United States-Japan Investment Initiative 2009 Report

July 2009

Executive Summary

The United States-Japan Investment Initiative for the past eight years has facilitated active discussion and cooperation on ways to improve the climate for foreign direct investment (FDI) in Japan, in the United States, and globally. The importance of FDI to both countries' continued economic prosperity makes the Initiative a critical pillar of the bilateral economic relationship.

Despite the severe global recession beginning in the last quarter of 2008, FDI stock in Japan at the end of 2008 had risen ¥ 3.4 trillion from the previous year (which was the largest increase on record) to ¥ 18.5 trillion (about $179.6 billion). Its share of GDP also increased from 2.9% to 3.6%. FDI from the United States increased by 34% to ¥ 6.7 trillion compared to the end of 2007

In December 2008, "The Program for Acceleration of Foreign Direct Investment in Japan" was revised, reflecting the recommendations by the Expert Committee on FDI Promotion released in May 2008. The revised program consists of a total of 91 policies including 25 new measures.

The United States also continues to attract significant FDI inflows. The U.S.' FDI stock was nearly $2.1 trillion at the end of 2007, up 13.5% from one year earlier. In 2008, foreigners invested $260 billion in U.S. businesses, contributing significantly to the U.S. economy. U.S. affiliates of foreign companies directly employ over 5 million people, accounting for more than 4% of total U.S. employment and 6% of U.S. economic output.

The Investment Working Group (IWG) continues to serve as a forum for positive and mutually beneficial discussion of a wide range of issues of importance to investors in both countries. Since the last report, the IWG met twice, in October 2008 and May 2009. At both meetings, Japan and the U.S. shared their common perception of the need for continuously promoting FDI in the midst of the global economic crisis, while opposing rising investment protectionism. After each meeting, the IWG co-chairpersons released a joint statement.

Over the past year, the IWG discussed:

i) Ongoing efforts by the Japanese government to promote FDI in Japan, including the revised Program for Acceleration of Foreign Direct Investment in Japan;

ii) The regulatory frameworks used by the U.S. and Japan to review FDI that may have national security implications;

iii) The progress in disseminating the report by the Corporate Value Study Group, and the deliberations of the Corporate Governance Study Group;

iv) Recent rule changes by the U.S. Securities and Exchange Commission (SEC) that may have an impact on corporate restructuring in Japan;

v) Cargo Security regulations;

vi) On-going exchange of information related to investment agreements with third party countries, including reports on the progress of negotiations;

vii) Revision of Japan's labor-related legal systems;

viii) Visas and other consular issues.

In addition, public outreach under the initiative continued with a Japan-U.S. investment seminar in Shizuoka, and an Invest Japan Symposium in Chicago in October 2008.

Both the United States and Japan are committed to continuing cooperation on investment issues so that the people and economy of both countries enjoy the benefits of open global investment to the fullest extent.

Table of Contents

I. Introduction

Since its establishment in June 2001 at a summit meeting between then-Prime Minister Koizumi and President Bush, the U.S.-Japan Investment Initiative has promoted active discussions and cooperation on measures to improve the FDI environment in Japan and the United States. The Initiative, part of the U.S.-Japan Economic Partnership for Growth, is co-chaired by Japan's Ministry of Economy, Trade and Industry (METI) and the U. S. Department of State.

The Initiative remains an effective tool for combating global investment protectionism and improving the environment for FDI in both countries. The discussions of the Initiative's Investment Working Group have led to a deeper understanding by both countries that FDI contributes to economic growth. FDI is also an effective tool for accessing new technologies and innovative know-how, introducing new products and services to the market, and ensuring greater employment opportunities, thereby revitalizing a country's economy. In addition, cross-border investment and M&A activities contribute to enhancement of multilateral global economic relationships.

The previous report noted that FDI stock in Japan has expanded substantially in the eight years since the Investment Initiative began. Opportunities for foreign capital to enter Japan have also broadened due to economic reforms and deregulation in various areas such as company laws and systems, bankruptcy laws and systems, and corporate accounting systems. As such, the attractiveness of Japan to foreign investors has strengthened.

Since the release of the previous report, however, the environment for global investment has changed significantly. In 2008, the global economy faced its worst crisis in almost 75 years. The crisis in the United States started with losses in sub-prime mortgages and became a global crisis when Lehman Brothers went bankrupt in September 2008. This affected not only the U.S. economy but also economies throughout the world. In the midst of this crisis, some countries are moving toward protectionism. This development is of increasing concern to both Japan and the United States.

Against these trends, G-20 leaders committed in London to extend their pledge to resist protectionism until the end of 2010. Asia Pacific Economic Cooperation

(APEC) Economic Leaders meeting in Lima, Peru in November 2008 issued a similar statement. At the Japan-U.S. Summit Meeting in February, Prime Minister Aso and President Obama shared the view that fighting against protectionism is a critical responsibility of both Japan and the United States in contributing to the recovery of the world economy.

The U.S.-Japan Investment Working Group met on October 29th, 2008 and May 26th, 2009 as U.S. and Japanese authorities worried what effect the global economic downturn may have on U.S.-Japan bilateral investment. The IWG confirmed the basic policies of both countries to take active measures to promote inward direct investment and fight investment protectionism in line with concerted actions against protectionism taken in various multinational frameworks.

Mr. Makoto Shiota, Deputy Director-General for International Regional Policy, Trade Policy Bureau, METI and Ambassador Haslach, the U.S. Ambassador to APEC, as co-chairpersons of IWG, issued a joint statement following both meetings to reiterate that appeal.

At the IWG meetings, the Japanese co-chair explained the contents of Japan's new “Program for Acceleration of Foreign Direct Investment in Japan”, which was revised in December 2008, incorporating the “Five Recommendations toward the Drastic Expansion of Foreign Direct Investment in Japan” from the Expert Committee on FDI promotion as described in the last year's report. In consideration of business interest in investment regulations concerning national security, Japan and the United States exchanged information on the implementation of Japan's Foreign Exchange and Foreign Trade Act (FEFTA), and the U.S.' new Foreign Investment and National Security Act (FINSA). In addition, as they did last year, both parties exchanged information on the status of negotiations of bilateral investment agreements with third countries.

As part of the Initiative’s public outreach program, the Invest Japan Symposium and an investment seminar were held during October 2008 in Chicago and in Shizuoka respectively (See: Appendix 1.)

This 2009 annual report describes the results of this year’s Initiative activities, including a review of the current situation of FDI in both countries and a summary of discussions and public outreach programs associated with the Initiative.

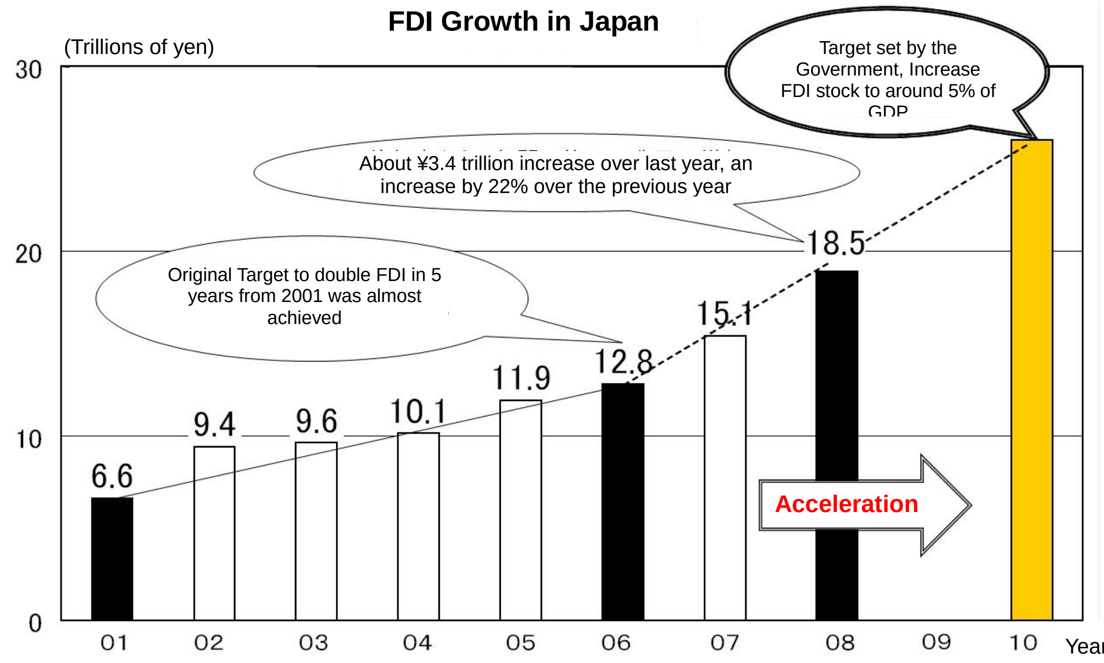
II. Current Situation of Foreign Direct Investment in Japan and the United States

1. FDI in Japan

(1) FDI Trends in Japan

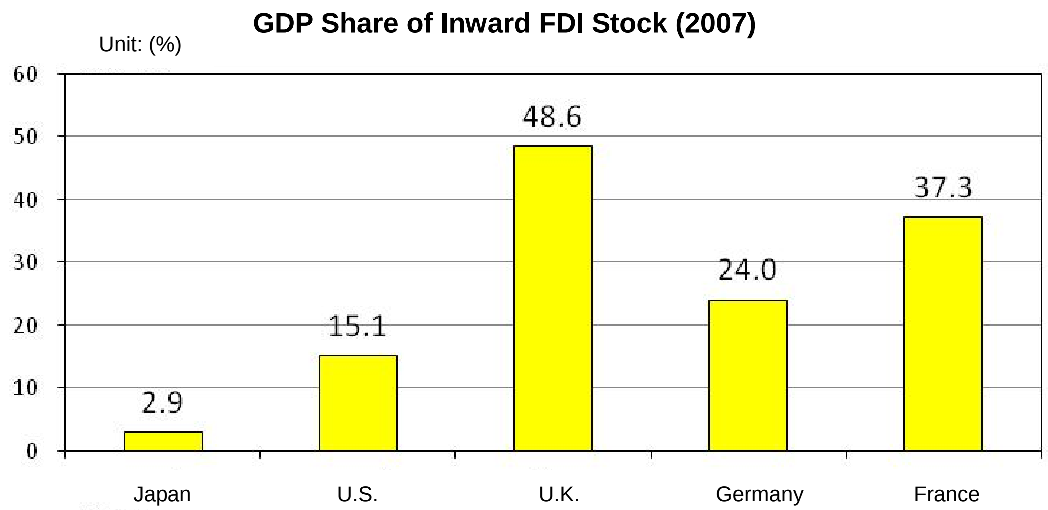
Japan continues to attract FDI. In recent years, FDI stock in Japan has steadily risen to ¥18.5 trillion at the end of 2008 (approx. $179.6 billion at an exchange rate of 103 yen/dollar, the official annual average exchange rate of the IMF International Financial Statistics for the year 2008). This ￥3.4 trillion increase over 2008, despite the sharp downturn in global economy triggered by the financial crisis, which began in the fall of 2008, is the highest rise ever.

Of this ¥18.5 trillion, direct investment from the United States accounts for ¥6.7 trillion. EU investment accounts for ¥6.8 trillion, and ASEAN investment accounts for ¥920.2 billion.



Source:"International Investment Position of Japan, Ministry of Finance/Bank of Japan

Although FDI in Japan has substantially increased in recent years, its share of GDP remains small when compared to that of other major countries. Japan's FDI stock was equivalent to only 2.9% of GDP at the end of 2007 and 3.6% at the end of 2008, compared to 15.1% in the United States, 48.6% in the United Kingdom, 24.0% in Germany and 37.3% in France. According to the World Investment Report 2008 issued by the United Nations Conference on Trade and Development (UNCTAD), Japan's inward FDI performance index ranks 135th among 141 countries (2007), although its inward FDI potential index ranked as high as 24th (2007).



[Source]
Japan/U.K./Germany: IMF International Financial Statistics
U.S.: Survey of Current Business
France: La Balance des Paiements et la Position Exteriure de la France

(2) Efforts to Promote FDI in Japan

A .Japanese Governmental Efforts

In January 2003, then-Prime Minister Koizumi announced a goal "to double the FDI stock in Japan". With integrated government efforts to take various measures to improve the business environment and review administrative procedures, Japan's FDI stock increased by 94% from ¥ 6.6 trillion in 2001 to ¥ 12.8 trillion in 2006, thereby effectively achieving Prime Minister Koizumi's goal.

In March 2006, the Japanese government set a new goal to "double the rate of FDI stock in Japan relative to GDP to 5 percent." To help achieve this new goal, "The Program for Acceleration of Foreign Direct Investment in Japan" was prepared in June 2006. In addition, the Expert Committee on FDI Promotion, established in January 2008, prepared "Five Recommendations toward the Drastic Expansion of Foreign

Direct Investment in Japan" in May 2008 and submitted them to the Council on Fiscal and Economic Policy. The "Program for Acceleration of Foreign Direct Investment in Japan" was revised in December of the same year, incorporating the suggestions presented in the aforementioned recommendations.

B. Revised "Program for Acceleration of Foreign Direct Investment in Japan"

The Japanese Government's revised "Program for Acceleration of Foreign Direct Investment in Japan" now contains a total of 91 policies, including 25 new measures. The additional measures specify new approaches to such issues as the appropriate use and implementation of takeover defense measures, a study of existing FDI regulations, and an action program for faster approval of medical equipment. Related government agencies have been steadily implementing these policies.

Summary of the Five Recommendations toward the Drastic Expansion of Foreign Direct Investment in Japan (Excerpt from the report of the Expert Committee on FDI Promotion)

1. Enhancement of system for the facilitation of M&As
   In order to contribute to facilitation of M&As, which is an important means of FDI in Japan, wide-ranging studies should be advanced, and the future improvement of Japan's M&As system should be accelerated.
2. Comprehensive studies on Foreign Direct Investment regulations
   While maintaining national security and public order, regulations with appropriate predictability should be advanced. The scope of cases where Foreign Direct Investment regulation is necessary and grounds for doing so as exceptions to the principle of nondiscrimination between domestic and foreign investors should be clarified and Japan's open investment policy should be demonstrated to the rest of the world.
3. Establishment of priority strategies by sector
   In the field of medical devices and pharmaceutical products, which will be especially important in terms of revitalizing the Japanese economy and improving the quality of life, an action program should be formulated that puts the focus on the field of medical devices.
4. Reduction of business costs and improvement of system transparency
   Amid global competition, the reform of regulations and systems should be promoted, thereby reducing business costs in Japan and improving system transparency, so that foreign companies and investors can see the merits of FDI in Japan.
5. Regional revitalization by foreign capital, strengthening of outreach that foreign capital is welcome, etc.
   In order to realize regional revitalization through the attraction of foreign capital, regional structures should be built to make it easy for foreign capital to enter and the outreach that Japan is welcoming foreign capital should be strengthened.

Outline of the revised "Program for Acceleration Foreign Direct Investment in Japan"

1. Regional-Oriented Economic Growth and Quality of Life Improvement

･Strategic transmission of information by region and wide-range cooperation

(Implement wide-range cooperation under the direction of Leaders to achieve efficient and effective transmission of information)

･Revitalization of local economy by the entrance of foreign companies to Japan

(Promote foreign investment in local economy through the reinvestment and secondary investments in Japan by existing foreign companies doing business in Japan)

2. Improvement of an Investment Environment capable of Overcoming Global Competition, etc.

･Improve the investment system to attract foreign companies and investors to invest in Japan amid global competition

(Review of effective corporate tax rate), (Review of regulations on appeal procedure of the Anti-monopoly Act), (To make an effort to rapidly respond to advance inquiries in writing about national taxes)

･Improve the system to facilitate M&A

(Enhance approaches to attract foreign-owned enterprises through M&A, which contribute to the continuation and regeneration of domestic companies including small and medium sized companies and expansion of overseas business operations), (Thorough publication of the report on the "Take over Defense Measures in Light of Recent Environmental Changes")

･Select the sectors and prepare action programs, which are important for the revitalization of Japanese economy and improvement of lives of the nation's people.

(Prepare the Action Program for Acceleration of Medical Device Review and its early-stage implementation), (Create and implement state-of-the-art medical technology development special zone) (Prepare new major strategies by sector)

･Smooth international capital flow

(Improve the environment by promoting dialogues between the industrial circles and the funds, and by activating the Fund Conference, in order to effectively utilize the funds), (Implement speedy and flexible negotiation of investment agreement and promote actively the conclusion of Economic Partnership Agreement (EPA), which includes the chapter on investment)

･Efficient international exchange of human resources and goods

(Accelerate the internalization of Haneda Airport and promote around-the-clock operation of international airports located in metropolitan areas) (Promote air liberalization)

･To improve the environment for foreign residents to live easily in order to attract foreign human assets (improve the facilities and services such as language services at medical institutions, child care facilities, serviced apartments, and international schools in the area where international financial functions are to be enhanced), (Conduct a survey on the current conditions of schools for Brazilian students in Japan)

3. Active internal and external publicity

･Conduct active internal and external publicity to show the position to welcome FDI in Japan

(Prepare a DVD to promote FDI in Japan and an English brochure on the "Five Recommendations toward the Drastic Expansion of Foreign Direct Investment in Japan."

2. FDI in the United States

(1) FDI Trends in the United States

The United States continues to attract significant FDI inflows from countries around the world because of its large consumer market, open economy, political stability, and high rate of return to capital. The United States' cumulative stock of FDI rose to nearly $2.1 trillion in 2007. Year-on-year growth was 13.5%, up from a 12.8% growth rate the year before (Table 1). The upswing includes an upward value adjustment of existing investments in 2006, a rise in investment spending, and a world-wide resurgence of cross-border merger and acquisition activity. Great Britain remains the largest owner of FDI in the U.S. economy with $411 billion invested. Japan holds second place with $233 billion, followed by Canada ($213 billion), the Netherlands ($209 billion), Germany ($203 billion), and France ($169 billion).

Table 1: Foreign Direct Investment Stock in the United States on a Historical Cost Basis, 2001-2007

Year end	Billions of Dollars	Percent Change from Preceding Year
2001	1,344.0	6.9
2002	1,327.2	-1.3
2003	1,395.2	5.1
2004	1,520.3	9.0
2005	1,634.1	7.5
2006	1,843.9	12.8
2007	2,093.0	13.5

Source: *Survey of Current Business* (July 2008 and September 2008), Bureau of Economic Analysis, Department of Commerce

Note: The Bureau of Economic Analysis officially refers to foreign direct investment stock as the "foreign direct investment position in the United States."

In 2008, the most recent year for which data is available, foreign persons and institutions invested $260 billion in U.S. businesses. This represents a slight increase from the $252 billion invested in 2007.

Table 2: Outlays for New Foreign Direct Investment in the United States by Type of Investment, 2002-2008

	2002	2003	2004	2005	2006	2007[r]	2008
Total	54, 519	63,591	86,219	91,390	165,603	251,917	260,362
By type							
U.S. business acquired	43,442	50,212	72,738	73,997	148,604	223,616	242,799
U.S. business established	11,077	13,379	13,481	17,393	16,999	28,301	17,564

(Millions of dollars)

r : revised

Source: *Survey of Current Business* (June 2009), Bureau of Economic Analysis, Department of Commerce

Foreign investment outlays in the United States consist overwhelmingly of U.S. business acquisitions. Since 2006, total outlays for new foreign direct investment have not only surpassed the peak 2001 figure but rose to $260.4 billion in 2008, the third-largest on record.

The influx of foreign capital due to these outlays contributes significantly to the U.S. economy. Majority-owned nonbank U.S. affiliates of foreign companies directly employed over 5.3 million people in 2006, the most recent year for which data is available, accounting for 4.6% of total U.S. employment in non-bank private industries and 6.1% of economic output. Investment by Japanese companies that year accounted for more than 580,300 U.S. jobs and almost 1% of U.S. private-sector GDP. Automotive manufacturing is a key sector for FDI. As of 2008, Japan Automotive Manufacturing Association (JAMA) members have cumulatively invested $33 billion in more than 22 manufacturing facilities in the United States. The Japanese auto industry employs nearly 425,000 Americans, including 62,000 in automotive manufacturing and almost 3,500 in R&D centers.

While world-wide FDI inflows are expected to decline by 20% in 2008 due to the global financial crisis, the significant real depreciation of the dollar has created a lucrative opportunity in the United States for foreign direct investors. This situation has raised the relative wealth of foreign investors while reducing investment costs in the United States. Preliminary estimates show that capital inflows for FDI in the United States in 2008 increased 38% over the $233 billion invested in 2007 to a new all-time record high of $321 billion. This figure is extraordinary given that the concurrent economic slowdown has caused U.S. real GDP growth to drop to only 1.1%. Some contraction of FDI inflow may occur, however, due to equity markets turmoil in major investing countries such as the United Kingdom and Japan.

(2) Efforts to Promote FDI in the United States

A. Federal Efforts

The United States remains committed to supporting open investment regimes both at home and abroad. It recognizes that FDI creates new jobs, raises domestic wages, encourages technological advancement, increases exports, and strengthens existing industries in the face of competition. The United States, as both the world's largest investor and the world's largest recipient of investment, has a key stake in promoting open global investment.

Over the past year, the U.S. Department of Commerce's *Invest in America* office has participated in more than 24 trade shows or other promotional events in the United States and around the world highlighting the importance of foreign direct investment for U.S. jobs and economic growth, including a trip by Invest in America Director Aaron Brickman to Tokyo, Nagoya, and Osaka, in September 2008 on an outreach mission to promote FDI in the United States. More information on the Commerce Department's efforts can be found at www.investamerica.gov.

B. State Efforts

U.S. state governments are the leading promoters of inward FDI in the United States. Many state governments offer a wide variety of services, information and incentives for companies interested in investing in their state. In addition, state governments often maintain offices abroad to promote trade and inward FDI. The American State Offices

Association (ASOA), established in 1980 to promote mutual interests of U.S. State Offices, has a branch organization in Japan. Currently ASOA Japan has 24 state offices as members and provides members with the means for collective action and information exchange. Information on ASOA and links to websites with information on individual state investment and trade promotion activities can be found at http://www.asoajapan.org.

III. Discussions in the U.S.-Japan Investment Initiative 2008-2009

1. Policies to Promote Foreign Direct Investment

(1) The Program for Acceleration of Foreign Direct Investment in Japan

At the May 2009 Investment Working Group meeting, Japan explained the 25 new items recently added to the revised "Program for Acceleration of Foreign Direct Investment in Japan." The new items reflect the policies proposed in the "Five Recommendations toward the Drastic Expansion of Foreign Direct Investment in Japan", prepared by the Expert Committee on FDI Promotion in May 2008.

The U.S. expressed appreciation for Japan's efforts to "improve transparency of investment policies, streamline investment procedure, and establish a method of assessing investment policies, based on the APEC Investment Facilitation Action Plan (IFAP)". In addition, the U.S. side expressed interest in the measures to revise the Japanese tax system to promote FDI into Japan. The U.S. also appreciated the increase in the number of persons tasked "to rapidly respond to advance inquiries in writing about national taxes".

(2) Release of Co-Chairpersons' Joint-Statements

Deputy Director Mr. Shiota and Ambassador Patricia Haslach, as co-chairpersons of IWG issued a joint-statement on the promotion of foreign direct investment at each of this year's Working Group meetings. The October 2008 statement expressed the importance of continuously promoting FDI in consideration of economic downturn that had recently begun. The May 2009 statement noted that over the past eight years the United States-Japan Investment Initiative has facilitated a "win-win" situation, in which FDI stock in both countries has grown significantly, and called for further efforts to expand FDI, and take measures to fight against investment protectionism.

[Reference 1] Joint-Statement at the Investment Working Group (October 2008)

Joint-Statement by Co-Chairpersons of Japan-United States
Bilateral Investment Working Group

October 29, 2008

1. The Japan-United States Bilateral Investment Working Group was held on October 29, 2008 in Tokyo.

2. This Working Group was co-chaired by Mr. Makoto Shiota, Deputy Director-General of Trade Policy Bureau, METI (Ministry of Economy, Trade and Industry) and Ambassador Patricia Haslach of U.S. DOS (Department of State).

3. The two chairs expressed the common view on the importance of continuing to promote foreign direct investment, taking careful note of the current economic downturn caused by the recent financial market turmoil. A positive trade and investment agendas will contribute to rapid return to prosperity and economic growth.

4. In today’s meeting, both sides exchanged and updated information and views on;
   ① Our respective investment climates, including the recommendations of the Expert Committee on FDI Promotion on the Japanese side
   ② Cargo Security issues including 10＋2 rule, 100% scanning
   ③ Security Related Investment Reviews
   -Update on the U.S. FINSA (Foreign Investment and National Security Act)
   -Implementation of Japan’s FEFTA (Foreign Exchange and Foreign Trade Act)
   ④ Negotiations toward a U.S.-China Bilateral Investment Agreement and other Bilateral Investment Treaties as well as Japan’s global strategy on negotiating Bilateral Investment Treaties

5. The Investment Working Group is one aspect of the “Japan- U.S. Investment Initiative” which is one of the key components of the cooperative framework of “Japan- U.S. Economic Partnership for Growth”. This framework was launched by then Prime Minister Junichiro Koizumi and President George W. Bush in 2001. The “Japan- U.S. Investment Initiative” is aimed at promoting bilateral direct investment between the two countries, by holding wide-ranging discussions related to investment climate and investment rules and regulations.

[Reference 2] Joint-Statement at the Investment Working Group (May 2009)

Joint Statement

U.S.-Japan Investment Initiative Working Group

May 26, 2009

Investment serves a critically important role in ensuring global economic growth and prosperity. Since 2001, the Japan-U.S. Investment Initiative has worked effectively to identify and remove barriers to cross-border investment flows between our two countries.

The Japan-U.S. Investment Working Group met May 26 in Tokyo to review the efforts of the two governments over the past year to further promote foreign direct investment (FDI) in both countries. The Working Group noted a number of important achievements despite the difficult conditions in the global economy. In the past year, Japan has taken steps to improve its climate for FDI through the issuance of “the Five recommendations” by the Experts Committee on FDI promotion. In addition, Japan revised the "Program for Acceleration of Foreign Direct Investment in Japan" to reflect these recommendations into the program in December 2008.

Both Japan and the United States have taken extraordinary steps to stabilize its financial sector after severe turmoil in global credit markets.

Investment is a powerful force linking the United States and Japan. Over the eight years of the Investment Initiative, Japan's stock of FDI has almost tripled while the U.S.' stock of FDI has increased by more 30%. Japan is the U.S.' second largest source of FDI and the U.S. is Japan's largest foreign investor. Japanese firms have invested more than $230 billion in the U.S. (*1) and U.S. firms have invested more than ¥5,067 billion in Japan (*2). This is a win-win situation for both countries, and further measures should be taken by both governments to expand mutual FDI between our two countries.

Japan and the United States remain committed to taking steps to oppose any forms of investment protectionism. We pledge to work together bilaterally, such as this dialogue, and in multilateral fora, such as the G8, the OECD, APEC and the G20, to ensure our citizens and our economies continue to enjoy the full benefits of open international investment. Especially, we recognized that the years 2010 and 2011 when Japan and the United States will take the chair of APEC, respectively, will be excellent opportunities to further promote open international investment in the Asia-Pacific region.

<Resource> (*1) United States Department of Commerce (*2) Ministry of Finance Japan

2. Information Exchange on Inward Investment Regulations

The United States and Japan for several years have discussed each country's system for reviewing proposed inward investment that may have national security implications. As part of these discussions, the United States and Japan acknowledged the importance of basing such reviews on genuine national security concerns associated with a transaction, and ensuring any measures either government takes to block or limit a transaction are proportional to the risk of that particular transaction. The U.S. side commended the May 2008 report of Japanese Cabinet Office Investment Experts Group that called for "appropriate predictability" of regulations governing inward FDI and clear explanations in cases in which the government feels the need to discriminate between domestic and foreign investors. The two governments agreed that, without appropriate transparency for potential investors, regulations designed to address the national security effects of investment transactions could have an unintended chilling effect on FDI flows.

(1) Inward Investment Regulations in Japan

The Foreign Exchange and Foreign Trade Act requires advance notification for FDI in certain industry sectors that may have an impact on “national security”, “public order” and “public safety.” Advance notification for FDI is based on the basic principle of free foreign trade, in compliance with the OECD international investment rules such as liberalization of capital movements.

Acknowledging that FDI contributes to economic growth, Japan decided in April 2009 to shorten the assessment period for the FDI notification, and in June of the same year to improve notification and reporting procedures, with the goal of reducing the administrative burden on foreign investors and to promote FDI in Japan.

(2) Inward Investment Regulations in the U.S.

The U.S. Congress passed the Foreign Investment and National Security Act (FINSA) in July 2007. FINSA amends the authority and procedures of the Committee on Foreign Investment in the United States (CFIUS), the interagency committee that conducts national security reviews of certain inward FDI to the U.S. The United States remains committed while implementing FINSA to also maintain an open investment regime. The overall aim of the CFIUS review process is not to block transactions but to resolve concerns in a way that allow transactions to proceed.

The U.S. Treasury Department issued final FINSA implementing regulations November 14, 2008. These new rules took account of a large number of public comments received in regard to the interim rules issued in January 2008. The final rules increase the transparency of the CFIUS process, including by clarifying the definition of which transactions are subject to CFIUS review. As a general rule, CFIUS can review any transaction that may pose a national security concern and, "which could result in control of a U.S. business by a foreign person." Greenfield investment is not subject to CFIUS review.

3. Review of Issues of Mutual Concerns

(1) Dissemination of the Report by Corporate Value Study Group

The Government of Japan stated that it would continue to actively disseminate to Japan's business sector and investors the appropriate use and implementation of takeover defense measures in accordance with the report, “Takeover Defense Measures in Light of Recent Environmental Changes” issued by the Corporate Value Study Group in June 2008.

The U.S. government stated that many foreign investors value this report highly and expressed appreciation for METI’s effort, noting that the report would contribute to the improvement of investment environment in Japan.

(2) Progress of Deliberation by the Corporate Governance Study Group

The Corporate Governance Study Group (CGSG) was established in December 2008 under METI, in cooperation with the Financial Service Agency (FSA), the Ministry of Justice (MOJ) and the Tokyo Stock Exchange (TSE), in order to deliberate on the desirable rules for improving corporate governance, and it compiled and released its report this June.

The CGSG determined in its report that “independence” means having an independent position from management, and sharing no mutual interests with management, and that there are two cases in which it cannot be said “independence” is present: (i) cases in which directors/kansayaku could be significantly controlled by management, and (ii) cases in which directors/kansayaku could have considerable control over management. Moreover, taking into account the dual requirements of securing independence while ensuring the effectiveness of governance, the CGSG concluded that the framework must necessarily assume that, as a minimum, there will be an “independent” director/kansayaku who is not at risk of having conflicts of interest with minority shareholders and who is supposed to protect minority shareholders. In the framework, each listed company will be required to improve disclosure of its view, so that consensus regarding the most appropriate corporate governance structure for each company can be fostered through dialogue with shareholders.

The CGSG also concluded in its report to require listed companies to choose either of options (1) or (2) below:
(1) To have an outside director, as minimum, and to disclose the role and function of the outside director etc., or
(2) If option (1) is not chosen, to disclose facts concerning the development and implementation of the corporate governance system using the company’s own original method.

(3) Removal of Disincentives to Prompt Organizational Restructuring (Form F-4)

Japan for the first time at the May 2009 Investment Working Group raised its concerns in the IWG about certain filing rules of the U.S. Securities Exchange Commission (SEC) that relate to disclosure and reporting requirements in cases of corporate restructuring transactions of foreign listed companies with a minimum threshold number of U.S. shareholders and the impact of these rules on Japan's investment climate. Under Rule 145 of the Securities Act of 1933, non-U.S. listed companies seeking to acquire another company via a stock-for-stock M&A transaction are required to file a registration statement on Form F-4 with the SEC prior to the transaction, if more than 10 percent of the listed shares of the target company are held by U.S. residents. Such a transaction is considered an offer and sale of securities to the U.S. holders of the target company stock under the Act.

Japan expressed its view that the requirement of non-U.S. listed Japanese companies to submit a Form F-4 is excessively expensive and has a potentially discouraging effect on corporate restructuring efforts in Japan. Japan asked the U.S. to reconsider the SEC rule from the view of a cost and benefit analysis, and to consider easing further the cross-border exemption under the Act. Streamlining the reporting rules, Japan argues, would make Japan's investment climate more attractive.

In response, the U.S. side explained the SEC believes there is a sound basis for the current registration requirement in cases in which securities are issued or transferred as part of a business combination transaction. Investor protection concerns and national treatment principles do not justify an exemption of the registration requirement for such transactions.

The U.S. and Japan agreed to continue discussion of this issue at future Investment Working Group sessions.

(4) Cargo Security

The Investment Working Group discussed for the fourth consecutive year the potential impact on cross-border investment of U.S. cargo security regulations and procedures. During that time, Japan has expressed its concern about the implementation of specific U.S. border security measures, including the U.S. Customs and Border Protection's (CBP) strengthened Importer Security Filing (the "10+2" rule) and the requirement for 100 percent scanning of U.S.-bound containers at foreign ports by 2012.

Japan and the United States in 2007 established a Study Group on Secure and Efficient Trade under the auspices of the Japan-U.S. Subcabinet Economic Dialogue to examine Japan's concerns in detail, and to ensure that the appropriate agencies on both sides were part of the dialogue. In addition, the U.S. government has undertaken an extensive series of public outreach efforts in Tokyo as well as other cities in Japan to ensure that Japanese stakeholders understand the aims of U.S. cargo security programs, and the requirements placed on individual exporters and manufacturers. The most recent outreach programs took place in Tokyo and Osaka during the week of May 18, 2009.

The U.S. side explained the Department of Homeland Security (DHS) remains committed to working with industry partners to implement the “10+2” rule in a realistic manner with minimal impact on global commerce. The “10+2” rule is mandated by U.S. law, however, and DHS is unable to make exceptions. The data elements that CBP requires from U.S. importers and carriers under the Importer Security Filing program are critical to the agency's efforts to enhance its targeting capabilities and ensure resources are focused on the cargo that needs additional scrutiny.

Since the issuance of the proposed rule, CBP has made significant revisions based on input from the private sector. It has allowed a number of flexibilities associated with certain required data, created a 12-month "delayed compliance" period, and accepted additional comments from stakeholders on the rule. .

From the experience of the program so far, including the submission of more than 1.16 million Importer Security Filing filings as of June 1, 2009, CBP is confident the vast majority of importers, exporters, and carriers are able to provide the necessary information with minimal impact on the supply chain.

In the meantime, Japan argued that only a small percentage of Japanese companies have adopted this program at the present time. Japan asked the U.S. to consider delaying full implementation of the Importer Security Filing regulations beyond the current target date of January 26, 2010, and to show flexibility in setting deadlines for filing Bill of Lading (B/L) numbers with CBP because many companies, especially small and medium companies, are unable to file the number at least 24 hours prior to lading. Japan asserted many companies have difficulty meeting the deadline due to the current global economic downturn. The Government of Japan also requested the U.S. Government to ensure wider opportunities for feedback on the proposed new rules and asked for clarification of U.S. plans for implementation of 100 percent scanning as scheduled in 2012.

Regarding the 100 percent container scanning requirement, the U.S. side explained this requirement has been mandated by U.S. law and, like the “10+2” rule, DHS is committed to working with domestic and foreign partners, trade groups, and industry, to move forward in a realistic manner with minimal impact on port operations and the movement of commerce.

Japan has expressed its serious concerns with 100 percent scanning and its potential impact on international trade and economic activities, including the 100 percent screening for U.S. inbound air cargo on passenger aircraft.

Both governments are addressing Japan's cargo and supply chain security concerns in various channels, such as in the Study Group on Secure and Efficient Trade, and through direct, joint public outreach efforts. Both governments will further discuss whether it is appropriate to discuss this issue in this Investment Initiative based on the development of the issue.

(5) Labor Regulations (Review of Defined Contribution Pension)

The U.S. government has suggested that Japan would be more attractive to foreign direct investment if its labor market were more flexible. It also recommended Japan consider allowing employee contribution to defined contribution pension plans and raising contribution limits. Both these changes would benefit workers.

To support voluntary efforts to secure income of older citizens, the Government of Japan submitted a bill to the Diet in March 2009 to allow employee contribution to the corporate-type Defined Contribution Pension Plans (i.e., matching contributions) and to revise the Defined Contribution Pension Act to allow employee contributions to corporate-type defined contribution. For the same purpose, the Government of Japan plans to raise contribution limit, which is scheduled to become effective in January 2010.

(6) Visas

The Government of Japan, as in past years, requested the U.S. Government to resume domestic revalidation of visas for Japanese employees, investors and other legal workers, and their families residing in the United States. It noted the requirement to return to Japan for visa revalidation often causes disruption to business operations. Timely visa issuances and renewals, in Japan's view, are essential to efficient cross-border business operations.

The United States explained the halt of visa reissuance in the United States in July 2004 was for security and logistical reasons, and in accordance with U.S. law. The Government of the United States has no plans to resume domestic reissuance of visas. Under U.S. law, the U.S. Department of State Visa Office cannot collect the necessary biometric information or undertake domestic adjudication of visas. However, the Government of the United States intends to continue discussing ongoing improvements to the visa application process that are consistent with U.S. law and policy in its discussion with the Government of Japan.

The Government of the United States, however, has implemented a number of procedures in lieu of domestic reissuance of visas to address Japan's concerns. Applicants can extend their stay in the United States without renewing their visas by applying for an extension with the Department of Homeland Security. Only if the applicant departs the United States, will he or she need to reapply for a visa at a U.S. Embassy or Consulate. While applicants are encouraged to apply for new visas in their home countries, they may apply in a third country, provided they make a visa interview appointment. The Government of the United States acknowledges the concern of the Government of Japan that this requirement under U.S. law may affect business travel including by Japanese nationals.

In addition, the United States implemented other procedures to facilitate the visa process for eligible applicants at the U.S. Embassy in Tokyo, and at U.S. Consulates that provide visa services in Japan. The new policy allows eligible visa applicants who previously submitted all ten fingerprints and are applying at the post of normal residence in Japan, to apply for a new visa in the same non-immigrant classification within 12 months of their previous visa’s expiration without having to appear in person at an embassy or consulate. Applicants, however, must be physically present in Japan when submitting the visa renewal paperwork.

Japanese business people stationed in the United States in E-visa status can apply for re-issuance of their visas at U.S. posts in Mexico, subject to post resources and space availability. The Government of the United States, however, noted that this flexibility in service has not been used by many Japanese applicants in the past year.

In regard to Japanese concern about the limited number and duration of U.S.

intra-company transfer (L) visas and H1-B visas, the U.S. noted the validity of the L visa is limited by law.

The validity of H-1B visas and their annual quotas are also controlled by the U.S. Congress. The law limits an H-1B nonimmigrant to a maximum length of stay of six years. The quota for the current fiscal year that began in October 2008 has still not been reached, thus there are still H-1B visas available. The United States government is aware of the Japan's interest in increasing the number of Japanese IT and other temporary workers authorized to work in the U.S. However, changing the temporary worker visa requirements and increasing the H-1B visa annual caps would require legislation. The Government of the United States, however, acknowledges that the Government of Japan has concerns about the effect of the Congressionally- mandated quota of H visas and the fixed starting date of the validity period of H visas on employment opportunities.

In addition, the recent U.S. economic stimulus legislation makes recipients of certain types of federal funding subject to pre-existing "H-1B dependent employer" reporting provisions. However, it does not reduce the number of H-1B visas available to non-immigrants in specialty occupations.

4. Information Exchange on Investment Agreement

Both governments reconfirmed their shared interest in expanding the global network of international investment agreements, ensuring high level investment protection in international investment agreement, and maintaining market access. They also exchanged information on best practices in International Investment Agreements (IIAs) concluded by Japan and the U.S., the current status of investment agreement negotiation, and strategies toward third countries.

Japan has concluded IIAs from the viewpoint of protecting the investments of enterprises which enter foreign markets. Since the 1990's, global investment liberalization has progressed and the procedural mechanisms for dispute settlement under international agreements have been strengthened. Globally, the number of IIA concluded and international arbitrations between investors and IIA signatory countries are increasing. Because the use of BITs to promote overseas business activity is increasing, the Government of Japan decided in its on "Basic Policies for Economic and

Fiscal Management and Structural Reform 2008" that it would negotiate BITs in response to the actual needs of business and prioritize among countries and areas for new BITs from a strategic perspective. Japan is reviewing the possibility of negotiating BITs with, in order of strategic priority, countries in the Middle East, Africa, Central Asia and Central and South America, where economic growth and potential investment are expected. In so doing, Japan established the "Foreign Investment Strategic Committee" to facilitate exchange of opinions between public and private sectors on international investment policy.

Japan's BIT with Cambodia became effective in July and its BIT with Laos in August 2008. Japan signed BITs with Uzbekistan in August and Peru in November 2008, and reached a substantive agreement in concluding a BIT with Saudi Arabia. Currently, Japan is negotiating a three-country investment agreement with China and Korea, and a BIT with Colombia, and plans to start negotiations with Kazakhstan and Qatar.

In addition, Economic Partnership Agreements (EPA) that include investment chapters became effective with Brunei and Indonesia in July 2008 and with the Philippines in December 2008. Japan signed an EPA that incorporates an existing BIT with Vietnam in December 2008 and with Switzerland in February 2009. EPA negotiations are also underway with the GCC, India and Australia.

The United States, as of June 2009, is continuing to pursue BITs with a number of economies. In 2008, the United States formally launched BIT negotiations with China, India, and Vietnam and held BIT-related discussions with Brazil, Gabon, Georgia, Ghana, Indonesia, Mauritius, and Pakistan. The United States in early 2008 joined negotiations of the Trans-Pacific Strategic Economic Partnership (TPP) on investment and financial services, which the Trans-Pacific partners had just begun. The TPP countries -- Brunei Darussalam, Chile, New Zealand, and Singapore -- had concluded a high-standard FTA in 2006 that was intended to serve as a vehicle for Trans-Pacific economic integration. In September 2008, the United States announced its intention to join the TPP and shortly afterward Australia, Peru, and Vietnam indicated their interest in participating as well. The Obama Administration is currently considering its overall trade strategy, including on Asia and the TPP, in the context of overall U.S. economic policy.

In addition to continuing technical work in the negotiations, the new Administration will be conducting an expeditious review of the 2004 U.S. model BIT text, to ensure that it is consistent with the Administration’s overall economic agenda and the public interest.

The United States and Japan agreed to consider closer cooperation in promoting high-standard international investment agreements, especially in the Asia-Pacific region, which could set positive precedents for future investment agreement negotiations worldwide. The July 2008 G8 Declaration underscored the importance of this objective.

Both governments confirmed their intention to continue exchange of information on investment agreements of both countries in the U.S.-Japan Investment Working Group.

IV. Conclusion

Since the establishment of the Investment Initiative in June 2001, Japan and the United States have made significant efforts to improve the investment climate in their respective countries, and raise the public's understanding of the positive role played by investment in promoting economic growth. Partially as a result of our efforts, Japan's stock of FDI since 2001 has nearly tripled, from ¥6 trillion to over ¥18 trillion. Despite recent turmoil in the world economy, Japan has continued to experience positive FDI inflows up to the end of 2008.

The world financial crisis since mid-2007 has had a severe impact on the global investment climate. Cross-border flows of capital and goods have shrunk, equity and bond prices have fallen, and the multinational financial system came close to collapse in the last half of 2008. What began as a financial crisis has turned into a worldwide economic slowdown.

In these uncertain economic times, voices have been raised against economic openness, and in favor of raising barriers to trade and investment in hopes of protecting jobs and markets. Japan and the United States reject those ideas. We recognize that a positive trade and investment agenda is critical to ensuring a rapid return to global prosperity and economic growth.

Over the past eight years in the bilateral Investment Working Group Japan and the United States exchanged views on a wide range of investment related topics including:

- How to improve each country's investment climate and promote cross-border M&A;
- Ways to open our markets for investment in key service sectors such as educational services, and to promote increased labor market flexibilities;
- How to design investment regulations that protect national security without unnecessarily impeding FDI;
- The need to craft policies that ensure continued cross-border flows of trade and labor while maintaining appropriate border security;
- The strategic objectives of each country in negotiating bilateral investment treaties and investment chapters of free trade agreements or economic partnership agreements.

Both governments expect discussions related to investment will continue to be an important part of the U.S.-Japan Economic relationship going forward.

Appendix 1: Invest Japan Symposium and Seminar

Every year, the U.S.-Japan Investment Initiative holds symposiums in the United States to publicize the Japanese investment environment, and seminars in local Japanese cities to discuss the mutual benefits of foreign direct investment.

In October 2008, the latesst Invest Japan Symposium was held in Chicago. U.S. companies that have already invested in Japan delivered speeches on the attractions of Japan as an investment destination through their own experiences. Japanese officials highlighted Japan's technological prowess, its high level of income, improved investment environment and M&A trends. A special envoy of the governor of Shizuoka prefecture, where the Japan-U.S. investment seminar was to be held in October 2008, spoke of the attractiveness of Shizuoka, with an emphasis on industrial infrastructures and incentives.

In October 2008, the Japan-U.S. investment seminar was held in Shizuoka prefecture. U.S. companies that have already entered Japanese market spoke about reasons to invest in Japan and how Japanese cities can attract foreign investment. The Japanese side presented best practices for attracting foreign companies. Industrial tours were provided to the U.S. companies that participated in this seminar.

Appendix 2: Recent Cases of U.S. Companies Investing in Japan

Many U.S. companies investing in Japan have obtained support from the Invest Japan Business Support Centers (IBSC) of the Japan External Trade Organization (JETRO). Thirty-one U.S. companies set up offices in Japan in 2008 with the support of JETRO. Noticeable examples are seen in pharmaceutical and medical equipment industries (four out of thirty one companies). Two examples are given below.

○ Biomedical Systems Japan Limited Liability Company (Biomedical Systems)

Biomedical Systems is a CRO (Clinical Research Organization) that handles medical equipments such as electrocardiogram. It established a limited liability company in Tsukuba City, Ibaraki Prefecture, to provide healthcare professionals with items and services required for clinical test of drugs, and clinical diagnosis services. JETRO supported Biomedical Systems to find an office property in Tsukuba City and provided the consultation with medical advisers.

○ Diba Japan K.K. (Diba Industries, Inc.)

Diba Industries, Inc. is a company which designs, manufactures, markets, imports and inspects custom tubes and tube assemblies for fluid treatments, which are used for medical equipments and analytical chemical equipments, suctioning and dispensing probes attached with level sensor, and inline reagent heater. Diba Industries' advantages include the capability to customize products to meet customer needs, and to provide highly accurate and high-quality parts. It established a business corporation in Tokyo to serve existing customers better and to start new business development. JETRO provided Diba Industries with supports by introducing service companies, consultating on registration and visa procedures, and providing temporary office space at IBSC Tokyo.