

# On the Improvement of Japan's Global Investment Environment Toward the Creation of a Legal Framework for Japanese Foreign Investment (Outline)

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## I. Current Situation and Challenges

### 1. Challenges Faced by Japanese Companies

Growing foreign investments of Japanese companies ⇒ Reduction and elimination of barriers to foreign investment activities are urgently needed

- Restrictions on foreign capital, demands for joint ventures (industries such as finance, retailing, and logistics services)
- Restrictions on the range of business activities, restrictions on the free and smooth transfer of payments
- Arbitrary application or delays in approval or other administrative procedures
- Arbitrary or sudden changes or abrogation of laws and regulations or administrative policies
- Infringements of intellectual property, double taxation, double payment of social insurance premiums
- Delays in visa issuance, country-specific standards and specifications

### 2. Current Situation of the Japanese Government's Efforts on Agreements regarding Investment

#### ■ Concluded agreements to date

Agreements with the main objective of protecting investments (with 9 countries)  
Conclusion of agreements including investment liberalization or EPAs with investment chapters (with 12 countries)

#### ■ Agreements being negotiated

Japan-China-ROK investment agreement  
Bilateral investment treaties (Saudi Arabia and Uzbekistan)  
EPAs (India, Australia, and Switzerland)

#### ■ Multilateral investment rules

No new efforts since the failure to include investment in the WTO Doha Round "July package" (2004)

### 3. Challenges Faced by Japan toward the Creation of Legal Frameworks

#### ■ Number of agreements

Japan's investment agreements and EPAs: 21 (much less than European nations or the U.S.)  
⇒ Germany: 135; China: 120; U.K.: 102; France: 98; ROK: 85; U.S. 49  
2,573 investment agreements worldwide (as of 2006 year-end)  
⇒ Many investee countries remain with whom there are no agreements with the main objective of protecting investments or even treaties of friendship and commerce, and legal protection is inadequate.

#### ■ East Asia

Level of investment liberalization in bilateral EPAs is limited to binding the status quo.  
Creating a multilateral legal framework on investment is a future issue.  
· In the ASEAN-Japan Comprehensive Economic Partnership (AJCEP), investment liberalization is a future issue.  
· The Japan-China-ROK investment agreement has not yet been concluded.

#### ■ Content of recent agreements

Some are not adequate (depending on the country, some do not include arbitration clause, limit the scope of investment, or limit the prohibition of performance requirements to TRIMs [WTO Agreement on Trade-Related Investment Measures]).

#### ■ Tax treaties and social security agreements

Issues faced will not be fully resolved merely by investment agreements or EPAs with investment chapters.

## II. Toward the Improvement of Japan's Global Investment Environment

### 1. Early Creation of a High-Level Legal Framework for Investment

#### (1) Promotion of investment protection and liberalization

##### Creation of multilateral rules

Japan should work for the inclusion of investments in the negotiations of the next WTO round. For this reason, the earliest possible conclusion of the Doha Round is desired.

#### (i) Early conclusion of agreements under negotiation

Examples: Japan-China-ROK investment agreement, Japan-Australia EPA, Japan-India EPA, and Japan-Saudi Arabia investment agreement

#### (ii) Start of negotiation for investment agreements and EPAs with investment chapters

##### ■ Content to be included

Arbitration clause for disputes between investors and host countries, fair and equitable treatment, liberalization of the entry of foreign capital, Investment facilitation, and an "umbrella clause"

##### ■ Exploration of the possibility of concluding EPAs

Countries of strategic importance to Japan (countries with close trade and investment relations)

Countries with whom Japan's competitive terms are inferior to third countries

##### ■ Positioning of bilateral investment treaties

When there is an urgent need for legal security regarding investment protection and liberalization

⇒ A possible choice is to negotiate investment agreements as precursors to EPAs  
When agreeing to high-level content is difficult in the short term.

⇒ Include provisions that will provide the basis for revising content to a more high-level one

**A) Countries receiving relatively sizable investments from Japan and where there is a strong need for investment protection and liberalization**

Examples: Brazil, South Africa, UAE, Argentina, Venezuela, Colombia, Poland, Czech Republic, Hungary, Slovakia, and Rumania

**B) Countries with whom to promote investment protection and liberalization from the perspective of national interest**

Examples: Algeria, Nigeria, Iran, Kuwait, Oman, Bahrain, Qatar, Peru, Panama, Bolivia, Ukraine, Kazakhstan, Israel, and Angola

#### (iii) Revision of existing agreements

Examples: China, Russia, Malaysia, the Philippines, Thailand, Brunei, Turkey, Hong Kong, Pakistan, Sri Lanka, Egypt, and Mongolia

### (2) Promotion of the conclusion of tax treaties and social security agreements

##### Tax treaties

Countries where investments are increasing or expected to increase (including the countries listed in II. 1 (1))  
⇒ Advance pricing agreements (advance agreement on the allocation of the return on assets) are needed (especially with Brazil and Indonesia).  
Reduction or waiving of source-country taxation of investment income (dividends, interest, and license fees [copyrights and patents])

##### Social security agreements

Countries where double payments are occurring or where there is such risk  
Examples: Italy, Brazil, Spain, Hungary, Sweden, the Philippines, Mexico, Poland, Greece, and countries listed in II. 1 (1)

### 2. Promotion of Government and Private-Sector Consultation and Dialogue for the Creation of a Favorable Business Environment

Countries where companies are facing many challenges in pursuing business activities, such as East Asian countries and countries listed in II. 1.

A framework should be created where the private sector can propose improvements and make requests in an ongoing manner as part of EPAs and investment agreements or in advance of their conclusion.

When such a framework already exists, it should be revised as needed so that it is effective in resolving specific issues.