

Current Status and Future Prospects of Japan on the EU-Japan Business Dialogue Round Table Recommendations (tentative translation)

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* This report was compiled by the Government of Japan with the aim of enhanced understanding on the current situation and future prospects of Japan concerning the recommendations raised by the BDRT at its Tokyo meeting on 16-18 July 2000.

Double Payment of Public Pension Contributions

1. Summary of the Tokyo recommendations

Double payment of public pension contributions results in heavy financial burdens for companies operating overseas. It is expected and hoped, therefore, that: the Japanese and French governments will accelerate negotiations to reach an early agreement, the remaining 12 countries of the EU will also start negotiations at an early date, and a common social security system will be established in Europe in the future.

2. Actions taken and state of play

With regard to the issue of the double payment of public pension contributions, the GOJ acknowledges the necessity of an early resolution. So far, between Japan and Europe, a Japanese-German Social Security Agreement has been entered into force since February 2000, and a similar agreement between Japan and the U.K. was also entered into force in February 2001. Furthermore, preliminary consultations were held for the conclusion of a social security agreement between Japan and France in June 2000.

3. Prospects for implementation

Japan is making preparations for plenary sessions with France, based on the results of their preliminary consultations. The two countries are intended to enter into formal negotiations as soon as the coordination of the domestic conditions is in order. In addition, Japan has been approached by several other EU member countries to start negotiations for the conclusion of similar agreements. The GOJ is considering the exchange of information for initiating negotiations with countries in the order of descending priorities based on the levels of personnel exchanges and so on.

Increasing Transparency in the Regulatory Environment: a Formal Rulings Process

1. Summary of the Tokyo recommendations

A formal rulings process should be established whereby companies would be able to receive written, binding clarification regarding a planned business transaction or a particular regulatory situation. These rulings should then be made available to the public in an anonymous format on a regular basis to establish a written body of precedent in order to help companies navigate the regulatory process.

2. Actions taken and state of play

There is no government-wide rule in Japan to obligate the regulating authorities to make a written explanation about the handling of individual issues available to companies. However, the ministries and the agencies concerned respectively inform them of the contents of regulations as well as their legal basis. For administrative guidance, a written reply, when requested, must be made in accordance with the Administrative Procedural Law.

Respective ministries and agencies are dealing with the documentation of precedents. In fact, some authorities (e.g. National Tax Agency), post notices on the interpretation of laws and regulations on their web site. There are also examples of publishing various consultation cases in a book form.

Furthermore, on the basis of "The Action Plan for the Reformation and Creation of the Economic Structure", a Cabinet decision in December 2000, the Cabinet set "Advance Confirmation Procedures for Application of Laws and Regulations by Administrative Bodies" in March 2001. The aim of this decision is to introduce a procedure that enables private companies, by seeking prior confirmation from the administrative bodies concerned, to ascertain whether respective actions arising from their business activities may be subject to the application of some articles in related laws and regulations, or not. The procedure, the so-called "Japanese version of No Action Letter system", which requires the administrative bodies concerned to reply to inquiring private companies and to make public their reply, is going to be introduced in some areas, such as Information Technology and Financial Services, on the basis of the decision.

3. Prospects for implementation

According to above-mentioned Cabinet decision, each Ministry and Agency is required to start immediately a study for the introduction of the so-called "Japanese version of No Action Letter system", in some areas in which new businesses, products and services are created quickly, such as Information Technology and Financial Services. In such areas, the system is to be introduced as soon as possible in fiscal 2001. In addition, the decision states clearly that the reply, in principle, should be made in written form.

Increasing Transparency in the Regulatory Environment: Independent Regulating Authority

1. Summary of the Tokyo recommendations

The Japanese government should strengthen regulatory independence by clearly determining the role of the main regulating authorities in the fields of telecommunications, transportation, energy, etc.

2. Actions taken and state of play

Neutrality and fairness of regulating authorities are assured and the role of the government that is responsible for regulation is clearly determined. Regarding regulatory independence, it is indispensable for the administration to reflect promptly and definitely the market trends and needs which would be acquired by implementing regulatory supervision, in order to achieve administrative aims in respective fields. To accomplish this aim, it would be appropriate to conduct policy planning and regulatory supervision uniformly and systematically.

3. Prospects for implementation

Neutrality and fairness of the regulating authorities will be secured over the years to come.

Increasing Transparency in the Regulatory Environment: Equality Between Domestic and Foreign Business Including Foreign Lawyers

1. Summary of the Tokyo recommendations

The Japanese government should abolish regulations discriminating against foreign business people, such as limiting foreign lawyers in the field of third country laws.

2. Actions taken and state of play

Regarding the handling of third country laws by Gaikokuho-Jimu-Bengoshi, there are two categories of lawyers in Japan: Gaikokuho-Jimu-Bengoshi, who are allowed to act only within a limited range of legal affairs related to the laws of the country where they obtained their bar qualification and lawyers who are allowed to handle all legal matters without limits. Therefore, these are not considered discriminatory regulations.

N.B., the "Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers" was revised in 1998 to allow "Gaikokuho-Jimu-Bengoshi" to engage in legal activities on their own in relation to third country law, provided that their activities were based on written advice from formally qualified and authorized persons.

3. Prospects for implementation

The Japanese government has no intention of removing the condition specified in the "Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers", since it is considered necessary for the protection of clients that Gaikokuho-Jimu-Bengoshi must have the above-mentioned written advice.

Increasing Efficiency in the Product Approval Process: Introduction of Notification System

1. Summary of Tokyo recommendation

The Japanese government should adopt the "file and use" system, instead of the current prior approval system in the fields of insurance, animal health, medical diagnosis, etc.

2. Actions taken and state of play

It is difficult to determine a general principle about the adoption of "file and use" system as a substitute for the prior approval system. Therefore, the current status on each case is given as follows:

- Insurance

As to insurance for commercial lines, notification system has already been generally in force since August 1998. As the standardization of rates has been approved and modification of the contents of insurance products has been allowed in accordance with the needs of contracting party of the normal insurance covenant, accompanied by a special agreement, it is possible to alter the rates and the contents of the products without approval or notification in the field of the commercial lines. In the case of personal lines, the notification system is applied only to part of the products, because the protection of contracting party should be taken into account more crucially.

- Animal health

As regards the procedure for approval of medicaments for animals, various deregulation measures, including the shortening of the time required for the normal administrative process, have been in effect. The harmonization of technical elements necessary for the application for approval of medicaments for animals has been in progress among the authorities concerned and the traders of Japan, the United States and the EU.

- Medical diagnosis/In-vitro diagnostics

The application procedure for IVDs has already been simplified, separate from the ordinary medicines. For example, the application of GCP(Good Clinical Practice) is not required any more when applying for the relevant authorization to the Ministry of Health, Labour, and Welfare.,. Categories of approval applications for IVDs were previously classified in accordance with the novelty of a measuring object or method, and as of March 2001, these were reclassified in accordance with health risks, except for those IVDs which measure new objects.

3. Prospects for implementation

- Insurance

The deregulation by adopting a notification system for personal lines is under constant consideration on the basis of consumer protection.

- Animal health

Medication for animals is intended to diagnose, cure, and prevent animal diseases: it is extremely important, therefore, for animal sanitation and public health. For this reason, the Pharmaceutical Affairs Law stipulates for a system to carefully examine the quality, potency, and safety before giving permission to manufacture or import. This sort of approval system is prevalent in many countries, including EU members. The GOJ, responsible for keeping inferior medicine out of the market, has no intention to abolish it. Besides, the Japanese government will continue to positively tackle the harmonization work by VICH(International Cooperation on Harmonization of technical requirement for registration of Veterinary medical products).

- Medical diagnosis/In-vitro diagnostics

Considering it necessary to ascertain whether the medicine is really effective, the GOJ practices prior examination for approval in order to make diagnosis accurate. It is difficult, therefore, that the GOJ abolishes the prior approval system.

However, except for IVDs which measure new objects or have high risks, the GOJ plans to abolish the approval procedure for IVDs according to the results of discussion on whether it is reasonable and possible to do so, provided that the GOJ enforces a public post-marketing surveillance system concerning the performance and quality of IVDs.

Increasing Efficiency in the Product Approval Process: Harmonization of the Authorization Process

1. Summary of the Tokyo recommendations

Some kind of overlapped procedures of permission increase the private sector's burden. The Japanese government, in collaboration with regulatory authorities of various countries throughout the world, should not only enter into a reciprocal arrangement like the MRA, but also introduce an authorization process not requiring authorization from each country by making use of the regulatory procedure already adopted by the international community. There is much room in the process for a unilateral reduction in the time and energy needed for companies to bring their products to Japanese market through introducing such system.

2. Actions taken and state of play

The Japanese ministries in charge of inspection and attestation services have already been working on a review of the authentication system, and the revision of laws for the acceptance of inspection done by the foreign authorities is underway.

With regard to architecture-related materials, the Building Standard Law was revised in 1998 to accept performance standards, and this revised law came into force in June 2000. On this occasion, the performance standard for nonflammable materials was clarified. It also became possible to designate without discrimination any performance assessing organ at home or abroad. As to the testing method, it is up to each performance assessing laboratories to determine the testing method coherent with the ISO standards.

The GOJ has set specifications for food additives and standards for their use based on the actual Japanese diet and consideration of international standards discussed in CODEX, etc. For example, the guideline for requesting the designation of food additives is based on the U.S.-FDA toxicological principles for evolving safety of food additive and OECD guideline for safety examination.

In longer terms, the Japanese government, with a view to harmonizing various standards of this kind, is making efforts to conclude the MRA with the EU on the basis of the existing systems.

3. Prospects for implementation

Both the Japanese government and the EC will endeavor to do the necessary work with regard to the MRA between Japan and the EC.

Increasing Competition in the Internal Market: Marine Transportation, Civil Aviation, and Construction

1. Summary of the Tokyo recommendations

To improve inefficiency of the controlled competition in the field of marine transportation, civil aviation, and construction, it is necessary to expand the scope of deregulation. Especially in the field of marine transportation, shipping agents are

barred from competitive bidding for harbor operations due to a general practice of the harbor business. The Japanese government, therefore, should allow shipping agents to participate in competitive bidding for operations in harbor areas.

2. Actions taken and state of play

In the field of transportation, following the revision in 1999 of the Railroad Law, the Road Trucking Law, the Marine Transportation Law, and the Civil Aviation Law, amendment bills of the Road Trucking Law, and the Port Transportation Business Law were passed in the ordinary session of the Diet in 2000. Since the deregulation of the trucking business in 1990 by two distribution-related laws, the supply-and-demand control of almost all business categories in distribution and human transfer has been mostly abolished, encompassing passenger train, chartered bus, domestic passenger ship, domestic civil aviation, omnibus, taxi, and, harbor and port transportation business.

In particular, as far as the harbor and port transportation business is concerned, the supply-and-demand adjustment control was abolished at 12 main ports where 95% of the total volume of container in Japan is handled. Thus the license system for entry into the harbor transportation business has been changed to a permission system. A charge was also changed from a permission system to a prior notification system. The revision of the Port Transportation Business Law which aimed at the deregulation of rules concerning the port transportation business including above mentioned change passed the Diet in May last year and went into effect on November 1.

In the field of construction as well, the Japanese government, in an effort to improve to a large extent the transparency, objectivity, and competitiveness in the bidding/contract system of public works, conducted a overall reform for the first time in the last 90 years by introducing in 1994 the Open and Competitive Bidding system. At the same time, in accordance with the recommendation made in 1998 by the Central Council for Construction Contracting Business and the Three-Year Programme for Promoting Deregulation, the government is adopting various bidding/contract systems, taking in proposals from private sectors. Furthermore, during the last session of the Diet, the "Act for Promoting Proper Tendering and Contracting for Public Works" was established, and by this Act, the government is endeavoring to develop the proper tender and contract systems for commissioning entities throughout Central Government, quasi-governmental agencies and local governments. As to the notations in the "Construction" part of the "Issues for the New Millennium", there are many mistakes in facts and misunderstandings of policies, which the Ministry of Land, Infrastructure and Transport (former "the Ministry of Construction") has already explained to the Delegation of the European Commission in Tokyo and the Secretariat of the European Business Community.

3. Prospects for implementation

With regard to the transportation sector, it is expected that, due to the regulatory review which resulted in the repeal of the supply and demand coordination control and the corresponding environmental arrangements, competition will be promoted, business activities will become more efficient, and better services and user convenience will be secured through reactivation and diversification.

Regarding of the harbor transportation business, the recently effected deregulation measures, including the repeal of the supply and demand coordination control, made it possible for any person to make an entry, provided he/she fulfills certain required conditions. It has in fact made entry much easier than before. Besides, for the selection of harbor transportation traders and the coordination among the persons concerned following changes, the consultation procedure agreed on by domestic and foreign shipping companies and harbor transportation traders into be observed since 1997.

Also in the field of construction, the "Act for Promoting Proper Tendering and Contracting for Public Works "will make it compulsory, as rules for proper tenders and contracts for all the commissioning entities throughout Central Government , quasi-governmental agencies and local governments, publicizing the information regarding tenders and contracts to the public, thoroughly abolishing improper actions and taking measures to secure proper implementation of works. Thus, the government considers that proper tendering and contracting will be promoted to a large extent.

Increasing Competition in the Internal Market: Telecommunications

1. Summary of the Tokyo recommendations

In order to appropriately supervise dominant situations occurring in sectors such as telecommunications, and to prevent potential, non-competitive practices such as the setting of exorbitant prices, the provision of cross-subsidisation to business activities based in the market by monopolistic enterprises, and the misuse of customer information. The best way to achieve the above is to expand the range of regulatory independence and provide the supervisory authorities with systematic authority which would effectively issue instructions to promote competition.

2. Actions taken and state of play, and prospects for implementation.

The Telecommunications Council issued the "First Report on the Competitive Policy in the Telecommunication Business to Promote an IT Revolution" on December 21, 2000. This report laid down measures to promote competition in the field of telecommunications. Based on this report a bill was submitted to the current Diet session on April 10, 2001.

The following are some of the main points of the bill:

1. Introducing new asymmetric regulations
2. Preventing and eliminating anti-competitive behavior by telecommunications carriers which have market power

Promoting deregulation for telecommunications carriers which do not have market power

1. Ensuring the provision of universal service
2. Establishing a Telecommunications Business Dispute-settlement Commission
3. Expanding the business scope of NTT East and NTT West
4. Relaxing restrictions on foreign capital ownership of NTT
5. Ensuring the Rights of Way

Taxation: Tax Related to Transfer of Assets and Shares

1. Summary of Tokyo recommendations

The Government of Japan should implement the following measures:

- (1) Global mergers and acquisitions and local corporate restructuring should in principle be allowed without immediate tax costs.
- (2) Property transfer tax relief should mirror corporate income tax relief rules, in effect making it easier to make intra-group transfers of buildings and assets without large tax consequences;
- (3) Share-for-share and assets- for-share exchanges should receive tax deferrals when there is over 25 percent post-transfer participation.

2. Actions taken and state of play

When companies transfer their asset to another company, they need in principle to record losses or profits from the transfer at the market price. However, losses and gains from the transfer can be deferred in some cases of investment in kind.

3. Prospects for implementation

The GOJ has introduced taxation measures concerning corporate restructuring, on the basis of consistency with the taxation system as a whole, in its revisions of the taxation system in fiscal 2001. These measures include the execution of taxation suitable for actual transactions relating to transfer of assets, which occurs in corporate restructuring, as well as the reform of taxation measures concerning investment in kind and mergers, etc.

In concrete terms, revised taxation measures for companies which transfer their assets through corporate restructuring allow them to defer losses and gains from the transfer, if such restructuring is done within the corporate-group or for starting cooperating businesses.

Taxation: Equality Between Domestic and Foreign Companies - Transfer of Assets and Shares -

1. Summary of Tokyo recommendations

Tax deferrals on share exchanges and transfers established as a result of changes to the Commercial Code in 1999 are not available to shares of foreign companies. However, the Government of Japan should not discriminate between Japanese and foreign assets/shares.

2. Actions taken and state of play

If companies transfer their asset to another company by merger, acquisition or restructuring they should in principle reckon losses and profits from the transfer into their account as a market-price transaction. However, losses and profits from the transfer can be deferred in some cases of investment in kind. This exceptional clause applied in cases where assets to be invested are not used to establish a company overseas if the assets are based in Japan.

3. Prospects for implementation

It is stipulated that, if the assets to be invested are based in Japan, they should not be used to establish a company overseas. This requirement is necessary since it is impossible to impose taxation on hidden profits on the assets to be invested in kind.

Taxation: Consolidated Tax System

1. Summary of Tokyo recommendations

The Government of Japan should implement a consolidated tax system no later than 2002, taking into consideration the following point:

(1) The common ownership requirement under the proposed consolidated tax system should be significantly less than 100 percent in order to accommodate situations where it is impossible for fully integrated companies to achieve complete ownership.

(2) Companies should be allowed to set acquisition financing costs against the profits of acquisition targets.

(3) Losses in joint ventures should be transferable to substantive shareholders.

The European Commission should make further efforts in the direction of fiscal harmonization.

2. Actions taken and state of play

Substantial study is under way within the GOJ to introduce a consolidated tax system. For example, the Sub-committee on Corporate Taxation of the Government Tax Commission has agreed on the main points to be studied.

3. Prospects for implementation

In order to introduce a consolidated tax system, the GOJ needs to conduct comprehensive studies not only on issues specific to consolidated tax (e.g. scope of consolidated companies), but also on the entire corporate taxation system (harmonization between taxation on respective companies and corporate groups).

Furthermore, it is necessary to consider how to prevent various forms of tax avoidance and how to make up for a decrease in tax revenue as a result of the introduction of a consolidated tax system. Therefore, a considerably long time is needed to hold in-depth discussions on various points before introducing a full-scale consolidated tax system.

Legal Environment: the Commercial Code - Corporate Governance -

1. Summary of Tokyo recommendations

In upcoming amendment of Japanese Commercial Code, the government should set the target of corporate governance, including protection of investors' rights and freedom of structuring, discuss it and monitor whether the goal is likely to be achieved.

2. Actions taken and state of play

The GOJ recognizes the importance of effective corporate governance. Based on this recognition, the government revised the system under which shareholders file a lawsuit against board members for losses they caused to the companies and the rules on company auditors in 1993. In 1999, it also amended rules in order to force companies to disclose business activities of their subsidiaries. It also revised legislation to prohibit companies from providing profits to shareholders by using the own account of their subsidiaries.

3. Prospects for implementation

The government is now reviewing corporate laws in order to ensure the effectiveness of corporate governance. In particular, the government is studying desirable system concerning board members/auditors.

Legal Environment: the Commercial Code - M&A Related Provisions, etc. -

1. Summary of Tokyo recommendations

The Commercial Code should clearly and explicitly define what the rules on M & As are, which body is charged with their implementation, and how to obtain appropriate recourse should a breach of rights be detected.

2. Actions taken and state of play

Japan's Commercial Code provides for clear rules on corporate reorganization. For example, Articles 408 through 416 provide for rules on mergers, Articles 352 through 372 provide for rules on exchange and transfer of shares and Articles 373 through 374-31 provide for rules on division of companies. Should a breach of rights be detected, shareholders and others can be compensated for the breach by filing a lawsuit demanding that the mergers concerned be invalid.

3. Prospects for implementation

The GOJ recognizes that necessary measures have already been taken.

Legal environment: the Commercial Code - Equality Between Domestic and Foreign Companies -

1. Summary of Tokyo recommendations

The Commercial Code should be completely neutral treating foreign and local firms alike. For example, share-swapping arrangements that apply only to Japanese companies should extend to all investors, regardless of their national origin.

2. Actions taken and state of play

The Japanese Commercial Code is neutral with regard to nationality and applies to all companies - including foreign subsidiary companies -founded in accordance with the code. However, as the code does not apply to foreign companies founded in accordance with laws in foreign countries, it does not allow exchange shares between Japanese and foreign companies. Otherwise, it would raise problems from the viewpoint of protecting shareholders because shareholders of one company would be forced to become shareholders of its partner based outside the country.

3. Prospects for implementation

Not in all the states of the USA, exchange of shares is permitted, and not a few states have not clarified how their laws and regulations on exchange of shares apply to foreign companies. In Europe, the GOJ understands that the German domestic laws are interpreted as prohibiting mergers and any other forms of corporate reorganization with foreign companies. The GOJ believes that it is important to thoroughly examine whether domestic laws in the EU member countries allow corporate reorganization between domestic companies and those based outside the EU.

Legal Environment: Foreign Lawyers

1. Summary of Tokyo recommendations

Barriers within the legal profession, such as prohibitions on foreign-domestic lawyer partnerships and requirements for written advice for Gaikokuho-Jimu-Bengoshi advising on third-country law should be removed in order to ensure access to comprehensive and integrated legal advice in Japan.

2. Actions taken and state of play

Foreign-domestic lawyer partnerships do not exist in the Japanese legal system. However, such a system is quite similar to "a specific joint enterprise between Gaikokuho-Jimu-Bengoshi and Bengoshi" provided for by the "Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers". As the law statute was revised in 1998 to relax regulations on the objectives of a specific joint enterprise between Gaikokuho-Jimu-Bengoshi and Bengoshi, the GOJ believes that "a specific joint enterprise between Gaikokuho-Jimu-Bengoshi and Bengoshi" equals foreign-domestic lawyer partnerships.

Furthermore, the above-mentioned revisions have allowed Gaikokuho-Jimu-Bengoshi to engage in legal activities in relation to third-country law, provided that their activities are based on written advice from formally qualified and authorized persons.

3. Prospects for implementation

Even after revisions of the "Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers", the GOJ has received requests that prohibitions on foreign-domestic lawyer partnerships should be lifted. Furthermore, The Three-Year Programme for Promoting Regulatory Reform (Cabinet Decision on March 30, 2001), also calls on comprehensive cooperation between Gaikokuho-Jimu-Bengoshi and Bengoshi to be considered. The Ministry of Justice is now trying to deal with the workings of a specific joint enterprise between Gaikokuho-Jimu-Bengoshi and Bengoshi and their needs by examining how the "Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers" is enforced and exchanging

opinions with the Japan Federation of Bar Associations and the Gaikokuho-Jimu-Bengoshi Kyokai (Foreign Lawyers Association of Japan) on the matter.

However, the Government of Japan has no intention of removing the condition, which it considers necessary for the protection of clients, that Gaikokuho-Jimu-Bengoshi must have the above-mentioned written advice.

Labor Policy: Defined Contribution Pension Scheme

1. Summary of Tokyo recommendations

The GOJ should implement necessary measures in order to make a defined contribution pension scheme it is planning to introduce more attractive. Specifically, it should allow both employees and their employers to jointly contribute to the pension fund; allow participants to obtain loans from their pension reserve fund; raise the upper limit on annual contributions and provide relief and technical assistance to companies to help switch from a defined benefit to a defined contribution scheme.

2. Actions taken and state of play

A bill to introduce a defined contribution pension scheme, which the Diet is now deliberating on (as of May 10, 2001), calls for the introduction of two types -one under which employers would pay premiums (corporate pension type) and the other under which individuals would pay premiums (individual pension type). In principle, participants could not receive pension benefits until they become 60 years old. In cases of corporate pension type, the upper limit on annual premiums is 216,000 yen for employees who also participate in other corporate pension scheme and 432,000 yen for those without other scheme. In cases of individual pension type, the upper limit is 180,000 yen for company employees and 816,000 yen for self-employed and other people. The bill states that companies could switch from a defined benefit to a defined contribution scheme provided that they meet certain conditions such as labor-management agreement, and there are measures on tax exemption on the occasion.

3. Prospects for implementation

The bill to introduce a defined contribution pension scheme was submitted to the 147th Diet session. However, the bill was scrapped after the House of Representatives was dissolved for a snap general election. It was submitted again to the 150th session. In the bill, the government incorporated the results of in-depth discussions with the ruling coalition and within the government while taking into consideration of opinions of people and groups concerned. The government is determined to make efforts to pass the bill as early as possible.

Labor Policy: Immigration Laws and Immigration Control (1)

1. Summary of Tokyo recommendations

Japanese Immigration laws should be revised to make it easier for companies to assign personnel on a global scale. Specifically, the re-entry permit system should be abolished. In other words, foreign workers should be allowed to freely come and go as they please within the period specified in the original visa.

2. Actions taken and state of play

The Immigration Control and Refugee Recognition Law (hereinafter referred to as "Immigration Law") was revised in 1999 to extend the maximum period, during which re-entry is permitted, from one year to three years, and came into force on Feb. 18, 2000.

As a result, the final day of the period of stay and that of re-entry have become the same, allowing those who hold a multiple-entry visa to freely come and go.

3. Prospects for implementation

If a foreigner staying in Japan leaves the country, the foreigner loses the visa status and other qualifications granted to him or her under the Immigration Law. If the foreigner re-enters Japan, he or she must obtain a visa and the government must determine his or her status in advance. The present re-entry permit system, provided for by Article 26 of the Immigration Law, is aimed at simplifying the entry procedure that foreigners staying in Japan must go through when they re-enter Japan after temporarily leaving the country, improving their convenience and allowing them to retain their visa status even after their re-entry. Therefore, the GOJ considers that this system is necessary and reasonable.

Labor Policy: Immigration Laws and Immigration Control (2)

1. Summary of Tokyo recommendations

With regard to Japanese Immigration Law, the two full-time employee requirement to obtain the manager/investor visa should be abolished.

2. Actions taken and state of play

As the requirement to obtain manager/investor visa, the Immigration Law does not stipulate that a company must employ two full-time staff members, but that the company must have a scale that requires two full-time staff members even though it does not actually employ two such staffers. On Feb. 29, 2000, the Ministry of Justice

instructed regional immigration bureaus to grant an entry permit to a person who intends to make investment to establish a company with a scale that requires two

full-time employees, even though it does not actually employ two full-time staff members. On Dec. 25, 2000, the Ministry of Justice set the standards for the scale of a company that does not hire two full-time employee at 5 million yen or more in annual investment for a new project.

3. Prospects for implementation

The GOJ has already fully responded to the request.

Labor Policy: Immigration Laws and Immigration Control (3)

1. Summary of Tokyo recommendations

The requirement of one-year intra-company employment experience for getting the intra-company transfer visa makes it difficult for companies to send new employees to Japan for training. The Government of Japan should allow companies to freely transfer employees regardless of the length of their employment experiences.

2. Actions taken and state of play

The period of the residence of a company employee who comes to Japan as a result of intra-company transfer was limited to five years under the Ministry of Justice ordinance. Officials of both domestic and foreign companies have pointed out that the limitation hinders their business activities. As there have been no problems involving foreigners who have stayed in Japan with this visa status, the requirement has been deleted from the Ministry of Justice ordinance. As a result of the revision to the ordinance, foreigners who enter and reside in Japan with an intra-company transfer visa can stay in Japan for more than five years by renewing their period of stay.

3. Prospects for implementation

The "intra-company transfer" visa status is an exceptional measure for the "engineer" and "human science expert and international affairs expert" status. Most of those who have the "intra-company transfer" status are also qualified for the "engineer" and "humanities specialist and international affairs specialist" visa status. If they meet the standards required to obtain entry permit for those with such visa status, they can enter Japan with these status. However, the "intra-company transfer" status was established so that holders of these status can enter Japan without meeting the standards for academic backgrounds and job experiences required to obtain the "engineer" and "humanities specialist and international affairs specialist" visa status.

The requirement for one-year employment experience at the headquarters and other offices abroad is aimed at preventing foreign companies from establishing a dummy company to hire foreigners and sending them to Japan. The GOJ holds the view that this requirement is necessary.

As mentioned above, those without one-year employment experience can enter Japan if they are qualified for the "engineer" and "humanities" specialist and international affairs specialist" visa status and meet the standards for these status.

Labor Policy: Immigration Laws and Immigration Control (4)

1. Summary of Tokyo recommendations

The 10-year experience requirement for engineers, skilled labor and humanities specialists discriminates against young people with specialist knowledge, preventing companies from taking advantage of their special skills, enthusiasm and motivation. It should be cut in half.

2. Actions taken and state of play

Engineers, skilled laborers and those who are engaged in occupations that require special skills or knowledge in the field of natural sciences are qualified for the "engineer" visa and those who are engaged in jobs that require special skills or knowledge in the field of humanities are qualified for the "humanities specialist" visa. Even if applicants for these visa statuses do not have a 10-year experience, they are eligible for them if they have majored in subjects relating to these fields at a university and graduated from the university, or received similar university-level education.

3. Prospects for implementation

The GOJ is actively considering accepting a larger number of foreign specialists and engineers in the fields where both Japan and foreign countries are becoming increasingly enthusiastic about accepting skilled foreign laborers, while examining the impact that the acceptance of such workers will have on the domestic industry and people's livelihood and creating an environment for accepting such foreigners.

Specifically, the GOJ is poised to review the requirements for relevant visa status, such as the period of employment experiences and types of jobs, in order to actively accept foreign engineers and specialists. It will consider the matter while gathering information from the ministries and agencies concerned on the necessity to accept skilled foreign laborers.

Accounting Issues: Adoption of the International Accounting Standards

1. Summary of Tokyo recommendations

The BDRT requests Japan and the EU member states to accept the International Accounting Standards which is called "IAS" in cross-boarder listings in their respective capital markets.

2. Actions taken and state of play

Japan, as one of major IOSCO members, supports the consent of the IOSCO Presidents Committee in May 2000 which allows foreign companies active in markets of the member countries to use IAS in cross-border offerings and listings. As recommended at the IOSCO, each of the member countries including Japan are studying whether such measures that seems to be possible to adopt when approving financial statements to be prepared under the IAS as reconciliation, additional disclosure and interpretation are indispensable or not.

3. Prospects for implementation

In cases where foreign companies raise funds in Japanese capital market by using the GAAP (Generally Accepted Accounting Principles) adopted at countries other than Japan, Financial Services Agency examines individual cases to see if they run counter to the public welfare and the protection of investors and approves them, as long as that the companies clearly disclose the differences with the Japanese GAAP on footnotes. In any case, the GOJ will take appropriate measures from the standpoint of protecting Japanese investors.

Taxation Issues: Transfer Pricing

1. Summary of Tokyo recommendations

It is particularly important to maximize foreseeability and legal safety from the company's perspective with regard to the transfer pricing taxation rules. We support the introduction of international standard rules based on the fundamentals of transfer pricing practice common to international transactions. With regard to the Advanced Pricing Arrangement –APA-, we propose that the EU and Japan agree on uniform rules between themselves first with a view to promoting a world-wide model in the future. In standardizing the APA system, it is important to determine the methods of calculating transfer pricing based on information available to a taxpayer and to make clear that APA has priority over tax audit.

2. Actions taken and state of play

With regard to the transfer pricing tax system, the main points of the OECD guidelines for transfer pricing –fully revised- were publicized in 1995 as an international consent. Details of specific items are currently being worked out. Furthermore, the No. 6 working group of the OECD Committee on Fiscal Affairs regularly monitors the member countries' legislation, regulations and whether procedures for enforcing them are consistent with the OECD guidelines for transfer pricing. The Government of Japan also revised its notices on the interpretation of the laws and regulations relating to the transfer pricing tax system in September 2000 and is making efforts to increase the transparency of the enforcement and taxpayers' predictability.

Japan has preceded other major countries in adopting and utilizing the APA in 1987 in order to promptly solve problems concerning transfer pricing and contribute to taxpayers' foreseeability. In October 1999, it also adopted the guidelines for prior confirmation in order to increase the convenience of the prior confirmation system. The OECD worked out the guidelines for dealing with prior confirmation rules in mutual agreement procedures in 1999, based on which it monitors mutual agreement procedures.

3. Prospects for implementation

As mentioned above, the GOJ has been trying to deepen mutual understanding between Japanese and foreign taxation authorities and work out common rules through the OECD and bilateral consultations. We would like to continue to smoothly solve problems involving international taxation based on mutual understanding and cooperation with foreign taxation authorities.

Taxation Issues: Electronic Commerce Taxation

1. Summary of Tokyo recommendations

The BDRT believes that the existence of differing tax regimes across the globe will constrict the healthy growth of e-commerce and distort fair competition among companies. We are strongly of the view that taxation rules for e-commerce should arise out of an international consensus at OECD as to the best means of protecting the growth of e-commerce and in particular ensuring maintenance of the principles of neutrality, simplicity, fairness, effectiveness, international harmonization, and consistency.

2. Actions taken and state of play

It has been internationally recognized that the principles of fairness, neutrality and simplicity should apply to electronic commerce taxation just like taxation on conventional transactions. Based on this recognition, the OECD is studying problems such as grasping of transactions necessary for taxation from experts' and technical viewpoints.

3. Prospects for implementation

The GOJ will continue to actively participate in discussions at the OECD and study problems concerning electronic commerce taxation while watching the development and results of international discussions on the issue.

Standards: Next-Generation Mobile Communications System

1. Summary of Tokyo recommendations

The Internet will be the next-generation communication network for both fixed and mobile networks. Based on this recognition, it is very important for both Japan and Europe to establish and sustain a continuing mutual cooperation in developing the Release 2000 in 3GPP and to cooperate with ITU and other international standards organizations as a member of 3GP. Furthermore, Japan hopes to cooperate with Europe in the field of international roaming in preparation for the beginning of the IMT 2000 service.

2. Actions taken, state of play and prospects for implementation

The GOJ has not been directly involved in the 3GPP's activities because it is a private organization. However, Japan has supported, and will continue to support the project that is aimed at promoting the compilation of international standards for ITU's IMT-2000. Moreover, we regard international roaming as one of the important features of the IMT-2000. We are determined to cooperate with other countries to materialize this project.

Standards: Voluntary Standard

1. Summary of Tokyo recommendations

Standards should not be inconsistent with technical rules either globally or regionally. We should proceed the consideration of transparency, openness, response to the needs in the market and fairness which are basic principles confirmed in the TBT agreement in the WTO and promote the harmonization of international standards as a part of Japan-Europe cooperation.

2. Actions taken and state of play

Harmonization of domestic standards with international standards is considered to be important from the viewpoint of facilitating international trade. Japan, a party to the WTO/TBT agreement, respects the agreement's principle of ensuring that

standards will not become a trade barrier, and exchanges views with officials of regulatory authorities of other countries at the APEC, ASEM and other international fora.

Furthermore, basic principles of transparency, openness, fairness and response to market needs, etc. with regard to the process of setting international standards have been discussed at the WTO/TBT committee by the proposal of members including Japan and European countries. "Principles of the process of setting international standards", which have materialized the ideas proposed during the discussions, were adopted by consensus in November as a result of the review of the TBT agreement three years after its conclusion.

3. Prospects for implementation

In accordance with 'The Action Plan for Economic Structure Reform (Cabinet Decision on December 1, 2000)', 'The Three-Year Programme for Promoting Regulatory Reform (Cabinet Decision on March 30, 2001)', 'domestic and international comments and requests', etc, Japan is determined to promote the international harmonization of standards, stipulation of performance of equipment, acceptance of foreign data and international mutual recognition. Japan would like to make appropriate proposals at the APEC, ASEM, WTO and other fora in order to conduct the utilization and introduction of international standards and guides in a harmonized way.

As mentioned in 2, the TBT committee adopted the principles of the process of setting international standards for transparency, openness, fairness and response to market needs reflecting the demands that Japan and Europe made after reviewing the TBT agreement three years after its conclusion. Japan is determined to cooperate with Europe so that the principles will be properly reflected in the process of setting international standards at the International Standardization Organization.

MRA: "Four Sectors"

1. Summary of Tokyo recommendations

The BDRT hopes that the mutual recognition agreement on four fields (electrical equipment, telecommunications equipment, chemicals and pharmaceutical products) -which is being discussed between Japan and the EC- will be concluded and implemented at an early date.

2. Actions taken and state of play

Japan and EC signed the mutual recognition agreement on four fields (telecommunications equipment, electrical products, GLP for chemicals and GMP for medicinal products) on April 4, 2001.

3. Prospects for implementation

The agreement has been submitted to the necessary domestic procedures for the conclusion both in Japan and the EC. The GOJ will continue its effort for the entry into force of the agreement at as earliest date as possible, taking into account the wishes expressed by the BDRT.

MRA: Medical Device

1. Summary of Tokyo recommendations

The BDRT hopes that Japan and the EC will promote MRA on medical device.

2. Actions taken and state of play

Japan and the EC placed the priority on the implementation of MRA on the above-mentioned four sectors because they found some problems after examining each other's system involving medical device. In this April, Japan and the EC signed a joint declaration which includes a statement that they will commence the negotiations on the extension of the sectoral coverage of the Agreement, in particular, the medical devices, two years from the date on which the Agreement enters into force.

3. Prospects for implementation

Japan will take appropriate measures in accordance with the above-mentioned joint declaration.

Electronic Commerce: Affordable Internet Access

1. Summary of Tokyo recommendations

The growth of electronic commerce in all jurisdictions depends on inexpensive Internet access for businesses and residential customers. This can be facilitated by government's mandating the availability of dominant networks to rival service operators at cost-oriented prices. We request both the European and Japanese governments to examine their local access policies covering both unbundling of the local loop and time-based interconnection charges to ensure expeditious development of the Information Society.

2. Actions taken, state of play and process for implementation

The GOJ amended relevant ministerial ordinances concerning access to the unbundled local loop(copper lines connecting the network termination points) in September 2000 and on improvement of the condition for co-location in October of the same year. The GOJ approved revisions that NTT East and NTT West made to all the relevant articles of the Interconnection Agreement before the end of that year.

Furthermore, the GOJ amended the relevant ministerial ordinance concerning unbundling of optic-fiber lines on April 6, 2001. NTT East and West applied for authorisation of the amended Interconnection Agreement on May 15, 2001.

Electronic Commerce: GBDe

1. Summary of Tokyo recommendations

The BDRT supports the following activities of the GBDe:

- (1) the "notice & take down" procedure;
- (2) the development of a system for endorsing trustmark schemes;
- (3) the cooperation with the GBDe Advocacy Group;
- (4) GBDe IPR Protection action and the promotion of providing unique ID code, such as CIDF, to be associated with any digital content distributed on digital networks.

2. Actions taken and state of play

The GOJ understands that the recommendations have been made to the GBDe for its future activities, and not to the governments. However, the GOJ, considering that e-commerce should be led by the private sector, appreciates the GBDe as a place for discussions between private companies on establishing systems. It also respects recommendations of the GBDe even though there are necessary parts to be coordinated between the recommendations and the benefits of consumers.

3. Prospects for implementation

There are nine GBDe working groups this year: 1) consumer trust; 2) convergence (of broadcasting and telecommunications); 3) cyber security; 4) digital bridge; 5) E-government; 6) Internet payments (including Paperless Trade); 7) intellectual property rights; 8) taxation; and 9) trade/WTO. These working groups have begun to compile reports and recommendations in preparation for the GBDe general assembly to be held in Japan in September this year. As the host country of the GBDe general assembly, the GOJ will extend as much support as possible for the assembly.

Electronic Commerce: Electronic Signatures and Seals

1. Summary of Tokyo recommendations

The BDRT encourages European and Japanese governments to promote the definition of a globally standardized industry framework for the implementation of internationally recognized electronic signatures and seals. The establishment of such a framework will be a first step towards the harmonization of global certification services with multiple domains of application. The European and Japanese Business Community and Governments consider that it can contribute a great deal through such an initiative to the establishment of a global approach to authentication.

2. Actions taken and state of play

The Diet passed into law a "bill concerning electronic Signatures and Certification Services" in May 2000 and the law came into force in April 2001. The GOJ is to actively implement the dissemination and promotion of electronic signatures and certification services. Japan also understands that the EU member states are drafting legislation in accordance with the "Directive on Electronic Signatures". Japan, the EU and other countries are drafting legislation concerning electronic signatures and creating a scheme for accrediting certification authorities. We recognize that it is of utmost importance to promote harmonization of such accrediting schemes from the viewpoint of ensuring the interoperability among global certification services.

3. Prospects for implementation

The GOJ recognizes that it is important to actively promote talks with the EU on mutual recognition of each other's electronic signature and seal approval systems while watching the development of the EU member states' drafting of relevant legislation. We expect that the implementation of mutual recognition between the EU and Japan will be vital to the achievement of harmonization of global authentication services.

Business Model Patent

1. Summary of Tokyo recommendations

Governments should try to have an accurate examination, based on the items affirmed at a Trilateral Technical meeting among the Japanese, European and U.S. Patent Offices. Governments should promote international coordination and improve a database of examples of Business Methods patented previously to conduct an accurate examination, especially on novelty and non-obviousness of the subject matter.

Businesses should cooperate with Governments by providing information on patented examples in business activities.

Governments and Business should consult with each other on any resolution, which would protect a right holder, without impeding the development of electronic commerce.

2. Actions taken and state of play

Japanese Patent Office recognizes that it is of utmost importance to accurately judge the patentability like "Novelty" and "Inventive step" of the subject matter in patent examination. Japanese Patent Office published a series of measures as "the guidelines regarding 'the invention of Business Methods'" and a draft of the revised Examination Standards for patenting Business Methods in October 2000. After considering public comments, Japanese Patent Office published the revised Examination Standards for patenting Business Methods December, 28, 2000.

Moreover, in April 2001, the JPO established the Electronic Commerce Technologies Division with the aim of establishing an environment in which examiners can concentrate on examination of business-related inventions. In addition, the JPO has also published Case Examples of Unpatentable Business-related Inventions, and has been making efforts to deepen the understanding of the public about patentable inventions.

Japanese Patent Office is also improving and expanding the database of examples of Business Methods patented previously. Japan is also promoting exchange of information on database of examples of Business Methods patented previously among the Trilateral Offices of the Japanese, European and U.S. Patent Offices in an effort to build common infrastructure.

In order to improve the database of Business Methods patented previously, the Government of Japan is asking economic organizations and industries, including the financial and insurance sectors, to provide information on patented examples of business activities and relevant literature.

At a Trilateral conference of the Japanese, European and the U.S. patent offices in November 2000, it was agreed to launch a joint search project focusing on about 20 PCT applications in the Business Methods related field to examine and compare the effectiveness of their respective search tools in this field. They also agreed on the details of the project and to launch the project in January of this year.

3. Prospects for implementation

The Government of Japan will continue to ask economic organizations and industries, including the financial and insurance sectors, to provide information on patented examples of business activities and relevant literature.

The Trilateral Patent Offices launched the joint search project in January 2001.

The Government of Japan is determined to step up efforts to ensure accurate patent examination.

WTO

1. Summary of Tokyo recommendations

The WTO Members should launch a comprehensive new round at the earliest possible date in order to promote trade liberalization in the 21st century.

2. Actions taken and state of play

It was agreed at the APEC summit meeting last November to launch a new round of the WTO by the end of 2001. In December 2000, Japan submitted its proposals on agriculture and services sectors of which negotiations already began at the beginning of 2000. At the OECD Ministerial Meeting held in May 2001, member countries committed themselves to the launch of a new round of multilateral trade negotiations at the Fourth WTO Ministerial Conference in Doha in November. Moreover, the importance of efforts for setting a balanced and broad-based agenda, including anti-dumping and the launch of a new round of negotiations, was confirmed at the meeting between ASEAN Economic Ministers and the Ministers of China, Japan and Korea in May 2001.

3. Prospects for implementation

The agenda of the new round of multilateral trade negotiations needs to be well balanced and sufficiently broad-based so that it includes not only issues related to market access but also those concerning the strengthening of WTO rules, such as anti-dumping and investment, and responds to the interests and concerns of all WTO Members. In order to launch a new round in Doha in November, Japan will coordinate views with other Members under the themes of "consideration for developing countries" and "response to Members' wide-ranging interests.". As for the negotiations on agriculture and services, meetings were held in March to assess the progress made in each section. Moreover, concerning negotiations on service, "Guidelines and Procedures for the Negotiations on Trade in Service" has already been adopted, which will be used as the guidelines for the negotiations in the future. In the area of agriculture, the Work Programme of the second phase has been adopted. With regard to developing countries, we will address the issues on the implementation of the WTO Agreements and work on the trade-related capacity-building for developing Members.