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Agenda Item: 10

Dialogue on the Competition Chapter in RTA/FTAs – Experience of Japan

Purpose: Information

Submitted by: Japan



Competition Policy and Deregulation Group

Meeting

Canberra, Australia

23 - 24 January 2007

A light blue map of East Asia, showing the Korean Peninsula, Japan, and the Philippines, serves as a background for the text.

Dialogue on the Competition Chapter in RTA/FTAs - Experience of Japan -

January 24, 2007
APEC CPDG Meeting in Canberra

Keiichi IWASE
Japan Fair Trade Commission

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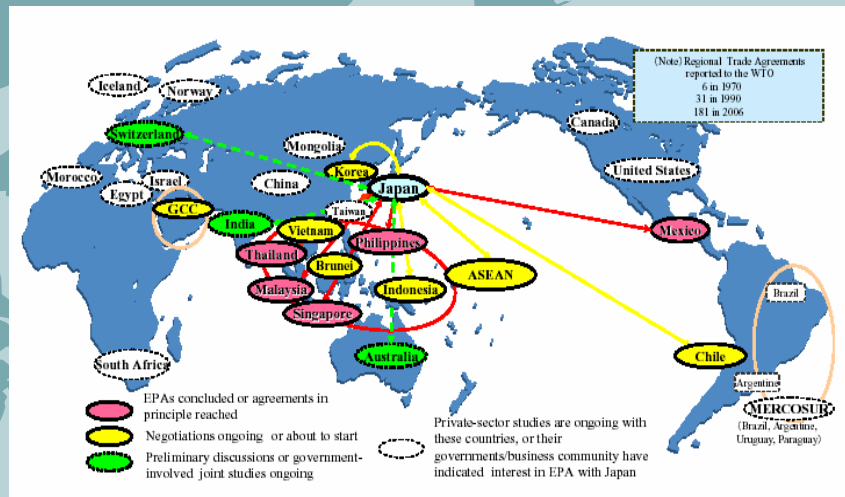
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Competition Provisions and RTAs

- Competition policy is an inevitable element to ensure the free flow of goods and services stemming from the liberalization of trade and investment.
- Japan has experienced a number of RTA negotiations mainly with neighboring East Asian economies.

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RTA Negotiations between Japan and Other Economies



Source: Ministry of Foreign Affairs of Japan

Note: This chart indicates RTA negotiations between Japan and other economies, and therefore does not include bilateral cooperation agreements between Japan-US, Japan-EU, and Japan-Canada.

EPA/FTA Negotiations Including Competition Elements

- Japan–Singapore: Enacted on Nov. 2002
- Japan–Mexico: Enacted on Apr. 2005
- Japan–Malaysia: Enacted on Jul. 2006
- Japan–Philippines: Signed on Sep. 2006
- Japan–Thailand: Agreed in principle on Sep. 2005
- Japan–Chile: Agreed in principle on Sep. 2006
- Japan–Indonesia: Agreed in principle on Nov. 2006
- Japan–Korea: Negotiating since Dec. 2003
- Japan–ASEAN: Negotiating since Apr. 2005

Bilateral Cooperation Agreements on Competition

- Japan–US: Enacted on Oct. 1999
- Japan–EU: Enacted on Jul. 2003
- Japan–Canada: Enacted on Oct. 2005
- Japan–Australia: Preparing for negotiation

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How Japan is pursuing RTAs with neighbors

- Japan has sought so called EPAs (Economic Partnership Agreements)
 - EPA covers wider range of components than those in FTA. The components are:
 - trade in goods
 - trade in services
 - investment
 - competition
 - intellectual property rights
 - business environment enhancement
 - customs procedures
 - movement of natural persons
 - government procurement
 - etc.
- These elements are main components in traditional FTAs

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RTA or Bilateral Cooperation Agreement?

- From the JFTC's perspective, there is no significant difference between RTA and bilateral cooperation agreement in content-wise.
 - We can seek full-fledged agreement with experienced economies, and we can seek tailor-made approach with less experienced economies.

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Elements of Competition Chapter

- Need to consider various developmental level of competition law & policy of counterparty.
 - For economies which have experienced competition authority
 - Emphasis is on cooperation in enforcement activities
 - For economies which have less experienced competition authority
 - Emphasis is on cooperation which is in consistent with the developmental level of each counterparty
 - Technical assistances are also put with high significance

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Cooperation with Experienced Economies

- Full-fledged agreement (as in Japan-Mexico EPA and bilateral cooperation agreements with US, EU and Canada), normally contains such elements as:
 - Notification;
 - Coordination of enforcement activities;
 - Cooperation in enforcement activities (such as exchange of information etc.)
 - Request for enforcement activities (positive comity);
 - Consideration of important interests of the other party (negative comity)

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Cooperation with Less Experienced Economies

- Enforcement cooperation should be more flexible and start from more elementary levels
 - Nevertheless it is desirable to agree on common understandings, such as:
 - Commitments to take appropriate measures against anticompetitive activities;
 - Commitments to ensure core principles of non-discrimination, transparency and procedural fairness;
 - Commitments to make enforcement cooperation
- (Note: Details of enforcement cooperation are determined in accordance with developmental status of competition law & policy in each economy)
- Technical assistance will also be included

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Operational Burdens Associated with Implementation of Competition Chapter

- Japan's experience indicates that there is little operational burden
 - Receives 10 – 20 notifications, and sends similar number of notifications per year
 - These notification include:
 - amendments or introduction of laws, regulations, and guidelines
 - information on investigation activities by foreign authorities against Japanese companies, and vice versa
- In some cross-border anti-competitive cases, enforcement activities are collaborated

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Benefits from Competition Chapter

- Cooperation agreement realizes active and confident enforcement cooperation within the cooperation framework, and brings strong advocacy effects
- Participation in RTAs or bilateral cooperation agreement could be one of gateways to international competition circle

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A light blue map of East Asia, including Japan, Korea, and parts of China, serves as a background for the slide.

Japan's Initiative for Capacity Building in the Context of EPA Negotiations

- Policy dialogues for deepening mutual understanding
- Training experts and trainers
- Creating an open platform for sharing and exchanging information
 - The JFTC is offering a web-accessed database, at “<http://www.jftc.go.jp/eacpf/>”

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Summary

- The JFTC seeks to promote cooperation with other competition authorities utilizing mechanisms of RTAs or bilateral cooperation agreements
- Developmental status of competition law/policy of each economy is considered when establishing these formal relationship
- According to JFTC's experiences, burdens are not so large and benefits are far greater than expected

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