



Statement of the U.S. Chamber of Commerce and the U.S.-Japan Business Council

WRITTEN TESTIMONY

ON: “Negotiating Objectives for a U.S.-Japan Trade Agreement”

TO: U.S. International Trade Commission

BY: U.S. Chamber of Commerce and the U.S.-Japan Business Council

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The Chamber’s mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. In addition to 117 American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

The Chamber's U.S.-Japan Business Council (USJBC) is a Washington, D.C.-based business association whose mission is to support U.S. business interests in Japan and promote stronger economic ties between the United States and Japan. USJBC member companies collectively account for a substantial share of overall U.S. economic activity with Japan, and place high priorities on doing business in Japan and helping forge the most cooperative and mutually beneficial economic relationship possible between the two countries.

The U.S. Chamber of Commerce and U.S.-Japan Business Council appreciate the opportunity to present the following testimony in response to the U.S. International Trade Commission's Federal Register Notice entitled *Negotiating Objectives for a U.S.-Japan Trade Agreement*.

At the outset, we want to emphasize the importance of any potential U.S.-Japan trade agreement to set high-standards and rules in the Indo-Pacific while noting that others in the region are rapidly pursuing and finalizing agreements that have similar potential and far-reaching implications for American business interests. They include: the Comprehensive and Progressive Agreement for Trans-Pacific Partnership that will enter into force December 30, 2018; and the EU-Japan Economic Partnership Agreement which is slated to go into force on February 1, 2019.

These agreements, once enacted, will put American companies at a competitive disadvantage in one of the world's most dynamic economic regions, and therefore the impact of these developments on the U.S.-Japan negotiations cannot be overstated and should not be overlooked. For example, the Japan-EU Economic Partnership Agreement represents the largest bilateral trade deal negotiated by the EU, and will establish an open trade zone that covers more than 600 million people. In total, the agreement will remove over 1 billion euros in tariffs paid annually by EU companies exporting to Japan—and there were real market access gains made for the EU on autos and agricultural products, from which U.S. exporters will not benefit.

With that said, the U.S. Chamber and U.S.-Japan Business Council commend the United States and Japan for announcing on September 26, 2018, that the two governments will enter into negotiations for a U.S.-Japan Trade Agreement. There is a real opportunity in these discussions to create a new “gold standard” trade agreement for a globally competitive U.S. industry. We recognize these negotiations will be challenging, and stand ready to work with both sides to secure successful outcomes that strengthen ties between two of the world's largest economies. The Chamber and USJBC have prepared public comments in response to USTR's request for input that expand upon the following:

- We recommend that the United States Office of the Trade Representative hew closely to the negotiating objectives established in the Trade Promotion Authority, and urge the U.S. and Japanese governments to prioritize a comprehensive agreement rather than focus narrowly on the reduction of tariffs on certain goods and services. While we encourage meaningful tariff reductions and market access gains for the agricultural and automobile industries, the service sector's priorities must not be ignored. This is critical as the service sector is competitive in the Japanese market, with U.S. service exports totaling \$46.4 billion in 2017.
- We also must underscore that any U.S.-Japan trade agreement would bring two of the world's three largest economies closer together, and may help mitigate risks that stem from broader trade tensions in the region. To this end, we believe that ensuring a level playing field is a key governing principle for strengthening markets and avoiding market inefficiencies and distortions. In that vein, a U.S.-Japan trade agreement must aim to strengthen cooperation to better protect American and Japanese companies and workers from non-market oriented policies and practices by third countries.

- Any U.S.-Japan trade agreement should promote innovation and ensure our future competitiveness, and therefore we would like to stress that any agreement between the two economies include a robust chapter on digital trade drawing on the United States-Mexico-Canada Agreement (USMCA) text. This is critical for the future competitiveness of the U.S. economy: the digital economy is growing at almost two and a half times faster than the global economy, and trade in digital goods is growing more rapidly than trade in traditional manufactured goods and agricultural products. In 2015, all things digital in the economy were valued at over \$19 trillion, making up 22.5% of global gross domestic product (GDP). By 2020, those numbers are estimated to increase to nearly \$25 trillion and 25.0%, respectively.
- Additionally, we see these negotiations as a real opportunity to set the highest global standard for Intellectual Property (IP)-led creativity and innovation. Both countries should take this opportunity to advance a model approach to sustainable access to innovation and creativity by promoting respect for property rights and a return of fair value for innovation. There is real opportunity in these negotiations to have an outcome that surpasses what was agreed to in TPP, particularly in establishing 12 years of IP protection for biologics in the pharmaceutical industry.
- The business community has looked to recent renegotiations of the U.S.-Korea Free Trade Agreement (KORUS) and the United States-Mexico-Canada Agreement (USMCA) for signals of where USTR will seek to take these negotiations, and the reactions have been mixed. USMCA included very strong provisions in a number of rules chapters, some of which surpass the quality achieved in any earlier U.S. trade agreement. Among these strong chapters are Digital Trade, Intellectual Property, Financial Services, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Competition Policy, State-Owned Enterprises, Good Regulatory Practices, Telecommunications, and Customs and Trade Facilitation.
- USMCA fell short in other areas, however, and the Chamber and the broader U.S. business community has expressed concern on these select outcomes as precedents for future Trade Agreements. USMCA outcomes on investment protection, government procurement, *de minimis*, and Canada's cultural exemption are disappointing and must not be viewed as precedents for future trade agreements. Other USMCA elements of concern are those that appear to be managed trade measures that limit trade and may violate the World Trade Organization (WTO) Agreement on Safeguards.

Beyond the overarching priorities outlined above, the members of the U.S. Chamber and the USJBC have identified a number of issue- and sector-specific priorities that are outlined in our submission. We have attached those detailed comments to the copies of this testimony for your reference. They include: agriculture and biotechnology, automobiles, competition, cosmetics, customs, digital trade, direct selling, electronic payments, energy and infrastructure, express delivery services, financial services, functional foods and dietary supplements, government procurement, investment, pharmaceutical and medical devices, and trade remedies and dispute settlement.

On behalf of our member companies—businesses of every size, sector, and state—we welcome the opportunity to continue to provide input and counsel on these issues.

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U.S.-Japan Trade Negotiations: Private Sector Priorities

Introduction

The U.S. Chamber of Commerce and U.S.-Japan Business Council collectively represent the interests of more than 3 million businesses of all sizes, sectors, and regions. We appreciate the opportunity to comment on negotiating objectives for a U.S.-Japan Trade Agreement.

The U.S. business community commends the United States and Japan for announcing on September 26, 2018, that the two governments will enter into negotiations for a U.S.-Japan Trade Agreement. We recognize these negotiations will be challenging, and stand ready to work with both sides to secure successful outcomes that strengthen ties between two of the world's largest economies, which together represent approximately 30 percent of global Gross Domestic Product.

Overarching Priorities

- Objectives: In keeping with the Chamber's mission to advocate for free enterprise, competitive markets, and rules-based trade and investment, one of the Chamber's primary objectives in these negotiations will be to pursue measures that remove — and do not raise — barriers to trade. Generally speaking, we recommend hewing closely to the negotiating objectives established in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, known as Trade Promotion Authority (TPA), and urge the two governments to prioritize a comprehensive agreement rather than narrowly focus on the reduction of tariffs on certain goods and services.
- Section 232 Tariffs: These negotiations should lead to the expeditious removal of U.S. Section 232 tariffs on imports of steel and aluminum from Japan. Similarly, these negotiations should make clear that the United States will not impose Section 232 tariffs on imports of Japanese autos or auto parts.
- Managed Trade: We oppose “grey area” measures, such as tariff-rate or snapback quotas, voluntary export restraints, and orderly marketing agreements that limit trade and violate the World Trade Organization (WTO) Agreement on Safeguards.
- Currency: Any effort to address currency manipulation in this reciprocal trade agreement must not infringe in any way on the ability of the Federal Reserve Bank or the Bank of Japan to steer the conduct of U.S. or Japanese monetary policy, respectively.
- Level Playing Field: Ensuring a level playing field is a key governing principle for strengthening markets and avoiding market inefficiencies and distortions. Therefore, the U.S. and Japan should avoid government-created distortions in the marketplace.
- Intellectual Property: Considering the very strong intellectual property (IP) rights regimes in both countries, we see these negotiations as a real opportunity to set the highest global standard for IP-led creativity and innovation. Both countries should avail themselves of the opportunity to advance a model approach to sustainable access to innovation and creativity through respect for property rights and a return of fair value for innovation.
- Third Countries: We welcome efforts by the U.S. and Japanese governments to strengthen cooperation to better support American and Japanese companies by establishing a level

playing field in policies and practices, so as to create tangible benefits for and protect both countries' and workers from non-market oriented policies and practices by third countries.

- Multilateral Trading System: We also welcome efforts to strengthen the multilateral trading system and its institutions, including through the ongoing trilateral chaired by Ambassador Robert E. Lighthizer, United States Trade Representative, Mr. Hiroshige Seko, Minister of Economy, Trade and Industry of Japan, and Mrs. Cecilia Malmström, European Commissioner for Trade.

Issue- and Sector-Specific Priorities

The following issue- and sector-specific priorities are those of the U.S. Chamber of Commerce, U.S.-Japan Business Council, and the American Chamber of Commerce in Japan. They are listed alphabetically by issue area and sector, and do not reflect any level of prioritization.

Agriculture and Biotechnology

- Remove remaining tariffs on certain U.S. agricultural products, such as tariffs on American beef and pork

Autos

- Remove regulatory barriers in Japan, such as Japan's only partial acceptance of Federal Motor Vehicle Safety Standards (FMVSS). These regulatory barriers focus the resources of American companies on burdensome compliance standards and prevent American companies from fully pursuing opportunities to partner with Japan on next generation auto technologies. Japan should fully accept FMVSS to allow American-manufactured vehicles to more easily enter the Japanese market.

Competition

- The agreement should establish strong rules and disciplines to ensure the private sector is not disadvantaged by state-owned enterprises (SOEs). Today's trading rules never envisioned the state as an active cross-border commercial actor in export and investment. Further, it is important that the agreement also address competition enforcement to ensure it is conducted in a manner that assures due process, is based in sound economic analysis, and is not misused as a tool for industrial policy, force technology transfer, or undermine legitimate IP rights.
- While disciplines on SOEs are not issues of direct concern in the bilateral U.S.-Japan trade relationship, it is nevertheless important that the United States and Japan stand shoulder-to-shoulder in establishing these and other much needed due process and trading principles that we can each carry forward with other trading partners in future negotiations.

Cosmetics

The cosmetic and personal care products industry is a truly global industry, dependent on open markets and transparent, consistent regulatory environments around the world. A Cosmetics Annex, such as the one incorporated in the original Trans Pacific Partnership (TPP), should be

included in any U.S.-Japan trade agreement. Further, we encourage the two governments to include the following:

- Simplify the regulatory approval process by eliminating unreasonable regulations on non-active (excipient) ingredients and introducing an online product registration/notification system that allows companies to submit notification/applications directly and links notification/application information across prefectural governments, the PMDA and Customs streamlining procedures required at custom clearance.
- Expand allowable claims to include product claims that are based on verifiable data and avoid restricting claims based on the same guidance to pharmaceutical products (prohibiting (1) data usage, (2) testimonials and (3) numerical claims regarding efficacy.)
- The process for approval of Quasi Drug (QD) products should be simplified. Specifically, the Government of Japan (Ministry of Health, Labor, and Welfare, or MHLW) should initiate a system to expedite registration for QD products that are recognized to be similar to products that are already approved and for QD products that use only raw materials that have been previously approved for use by consumers by the MHLW. Process simplification for QD will expand choices for consumers to meet a variety of demands and preferences for medicated cosmetics, just as consumers have with ordinary cosmetics.
- Product risk assessments should be science-based, particularly when evaluating chemical assessment methods and aligning product classification and labeling standards with international norms.
- Regulations should be based on risk assessments using evidence and a cost-benefit analysis. This should apply both to cosmetics as well as vitamins, minerals and botanicals used in food supplements.
- A mutual-recognition protocol should be adopted to preclude the need to duplicate testing or approval requirements and an acceptance of a manufacturer's Declaration of Conformity.
- USG negotiators should consult with U.S. companies throughout the negotiations with regard to specific ingredients that will be subject to evolving regulations.
- Allow foreign companies to obtain marketing licenses directly rather than require that companies find a licensed importer or set up a subsidiary.

Customs

Given the dramatic rise in e-commerce and the uptick in free trade agreements that Japan has been involved with over the last few years, the U.S. should encourage Japan to implement high standard trade facilitation measures, including raising the customs *de minimis* level to be at or similar to the U.S.'s level, inclusive of duties and taxes.

- Specifically, the U.S. should encourage Japan to change Article 14, Item 18 of the Customs Tariff Act from JPY10,000 to JPY100,000, inclusive of duties and taxes. Raising the customs *de minimis* levels contributes to faster and more efficient customs procedures for express shipments, particularly for international express shipments of e-commerce, thereby alleviating the workload of the Japanese government.
- In turn, this also frees up Japan Customs to target high-risk imports, such as illegal or illicit material, because those Customs agents can refocus their resources on risk-based targeting

and analysis, as opposed to the considerable administrative burdens of clearing small or low-value shipments.

- Japan should also be encouraged not to require Harmonized Tariff Schedule codes on imports entering under the new, higher customs *de minimis* levels. The new, higher customs *de minimis* amount should apply to imports from all origins, and not exclusively goods of U.S.-origin.
- Additionally, the U.S. and Japanese governments should collaborate to develop a trade facilitation program for low-value shipments, most of which are traded via e-commerce. The program should include:
 - A simplified set of procedures for clearance, taxation and return of goods under a simplified common threshold, with the aim of reducing time, cost and complexity in trade.
 - A common Standard for E-Commerce Trusted Trader Accreditation which helps manage the risk of illicit shipments and support the implementation of the abovementioned trade facilitation measures.

Digital Trade

While the U.S. and Japan are generally well aligned on principles around the digital economy, it is important to consider that any U.S.-Japan trade agreement will have considerable potential to set global standards for cooperation in support of the digital economy. Thus, we stress that any agreement between the two economies include a robust chapter on digital trade drawing on the United States-Mexico-Canada Agreement (USMCA) text.

- The digital trade chapter should secure commitments that ensure the ability for businesses in all sectors to move data across borders, and should include a prohibition on the forced localization of data across all sectors.
- The agreement should explicitly prohibit measures that require the use of local technology infrastructure for market access and other commercial benefits. In addition, the agreement should state that no Party shall require the transfer of, or access to, source code of software owned by a person of another Party, or to an algorithm expressed in that source code, as a condition for the import, distribution, sale or use of that software, or of products containing that software, in its territory.
- The agreement should also seek commitments to regularly review existing regulatory frameworks in specific sectors (e.g., transportation, hospitality, financial services etc.) that are impacted by technological development. This should include the removal or modernization of legacy regulations that no longer best serve the public interest, but instead limit the realization of the full social, economic, and environmental benefits of innovative, newly available technologies and the services and business models created by them.
- The agreement should seek commitments that the two governments will continue to take proactive and coordinated leadership roles to promote a multi-stakeholder model for internet governance, privacy, and cybersecurity around the world, and particularly across the Indo-Pacific. This includes working together to expand the interoperability of privacy frameworks across the globe, especially the APEC Cross-Border Privacy Rules Framework and the OECD Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013), as laid out in the USMCA.

- The two governments should also commit to build the capabilities of their national entities responsible for cybersecurity incident response; and strengthen existing collaboration mechanisms for cooperating to identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks and use those mechanisms to swiftly address cybersecurity incidents, as well as the sharing of information for awareness and best practices. This is particularly important in the era of the Internet of Things, where there is an increased risk in malicious cyberattacks. The U.S. and Japanese governments should play a leading role in establishing comprehensive and powerful countermeasures in cooperation with other allies.
- Ensure that the two countries continue to provide duty-free access in information and communications technology (ICT) products.
- The agreement should streamline and modernize customs processes, including by encouraging the use of electronic customs forms, electronic signatures and authentication, and secure on-line payments, in addition to ensuring *de minimis* levels are set at commercially meaningful levels to promote e-commerce. The agreement should also prohibit customs duties on electronic transmissions, including information transmitted electronically.
- The agreement should also state that no Party shall accord less favorable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like digital products.
- The agreement should include the ability to establish forums and regular working groups between the two governments to address any emerging or lingering implementation issues related to the digital trade chapter. To this end, we would encourage that the agreement establish US-Japan Digital Trade Committee or Commission, to both discuss implementation issues between the two governments and also coordination regarding digital trade barriers in third countries as well as regional and global negotiations.
- The agreement should include protections for online platforms and marketplaces to host lawful speech and commerce without being treated as the originator of content.

Direct Selling

The agreement should explicitly recognize direct selling as a legitimate and beneficial distribution service that expands consumer choice, encourages entrepreneurship and labor market flexibility, and broadens economic opportunity. At the same time, the Government of Japan should acknowledge that up-line payments based on product sales shall not be prohibited. This distribution system was recognized in the recently completed trade agreement among the United States, Mexico and Canada (USMCA, Chapter 15, Cross Border Trade in Services, Article 15.10: Paragraph 1, footnote 7). The definition of direct selling should be identical to the language in this footnote.

Electronic Payments

- A U.S.-Japan trade agreement should follow the financial services commitments in the U.S.-Mexico-Canada agreement (USMCA), providing for both market access and national treatment, to ensure a level playing field for domestic and foreign-based suppliers of

electronic payment services (EPS) in both markets. Regulation should account for, and be respectful of, different business models, encouraging a diverse set of players in the payments space. This competition among players will not only result in greater consumer choice, but will also spur innovation, contributing to a more robust payments ecosystem that will allow all market participants to develop and supply a wide range of payment services with differing product features and value propositions.

- Japan should be encouraged to commit to ensuring and safeguarding an open and global payment system in which transactions are processed by global networks without any requirements for local switching or processing of transactions.
- The agreement should also apply digital trade provisions to electronic payment services suppliers. Specifically, digital trade provisions of the agreement should: a) ensure EPS suppliers are able to transfer information across borders; and b) prohibit requirements to use or locate computing facilities in a Party's territory as a condition for supplying EPS in that territory.

Energy & Infrastructure

- Foster a market that chooses winners based on transparent processes. Enabling all resources to compete fairly in bilateral tender, energy market, capacity market, and balancing markets, will ensure that market rules and pricing are technology-neutral and do not privilege incumbents over newcomers.
- Market opportunities should be designed as a “pre-market” mechanism, foreseeing the integration of all resources into future wholesale markets.
- Promote international consistency in technical and safety standards to ensure the participation of leading global companies in both the U.S. and Japanese markets.

Express Delivery Services

The United States should support a Delivery Services Annex to ensure U.S. and Japanese businesses have access to world-class delivery service options. The parties should also commit to fair, non-discriminatory treatment of non-postal service providers. Both the U.S. and Japan should ensure that some of the unique challenges associated with market dominant players (i.e., national postal operators) in the sector are addressed with appropriate safeguards against abuse of that position. A competitive market in which both Japan Post Co., Ltd. (JPC) and private sector express carriers compete on an equal footing to offer the best service at the lowest possible price will benefit Japanese consumers and the Japanese economy as a whole. The concept should be applied to competitive, value-added delivery services, including JPC's Express Mail Service (EMS).

- To that end, the U.S. and Japan should work together to remove EMS from the postal universal service definition, and eliminate advantageous regulations for EMS or application of discriminatory regulations to private international express carriers for establishing equivalent conditions of competition.
- For example, currently the Act on Domestic Animal Infectious Diseases Control (Article 38), and the Plant Protection Act (Article 603), both exclude international postal shipments from their requirements of first entry port approval for quarantine shipments. Instead, quarantine

shipments of JPC's EMS are brought to the International Post Distribution centers and checked there, without receiving an arrival airport check first. This unfairly provides time and cost advantages for EMS, which are not provided to private sector carriers. The U.S. should work with Japan to ensure that the benefit of moving quarantine shipments without a first entry port check, is applied fairly, so that shipments can undergo the quarantine check at the private sector carrier's facility outside of the airport.

- Also, JPC and private sector carriers are treated differently when it comes to Customs Clearance. Private international express carriers must use the duty declaration system whereby the carrier needs to declare all shipments for customs clearance and calculate duties and consumption taxes by their cost. However, different procedures apply to JPC, because the duty assessment system is conducted by customs officials for EMS shipments. The U.S. should urge the Japanese government to apply the same customs clearance regulations and procedures to JPC as applied to the private sector.
 - Since Japan Post has been privatized, it should be regulated in the same manner as its private sector competitors. Currently, Ministry of Internal Affairs and Communications (MIC) regulates Japan Post Corporation's postal services, whereas private companies are regulated by various ministries, including MLIT for transportation and security, MOF for customs clearance, and MAFF for quarantine procedures. Different regulatory agencies between the postal services and other private companies have led to discrepancies in regulations and disadvantages for private companies.
- Finally, the same security requirements are currently not applied to EMS and other international postal products as are applied to private sector carriers in Japan. Most notably, JPC does not have to comply with Advance Cargo Information Submission Program. However, private express carriers handling international air cargo are currently required to submit cargo information, (including the Master Air Waybill) in advance. For example, for a long haul flight longer than five hours, cargo information should be submitted three hours before arrival. As of March 2019, Japan Customs will require airlines to submit House Air Waybill information, but this requirement will not apply to shipments handled by JPC. This discrepancy fails to adequately address the goal of public safety and creates a competitive disadvantage for private carriers who must bear this greater cost for security. EMS and private express carrier cargo are often loaded onto the same passenger aircraft, and therefore, the same security rules should be applied to EMS as private express carrier cargo.

Financial Services

- Ensure the free flow of data. In the USMCA Financial Services Chapter, Article 17.19: Transfer of Information is a good example of a strong free flow of data provision that a U.S.-Japan trade agreement can draw upon. While CPTPP includes a data flow provision, it relies on the approach from the GATS Financial Services Understanding which is outdated, as it was concluded in 1997.
- Similarly, a U.S.-Japan trade agreement should prohibit data localization measures. The USMCA Financial Services Chapter, Article 17.20: Location of Computing Facilities, prohibits data localization as long as financial institutions provide the access to data to regulators for their regulatory and supervisory purposes. CPTPP does not include such a provision lacking recognition and understanding of the importance of this issue to the sector

from a cybersecurity as well as business efficiency perspective. Inclusion of such a provision in a U.S.-Japan trade agreement is critical to the affirmation of this U.S. government policy for the provision of financial services in a global economy. Combined, provisions 17.19 and 17.20 will help facilitate the adoption of cloud technologies in the Financial Services sector which will have multiple benefits for efficiency, cybersecurity, and privacy.

- A U.S.-Japan trade agreement should commit to deepened regulatory cooperation and coherence in FinTech developments, complementing multilateral and other bilateral efforts aimed at promoting cross-border financial technology development and growth.
 - Financial regulatory cooperation commitments in a U.S.-Japan trade agreement should include robust transparency obligations that ensure stakeholders have the opportunity to review and comment on proposed measures. Such obligations would ensure industry and other stakeholders can engage with regulators to craft meaningful outcomes to meet regulatory objectives while not hindering the industry's ability to serve its clients. The agreement should also set clear rules regarding how regulators will engage with applicants for a license, including timelines and fees.
- A U.S.-Japan agreement should set a high standard to discipline subsidies to financial services related entities. Provisions in the financial services chapter should discipline the granting of subsidies to state-owned financial institutions with limited exception for certain programs.
- Encourage the U.S. and Japanese governments to avoid distortions that arise when one market participant enjoys favorable treatment over another.
 - Establish a level playing field between mutual aid cooperatives (*kyosai*) and Financial Services Agency (FSA)-regulated private sector financial service providers.
 - Support the Japanese government's continued efforts to ensure a level playing field between postal financial institutions and the private sector.

Functional Foods and Dietary Supplements

- A U.S.-Japan trade agreement should ensure science-based risk assessments that align chemical assessment methods and promote alignment in classification and labeling. Authorities should be required to include U.S. companies in consultations on ingredients that will be impacted by evolving regulations.
- Both governments should agree to adopt and accept internationally recognized standards, including Good Manufacturing Practices (GMPs).
- As a general principle, regulations should be risk-based, evidence-based and incorporate cost benefit analysis.
- Both governments should agree to no duplication in testing or approval requirements and an acceptance of a manufacturer's Declaration of Conformity.
- The accord should mandate science-based risk assessments and mutual recognition for vitamin and mineral levels as well as the acceptance of botanicals in food supplements.
- Rules of origin should be consistent with those proposed in the original version of the TPP. The initial TPP rules provided for a 10 percent *de minimis*. Furthermore, the exceptions to *de minimis* did not prevent the use of foreign material in production of the finished products under tariff subheading 2106.90.

Government Procurement

- The bilateral negotiations should provide for open, transparent, and reciprocal access to U.S. and Japanese procurement markets, expanding access beyond the level established in the WTO's Agreement on Government Procurement.

Intellectual Property

Many American companies, like those in the creative content industry and the biopharmaceutical sector, among others, depend on intellectual property. In order for U.S. industries to continue to thrive, the U.S. government must ensure that the United States' trading partners are putting in place effective intellectual property (IP) protection and enforcement mechanisms to protect U.S. companies operating abroad. We urge the U.S. government to ensure that such protections are secured as early in the negotiation as possible.

- Provisions should include a strong base term and scope of protection for patents, copyrights, trademarks, designs, and establishment of a statutory commitment to protect trade secrets; exclusive rights for all forms of IP regardless of business models; transparent, predictable, and carefully-defined rules for exceptions to rights across all forms of IP.
- On copyrights, the agreement should require parties to provide effective remedies for online copyright infringement, including intermediary liability, with appropriately conditioned liability safe harbors for intermediaries.
- American companies are widely recognized as global leaders in technology innovation. The licensing of these IP assets has increased global access to innovative technology, created high value jobs and resulted in billions of dollars of economic growth. To support the licensing of technology, this agreement should prohibit government interference in commercial negotiations between private parties related to legitimate IP.
- On trade secrets, civil and criminal causes of action and penalties for trade secrets theft are critically important.
- IP enforcement measures should also include ensure fully effective injunctive relief; deterrent-level civil and criminal remedies in law, backed up by effective enforcement efforts, including ex-officio authority to seize goods and enforcement for goods trans-shipped through a party's territory in order to combat trade in counterfeit goods.

Investment

- It is important that any U.S.-Japan trade agreement endorse and enhance the economic strength each country receives from the private sector's cross-border investments. The agreement must reject any effort to unwind supply chain investments in goods and services.
- The obligations found in the U.S. 2012 model Bilateral Investment Treaty text should serve as the basis for an investment chapter in a prospective U.S.-Japan trade agreement. The agreement should protect U.S. and Japanese investments from non-discriminatory treatment, direct and indirect expropriation, under the minimum standard of treatment, including fair and equitable treatment, performance requirements and ensure free transfers. These obligations should be enforced via investor-state dispute settlement (ISDS) provisions, which

provide for neutral arbiters to uphold these investment protections. The agreement should ensure that all sectors are afforded the same level of protection.

- A U.S. trade agreement should prohibit measures that would require a financial institution to purchase or use a particular technology and include protection from such a performance requirement for all sectors, including financial institutions.
- Financial institutions must invest abroad to serve customers and clients and, in doing so, make significant investments under the prudential regime of the trading partner. These investments should be afforded the same level of protection in a U.S.-Japan trade agreement as other investments.
- It is the Chamber and USJBC's view that the USMCA text should not be drawn on in this chapter as it represents a notable step back from the investment protections included in many U.S. trade agreements and bilateral investment treaties.

Legal Services

- Streamline the application and approval process for foreign lawyers to be licensed as Gaikokuho Jimu Bengoshi by reducing the home jurisdiction practice requirement, by adhering to the July 2010 information and documentation requirements for submission and by eliminating requirements for information that is supplemental to licensing requirements.
- Eliminate discriminatory treatment of Gaikokuho Jimu Bengoshi in areas of branching, formation of legal entities, handling of third country law issues, discipline, and law firm management.

Pharmaceutical and Medical Devices

Based on the long-history of detailed bilateral trade talks on pharmaceutical and medical device market access, we look to the two governments to achieve a comprehensive agreement in this sector that includes pricing and reimbursement, intellectual property rights, and regulatory convergence. To meet these goals, the bilateral talks should aim to:

- Provide greater transparency and due process, including regular and meaningful opportunities to provide input regarding the development of further reforms to the pricing and reimbursement system. This has been lacking in steps taken by the Japanese government to date.
- Eliminate new company criteria and expand the product criteria within Japan's Price Maintenance Premium program (part of the pharmaceutical reimbursement system) to better value the contribution that innovative medicines and therapies bring to the Japanese healthcare system.
- Maintain long-established biennial review of reimbursement prices for innovative products, rather than move to an annual review under the National Health Insurance (NHI) system.
 - For pharmaceuticals, any off-year pricing revisions should not target all pharmaceutical products but rather should be limited to those products for which there is a large percentage differential between the NHI-reimbursed price and the market price.

- For medical devices, the rules governing biennial reviews should remain stable, with changes considered to better reward new and existing devices in robust consultation with stakeholders.
- The New Health Technology Assessment (HTA) system should be applied post-launch to validate a product's premium (allowing for both upward and downward adjustments) based on criteria and validated methodology that recognize the full value of innovative medicines as a whole. Cost effectiveness analysis and appraisal processes should keep fairness and transparency through full involvement of critical stakeholders such as manufacturers and patients with the equal status of healthcare providers, payers and health economic specialists. Furthermore, upon completion and evaluation of the device HTA pilot, if HTA is applied to devices, such usage should be applied only in special cases after launch.
- Ensure transparency and procedural fairness in the process by which national health care authorities establish reimbursement for medical devices at the national level. This would require a reasonable period of time for making reimbursement decisions, clear and publicly transparent rules that are used to make these decisions, consultations with applicants during the decision process, clear explanation of decisions made, and an appeals process for the applicants.
- Ensure that procedures and rules that apply to pharmaceutical pricing and reimbursement decisions are predictable and transparent: the intensive investment in the development of innovative medicines requires a predictable and transparent public policy environment that fosters medical advancements and a favorable business environment. This includes creating efficient and transparent processes for bringing new medicines and technologies to market, such as publishing rules related to pricing and reimbursement in advance of adoption, making decisions in a timely fashion, and allowing stakeholders meaningful opportunity to participate in the development of rules and regulations in the pharmaceutical sector.
- Adopt robust intellectual property protection and enforcement commitments that meet the highest global standards, including broad patentability, patent term restoration and adjustment, effective measures to permit resolution of pharmaceutical patent disputes prior to generic or biosimilar launch (sometimes referred to as "patent linkage"), as well as 12 years of regulatory data protection for biologics.
- Ensure meaningful regulatory convergence to reduce redundancies, and flexible use of expedited approval pathways to deliver innovative medicines earlier to patients.