Opinions on the Japan-India Economic Partnership Agreement

December 15, 2006

Japan-India Business Co-operation Committee (JIBCC)

India, a country with a huge market of over one billion people, has drawn the attention of the world with its achievement of remarkable levels of economic growth. Since implementing economic liberalization in 1991, India has seen growth averaging 6%, with a figure of 8% over the past three years. In accomplishing this feat, India has made good use of its abundant and highly skilled human resources, who are supported by an outstanding system of higher education. India is also actively strengthening its external economic relationships, and it is increasing its presence amid advancing economic integration in East Asia. This can be seen from its EPA negotiations with Thailand, Singapore, and the Association of Southeast Asian Nations (ASEAN), as well as from its participation in the East Asia Summit.

Although Japan and India have a long history of exchange as the largest and third-largest economies in Asia, economic relations between the two countries remain at a low level. As well as sharing the basic values of democracy, market economics, and the rule of law, Japan and India both are stand to gain wide-ranging benefits from ongoing development in Asia, and particularly from economic integration in East Asia. It is therefore important that we promote mutual cooperation between the two nations. With the rapidly growing interest of Japanese companies in the Indian market and its potential for growth as a destination for investment, the strengthening of economic relations between Japan and India has become a very urgent task.

In view of this situation, with the agreement of the leaders of our two countries, negotiations will be commenced toward the conclusion of the Japan-India Economic Partnership Agreement (EPA). The JIBCC, which has contributed since its establishment in 1966 to the development of Japan-India economic relations through political and business exchange, strongly supports the conclusion of this agreement and hopes that it will be achieved in the near future.

Accordingly, the JIBCC requests that the Governments of Japan and India

undertake negotiations while taking into full consideration the following opinions.

I. Nature of the EPA

The coverage of the EPA should be broad and comprehensive, including not only border measures such as tariff and non-tariff measures, but also investment, trade-in services, movement of natural persons, intellectual property rights, and development of the business environment, with a view to contribute to the sustainable development of robust international trade.

When negotiations are conducted, the views of the private-sector companies that actually perform trade and investment should be fully taken into account. Moreover, the negotiation process should be disclosed to such companies, in order to ensure that they are not only informed of the results.

II. Specific Matters to be Considered in Negotiations

1. Trade in Goods

(1) Tariffs

Regarding trade in goods, tariffs should be eliminated on as broad a range of items as possible to ensure that the agreement is in conformity with WTO rules (GATT Article 24). In the free trade agreements that India has concluded thus far, a large number of items have been excluded from tariff reductions, but in the agreement with Japan, tariffs of substantially all the trade should be eliminated.

Although the Government of India has reduced basic tariff rates, compared with Japan's main trade partners in Asia (such as China and ASEAN member nations), they remain high. The average applied tariff rates are 37.4% on agricultural goods and 27.9% on non-agricultural goods. In particular, tariff rates on finished articles and on their parts are the same in some cases, making it difficult for companies investing in India to derive benefits from local production.

We request that the Government of India eliminate tariffs to be levied on capital goods among other things. In this context, we also request the Government of India eliminate a 5% reduced tariff which has been levied on capital goods to be imported under the Export Promotion Capital Goods (EPCG) scheme.

Even if basic customs duties (4 levels: 0%, 5%, 10%, and 12.5%) are reduced, additional duties (generally 16%; 0%, 4%, or 8% on certain items), countervailing duties (4% across the board), and education cess (2%) are also levied, making

duties in effect very high. For example, when the basic customs duty on a product is 12.5% and additional duty is 16%, the final duty comes to 36.736228%. Furthermore, since the rates of additional duties and the like are revised every year, tax administration in companies becomes very complicated and profits are unstable. Therefore, in the EPA with Japan, not only should tariffs be eliminated (zero basic customs duty) but also additional duties, countervailing duties, and education cess should be eliminated in a wide range of fields.

(2) Trade Remedies

India is the heaviest user of anti-dumping measures among the WTO members, with 323 cases from the inception of the WTO in 1995 to June 2006. The abuse of anti-dumping measures imposes a heavy burden on companies and may result in negating the effect of tariff reduction. We request that the agreement explicitly provide that when one party decides to initiate an anti-dumping investigation, the party is obliged to give prompt written notice to the other party. We also request that following this, the two parties hold a consultation, with the aim of preventing arbitrary and protectionist abuse of anti-dumping measures. We further request that the agreement provide a mechanism for consultation concerning safeguard measures between the two countries to resolve situations in which a party deems itself to be affected by the negative impact caused by its commitments under the agreement. The appropriate application of trade remedies such as anti-dumping, safeguard, subsidies and countervailing measures is the right of WTO member countries, and it is not desirable that this right be revoked in a bilateral agreement. To promote liberalization, certain measures approved by the WTO should be guaranteed.

(3) Rules of Origin

In a preferential trade agreement, rules of origin contribute to the promotion of trade between the countries concerned and are essential to prevent third-country circumvention. However, when the rules of origin and rules for their administration are stricter than is necessary, they may have the effect of obstructing trade. Therefore, rules of origin must be clear and transparent, and their operation must be made easy for users to understand and implement.

In the negotiations for its Framework Agreement on Comprehensive Economic Cooperation with ASEAN, India proposed rules of origin requiring the fulfillment of criteria for changing tariff classification (four digits) and value-added criteria, but Japan and India should not adopt such strict rules.

When Japan and India formulate product-specific rules of origin in the EPA, the classifications adopted should be based on the International Convention on the Harmonized Commodity Description and Coding System (HS Convention), which is to be amended on January 1, 2007.

(4) Certificates of Origin

When determining the rules for operational procedures of certificates of origin, the Governments of Japan and India must fully take into account rapidly changing and diverse trade situations, including such developments as the use of re-invoicing.

In the EPAs that Japan has concluded thus far, rules for operational procedures of certificates of origin have been determined on the day the agreements came into effect, which has not allowed sufficient time for preparation for companies using certificates of origin or for the bodies that issue them. In the EPA with India, rules for administration of certificates of origin should be made in the form of an annex to the EPA, to ensure that there is sufficient preparation time between the signing of the agreement and its effectuation.

Considering the fact that the Japan Chamber of Commerce and Industry and other concerned chambers of commerce and industry have already issued specified certificates of origin based on the EPAs with Mexico and Malaysia, we request that all due attention be paid to soliciting the opinions of and providing information to chambers of commerce and industry in the course of these negotiations.

2. Customs Procedures

(1) Customs Procedures

In customs procedures in India, many types of documents are required by customs and, because the tariff system is complex, customs procedures take a very long time. Even when urgent freight is sent by air, it can take as long as one week from arrival at an airport in India to reach the consignee. When using duty exemption schemes, the procedures for the refund of duties paid are also complicated. Customs procedures should be simplified and expeditious customs clearance should be made possible, providing companies with the benefit of reduced costs.

(2) Basis of Customs Valuation

In the WTO Agreement on Customs Valuation, the adoption of the CIF price or FOB price as the basis of customs valuation is left to the domestic laws of the

countries concerned. India has adopted the CIF price as its basis, but adds loading charges (estimated at 1% of the CIF price). Since the CIF price in the Agreement on Customs Valuation is the price upon arrival at the port of import, this price should be used without any additions.

(3) Tariff Classification

India is currently considering the introduction of a law to impose a 12.5% duty (and countervailing duty) on digital cameras with video functions, which should not be subject to taxation since they fall under the Information Technology Agreement (ITA) of the WTO. This duty is being considered on the ground that the ITA is not applicable to products with video functions, and a bank guarantee is currently required when importing such digital cameras. The JIBCC requests that tariff classification be implemented in India in accordance with internationally harmonized system.

In the EPAs that Japan has already concluded, there have been several cases of differences of judgment concerning classification between Japan's customs authorities and those of the partner country. Disparities concerning tariff classification between the parties involved diminish the benefits of elimination or reduction of tariff. In particular, regarding goods that fall under the WTO's Information Technology Agreement (ITA), the item list of information-related equipment will be broadly revised with the coming amendment of the HS Convention. Since there are many new classifications, there should be sufficient coordination between the Governments of Japan and India to ensure that the aims of the ITA are fully applied. Product-specific rules of origin should therefore be formulated with sufficient coordination between the Governments of Japan and India.

3. Criteria and Standards

We recognize the important contributions that international standards and conformity assessment systems can make in a variety of areas. These include ensuring security and the quality of exports, protecting the environment and human life and health, maintaining compatibility between products, and supporting high levels of productivity and efficiency. However, if such standards are not arranged or managed properly, they can also impede trade or hinder market access. Therefore, the agreement should ensure that standards and conformity assessment systems would not impair trade or investment between the two counties.

Japanese companies have pointed out the following problems in the Indian market.

(1) Indian Standards (BIS Standards)

When items falling under the regulations of the Bureau of Indian Standards (BIS) are imported into India, they are required to comply with BIS standards; otherwise the manufacturer of such items must undergo BIS standards screening and registration, as well as pay for these procedures. As a result, import procedures in India are very costly. The BIS standards should either be removed or mutual recognition of standards for our two countries should be achieved.

(2) Maximum Retail Price (MRP) Marking System

In India, in order to protect consumers by preventing retailers from setting unjustifiably high prices, producers must indicate MRP or put an MRP sticker on each carton. For products that cannot be labeled with MRP stickers before shipment from the factory, MRP stickers are applied in a bonded warehouse and the products are then distributed to retailers after customs clearance. This leads to an increase of stock lead time, man-hour costs, and logistics costs. An MRP is used as basis for countervailing duty assessment for TVs and audio equipment, which has made the calculation of custom duties complicated. We request that the MRP marking system be abolished.

(3) State Government Regulations

The regulations of the state of West Bengal require that hydraulic tests be made on all pressure vessels every four years, which involves considerable expense and takes a great deal of time, imposing heavy burdens. We believe that such tests should be required only at the time of manufacture and modification, as in Japan. In addition to hydraulic tests, the regulations concerning boilers require the implementation of emission tests using actual boiler fluid when safety valves are newly installed or changed. Since this is both dangerous and impractical, these regulations should be abolished.

4. Sanitary and Phytosanitary Measures

The agreement should reaffirm that the two countries would not be prevented from adopting or enforcing, on the basis of scientific principles, measures necessary for the protection of human, animal, or plant life or health. It should be required, however, that such measures not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail, and that such measures not be used as disguised restrictions

on international trade, as specified in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

5. Investment

In February 2002, with the aim of improving transparency, India changed its approval system for foreign direct investment from a positive list approach to a negative list approach, whereby approval for direct investment with an equity participation rate of up to 100% is automatically granted for sectors not on the list. The JIBCC actively participates in the India-Japan Investment Dialogue established in 1999. It has requested improvements regarding various problems related to the promotion of investment in India, but many impediments to investment still remain.

India wishes to encourage investment by Japanese manufacturing companies, particularly small and medium-sized enterprises. However, in order to vitalize the Indian economy, foster supporting industries, and promote employment, India should abolish or relax the following investment regulations and increase its acceptance of investment.

(1) Non-objection Certificate

When a foreign company that has set up a joint venture (with a minority share) in India launches a new joint venture business (with a majority share) in the same business field, the new business must obtain a non-objection certificate from the existing business. The regulations concerning the commencement of a new business in the same field as an existing business should be relaxed.

(2) Remittance Regulations

When a Japanese person posted in India sends money to Japan, the amount is restricted to no more than 75% of the salary received in India. We request that this regulation be removed.

(3) Withdrawal Regulations

When a company becomes insolvent as a result of a change in the business environment or for another reason, it must notify the Board for Industrial and Financial Reconstruction (BIFR) in accordance with the Sick Industry Company Act. Upon notification, under the supervision of the BIFR, the company may determine a rehabilitation policy, remedy the situation itself, or be dissolved, but there are no cases of withdrawal being permitted. Company liquidation procedures should be simplified through legislation such as amendment of the Company Act.

(4) Regulations on Remittance of Royalty Payments

When royalty exceeds 8% of exports or 5% of domestic sales, or when the first lump-sum payments in connection with a royalty agreement exceed two million dollars, the approval of the Reserve Bank of India (RBI) is required. However, several cases have been reported in which RBI did not approve such remittance. These regulations concerning remittance of royalty payments should be abolished. Advance approval is required when royalty payments on trademark use exceed 2% of exports and 1% of domestic sales. Furthermore, it sometimes takes as long as six months from the submission of an application to the RBI for approval to be granted. These procedures should be simplified, and it should be possible to undertake them with greater rapidity.

To promote investment between Japan and India, it is necessary to liberalize investment and protect investors. The EPA should therefore contain clear provisions on transparency, expropriation and compensation, freedom of transfer of funds, most favored nation treatment and national treatment both at pre-establishment stage and at post-establishment stage, and the abolition of performance requirements. Most favored nation treatment and national treatment should be applied to the right to receive trial in a domestic court and to taxation.

A transparent and effective dispute resolution mechanism is necessary for the protection of investors. In order to widen the choice of dispute resolution methods for disputants, India should promptly ratify the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

6. Trade in Services

(1) Liberalization of Trade in Services

The liberalization of trade in services is advantageous in that it promotes economic efficiency, inward foreign direct investment, and employment. In particular, the liberalization of manufacturing-related service industries is indispensable in building a speedy and efficient supply chain. Negotiations on the liberalization of trade in services are being conducted in the WTO Doha Round, and in the Japan-India EPA, liberalization should be promoted in a wide range of sectors in accordance with the WTO agreement (GATS Article 5). We believe that negotiations for trade in services should take a negative list approach in order to ensure wide-ranging, high-level, and transparent commitments.

(2) Movement of Natural Persons

With the expansion of corporate activities overseas, it has become essential to liberalize and facilitate the movement of natural persons, such as the movement of professional service providers, to ensure the smooth promotion of business overseas, including the simplification and speeding up of visa procedures.

To promote the expansion of investment in India from Japan, we request that the Government of India simplify and speed up visa procedures for short stays and transfers of staff within companies. In particular, since only a three-month extension is permitted when an application is made in India for visa extension, at present it is more efficient for applicants to return to Japan and apply for a three-year visa at the Indian Embassy in Tokyo. Visa procedures should also be expedited, such as by approving extensions to the ends of the terms specified in employment contracts issued by local affiliated companies.

Furthermore, we request that the two countries implement reciprocal exemption of visas for temporary visitors with a view to promoting trade and investment. We believe that visa waivers for temporary visitors would also contribute to the promotion of the tourism industries of both nations.

At the same time, the Government of Japan should consider the facilitation of the movement of service providers based on contracts between companies. Regarding professional services provided through mutual recognition of qualifications, as well as domestic regulations concerning such matters, facilitation and deregulation should be studied, fully taking into account issues such as safety, reliability, and the maintenance of service quality.

In August 2000, then prime minister Mori proposed the Indo-Japanese IT Promotion and Cooperation Initiative, which included a scheme to issue multiple-entry visas valid for three years to Indian IT specialists. Although the Government of Japan relaxed the requirements for issuance of visas, admittance of Indian IT specialists remains flat. In order to promote interaction between IT specialists in two countries, the Government of Japan is requestd to improve the operation of the scheme.

7. Intellectual Property Rights

(1) Protection of Intellectual Property Rights

Intellectual property rights are not adequately protected in India because the

legal system for such rights is insufficiently developed and legislation is beset by delays. Since there is no system for customs control at the borders for articles infringing intellectual property rights, such as pirated goods or copies, enforcement measures are also inadequate.

India has not ratified several important treaties related to intellectual property rights, including the Trademark Law Treaty, the World Intellectual Property Organization (WIPO) Copyright Treaty, the WIPO Performances and Phonograms Treaty, and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. It is therefore necessary for India to ratify these treaties as soon as possible and to establish a related domestic legal system for the protection and enforcement of intellectual property rights.

(2) Faster Trademark Registration Procedures

Trademark registration procedures take a very long time in India. India should quickly establish legislation and a system for trademark registration with a view toward the implementation of speedy registration procedures. The establishment of a speedy registration system and procedures is also essential for the adequate protection of intellectual property rights.

8. Competition

To promote trade and investment between Japan and India, the provisions of the Japan-India EPA should include basic principles such as transparency, non-discrimination and fairness of procedures, the prohibition of hardcore cartels, and cooperation between the competition authorities of both countries, in order to prevent anti-competitive practices.

Japanese companies have pointed out the following problems in the Indian market.

- In the private-sector electric power field, the state-run National Thermal Power Corporation (NTPC) is allowed to participate in bidding for ultra-mega projects, impeding competition and suppressing private business.
- Monopoly rights are granted to Indian companies that participate in joint ventures with foreign companies in India. These monopoly rights should be removed.

9. Government Procurement

India lacks transparency in government procurement. We, therefore, urge India to participate in the WTO Agreement on Government Procurement and improve

transparency by strengthening the related legal system. Since state-run companies are given preferential treatment, it is not easy for foreign companies to obtain contracts with the Government of India. The preferential procurement policy whereby state-run companies can obtain contracts if their bid price is within 10% of the minimum bid price should be revised as soon as possible.

One specific example is the preferential treatment accorded to the state-run company Bharat Heavy Electricals Limited (BHEL) for bidding on government projects in the electric power plant sector.

10. Development of the Business Environment

In order for Japanese companies in India to maintain their competitiveness amid increasingly severe global market competition, a transparent and effective framework is required to resolve the various business problems that arise. Accordingly, as in the EPAs that Japan has already concluded, a subcommittee for the development of a business environment in which private companies can participate should be set up as part of the EPA with India.

In addition, we request that the following issues regarding India's business environment be resolved.

(1) Taxation System

In India, the taxation system is frequently changed and its contents are not clear, making it easy for the tax authorities to take arbitrary measures. When the taxation system is changed, the nature of the changes should be publicly announced in advance to ensure that companies have a sufficient period of time to respond.

The following problems have been pointed out with respect to India's taxation system.

(a) Corporate Income Tax

Corporate income tax in India is 30% for Indian companies (effective tax rate: 33.66%) and 40% for foreign companies (effective tax rate: 41.82%). The application of discriminatory corporate income tax on foreign companies should be revised as quickly as possible.

(b) Introduction of Value Added Tax (VAT)

In April 2005, VAT as a federal tax was introduced, in place of the state sales tax. Taxation on domestic business in India is complicated, since some states have introduced VAT while others have not. The Government of India should urge states that have not introduced VAT to do so as soon as possible.

(c) Taxation on Representative Offices

The Indian tax authorities consider representative offices, which are tax-exempt by nature, as permanent establishments, and impose taxes thereon. The Government of India should clarify the definition of "permanent establishment" and halt the taxation of representative offices.

(d) Fringe Benefit Tax

In 2005, the Government of India introduced a fringe benefit tax. In addition, the expenses that foreign companies generally provide to resident representatives, including business traveling expenses, lodging expenses during business trips, transportation expenses, and company housing aid, are variable. We request that the Government of India abolish the fringe benefit taxation system.

(e) Central Sales Tax (CST)

The Government of India plans to phase out the central sales tax. However, no schedule for this has been published. We request that the Government of India abolish CST at the earliest possible date, and that it reveals the schedule for this process.

(f) Research and Development Cess

A 5% research and development cess has been levied on all payments made towards the import of technology. Among other detrimental effects, this cess deters investment in and technology transfer to India. We urge the Government of India to abolish the R&D cess.

(2) Labor Issues

Although the number of labor disputes in India is decreasing, it is still high compared with that in other countries, and the number of workdays lost through labor disputes in India is the highest in the world. We recommend that the Government of India develop a new legal system limited to Special Economic Zones in order to rapidly resolve labor disputes.

(3) Labor Laws and Exit Policy

In India, the protection of workers is strong to the point of being excessive. There is a provision, for example, requiring companies with 100 or more employees to obtain prior approval from the state government when laying off employees. This makes it difficult to scale back business or to withdraw from the market when it would involve layoffs. The relaxation of procedures regarding layoffs might actually lead to an increase in new employment.

(4) Infrastructure

Basic industrial infrastructure such as roads, port facilities, electricity, and communication means is inadequate. The Government of India should promote infrastructure development through budget expansion and the utilization of ODA, establish a public company to develop infrastructure for Japanese companies, and work together with state governments to develop infrastructure and attract Japanese companies.

(5) Land Acquisition for Industrial Sites

Japanese companies have often found that industrial sites recently designated by state governments have already been bought up by other parties. The state government should regulate the acquisition of land for speculation purposes.

(6) Judicial System

In India, trials often take years. As a result, attorney's fees can become enormous. The Government of India should move to assure expeditious court proceedings.

(7) Establishment and Use of Export Letters of Credit

Establishment of export letters of credit in Indian banks is difficult. As is often the case in Indian banks, settlement for an export letter of credit is not executed at the due date. It is necessary to improve the credibility of banks and to enhance the ability of bankers involved in foreign exchange to handle greater capacities.

(8) Hotels

There is a chronic shortage of hotel rooms in India’s major cities, resulting in sharply rising accommodation costs. The Government of India should promote the construction of new hotels by relaxing restrictions on market access and land acquisition for the hotel industry.

(9) Japan-India Air Routes

Although the number of people traveling between Japan and India is rapidly

increasing with the growing closeness of the relationship between the two countries, there are still only 11 direct fights a week between Japan and India. The expansion of air routes, including routes to major cities other than Delhi, is an urgent task. We also request the Government of Japan to permit commercial airliners traveling between Japan and India to fly into Haneda Airport.

11. Dispute Settlement

We request that the agreement ensure transparent and effective dispute settlement procedures, including consultations, or good offices, conciliation or mediation, or establishment of arbitral tribunals, with respect to the settlement of disputes between the two countries concerning interpretation or application of the agreement.