and rules for the protection of consumers' rights. They have also done a great deal of protection work by accepting consumers' complaints, supervising the products and services, publicizing the laws, doing theoretical research, offering guide to consumption and increasing foreign exchanges.

### ***Japan***

According to the *Consumer Basic Act*, it is prescribed that the "Consumer Basic Plan" shall be made with the outline of consumer policies to be taken in the long term. The "Consumer Basic Plan" was established by the Cabinet decision on March 30, 2010. (This Basic Plan is on the second term following the first term Plan (April 8, 2005).) The Plan is a five-year program (2010-2014) and covers 171 measures and policies to be taken by relevant ministries and agencies. It is built on three pillars as below:

- 1) Respecting consumers' rights and supporting independent consumers;
- 2) Collaborating and cooperating with local governments and consumer organizations, and ensuring and enhancing the effectiveness of consumer policies; and
- 3) Responding to the development of economic society.

According to the "Consumer Basic Plan", examination, evaluation and observation of the measures and policies would be carried out every year.

Since the Consumer Affairs Agency (CAA) was established in September 2009 as a new administrative agency, relevant administrative agencies and ministries and local governments have been required to notify consumer accident information to the CAA according to the

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<sup>56</sup> China Consumers' Association, *Current Situation of China's Consumers' Rights Protection Movement*, <http://www.cca.org.cn>.

*Consumer Safety Act*. Manufacturing businesses and import businesses are required to report serious product accidents to the CAA according to the *Consumer Product Safety Act*.

The results of the collection and analyses of the information are published and supplied to the ministries and local public organizations as well as to the Diet and the Consumer Commission. In order to prevent the occurrence and spread of consumer-detriment, the CAA publishes the needed information and issues alerts to consumers, and carries out countermeasures against emerging and expanding of consumer-detriment.

Also, the following areas are covered under the jurisdiction of the CAA: In order to regulate misrepresentations on food labels, the food labeling laws including the *Food Sanitation Act* which aim to prevent sanitation hazards resulting from eating and drinking, and the *Act on Standardization and Proper Quality Labeling of Agricultural and Forestry Products* which aims to assist consumer decision-making with the appropriate labeling of quality information such as ingredients and product origin, are implemented. Regarding representations, the *Act against Unjustifiable Premiums and Misleading Representations* is enforced to control false or misleading representations. Also, to combat troublesome door-to-door sales, mail order sales, telemarketing sales and multilevel marketing transactions and so on, the *Act on Specified Commercial Transactions* is enforced.

## **Korea**

Korea has four policy areas in securing consumer benefits: reinforcing consumer sovereignty, creating a competitive market environment, developing mechanisms for prevention and remedies of consumer damages, and enhancing efficiency in enforcement of consumer policies.

Under these consumer policy areas, Korea has established a legal framework for consumer safety. The *Framework Act on Consumers* which sets the basic direction and implementation for consumer policy replaced the former *Consumer Protection Act* of 1987 and became effective in March 2007. Along with the *Framework Act on Consumers*, a variety of laws related to product safety, quality and standards are in effect, such as the *Food Sanitation Act*, the *Food Labeling Standards*, the *Fair Labeling and Advertising Act*, the *Product Liability Act*, the *Quality Management and Safety Control of Industrial Products Act*, and the *Regulation on Consumer Dispute Resolution*.<sup>57</sup>

The function of the Fair Trade Commission (FTC) in consumer policy has been expanded in order to cover the establishment and implementation of sectoral consumer policies and it is one of the main institutions regarding consumer policy enforcement. It has the authority to support and monitor the Korea Consumer Agency which has been established to protect

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57 The full English version of the law is available at [http://www.kca.go.kr/front/english/info\\_02.jsp](http://www.kca.go.kr/front/english/info_02.jsp).

consumer rights and interests. The Korea Consumer Agency mainly conducts test/inspection and investigation on standards, quality and safety of products and services.

The consumer protection organizations have been actively engaged in various social activities in Korea. The Korea National Council of Consumer Organizations is a federation of consumer protection organizations established to encourage the activities of consumer groups and secure the interests of consumers. Established in 1976, with four founding members, the Korea National Council of Consumer Organizations coordinates consumer protection activities of 10 member organizations and 182 regional associations.

## **8.2 Suggestions for a Future CJK FTA**

It is seen that China, Japan and Korea have all set up comprehensive legislation frameworks for consumers' safety protection. Alongside the depth and extension of economic relationship in a future CJK FTA, the movement of commodities, capital and persons among the three countries will become more and more frequent.

Therefore, the three countries should seek to continue discussing the possibilities for promoting and strengthening cooperation in the following areas to promote protection of consumers' safety while taking advantage of the existing framework, such as the Consultative Meeting on Consumer Policy among China, Japan and Korea.

- Sharing best practices and experiences in legislation and policies implementation.
- Promoting cooperation in resolving issues related to consumer safety in the context of a CJK FTA.
- Promoting cooperation on capacity building and technology exchange related to consumers' safety.
- Sharing information on a serious risk of a product which is detected and then notified to the parties in the field of product safety.

## 9. E-commerce

With the development of information technology, e-commerce has emerged as a dynamic form of transaction and one of the most quickly growing business industries in the world. Increasing use of e-commerce can bring economic growth and opportunity through facilitating trade in goods and introducing new services. Enterprises, including SMEs, will profit from the use of e-commerce as it improves efficiency and reduces the cost of transactions. A possible CJK FTA would provide an opportunity to enhance trilateral e-commerce cooperation and transaction.

### 9.1 Current Situation and Policies

#### *China*

China has always attached great importance to the development of e-commerce. With the development of infrastructure, human resources and technology, China is in a position to further explore the use of e-commerce. Since 1993, China has launched three Golden Projects: the “Golden Bridge Project,” aimed at establishing a nationwide economic information website; the “Golden Customs Project,” aimed at promoting the process of electronicizing customs declaration in place of the traditional customs declaration; and the “Golden Card Project,” aimed at promoting electronic payment. Meanwhile, the Chinese government is encouraging government bodies at all levels to electronicize their work.

According to the *Report on E-Commerce of China 2008-2009* promulgated by MOFCOM in 2009, the transaction value of e-commerce and online purchasing in China have reached RMB 3,800 billion and RMB 258.6 billion respectively, an increase of 21.7% and 105.8% respectively from the previous year. Currently, Chinese enterprises’ e-commerce models vary from setting up of websites for online expositions to online transnational project fairs, never-ending online fairs and information portals. Chinese companies have been developing new markets using online negotiations, online sales promotions and online trading. The use of online purchasing, online auctions and online bidding in China has increased rapidly.

Several laws and policies have been promulgated for the purpose of promoting e-commerce in the past few years. The *Electronic Signature Law of the People’s Republic of China* was adopted by the Standing Committee of the Tenth National People’s Congress in August 2004, and came into effect from April 2005, stipulating the legal status of electronic signatures in China for the first time. In 2004, *Some Opinions of the State Council on Accelerating the Development of E-Commerce* emphasized the importance of e-commerce to economic development, and determined the basic principles and measures for the development of e-commerce. The People’s Bank of China published the *Electronic Payment Direction No.1* on October 30, 2005, which is the basic rule to address electronic payment problems. Other



regulations and policies related to e-commerce include the *National Informatization Strategy of China in 2006-2020* promulgated by the State Council in 2006, the *Guiding Opinions of the Ministry of Commerce for Online Trade (Provisional)* in 2007, the *Eleventh Five-Year Plan on the Development of E-Commerce* in 2007, the *Specification for E-Business Model* and the *Service Specification for Online Shopping Transactions* in 2008, etc.

## ***Japan***

According to the survey by the Ministry of Economy, Trade and Industry, the scale of the domestic B to B (business-to-business) e-commerce market (business transactions via a computer network system using Internet technology) in 2010 was approximately 169 trillion yen, with an increase of 28.6% from the previous year. Its market scale returned to the level of 2008, and the EC ratio\*, which is an index showing how EC has penetrated, marked 15.6%, with an increase of 1.9 points from the previous year. The scale of the domestic B to C (business-to-consumer) e-commerce market in 2010 amounted to approximately 7.8 trillion yen, with an increase of 16.3% from the previous year. In addition, the EC ratio marked about 2.5% with an increase of 0.4 points from the previous year.

\*EC ratio: The ratio of e-commerce transactions in all business transactions

In promoting e-commerce, it is important for governments to avoid barriers against the use and development of e-commerce and improve an environment of trust and confidence for e-commerce given the rapid growth of the market and trade. The following laws and regulations applicable to e-commerce in Japan constitute a legal framework which contributes to achieving such goals by a legal framework.

- Act on Electronic Signatures and Certification Business  
For secure and credible e-commerce, the Government of Japan is promoting the use of electronic signatures and authentication. The provisions included are those concerning presumption of the authenticity of an electromagnetic record, accreditation system for specified certification business, and other necessary matters.
- Act on Protection of Personal Information  
Under the Act, entities have legal obligations to handle personal information. The duties of entities handling personal information in the Act embody the eight Principles of the OECD Guidelines on the Protection of Privacy and Trans-Border Flows of Personal Data adopted in 1980.
- Laws dealing with consumer protection such as:
  - *Act on Specified Commercial Transactions*, which provides the rules of “prohibition of an exaggerated advertisement” in mail orders to protect the consumer;
  - *Act on Special Provisions to the Civil Code Concerning Electronic Consumer Contracts and Electronic Acceptance Notice*;
  - *Act against Unjustifiable Premiums and Misleading Representations*; and
  - *Act on Regulation of Transmission of Specified Electronic Mail*.

In addition, as e-commerce is relatively new and there are instances where it is unclear whether or not current laws can be applied to this growing form of business, the Government of Japan provides interpretative guidelines on how specific existing laws should be applied to e-commerce. These guidelines will be continuously revised as e-commerce evolves through the practical handling of transactions, technological developments and trends in international regulations.

With respect to international commitments on e-commerce, Japan included an electronic commerce chapter in its EPA with Switzerland, which contains provisions on non-discriminatory treatment of digital products and electronic services transmitted electronically as well as on practice of not imposing customs duties on electronic transmissions, transparency, protection of online consumers and personal data of e-commerce users, private sector participation and cooperation.

### ***Korea***

Currently, Korea, with 95% of its population accessing the Internet, is among the countries with the highest broadband penetration in the world. The e-commerce infrastructure in Korea is considered by the international community to be world class, with the highest rate of Internet usage. In tandem with the development of e-commerce infrastructure, nation-wide transaction volume of e-commerce is rising dramatically, reaching 824,391 billion won in 2010, increased by 22.6%, as compared with the previous year.

Given the potential of e-commerce in creating great business opportunities by cutting down on transaction costs and facilitating international trade, Korea, since 1999, has developed its e-commerce legislation to deal with the rapid growth of its e-commerce market. Several laws and policies have been established for the purpose of promoting e-commerce, such as the *Framework Act on Electronic Commerce* (enacted in 1999, revised in 2002 and 2009, and currently under the third revision process), the *Digital Signature Act* (enacted in 1999, revised in 2001 and 2008), the *Act on the Consumer Protection in the Electronic Commerce Transactions* (enacted in 2002, revised in 2007) and the *Guide for Protection of Electronic Commerce Users* (enacted in 2000).

The Korean government, especially the Ministry of Knowledge Economy, has been promoting e-commerce industry by operating institutions such as the Electronic Commerce Mediation Committee (established in 2000) and the Authorized Electronic Document Depository (activated since 2007).

The Electronic Commerce Mediation Committee (ECMC) organized and operated under the *Framework Act on Electronic Commerce* offers Online Dispute Resolution (ODR) service, deploying an automated counseling system on the Internet in order to redress various

electronic transaction claims. In 2010, electronic transaction claims has amounted up to 18,000, showing increase of 36.7% compared with those of the previous year. Up to 82.9% of the claims were resolved by the ECMC last year. Besides ODR, the e-Trust certification program is operated in order to prevent claims and in 2010 up to 138 e-business companies were certified as trustworthy e-business vendors which was an increase of 29% compared with those of the previous year.

The Authorized Electronic Document Depository established for e-document promotion aims to expand the utilization rate of e-documents up to 50% by 2015 from the existing 30%, and plans to reduce paper consumption and CO<sup>2</sup> emissions accordingly.

## **9.2 Suggestions for a Future CJK FTA**

Currently, a substantial amount of cross-border e-commerce exists among the three countries which have high broadband penetration and Internet access rates, and the three countries are regarded as leaders of e-commerce in the world. With the deepening economic interdependence among the three countries, e-commerce will serve to further invigorate trilateral economic relations. Under the framework of a future CJK FTA, the three countries should make joint efforts to ensure the sound development of e-commerce.

Realizing the vigorous development of e-commerce, and the necessity to further strengthen cooperation among the three countries, the JSC shared the view that the three countries should explore possibilities to incorporate elements from existing EPAs/FTAs of the three countries and other initiatives in multilateral arenas, such as APEC model measures, into a future CJK FTA.

## **10. Energy and Mineral Resources**

Energy security has long been an important issue for all countries in the world, including China, Japan and Korea, who are major energy and mineral resources consuming countries. Strengthening energy security, which aims to ensure stable supply, is crucial to the economic prosperity of the three countries. Promoting investment will also enhance energy security as investments can bring expansion of production capacity, improvement of energy efficiency and development of clean energy technology. In recent years, the three countries have been discussing ways of enhancing energy security under the framework of several regional economic fora such as APEC, the Five-Party Energy Ministers' Meeting, ASEAN+3, and EAS. In addition to that, a future CJK FTA would become a new platform for promoting effective trilateral cooperation and enhancing trade and investment rules in energy and mineral sectors.

### **10.1 Current Situation and Policies**

#### ***China***

China is the second largest energy producer and consumer in the world. The basic themes of China's energy strategy are giving priority to thrift, relying on domestic resources, encouraging diverse patterns of development, relying on science and technology, protecting the environment, and increasing international cooperation for mutual benefit. It strives to build a stable, economical, clean and safe energy supply system, so as to support sustained economic and social development in line with sustained energy development.

China has fairly rich fossil energy resources, dominated by coal. However, China has a large population, resulting in a low per-capita average of energy resources. The per-capita average of both coal and hydropower resources is 50% of the world's average, while the per-capita average of both oil and natural gas resources is only about one-fifteenth of the world's average. Therefore, the Chinese government continues to encourage the development of energy-saving technology and endeavors to popularize energy-saving products with the aim of enhancing energy efficiency. In its clean energy strategy, China attaches great importance to promoting development in harmony with the needs of the energy industry and environmental protection, with the help of advanced energy technology and development of renewable energies. In recent years, China has developed hydro power in an orderly way, actively developed nuclear power, and encouraged and supported the development of renewable energy including biomass, solar and geothermal energy and wind power. At present, China ranks first in the world in terms of installed hydro power capacity, nuclear power capacity under construction, the coverage of solar water heating panels and photovoltaic power capacity.

With the above-mentioned efforts, China's energy supply capability has been remarkably enhanced, with coal as the main energy resource and electricity as the focus, featuring an overall development of oil, gas and renewable resources. The consumption structure has been gradually optimized, and the energy-saving effects are becoming more and more conspicuous.

Apart from domestic efforts, China has also forged increasingly closer ties with other countries in the field of energy cooperation. China is a member of the APEC Energy Working Group, ASEAN+3 Energy Cooperation, International Energy Forum (IEF), Energy Council, and Asia-Pacific Partnership for Clean Development and Climate. It is an observer of the Energy Charter, and maintains close relations with such international organizations as the International Energy Agency (IEA) and the Organization of Petroleum Exporting Countries (OPEC). Regarding bilateral cooperation, China has established a mechanism for dialogue and cooperation in the field of energy with a number of countries including Japan and Korea, regarding energy exploration and utilization, environmental protection, as well as renewable energy and new energy resources exploitation and application.

### *Japan*

Japan is dependent largely on imported resources. Therefore, importance has been placed on realizing a low-cost and stable energy supply which is indispensable for economic growth. Furthermore, in recent years, the circumstances surrounding the policy for resources and energy has been significantly and rapidly changing, as we see volatility in the prices of resources, intensification of the international competition for securing resources, increasing social pressure for countermeasures against global warming and so on. In order to overcome these constraints, Japan's energy policy stands on energy security, environmental protection, and efficient supply.

In 2007, Japan's self-sufficiency ratio in energy, including hydroelectric power, was 4%. Compared to other countries, it remains low. Therefore, Japan has made great effort to secure a stable supply of energy from overseas, promote energy conservation and introduce renewable energy such as hydro-power and solar power. Over the last three decades, energy consumption has been progressively reduced and energy efficiency has improved by 37%. As a result, primary energy supply per GDP in Japan has been reduced to the lowest level in the world. Japan has also been trying to diversify its energy supply structure. While in 1973, oil accounted for 75% of Japan's total primary energy supply (TPES), today its share dropped to 42%. Currently, the shares of other energy resources in the TPES are 23% in coal, 19% in natural gas, 10% in nuclear power, 3% in hydro-power, and 3% in other renewable energy (in FY 2008).

Japan has been active in energy cooperation. Japan is a member of the APEC Energy Working Group, ASEAN+3, EAS, IEA, IEF, International Renewable Energy

Agency(IRENA), International Partnership for Energy Efficiency Cooperation(IPEEC), Asian Ministerial Energy Roundtable, and Asia-Pacific Partnership for Clean Development and Climate, and maintains close relations with OPEC. Regarding bilateral cooperation, Japan has established a mechanism for dialogue and cooperation in the field of energy with a number of countries including China and Korea, in terms of energy exploration and utilization, environmental protection, as well as renewable energy and new energy resources exploitation and application.

Japan has addressed issues relating to energy and mineral resources in its previous EPAs in order to enhance energy security with partner countries. In the Japan-Indonesia EPA and the Japan-Brunei EPA, there are independent chapters. These chapters include provisions which are related to prohibition of export restrictions, minimization of adverse effects on contractual relationship, enhancement of transparency of policies and regulations, promotion of cooperation, creation of a consultation mechanism with participation of the business sector, and so on.

### ***Korea***

The Korean government has set energy security, energy efficiency and environmental protection as the three main goals of the nation's energy policy, in an effort to promote sustainable economic growth while preparing for increased energy demands in the future. A stable energy supply is vital to Korea's sustainable development because of its heavy reliance on energy imports, which account for 97% of its energy supply. More efficient energy use is expected to help the nation deal with adverse external impacts such as from high oil prices. Lastly, environmentally-friendly energy policies will help to effectively meet future increases in energy consumption.

Under these three goals, the Korean government has set four visions – to achieve energy independence, to transform into a low energy-consuming society, to realize energy welfare, and to develop improved energy technology. To put these visions into action, the Korean government will work to further promote overseas resource development, increase the share in energy use of new and renewable energies, and considerably improve energy efficiency. The Korean government will also continue to capitalize on its advanced technology to enter into new overseas energy markets, upgrade its energy technology development system, and establish an energy efficiency market. It will further work to set up various infrastructures to ensure a stable energy supply and to increase the use of nuclear power.

Korea has promoted energy cooperation with China and Japan within a framework of multilateral fora such as APEC, the Five-Party Energy Ministers' Meeting, ASEAN+3 and EAS. Further at the 3rd Trilateral Summit in Seoul 2010, the three leaders committed to cooperating to promote policies and programs that advance renewable energy technologies

and energy efficiency globally, through existing international frameworks such as the Clean Energy Ministerial, APEC, and IPEEC.

## **10.2 Suggestions for a Future CJK FTA**

Ensuring energy security by enhancing trade and investment rules in energy and mineral sectors is essential for the three countries. Investment in energy and mineral sectors should be promoted as it often leads to expansion of production capacity, improvement of energy efficiency and development of clean energy technology. Efforts for cooperation should also be made in areas such as market monitoring and emergency response to support the stable supply of energy and mineral resources. For those purposes, it is suggested that the three countries further discuss energy and mineral resources issues in the future, *inter alia*, (i) reinforcing the role of the market, (ii) improving the investment environment in energy and mineral sectors through investment promotion and protection, (iii) enhancing transparency of policy and regulation applied in energy and minerals sectors, (iv) promoting cooperation in energy and mineral sectors, so as to achieve a stable framework in energy and mineral sectors, and (v) conducting dialogues involving relevant parties for enhancement of trade and investment.

Japan and Korea suggest that the three countries should endeavor to remove the non-tariff barriers which may restrict export and import, and to prevent the use of measures which hinder trade and investment.

China suggests that due consideration should be taken to ensure the sustainable utilization of natural resources in energy and mineral resources sectors, in order to prevent environmental degradation.

## 11. Fisheries

For centuries, the seas around China, Japan and Korea have provided abundant fisheries for food security and employment opportunities for the three countries. However, in consideration of the migratory nature of many fish species and the common pool nature of the surrounding seas, no single country would be able to effectively manage or conserve the common migratory fish stocks. Therefore, there is good reason for China, Japan and Korea to enhance fisheries cooperation.

### 11.1 Current Situation and Policies

#### *China*

During the past three decades since reform and opening-up, driven by institutional and technical innovations, China has developed and improved its modern fishery industry and gradually has become one of the major fishery countries in the world. In 2009, the fishery production of China reached US\$88.6 billion, with a total output of 51.1 million tons. China also plays an important role in the global trade in fish and fishery products. In 2009, the total trade of China in this category reached 6.68 million tons, valued at US\$15.96 billion, with exports of 2.94 million tons, valued at US\$10.7 billion, and imports of 3.74 million tons valued at US\$5.26 billion.<sup>58</sup>

In the process of development, the structure of China's fishery industry has been gradually improved. Different sectors such as inner-water fishing, marine fishing especially distant-water fishery, sea farming and pet-fish farming have been witnessing comprehensive development. Meanwhile, driven by the growing international demand for aquatic products, the Chinese aquatic product processing industry has developed with a continuous and rapid increase in scale, output and value. The deep and intensive processing capacity of the companies has been obviously improved, and many high-quality products with fine packaging and rich nutrition, convenient for consumption, have been put on the market in large quantities, enjoying increasing market share.

In spite of the achieved progress, China's fishery industry still faces challenges related to limited resources, deteriorating environment, a more competitive market and less advanced technology. Therefore, great efforts have been made in preservation and sustainable use of aquatic resources.

The fishing moratorium system for marine summer season has been improved and consolidated since 1995. Several new national nature reserves have been set up, bringing the

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<sup>58</sup> China Customs: Import and Export Statistics.



total to 16, and 220 national aquatic germplasm reserves are under establishment.<sup>59</sup> Rapid progress has also been made in developing marine pastures and artificial fish reefs.

The fishery industry of China is mainly governed by the *Fisheries Law of the People's Republic of China*,<sup>60</sup> which was adopted in January 1986, and was amended two times in October 2000 and August 2004 respectively. The relevant authorities and institutions include the Ministry of Agriculture ([www.agri.gov.cn](http://www.agri.gov.cn)), the Bureau of Fisheries of the Ministry of Agriculture ([www.cnfm.gov.cn](http://www.cnfm.gov.cn)), the China Society of Fisheries ([www.china-fisheries.org](http://www.china-fisheries.org)), and the China Fisheries Association ([www.china-cfa.org](http://www.china-cfa.org)).

## ***Japan***

Japan has already established a variety of domestic laws and regulations at the national and prefectural level, including the *Fisheries Law*, the *Prefectural Regulations based on the Fisheries Law*, the *Law on the Exercise of Sovereign Right on Fisheries Activities within the Exclusive Economic Zones*, the *Law on Regulation of Foreign Fishing*, the *Law on the Conservation of Fisheries Resources*, the *Law on Conservation and Management of Marine Living Resources* and the *Law on the Management of Fishing Vessels*, and been conducting various fishery resource conservations and managements, fishery and fishing vessel management and inspection. In addition, Japan also applies, on trade in fishery products, other relevant laws such as the *Law on Foreign Exchange and Foreign Trade*, and the *Import Trade Control Order*, although they are not directly related to fishing operation. With those domestic laws and regulations, any IUU (Illegal, Unreported and Unregulated) fishing operation conducted by Japanese nationals are subject to strict punishments. Furthermore, as for fishing activities conducted in the waters outside Japan's national jurisdiction, Japan has been making strenuous efforts through concluding bilateral fishery agreements and active participation in the competent regional fisheries management organizations (RFMOs) to ensure compliance of its nationals with relevant international rules and regulations as well as the sustainable conservation and management of fishery resources.

Based on the *Fisheries Law*, Japan imposes various restrictions such as number and tonnage of permitted fishing vessels, time and areas of operation and types of gears. It has also introduced the Total Allowable Catch (TAC) management system to set annual maximum catches in accordance with the provisions of the *Law on the Conservation and Management of Marine Living Resources* enacted based on the concept of United Nations Convention on the Law of Sea (UNCLOS). At present, seven main species including horse mackerel, sardine and squid are subject to TAC. In addition to that, since 2001, the Resource Recovery Plan (RRP), targeting fish which are in need of urgent resource restoration, has been introduced

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<sup>59</sup> Ministry of Agriculture of China.

<sup>60</sup> The full English version of the law is available at

[http://www.china.org.cn/environment/2007-08/20/content\\_1034340.htm](http://www.china.org.cn/environment/2007-08/20/content_1034340.htm).

with a reduction in fishing efforts such as reducing the number of vessels and suspension of fishing operation. In order to ensure appropriate fishing operation and fisheries management mentioned above, MAFF and prefectural governments appoint public fishery inspectors to direct fishers and conduct monitoring, control and surveillance (MCS) over ports and fishing grounds by dispatching inspection vessels and aircrafts.

## ***Korea***

During the last 10 years Korea has seen a decrease in the number of fishery households from 82,000 in 2000 to 69,000 in 2009, but its fishery output has increased from 4,066 billion won to 6,924 billion won during the same period. In 2009, the fishery production recorded 3.18 million tons and the total trade volume reached US\$4,407 million with exports of US\$1,511 million and imports of US\$2,896 million.

In its efforts to develop the fishery industry, the Korean government of has set three main goals, namely risk management, growth force strengthening and fishing village vitalization. Regarding risk management, the Korean government of has made efforts to establish systematic management mechanisms to prevent and cope with damages caused by storm and flood, fishing vessel accident, infectious aquatic animal disease, etc. In the process of enhancing the growth potential of the fishery industry, it has put great importance on sustainable fisheries and mutually-beneficial overseas development cooperation. In order to achieve sustainable fisheries, the Korean government of has introduced various measures such as the fishing license system, the fishing gear size and type regulation, the Total Allowable Catch (TAC) system, and the buy-back program.

The relevant authorities and organizations include the Ministry for Food, Agriculture, Forestry and Fisheries ([www.mifaff.go.kr](http://www.mifaff.go.kr)); the National Fisheries Research and Development Institute ([www.nfrdi.go.kr](http://www.nfrdi.go.kr)); the Animal, Plant and Fisheries Quarantine and Inspection Agency ([www.qia.go.kr](http://www.qia.go.kr)); the East Sea Fisheries Supervision Office ([eastship.mifaff.go.kr](http://eastship.mifaff.go.kr)); the West Sea Fisheries Supervision Office ([westship.mifaff.go.kr](http://westship.mifaff.go.kr)); and the National Federation of Fisheries Cooperatives ([www.suhyup.co.kr](http://www.suhyup.co.kr)). The fishery industry of Korea is mainly governed by the *Fisheries Act*, the *Fishery Resources Management Act*, the *Distant Water Fishery Act*, the *Aquatic Animal Disease Management Act* and the *Fishery Products Quality Control Act*.

## **11.2 Suggestions for a Future CJK FTA**

China, Japan and Korea have long been attaching importance to fisheries cooperation. There are several existing bilateral frameworks for conservation and management of fishery resources. China and Japan have concluded the Agreement on Fisheries between China and Japan, which took effect in 2000. Japan and Korea have also concluded the Agreement on

Fisheries between Japan and Korea, which took effect in 1999. China and Korea have concluded the Agreement on Fisheries between each other, which took effect in 2001.

In recent years, China, Japan and Korea have been making efforts to enhance fisheries cooperation through various channels. Researchers from the three countries have held several seminars with the issuance of hundreds of papers, which have greatly promoted scientific research and management in the field of aqua culture and fishery resource conservation. The China, Japan and Korea Fisheries Scientist Conference was established in December 1990 and the FRA-CAFS-NFRDI Presidents' Meeting has been held on a regular basis since October 2007, all of which have particularly made significant contribution to reinforcing mutual understanding in a consistent manner.

China, Japan and Korea recognized that it would be important for the three countries to cooperate in conservation and management of fishery resources and sustainable development of their fishery industries because the three countries have utilized the common fishery resources. In this regard, the three countries confirm the necessity to further discuss the possibility for fishery cooperation while taking advantage of the existing framework and dialogue channels. Japan and Korea suggest that the cooperation activities may include joint control on IUU fishing; joint research on the common fishery resources; exchange of information and technology regarding fisheries; establishment of joint fishery management organizations. China suggests that concrete cooperation initiatives, if needed, may be developed among fishery management authorities in the future.

Future trilateral cooperation and existing bilateral cooperation should complement each other, giving due consideration to the existing framework. The enhanced cooperation among the three countries could also allow better coordination to achieve common goals in other regional and multilateral organizations, which would improve the development of global fisheries.

## 12. Food

The physical and economic access to sufficient, safe and nutritious food is indispensable for the healthy and active life of people. Considering the significance of this issue, it should be an important task requiring not only national initiatives but also collective action. Therefore, food issues are expected to be considered under the framework of a future CJK FTA.

### 12.1 Current Situation and Policies

#### *China*

As the most populous country in the world, China's ability to feed over one-fifth of the world's population with only 7% of the world's arable land is widely acclaimed. With the great importance attached to food supply, the Chinese government has employed comprehensive approaches such as implementing beneficial policies for agriculture, rural areas and farmers and increasing financial input into agriculture; promoting increase in yield and output through science and technology; and establishing a market-oriented distribution system to set food prices based on demand and supply. These measures have proved to be effective and China has maintained a grain self-sufficiency rate above 95% in recent years, contributing greatly to global food security.<sup>61</sup> China's experience has demonstrated the importance of technological development, institutional change, improved incentives, and rural development among other policies in improving the food supply with limited natural resources.

During the past three decades, China's output of grains, animal and dairy products, vegetables, fruits and aquatic products has increased successively and rapidly. With growth and diversification of the food supply, the consumption structure of the rural and urban residents of China has been greatly improved, with decreasing grain consumption per capita, and increasing consumption of non-staple food products such as meat, egg, fruits, vegetables and dairy products. Meanwhile, China has also become an important importer and exporter of agricultural products in the world.

The quality of food consumed is another key issue. In recent years, the Chinese government has been making great efforts to ensure food safety through upgrading food safety standards, improving supervision and emergency handling capabilities, raising the credibility and personnel quality of food production enterprises, and increasing penalties for violators.

While recognizing the above mentioned achievements, it should be pointed out that there are

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61 *A Report on the Status of China's Food Security*, Beijing: China Agricultural Science and Technology Press, 2009.

still some areas and populations vulnerable to food insecurity in China due to disparities between urban and rural areas, and among regions. Furthermore, from a dynamic point of view, China will face the great challenge of feeding its growing population with declining land, water, and other food production resources, and increasing cost of labor and domestic food production in the long run.

## *Japan*

Regarding the current situation of Japan's agriculture, revitalization of the domestic agriculture is a key issue, since it faces various problems, such as weakening production capacity; persisting small-scale farming; limited and decreasing farmland; growing aging labor forces for agriculture; and decreasing number of farmers.

Reflecting such circumstances, the total agricultural output has decreased by about 30% to 8.5 trillion yen in 2008 compared with its peak of 11.7 trillion yen in 1984. Due to both production-related factors (declining and stagnating production) and consumption-related factors (changing dietary patterns of consumers), Japan's food self-sufficiency ratio has declined to 40% in 2009 (on a calorie basis), which is the lowest among developed countries. According to an opinion poll conducted by the Cabinet Office in 2008,<sup>62</sup> more than 90% of Japanese people think that Japan's food self-sufficiency ratio should be raised. It is a grave situation from the viewpoint of food security. In addition, due to some food safety-related cases which occurred in and outside of Japan, food safety became an issue of growing concern for the Japanese public.

Looking into the issue of food from the aspect of global demand, it should be noted that the world population is forecasted to increase to approximately nine billion by 2050, and demand for feed crop is estimated to increase due to increasing meat consumption mainly in developing countries. From the aspect of production, there are some constraints such as depleting water resources, soil deterioration and desertification and unstable factors like global warming. Therefore, since global supply and demand for food is forecasted to be tight in the mid- and long-term, there exists anxiety among the Japanese public concerning future food supply. In this regard, Japan has established a public-private partnership mechanism for responsible agricultural investment which promotes and increases sustainable agricultural production in order to ensure stable food supply to Japan and the global market.

Ensuring a stable supply of safe food for the nation is one of the basic responsibilities of the government. For this objective, the Government of Japan has adopted a policy of increasing domestic production, complemented by import and stockpile. As such, from the viewpoint of food security, the Japanese government has implemented various measures to maintain and increase domestic production to raise the self-sufficiency ratio of food to 50% by 2020, as

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62 <http://www8.cao.go.jp/survey/h20/h20-shokuryou/index.html>.

well as to ensure a stable food supply from overseas. In compliance with the WTO/SPS Agreement, Japan has committed itself to establishing SPS measures, including those for food safety issues, following the stepwise processes of risk analysis, namely, risk management; risk assessment (functionally separated from risk management); and risk communication (an interactive process of exchange of information and opinions on risk among risk assessors, risk managers and other interested parties). It is essential for the Government of Japan to elaborate the science-based decision-making with regard to SPS measures.

In 2010, following the *Basic Policy of Comprehensive Economic Partnerships*, the “Headquarters to Promote the Revitalization of the Food, Agriculture, Forestry and Fishery Industries” was established in order to promote both high-level EPAs and improvement of Japan’s food self-sufficiency and revitalization of its agricultural industry and rural communities, and also to take measures aimed at fostering sustainable and strong agriculture. Based on the Cabinet Order “*Overall Picture of Policy Promotion*” issued in 2011, the Strategy for the Revitalization of Agriculture, Forestry, and Fisheries was developed.

### ***Korea***

Over the past 50 years, Korean agriculture has faced numerous domestic and foreign challenges such as the need to secure food security, income discrepancy between urban and rural households, progressive market liberalization, food safety, rural development, and rapid aging of farmers. To cope with these challenges, Korea, one of the major food importers, has introduced various measures and policies.

One of the most important objectives of these policies has been to maintain an adequate level of domestic production of staple food for food security. Korea’s low level of grain self-sufficiency rate, which marked only 27% in 2009, had served as the basis for setting such goal. In recent years, the insecurity of the international food market triggered by global climate change and a surge in demand has drawn more attention to the issue of food security. In this regard, the Korean government has raised the self-sufficiency target rate and introduced a comprehensive set of measures related to both consumption and production. The policy actions include expanding domestic food-production infrastructure through multi-use of farmland, securing stable food import routes with overseas agricultural development, maintaining an appropriate level of food reserves, and establishing a management system to react to import suspension or a poor harvest, etc.

Food safety is another important policy objective in Korea. With the recent increase in food trade between countries and the emergence of new risk factors related with the development of new technologies and environmental changes, incidents that compromise food safety are no longer concerns of a single country but of the global community. In order to ensure food safety in these current situations, the Korean government has undertaken multiple efforts in

many ways. At the preventive level, various safety tests are conducted during the production and distribution stage. Standards for the tests have been established with a solid scientific basis by referring to data acquired through food monitoring and risk assessments. Korea has also made efforts to harmonize its domestic standards with the international standards of Codex Alimentarius and other countries. A traceability system is implemented for better management of final products. In addition, the Korean government has established a safety management system to collect and analyze any relevant information from foreign countries and respond to possible incidents regarding food safety in advance.

The Korean government has also endeavored to expand the rights of consumers. In order to provide a broader range of consumer choices, Korea has adopted and maintained various policies including quality or safety certification mechanisms, such as the Chemical Free Agricultural Product and Organic Food, Good Agricultural Practice (GAP), Hazard Analysis and Critical Control Points (HACCP).

## **12.2 Suggestions for a Future CJK FTA**

In recent years, with the platform provided by APEC, ASEAN+3, ASEM and other regional cooperation mechanisms, China, Japan and Korea have already carried out various forms of cooperation on food and agricultural issues. Due to the geographical proximity, China, Japan and Korea have many similarities of production and consumption. Because of a substantial amount of trade in agriculture, fishery, and food products among the three countries, it is important for the three countries to examine how to contribute to the regional stable supply of food. A future CJK FTA would provide a new platform for China, Japan and Korea to address food issues and information sharing by promoting productivity and growth in the agricultural sector, facilitating food trade, securing each country's food security improvement, encouraging development and transfer of new agricultural technologies, and establishing mutually beneficial systems for the agricultural sectors of each country. Furthermore, it would provide an opportunity to further secure food safety and contribute to strengthening public health through close collaboration among the three countries.

- **Promoting agricultural productivity and growth**

Recognizing the importance of efforts of each country to increase food production, activities in this area could include raising awareness of environmentally sustainable agricultural methods; improving surveillance and control of pests and diseases that harm agricultural production; fostering investment and finance in the agricultural sector; building well-functioned markets and regulatory frameworks for sustaining robust agricultural sectors; considering joint projects to strengthen other various roles of agriculture; and supporting the coherent work done by international organizations such as the FAO to raise agricultural productivity and consultations on relative issues.

- Facilitating food trade and securing food security improvement

Activities in this area could include providing support for the successful conclusion of the WTO Doha Development Agenda (DDA) negotiations; making efforts to increase trilateral food trade among the three countries; exchanging information on policies and practices to raise the self-sufficiency rate; encouraging the implementation of more facilitative measures in food trade among the three countries in compliance with the WTO rules on export and import for ensuring a stable food supply.

- Encouraging development and transfer of new agricultural technologies

The approach in this area could include sharing agricultural innovation; creating an environment conducive to agricultural research and development; improving farmers' income and productive capacities through agricultural technology transfer and training; improving agricultural production infrastructures; encouraging R&D and dissemination of its outcomes; and conducting collaborative communication on biotechnology, climate change and food safety.



## 13. Government Procurement

Governments at all levels are big purchasers of goods, services and construction services which makes government procurement an important component of the national economic activities of China, Japan and Korea. Much of this purchasing is conducted on an open and non-discriminatory basis. The following outlines the government procurement frameworks of the three countries and makes suggestions for a future CJK FTA.

### 13.1 Current Situation and Policies

#### *China*

China's government procurement practice started in 1996 with the implementation of pilot programs in Shanghai and Shenzhen successively. Since then, with the robust growth of China's economy, the government procurement market in China has been witnessing a rapid expansion. In the past decade, the government procurement value of China has been growing by double-digit figures. Latest statistics from the Ministry of Finance showed that the government procurement value of China exceeded RMB 800 billion in 2010.

China's government procurement system is governed by the *Government Procurement Law*<sup>63</sup> which was promulgated on June 29, 2002 and took effect on January 1, 2003. The Law is modeled after international procurement principles and applies to all levels of the Chinese government. The Law contains nine chapters, with 88 provisions on main issues such as the basic principles and patterns of government procurement, the format and enforcement of contract, supplier query and complaint, and the responsibilities of administrative supervision. In situations where the government procurement of engineering works takes the form of public bidding, the bidding law shall prevail.

- To protect fair competition in the government procurement market, the Law prescribes that no region or industry should impede the free access of suppliers to its market. Financial departments of the government are responsible to monitor and supervise government procurement issues. They are not allowed to set centralized procurement institutions nor participate in procurement activities under government procurement programs. No subordination or other interests shall be involved between centralized procurement institutions and administrative institutions.
- Concerning patterns of procurement, the Law prescribes that open bidding be the major method of procurement, but other methods, including invited bidding and competitive

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<sup>63</sup>The full English version of the law is available at [http://www.gov.cn/english/laws/2005-10/08/content\\_75023.htm](http://www.gov.cn/english/laws/2005-10/08/content_75023.htm).

negotiation, may also be chosen by procurement personnel subject to prior approval of financial departments.

- According to the Law, domestic goods, construction or services should be preferred for all government procurements in general, unless where goods, construction or services in need cannot be acquired within the territory of China, or where the procurement items are procured for consumption abroad.

Apart from the legal framework, administrative institutions for government procurement have been set up at all levels of government in China. Most provinces have also established government procurement centers in charge of centralized purchasing. Meanwhile, an effective and transparent government procurement information publication system has been established, composed by those media organizations such as the China Government Procurement Network (<http://www.ccgp.gov.cn>), China Financial and Economic News, and the *Magazine of China's Government Procurement*.

China is not yet a signatory to the WTO Agreement on Government Procurement (GPA). In accordance with its commitment upon accession to the WTO, China became an observer to the WTO Committee on Government Procurement in 2002. China also committed, in its Protocol of Accession to the WTO, to initiate negotiations for accession to the WTO/GPA “as soon as possible”. In December 2007, China submitted its application for WTO/GPA accession and initial offer of coverage. In July 2010, China submitted its reversed offer of coverage.

### ***Japan***

Japan implements government procurement through fair, open and transparent procedures, under such laws and regulations as the *Account Law* (1947), the *Cabinet Order concerning the Budget, Auditing and Accounting* (Imperial Ordinance, 1947), and the *Local Autonomy Law* (1947). In addition, the Government of Japan took a series of voluntary measures to increase opportunities for foreign suppliers to access the Japanese government procurement market.

These laws and regulations set out provisions on, for example, qualification of suppliers, public notice of a tender, method of awarding contract, and drafting of contract documents. Under Japan's procurement regime, the Open Tendering Procedure is the basic tendering procedure. The Selective Tendering Procedure is used when the Open Tendering Procedure is not needed because only a small number of suppliers can participate in a tendering procedure due to the nature or purpose of a contract or when the Open Tendering Procedure is regarded as inappropriate. The Limited Tendering Procedure is an exception and is used only under such conditions as the absence of tenderers in response to a public notice.

With respect to administrative institutions, the Ministry of Finance is responsible for laws and regulations for central government entities, the Ministry of Internal Affairs and Communications (MIC) for those for local government entities, and the Cabinet Office for voluntary measures, respectively.

As for international rules, Japan is a party to the WTO/GPA and has several EPAs which include provisions on government procurement (e.g. National Treatment and Non-Discrimination, Tendering Procedures, Transparency of Procurement Information, and Challenge Procedures).

According to the statistics for 2009 which Japan submitted to the WTO Committee on Government Procurement,<sup>64</sup> the value of contracts the central government entities (above and below threshold) and local government entities (above threshold) concluded was about 4,480 billion yen in total.

### ***Korea***

Korea's government procurement scheme has been designed and developed to achieve the goal of acquiring the "best value" when procuring entities use public funds to procure goods or services (including construction services).

As a signatory to the WTO/GPA, Korea has ensured non-discrimination and transparency in its government procurement system by keeping its domestic laws, regulations and policies in compliance with the general principles and procedural provisions of the WTO/GPA. Such principles include non-discrimination, national treatment, open competition and transparency.

The two main pillars of the legislative framework for Korea's government procurement are the *Act on Contracts to which the State is a Party (ACSP)* and the *Act on Contracts to which the Local Government is a Party (ACLGP)*. These two laws were enacted in 1995 and 2005, respectively, and both encompass the basic principles and procedures of Korea's government procurement. The Ministry of Strategy and Finance and the Ministry of Public Administration and Security are the primary authorities responsible for the legal framework. Procurements by public enterprises are governed by a separate law, the *Act on the Management of Public Institutions (AMPI)*. The AMPI, however, incorporates most provisions of the ACSP, with slight variations. Thus, the major principles and procedures stipulated in the ACSP also apply to the procurements by public enterprises.

As for international tendering, the *Special Regulation of the Enforcement Decree of the ACSP for Specific Procurement* has been the main legal instrument since January 1, 1997. It

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<sup>64</sup> WTO Committee on Government Procurement, Statistics for 2009 Reported under Article XIX of the Agreement, GPA/104/Add.4, 5 May 2011.

specifically regulates international tendering procedures in full compliance with the principles and rules of the WTO/GPA.

One particular aspect that distinguishes Korea's government procurement system from others is that procurements are mostly conducted through a single government-wide e-procurement system, called KONEPS (Korea Online E-Procurement System). Since it was launched in October 2002, most of the government entities have carried out all procurement procedures via KONEPS from supplier registration, bidding, contracting to contract payments. Suppliers can also conduct all procurement-related operations by accessing KONEPS. Thus, KONEPS serves as the single window for public procurements whereby suppliers can participate in bids made by all KONEPS users in the public sector through a single registration. The system provides a one-stop service, linking 123 external systems of other organizations, including the Ministry of Public Administration and Security, financial institutions and other related associations. As of 2010, 40,000 public organizations and 200,000 businesses used KONEPS and procurement transactions worth approximately 75 trillion won were made via KONEPS. The introduction of KONEPS has significantly reduced transaction costs and has increased efficiency. It has also enhanced transparency and has shortened procurement lead times.

The total volume of Korea's government procurement in 2010 was 104.4 trillion won, or approximately US\$ 104 billion.

### **13.2 Suggestions for a Future CJK FTA**

China, Japan and Korea have already carried out cooperation on government procurement in regional and multilateral contexts, such as in the APEC Government Procurement Experts Group (GPEG) and in the accession process of China to the WTO/GPA.

Given the importance of government expenditure as a percentage of GDP, improving the efficiency and effectiveness of government procurement can contribute to economic growth. Within the framework of a future CJK FTA, the three countries would be in a better position to deepen their understanding of each other's policies and practices in government procurement through exchanging information and sharing experiences.

China suggests that because China's accession to the WTO/GPA is still underway, China takes the WTO/GPA as the main vehicle to conduct government procurement negotiations. China further suggests that the three countries should explore opportunities to further enhance trilateral cooperation through information exchange.

Japan and Korea suggest that a CJK FTA should have a separate chapter on government procurement, for trilateral binding rules and guidelines on such issues as non-discrimination, transparency, prohibition of offsets, specific procurement procedures, consultations and

establishing a sub-committee, covering central governments, local governments and other entities.

## **14. Environment**

The Governments of China, Japan and Korea recognize the importance of environmental protection whilst striving for sustainable economic development and those should be mutually supportive for the achievement of such a goal. The establishment of a future CJK FTA will provide a good opportunity for China, Japan and Korea to further enhance the cooperation in environmental protection and economic development.

### **14.1 Current Situation and Policies**

#### ***China***

As a country undergoing rapid economic growth and social development, China attaches great importance to environmental protection and gives prominence in its strategy for industrialization and modernization to build a resource-conserving and environment-friendly society.

China has in recent years formulated or revised a series of laws on prevention and control of water pollution, marine environmental protection, prevention and control of air pollution, as well as evaluation of environmental impact. The State Council has also enacted or revised more than 50 administrative regulations to strengthen environmental protection. China is also the first developing country to adopt and implement a National Climate Change Program.

As an agency directly under the State Council, the Ministry of Environmental Protection (MOEP) of China is empowered and required by law to implement environmental policies and enforce environmental laws and regulations. Complementing its regulatory role, the ministry funds and organizes research and development. In addition, it also serves as China's nuclear safety agency.

While making great efforts to improve the legal and institutional framework, China has also invested heavily in environmental protection. Between 2005 and 2010, for example, the investment in this area exceeded US\$230 billion,<sup>65</sup> which was mainly used in exploiting and promoting the usage of new or renewable energy, controlling the dust storm sources, protecting natural forests, turning cultivated farmland back into forests or pastures, etc.

Apart from domestic efforts, China has signed bilateral environmental protection cooperation agreements or memorandums with about 50 countries including Japan and Korea. In the multilateral realm, China has also acceded to more than 50 international conventions on environmental protection, and has been active in performing the obligations stipulated in

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<sup>65</sup> Statistics from Ministry of Environmental Protection of China.

these conventions, which include the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol, the Montreal Protocol on Substances that Deplete the Ozone Layer and the Convention on Biological Diversity (CBD).

At present, environmental protection in China is facing unprecedented opportunities. The shift of economic growth mode and accelerated economic restructuring will provide a good foundation for addressing structural and regional environmental pollution and ecological destruction. Increasing national strength provides a strong physical and technical support to environmental protection. Deepening reform of economic system and administrative institutions creates favorable conditions for the innovations in environmental protection work mechanism. The 12th Five-Year Plan (2011-2015) stated that China will vigorously facilitate industrial restructuring and upgrading, promote clean production, develop a circular economy, reduce pollution at source and promote the development of an environment-friendly society.

### ***Japan***

The Government of Japan established the Basic Environment Plan in 1994 (revised in 2000 and 2006). Following the provision of the *Basic Environment Law* (enacted in 1993), this Plan stipulates the comprehensive and long-term environmental policies and set out four long-term objectives (Environmentally Sound Material Cycle, Harmonious Coexistence, Participation and International Activities). The government will shortly develop the fourth Plan, after an overall review in 2011. Based on the Plan, Japan implements various policies to achieve sustainable society.

The Ministry of the Environment and other ministries involved are having implemented specific measures for environmental preservation in accordance with the Plan. Local governments, private sector, citizens and other parties are also expected to voluntarily and actively engage themselves in environmental activities.

Japan has also put emphasis on efforts for the global environment as a diplomatic priority and is currently leading worldwide discussions in this field. It is taking initiatives in a wide range of areas, such as climate change, conservation of biodiversity and conservation of forests in cooperation with other countries. Furthermore, Japan actively supports the efforts of developing countries and contributes to improving their capacity and environmental situations. Specifically, with regard to the Fast-Start Financing up to 2012 to address climate change, Japan has announced the assistance of approximately US\$15 billion including public and private financing of which more than US\$9.7 billion has already been implemented as of March 31, 2011.

In the bilateral context, Japan has established documents with many countries to strengthen cooperation in the area of environmental protection and to promote joint efforts at regional and global levels as well. With respect to multilateral fora, Japan has been implementing its

obligations under international environmental conventions, such as the UNFCCC, the Kyoto Protocol to the UNFCCC and the CBD.

### ***Korea***

In the pursuit of Low Carbon, Green Growth, the national vision declared by President Lee Myung-bak in August 2008, Korea enacted the *Framework Act on Low Carbon Green Growth* (January 2011), which lays out the basic direction for policies and sets up a systematic foundation for the cause. It also established the *National Strategy for Green Growth and the five-Year Plan* (2009-2013), which contains medium- and long- term action plans for the country's movement towards green growth. It invests approximately 107 billion won, which is around 2% of the GDP, in green growth annually, and proactively works towards achieving the national greenhouse gas reduction target for 2020, which requires a 30% reduction from the BAU projection of the nation's total amount of greenhouse gas emissions. In recognition, international organizations such as United Nations Environment Programme (UNEP) and OECD acclaimed that such efforts should serve as role models in the international community. Furthermore, they have established and operated an international research institute called the Global Green Growth Institute (GGGI) since 2010 as a means of sharing previous experiences and lessons with the international community and looking into potential cooperation schemes.

In order to reduce greenhouse gas emissions in an efficient manner, the Ministry of Environment has set reduction targets by departments and industrial sectors. It has also established and has been operating the Greenhouse Gas Inventory and Research Center of Korea (June 2010) for greenhouse gas management by high-quality international standards. In addition, it has introduced and has been operating a target management system (September 2010) for public institutions and greenhouse gas emitting businesses. Following the introduction of the greenhouse gas emission trading system, the Ministry of Environment is working towards setting up a trading center, establishing a mandatory market system strictly based on examinations and certifications along with a voluntary market system that can induce emission-reducing behavior in various participants.

Following the success of the G20 Summit, Korea is currently actively participating in international negotiations regarding the Post-2012 Climate Change Response System. Recently, it hosted the 13th Tripartite Environment Ministers' Meeting among China, Japan and Korea (TEMM13) in April 2011, and has examined progress made on shared action plans for the top 10 priority issues, which include climate change and biodiversity. It continues to strengthen international cooperation in the environmental sector through participation in Environment Ministers' Meetings with Southeast Asian, Middle Eastern, African, Central and South American countries. Furthermore, the experiences and technologies of Korea's leading environmental policies are disseminated and shared, as Korea supports underdeveloped countries in their efforts to strengthen their environmental management



capacities and build a master plan for environmental improvements while also cooperating with them to develop environmental technologies.

On the other hand, Korea has reflected its pursuit of environmentally sound and sustainable development in the recent FTAs with its substantial trade partners in the context to strengthen trade relations and cooperation in ways promoting sustainable development but not to harmonize each country's environmental standards. The Korea-US FTA (KORUS FTA) sets a separate chapter on the environment which requires that the parties strive to ensure its laws and policies provide for and encourage high levels of environmental protection and that the two countries adopt, maintain and implement measures to fulfill its obligations under the multilateral environmental agreements. Furthermore, Korea and the US introduced opportunities for public participation in the implementing process of the agreement. The Korea-EU FTA also deals with trade-related environmental issues, combined with labor issues in the Trade and Sustainable Development Chapter which contains similar provisions with those of the KORUS FTA. The Korea-Peru FTA also has a separate environment chapter and Korea has been negotiating with Australia, New Zealand, Colombia and Canada about including a separate agreement regarding the environment.

## **14.2 Suggestions for a Future CJK FTA**

Environmental cooperation carries great significance in terms of the socioeconomic well-being for China, Japan and Korea, especially considering the geographical proximity of the three countries. There are considerable complementarities among the three countries in the field of environmental protection. Actually, great efforts have been made among the three countries in recent years to cope with common environmental issues under those regular meetings mechanisms such as the Tripartite Environment Ministers' Meeting (TEMM) and the Tripartite Director Generals' Meeting on Dust and Sandstorms (TDGM), which has yielded fruitful achievements.

It is beneficial for China, Japan and Korea to follow common principles on trade and the environment. In a future CJK FTA, efforts should be pursued to achieve a balance between environmental protection and international trade/investment so as to contribute to the socioeconomic well-being of China, Japan and Korea, and to increase the complementarities among the three countries in this field.

In addition, a future CJK FTA could provide the three countries with a new platform to further enhance environmental cooperation with mutual benefits and a win-win situation, aiming to realize the common goal of achieving sustainable development. Possible areas for cooperation may include: information sharing, the exploitation and adoption of alternative energy, the reduction of greenhouse gas emissions, improvement of environmental quality and promotion of ecosafe products, marine environmental protection, dust and sandstorm

control, and nuclear safety. The three countries may also seek opportunities to further enhance cooperation in areas such as capacity building, development of environmentally sound technology, trade-related environmental issues, and development of appropriate environmental regulations and their implementation through strengthening the linkages for environmental cooperation among the three countries.

## **VII. General Conclusions and Recommendations**

In accordance with the consensus reached among the leaders of China, Japan and Korea during the Trilateral Summit held in October 2009, the JSC has been established and conducted the Joint Study for an FTA among China, Japan and Korea. Being fully aware of the leaders' will to accelerate the Joint Study process as shown at the Trilateral Summit held in May 2011, the JSC has thus completed its work, making the following conclusions and policy recommendations.

### **1. General Conclusions**

#### **1.1 Strategic Implications, Economic Benefits and Possible Challenges of a Future CJK FTA**

The JSC has reaffirmed that a possible trilateral FTA among China, Japan and Korea will serve as an important vehicle that would strengthen the existing relations of the three countries not only by expanding trilateral and bilateral trade and investment among them but also by providing a comprehensive and institutional framework in which a wide range of trilateral cooperation would evolve. The strengthened trilateral relations will also contribute to making progress in the ongoing process of economic integration in East Asia, such as ASEAN+3, ASEAN+6, as well as the Asia-Pacific region. A CJK FTA would be regarded as a milestone in regional integration, fostering prosperity not only for the region but for the world as a whole.

The JSC has also concluded that a possible CJK FTA will be a new growth engine for all three countries by promoting intra-regional trade and investment which still remains at a low level in light of their economic potential. To be concrete, a future CJK FTA would deliver economic benefits to the three countries by realizing more fully the complementarities in the trilateral economic relationship with the elimination of trade and investment barriers, promoting productivity through greater competition and economies of scale on a larger market, and encouraging a wide range of trilateral economic cooperation.

On the other hand, in the entire negotiation process, the three countries should make efforts to address the sensitivities of each country, for example, by exploring the most appropriate structure of the agreement and the level of ambition.

## 1.2 Scope and Coverage of a Future CJK FTA

Throughout the Joint Study process, the JSC examined coverage of a possible trilateral FTA in a comprehensive and constructive manner, without prejudice to the future positions of the three countries in possible trilateral FTA negotiations. Based upon the discussions and examinations conducted by the JSC, a possible trilateral FTA is expected to address the following issues covered by this Report:

- ✓ **Trade in goods**
- ✓ **Trade in services**
- ✓ **Investment**
- ✓ **Other issues** may include, but not be limited to: technical barriers to trade, sanitary and phytosanitary measures, intellectual property rights, transparency, competition policy, dispute settlement mechanism, industrial cooperation, consumer safety, e-commerce, energy and mineral resources, fisheries, food, government procurement and environment.

## 2. Policy Recommendations

### 2.1 Basic Principles of a CJK FTA

The JSC has shared the view that the following basic principles should be fully taken note of by the three countries during negotiations:

- ✓ **(A Comprehensive and High Level FTA)** To aim at a comprehensive *and high level* agreement;
- ✓ **(Consistency with WTO Rules)** To be consistent with WTO rules, in particular, Article XXIV of GATT 1994 referring to tariff eliminations on “substantially all” the trade and Article V of GATS referring to the absence or elimination of “substantially all” discrimination in the substantial sectoral coverage;
- ✓ **(Balanced Interests)** To strive for balanced results and achieve a win-win-win situation on the basis of reciprocity and mutual benefit; and
- ✓ **(Consideration to Sensitive Sectors)** To conduct negotiations in a constructive and positive manner, with due consideration to the sensitive sectors in each country.

## **2.2 Recommendations**

With the above principles in mind, and based on the common understanding that a CJK FTA would be feasible and could bring benefits to all three countries, the JSC recommends the governments to decide on how to proceed with a possible trilateral FTA and to announce, as appropriate, the course of action, such as a timeframe and/or a roadmap guiding the negotiations.

The JSC shares the view that strong political will would be needed during the entire process for a CJK FTA.

In this context, the JSC will report the result of the study, through the Economic and Trade Ministers' Meeting as well as the Foreign Ministers' Meeting, to the Trilateral Summit in 2012 for the follow-up actions.