

(tentative translation)

**Call for the Start of Negotiations on  
Japan-EU Economic Integration Agreement  
–Third Proposal for Japan-EU Economic Partnership Agreement–**

**November 17, 2009  
Nippon Keidanren**

Although the Japanese economy has bottomed out, it will continue to face difficulties for some time to come. Under these circumstances, it is essential to absorb the dynamism of the global economy by ensuring a liberal trade and investment environment in order to achieve self-sustained economic recovery and growth. The importance of doing so will grow as Japan's population is declining. From this perspective, the development of stronger economic ties with the EU, the world's largest single market, stands as an urgent challenge for Japan. The EU is Japan's third largest export market (after the United States and China), the second largest host for Japan's foreign direct investments (after the United States), and the leading source of foreign direct investment into Japan.

Immediately after the start of negotiations for the EU- Korea Free Trade Agreement (FTA), Nippon Keidanren issued its first proposal in June 2007 entitled "Call for the Start of Joint Study for a Japan-EU Economic Partnership Agreement."<sup>1</sup> Thereafter, we have continued to work toward the realization of an economic partnership agreement (EPA) with the EU. In April 2009, we came up with our second proposal entitled "Toward Japan-EU Economic Integration."<sup>2</sup> The document proposed not only the reduction and elimination of trade barriers but also called for the deepening of economic integration with the EU through the improvement and harmonization of various systems and rules.

Japan and the EU share such basic values as democracy and the rule of law. These shared values provide us with a foundation for strengthening our mutual ties and developing multi-tiered and comprehensive relations. The pursuit of such relations will also prove conducive to greater economic integration.

## **1. Urgent Need to Create a Framework for Strengthening Japan-EU Economic Integration**

Shortly after the issue of our second proposal, the Japan-EU Summit was held in the Czech Republic in May 2009 where leaders from both sides reaffirmed the crucial importance of the EU-Japan bilateral economic and commercial relationship for global prosperity. In light of the current global economic situation, they also agreed to lead the international efforts for maintaining an open economy. With a view to better exploiting the potential of their economic relationship, the leaders agreed that the integration of their economies should be strengthened by focusing on a few specific non-tariff issues and reviewing the progress made in these areas before the next summit in 2010. We believe that this agreement constitutes a first step in the right direction. Given the short amount of time available, it is necessary to quickly identify specific issues that are expected to bring concrete outcomes and whose resolution will add momentum to the further development of Japan-EU economic relations. Although six months have passed since the summit, no decisions have been made on the specific issues to be taken up.

In contrast, steady progress has been made in the EU-Korea FTA negotiations that started in May 2007. The initialing of the agreement took place on October 15 of this year, and it is expected to come into effect in 2010. Japanese companies are currently engaged in intense competition with their Korean counterparts in EU market, and Japanese companies will find themselves at a serious competitive disadvantage once the FTA is enforced. It has been estimated in one study that Korean exports to the EU will increase by 12.8 billion euros once the FTA becomes effective.<sup>3</sup> These gains will be centered on the automotive and electric machinery industries. For instance, in the case of passenger cars, the current EU tariff rate of 10 percent will be reduced to zero for Korean cars no later than five years after the FTA comes into effect, while Japanese cars will continue to face the current tariff level. This development will seriously affect the price competitiveness of Japanese cars, including those manufactured in the EU. In the field of electronics, the EU-Korea FTA will result in a substantial

tariff-rate differential between Japanese and Korean products at the maximum 14 percent (tariff rates vary according to item).

In addition to the above, the elimination of tariffs will free Korean companies from the impact of EU's arbitrary changes in tariff classification, ensuring greater freedom in the development and design of products. On the other hand, Japanese companies will remain exposed to risks related to changes in tariff classification. Even when technological innovations render the development of multi-functional products possible, Japanese manufacturers may hesitate to proceed with development if they feel that the new product would come under a different tariff classification with a higher rate. It is said that that some EU member states would like to maintain high tariff rates in order to encourage investment from Japan. However, high tariffs will raise procurement costs from outside the EU for local production. At least in the medium- to long-term periods, therefore, this strategy will not have a positive effect on attracting investment.

Any further delay in creating a new framework for economic relations with the EU will have a serious impact on the international competitive position of Japanese industries. As the enactment of the EU- Korea FTA approaches, it will be absolutely essential to accelerate current initiatives for strengthening Japan-EU economic integration.

## **2. Japan-EU Economic Integration Agreement as a New Framework**

In light of the above situation and based on the past proposals, this paper presents an outline of a new framework for strengthening economic integration centered on the lowering of non-tariff barriers as well as tariffs. We name this new framework “Japan-Economic Integration Agreement,” and call for the government of Japan, the European Commission, and the EU member states to prepare for the start of negotiations on this agreement as soon as possible following next year’s summit.

The agreement should be designed to cover the following objectives: (1) ensure a business environment in which Japanese companies will not be at a disadvantage in global competition; (2) develop an economically borderless

environment by lowering non-tariff barriers as well; (3) realize a highly transparent, liberal, and stable business environment by comprehensively covering all aspects of economic relations, including not only trade but also investment, services, intellectual property, anti-competitive behavior, and government procurement; (4) include provisions that are commensurate with those agreed between developed countries, which are on a par with or exceed the provisions concerning certification of origin, electronic commerce, and other matters contained in the Free Trade and Economic Partnership Agreement (FTEPA) between Japan and Switzerland; and (5) develop mechanisms for continuous consultation through the establishment of a series of subcommittees as an institutional framework for strengthening economic integration from a medium- to long-term perspective and for promoting structural reform in both Japan and the EU.

With the above objectives in mind, the proposed Japan-EU Economic Integration Agreement outlined below contains various features that we believe would contribute to the future development of Japan-EU economic relations. However, this does not preclude the inclusion of other features not mentioned here. We hope that this proposal will stimulate discussion in various quarters and lend momentum to the start of negotiations on an agreement that is both comprehensive in content and befitting the requirements of developed countries. In order to ensure that the agreement is truly reciprocal, we are particularly interested in hearing suggestions and comments from the EU side. As the result of these discussions, we hope that an economic integration agreement will be incorporated in the next plan as a core element, following the 2001 Action Plan for EU-Japan Cooperation ending in 2011, so that it may strengthen our political, social, and cultural relations, thereby generating synergy effects in these areas.

### **3. Japan's Trade Strategies and Japan-EU Economic Relations**

As two drivers to promote free trade and investment, Japan is actively promoting the early conclusion of multilateral negotiations in the WTO Doha Round and the conclusion of regional and bilateral economic partnership agreements. The steady implementation of this basic policy is also important for Japan's relations with the EU.

The multilateral negotiations in the WTO Doha Round have the advantage of simultaneously lowering the tariffs of more than 150 countries. Respecting what has been achieved so far as the result of nearly eight years of negotiations, Japan and the EU should cooperate in bringing the Doha Round to an early and successful conclusion. Given the modalities under current negotiations, the double-digit tariffs of the EU will be lowered to the 4–5 percent range. For this reason among others, the conclusion of the Doha Round will contribute significantly to promoting closer economic ties between Japan and the EU.

Turning to regional and bilateral agreements, Japan has thus far concluded eleven EPAs with ten countries and one region, which are for the most part Asian. These countries and a region, however, account for less than 20 percent of Japan's total trade. For these agreements to function fully as an institutional framework for supporting the worldwide supply chains of Japanese companies, they must be further expanded and knit together into viable networks. Given the widely held expectation that Asia will continue to perform as the engine for global economic growth, one of the approaches Japan should pursue would be to work toward Asian regional economic integration with a view to creating an "Asian Economic Community." In undertaking such an initiative, Japan must be aware of the importance of keeping the region open to countries outside the region. In particular, the region should remain open to the United States and the EU, which rank among Japan's top counterparties in terms of outstanding investment amounts and trade. From this perspective, Japan must actively promote the conclusion of a Japan-US EPA as well as an economic integration agreement with the EU. An economic integration agreement with Japan would provide EU with a useful tool for deepening its ties with the fast-growing Asian region and creating a stable business environment in Asia in line with international rules and practices under the rule of law.

Several other initiatives must be taken to create a borderless environment with the EU. These include the revision or conclusion of tax treaties and social security agreements with EU member states, through which source-country taxation of investment income (dividends, interest, royalties) is

reduced or exempted, and the double payment of social insurance premiums by corporate employees eliminated.

## Outline of the Economic Integration Agreement

### **Trade in Goods**

#### **Industrial Products**

- Eliminate tariffs on all industrial products, in principle. Eliminate tariffs on sensitive items as well in a short period of time
- In particular, eliminate tariffs on environmental products to mutually complement efforts to contribute to the urgent need for building low-carbon societies.
- For the period until tariff elimination, establish systems for prior consultation on changes in tariff classifications and duty suspension measures.

#### **Agricultural Products**

- Include provisions for promoting trade in agricultural products while also promoting the development of a sound domestic agricultural sector.

#### **Discipline in Trade**

- Establish systems for prior notification and consultation on trade remedies. Apply rigorous trade discipline, on a par with or exceeding those contained in the EU-Korea FTA and exceeding those of the WTO Agreements.

#### **Rules of Origin**

- Determine the country of origin based on either the value-added criterion or change in the tariff classification rule.
- In addition to third-party certification systems (A certificate of origin shall be issued by the competent governmental authority of the exporting

party. The competent governmental authority may designate other entities or bodies for the issuance of a certificate.), adopt an origin declaration by approved exporters (An origin declaration may be produced only by an approved exporter. The competent governmental authority of a party may authorize an exporter to produce an origin declaration as an approved exporter.) as easy-to-understand and easy-to-use procedures for certification of origin (as in the case of the Japan-Switzerland FTEPA).

### **Customs Procedures and Trade Facilitation**

- Adopt transparent, easy-to-use, and simple procedures that are in harmony with international standards. In order to strengthen the security of supply chains, at the same time, efforts should be made toward the earliest agreement on mutual recognition of the authorized economic operator (AEO) system by accelerating the ongoing work. (Comparison of certification standards of the two sides has been completed, and the joint on-site confirmation process was started in 2009.) Subsequent to the agreement on mutual recognition, exempt AEOs from the EU's 24-hour rule (mandating submission of international marine cargo information 24-hour prior to loading) scheduled to be introduced in the future. Moreover, establish a framework for continuous review of the AEO system.
- Implement the following measures for the realization of expeditious, predictable, and simple customs procedures: (1) exchange information on details of customs systems and related developments and changes; (2) develop uniform documents and data sets; (3) ensure transparency, efficiency, and accountability in customs procedures; and (4) hold periodic meetings of customs authorities.
- Include provisions for coordinating with the Japan-EC Agreement on Cooperation and Mutual Administrative Assistance in Customs Matters as needed for the achievement of the above.



## **Sanitary and Phytosanitary Measures**

- Establish a subcommittee to promote harmonization and mutual recognition of food product related standards in light of equivalency assessment<sup>4</sup> of organic product standards.

## **Technical Regulations, Standards, and Conformity Assessment Procedures**

- Promote harmonization and mutual recognition of the following technical regulations and standards (or recognition as equivalent of technical regulations and standards), and mutual recognition of conformity assessment results to prevent technical regulations, standards, and conformity assessment procedures from constituting obstacles to trade. Establish a subcommittee for improving the Japan-EC Agreement on Mutual Recognition<sup>5</sup> based on studies of the current level of use, and promote further harmonization and mutual recognition of standards.

### **Harmonization of Technical Regulations and Standards**

- Ensure harmonization between Japan's good clinical practice (GCP) related to medicinal products and international standards (ICH-GCP) to promote efficient and smooth implementation of joint international clinical trials and to reduce the time needed for approval.
- Promote harmonization between Japan's GCP related to medical devices and international standards (ISO14155) to shorten the review period for approval.
- Considering that the ministerial ordinance for medical devices quality management system (QMS) is identical to international standards (ISO13485), shorten the review period for approval and certification by accepting audit results from foreign countries that are based on ISO13485.
- Promote and improve international harmonization and mutual recognition of technical standards for motor vehicles.

## **Mutual Recognition of Technical Regulations and Standards (recognition as equivalent of technical regulations and standards)**

- Promote equivalency assessment between EN standards and CE marking for strength and other specifications of construction materials (structural lumber, glued-laminated timber) and Japan Agricultural Standards (JAS) / Japan Industrial Standards (JIS).

## **Mutual Recognition of Conformity Assessment Results**

- Expand the range of GMP (Good Manufacturing Practice) for medicinal products under the Japan-EC Mutual Recognition Agreement to include non-solid medicinal products.

## **Others**

- Unify outer-box labeling information for medicinal products marketed in the EU.
- Adopt the following measures in the EU certification system for medical devices: (1) unify the applications and interpretations of more than 80 existing Notified Bodies; (2) unify member-state interpretations of EU directives concerning medical devices; and (3) establish a single and common registration system of medical devices in European Database on Medical Devices (EUDAMED).
- Abolish type-certification of television equipment by individual EU member states.
- Mandate prior notification and publication of information on the introduction and revision of standards at a sufficiently early stage.
- Promote international standardization of new technologies and their adoption by third countries through the establishment of a framework for joint study and verification testing of newly developed technologies, such as radio frequency identification (RFID) and biometrics.

## **Trade in Services**

- Grant most-favored-nation treatment.
- Adopt a negative list approach for market access and national treatment. Mandate the maintenance of the regulatory status quo even where reservations have been made in trade liberalization.
- Mandate the maintenance of the status quo throughout the future in already liberalized fields.
- Pledge such measures as the following other than market access and national treatment.
  - Regarding regulated Kyosai established under laws other than the Insurance Business Law, promote the further development and improvement of rules from the perspective of ensuring consistency with regulations applicable to insurance businesses.
  - Promote the movement of people and goods, in order to enhance consumers' benefits, by moving forward with an “open sky policy” allowing the private sector to decide freely on the number of flight routes, selection of aircraft and equipment, and other matters. <sup>6</sup>
- Mandate early solicitation of comments when introducing or revising domestic regulations.
- Establish a subcommittee for continuous consultation on further liberalization.

## **Movement of Natural Persons**

- Ensure maximum possible freedom in intra-corporate transfers and business-related personnel movement (including dispatch to manufacturing and sales locations and to licensees, also covering family

members, etc) by introducing simplified procedures (for example, through the introduction of a “Japan-EU Business Residence Card”).

### **Electronic Commerce, etc**

- Promote electronic commerce and network-based IT services by mandating permanent WTO's moratorium on customs duties on electronic transmissions, granting national treatment and most-favored-nation treatment to digital products, ensuring transparency and fairness in administrative measures related to electronic commerce and network-based IT services, and fostering cooperation among competent authorities to establish and harmonize rules for consumer protection, protection of personal information, and responsibilities of Internet service providers (achieving levels on a par with or exceeding those contained in the Japan-Switzerland FTEPA).

### **Investment**

- Grant most-favored-nation treatment and national treatment at the stage of investment approval, abolish performance requirements (apply a negative list approach to the above two points), ensure freedom in cross-border remittances, and adopt provisions for umbrella clause and arbitration between investors and government.<sup>7</sup>
- Pledge other measures such as the following.
  - Consider measures for excluding EU member states from the list of target countries for the Japan's anti-tax haven rules.<sup>8</sup>
  - Promote the harmonization and integration of commercial laws and business practices in the EU. In particular, enforce "the Statute for a European Private Company" and monitor its enforcement to ensure harmonization in application and interpretation of the statute among EU member states.

- Promote further investment liberalization and facilitation by establishing a subcommittee for exchanging information on investment-related problems and reviewing the enforcement, application, and reservations concerning investment-related provisions.

### **Competition**

- Implement appropriate measures against anti-competitive behavior and cooperate in regulating such a behavior.
- Avoid and reduce disputes related to the application of competition laws by mandating mutual prior notification of the enforcement of specific decisions and measures to be adopted by competition authorities.
- Exchange views on basic thinking on competition policies and maintain continuous consultation to ensure transparency in procedures for the enforcement of competition laws.
- Include provisions for coordinating with the Japan-EC Agreement concerning Cooperation on Anti-Competitive Activities as needed for the achievement of the above.

### **Intellectual Property**

- Establish protection levels for copyrights, trademarks, design, patents, and other intellectual property.
- Mutually recognize patents.
- Review the EU's private copying levy system in light of progress made in digital rights management (DRM) technologies as an alternative and differences in design and application of the system among EU member states.<sup>9</sup>

- Confirm that protection of geographical indications shall be ensured as much as possible (at least on a par with the provisions of the Japan-Switzerland FTEPA<sup>10</sup>).
- Strengthen countermeasures against counterfeit drugs by prohibiting repackaging among other measures.
- Ensure effectiveness of the enforcement of laws against counterfeit and pirated products through unified and more efficient enforcement<sup>11</sup> and by raising penalty levels.
- Cooperate in countermeasures against counterfeit and pirated products in third countries.

#### **Government Procurement**

- For Japan, adopt provisions that exceed those of the WTO Government Procurement Agreement such as lowering the relevant value thresholds for the contract to which the agreement shall apply.
- For Japan, simplify procedures and enhance transparency by creating a virtual single access point, including tender information on local government procurement.

#### **Strengthening Economic Integration**

- Establish a subcommittee as a mechanism for continuous consultation between both sides' governments with private-sector participation to discuss measures for strengthening economic integration (Subcommittees for specific areas are noted under each section).

#### **Dispute Settlement**

- Include provisions for consultations, arbitral tribunals, award and other procedures for measures inconsistent with the Agreement and measures impairing or nullifying benefits accrued from the Agreement.

## **Administration of the Agreement**

- Include provisions for the establishment of a joint committee responsible for monitoring and coordinating the work of the subcommittees created under the Agreement.

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<sup>1</sup> <http://www.keidanren.or.jp/english/policy/2007/050.html>

<sup>2</sup> <http://www.keidanren.or.jp/english/policy/2009/037.html>

<sup>3</sup> “Economic Impact of a Potential Free Trade Agreement Between the European Union and South Korea” (Short study by Copenhagen Economics & Prof. J.F. Francois (March 2007).

<sup>4</sup> According to Japan’s Proposals for Regulatory Reform Dialogue presented as part of the Fiscal 2008 Japan-EU Regulatory Dialogue, in March 2001, Japan recognized the equivalence of the European Council Regulation No. 2092/91 (“EC Regulation”) with the Japanese Agricultural Standards for organic crops and organic crop products (“organic JAS Standards”). On the other hand, the EU recognized the equivalence of the organic JAS Standards with the EC Regulation on all points except one technical point, and indicated that it would be possible to move on to conducting on-the-spot inspections in Japan.

<sup>5</sup> The Japan-EC Mutual Recognition Agreement came into effect in January 2002 for the purpose of promoting trade by reducing the burdens on companies involved in Japan-EU trade. The Agreement provides for a framework that enables certain procedures required in the importing country at the time of exportation or importation to be undertaken in the exporting country. Currently, this framework is operational in the following four sectors: (1) telecommunications equipment, (2) electrical products, (3) good laboratory practice (GLP) for chemicals, and (4) good manufacturing practice (GMP) for medicinal products.

<sup>6</sup> Specifically, the scope of liberalization of commercial aviation should be extended to include airports located in the Tokyo metropolitan area. Additionally, the use of Haneda Airport for international flights is to be promoted, and flight destinations and transport capacity are to be liberalized for all operating hours.

<sup>7</sup> With the enforcement of the Lisbon Treaty, authorities related to foreign direct investment are expected to be delegated exclusively to the European Union. Since member countries have had retained authorities related to investment protection including capacity to conclude bilateral investment protection treaty with third countries, however, it is necessary to closely watch how authorities related to investment protection will be treated in practice.

<sup>8</sup> Nippon Keidanren’s proposals for fiscal 2010 tax reforms (October 2, 2009) contains the following proposal concerning the review of anti-tax haven rules. “In light of developments in the effective corporate tax rates of various countries, the current threshold for anti-tax haven rules should be lowered to below 20 percent. From the perspective of ensuring predictability for taxpayers and lowering administrative costs, a white list should be introduced exempting subsidiaries

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located in countries and regions satisfying certain conditions from the application of anti-tax haven rules.”

<sup>9</sup> Notwithstanding the EU Copyright Directive (2001), systems for private copying levies and their application differ among EU member states. For example, no such system exists in the UK, Ireland, Luxembourg, Cyprus, and Malta.

<sup>10</sup> In addition to the range of protection as Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides for, the Japan-Switzerland FTEPA confirms that the greatest possible protection will be ensured for related indications within the scope of existing laws.

<sup>11</sup> EU Council Regulation No. 1383/2003 that came into effect in July 2004 was designed to contribute to efficient and low-cost customs control of counterfeit and pirated goods in the EU region. However, some member states, such as the UK, Italy, and Finland, have additionally adopted their own border measures, resulting in a double burden for applicants.