

Improvement of the Business Environment

(1) Background to the Rules

As a result of the expansion of international activities such as the advance of Japanese companies into overseas markets, the various problems faced by Japanese companies – including their local subsidiaries – in doing business internationally are becoming more diverse (developing industrial infrastructure in various countries, improving transparency in administrative procedures and decision-making, as well as in judicial decisions, simplifying and streamlining administrative procedures, increasing safety and protecting intellectual property rights, etc.). Given this situation, it is important to make appropriate requests to key figures in the governments of partner countries for improvements in areas where companies are facing issues relating to the business environment in the partner country in question.

When engaging in comprehensive discussions relating to such issues concerning the improvement on the business environment, there have hitherto been few cases in which a specific consultative body has been established, so the response has either been for individual companies or industry groups to discuss individual issues with the government of the partner country in question, or to take up the matter within various intergovernmental discussion forums. In discussions between governments, for a number of years there have been various bilateral consultative bodies relating to the economy that have held meetings both regularly and on an *ad hoc* basis (such as dialogue concerning regulatory reform and regular meetings between relevant ministries and agencies in the two countries); in addition, talks have taken place in a timely fashion when the opportunity has presented itself, but with particular regard to countries that did not have an adequately developed existing forum, there was a desire to establish a forum for close bilateral consultations between key figures in the governments in question, focusing on the trade and investment environment, in order to improve the business environment in the partner country. Moreover, procedures have developed within the WTO and other organizations for resolving issues legally, as a forum that can be used at any stage as a forum for settling individual disputes, but there are limits, in that these cannot be used in relation to cases where compliance with the agreement is not the problem. For example, procedures for seeking the rectification of governmental measures by the government of the partner country through the good offices of the Japanese government include the WTO dispute settlement procedures and the dispute resolution procedures in economic partnership agreements (EPAs); moreover, in cases where companies are seeking compensation for damages incurred as a result of actions by governments, it is possible to use the arbitration procedures stipulated in investment contracts, as well as domestic courts in the country in question, but these can only be used in cases where the problem is compliance with the agreement in question.

As a result of such considerations, in order to establish opportunities for the governments and companies of both countries to participate in intensive discussions concerning systems relating to trade and investment and their implementation status in the partner country, most Japanese EPAs contain a chapter on the “improvement on the business environment”, which provides for the establishment of a “business environment improvement subcommittee”¹ as a

¹ The names of the subcommittees vary among the EPAs: “Committee for the Improvement of the Business Environment” in the Japan-Mexico EPA, “Sub-Committee on Promotion of a Closer Economic Relationship” in the Japan-Switzerland EPA, and “Sub-Committee on Trade in Goods” in the Japan-Peru EPA, etc. In this report, they are collectively referred to as “business environment improvement subcommittee”.

forum for discussions aimed at the development and improvement on the business environment in the partner country.

Both the private sector and government officials can participate in this subcommittee, through which it is possible for the governments concerned to raise issues in a coordinated fashion, including the problems faced by Japanese companies, including problems that it would be difficult for a single company to raise, as well as problems faced by the industry as a whole or all companies that expand into the partner country in question.

With regard to frameworks under the economic partnership agreements between Japan and Mexico, Japan and Malaysia, Japan and Thailand, Japan and Chile, Japan and the Philippines, Japan and India, and Japan and Peru, the subcommittees have already begun to meet and requests on the part of both governments in relation to the government of the partner country have been put forward (however, in the framework under the Japan – Thailand EPA, only Japanese requests to the Thai government have been raised and discussed). The matters that can be taken up by the subcommittees cover a wide range of requests relating to trade, investment and the activities of local subsidiaries, and the requests made by Japan to its partner countries cover a broad array of topics, such as requests for improvements to the infrastructure development environment, including improved power supply quality and measures to rectify the lack of gas supply, as well as improvements in customs and tax procedures, measures to deal with counterfeit items, and speeding up visa, work permit and basic certification procedures, not to mention requests for improvements to measures to be taken where unfair trading is suspected. When an enterprise submits to arbitration based on the investment agreement, the international investment arbitration involves costs and risks (expenses, time, and relations with partner country). Considering this, it is important that relief can be actually received based on the investment treaty, by having problems of consistency with the investment treaty raised in forums for improvement on the business environment. As well as compiling minutes based on consensus between both parties, the subcommittee undertakes practical matters relating to obtaining a commitment to following up at the next meeting concerning progress in responding to matters requested of the counterpart country and checking on this.

(2) Overview of the System

In most of the Japanese EPAs that have achieved some results in terms of the holding of subcommittee meetings, the chapter on the improvement on the business environment provides for establishing a “business environment improvement subcommittee”, which is a discussion mechanism for talks between the governments of the signatory countries on a wide range of issues relating to the improvement on the business environment, in order to cooperate in working on issues concerning the development of the business environment. The detailed provisions concerning the functions of each subcommittee differ according to the EPA in question, but in general, they are as follows:

- 1) To carry out discussions regarding the improvement on the business environment;
- 2) To report the findings of the subcommittee to each country and make recommendations;
- 3) To carry out a review of the implementation of the subcommittee’s recommendations in each country, where appropriate;
- 4) To publicize the subcommittee’s recommendations, where appropriate;
- 5) To report its recommendations and its findings concerning the implementation and operation of provisions concerning the improvement on the business environment, as well as other matters to the joint committee established under the agreement.

The participants in this subcommittee consist of representatives of the governments of the

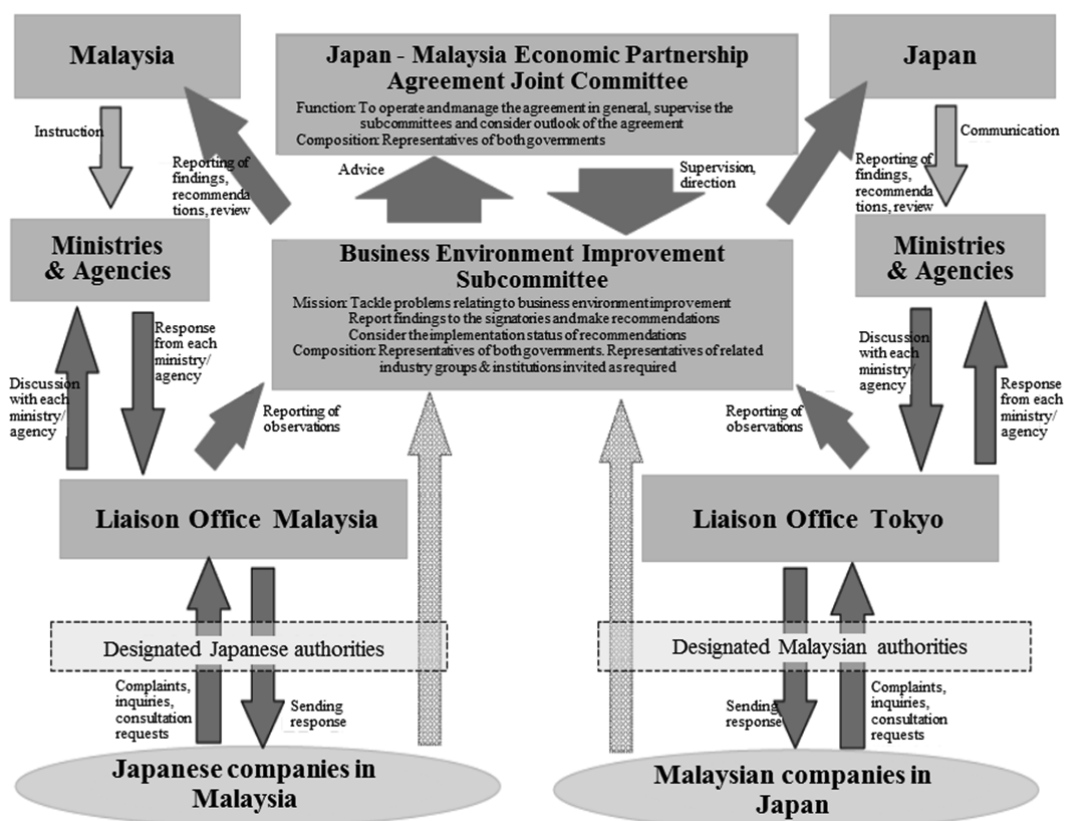
two countries, but it is also possible to invite participation by representatives of industry groups, if both sides agree, and a major feature of these subcommittees is that they provide an opportunity for representatives of companies associated with the issues under discussion to directly discuss these matters with representatives of the government of the partner country. These subcommittee meetings are held as needed, in response to requests by one or other of the countries, followed by coordination and agreement among the parties concerned. Moreover, a liaison office or contact point within each government is established under this framework, so even when the business environment improvement subcommittee is not in session, companies can submit queries and requests concerning legislation and regulations in the partner country.

The agreements prescribe that the role of the liaison office is to accept queries and requests from companies, convey these to the relevant government department, furnish a response, and convey this response to the party who submitted the request. In the same way, in this framework, a contact point for queries exists within the partner country, which is characterized by the fact that it conveys requests, etc. to the appropriate authorities within the government and obtains responses from those authorities via the liaison office. Moreover, the liaison office is charged with reporting its findings to the subcommittee, as well as exchanging information with the relevant departments within the government of its own country. It is envisaged that, based on these findings, the governments of each country will select which issues to raise in the subcommittee.

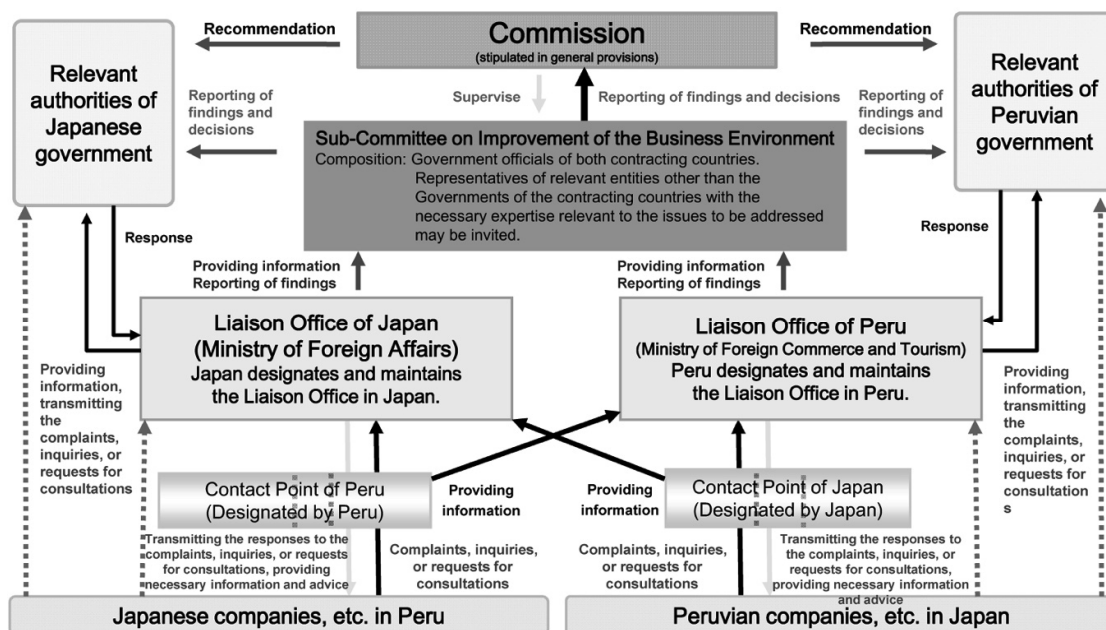
In addition to this, in the EPAs between Japan and Malaysia, Japan and Viet Nam, Japan and Switzerland, and Japan and Peru, it is stipulated that the liaison office can designate a liaison facilitation institution to accept requests from companies and convey them to the liaison offices of each country, in order to facilitate smooth communication between companies and liaison offices. An overview of these frameworks relating to the improvement on the business environment prescribed in the chapter on business environment improvement is shown in the diagram below:

**Figure III-8-3 The Mechanism Relating to Improving the Business Environment
(Example of the Japan - Malaysia EPA)**

* There are cases where the content differs, depending on the partner country or region.



**Figure III-8-4 The Mechanism Relating to Improving the Business Environment
(Example of the Japan-Peru EPA)**



(3) Stipulation of business environment improvement subcommittees in EPAs in force and their implementation status

Of Japan's EPAs/FTAs with 13 countries and one region in force, business environment improvement subcommittees were established under bilateral EPAs/FTAs with 12 countries excluding the Japan-Singapore EPA and AJCEP. Outlines of the stipulation of business environment improvement subcommittees in EPAs in force and their implementation status are given below. In addition, the holding of subcommittee meetings for the period between March 2014 and February 2015 is given in Figure III-8-5.

i) Japan-Mexico EPA

The chapter on the improvement of the business environment (Chapter 13) provides for the establishment of a business environment improvement committee. This chapter is exempt from the application of the chapter on the dispute settlement. The business environment improvement committee holds meetings with the participation of such parties as the Japanese government (Ministry of Foreign Affairs, Ministry of Economy, Trade and Industry, and the Embassy of Japan in Mexico), the JETRO Mexico Office, Keidanren (Japan Business Federation; Japan – Mexico Economic Committee), the Japanese Chamber of Commerce in Mexico, the Japan Maquiladora Association, and the Mexican government (Ministry of the Economy). The first meeting took place in April 2005, and the latest meeting (seventh) was held in August 2013. Japan requested Mexico to take more strict measures against counterfeit products in those committee meetings. Consequently, both sides established a hotline (with a designated person in charge) between the Mexican Institute of Industrial Property (IMPI) and the Japanese Chamber of Commerce in Mexico. Both sides also established a hotline with a person in charge at the Central Customs to improve customs and taxation procedures based on the request of Japanese side. Japan requested Mexico to prevail its equivalency agreement to

Japanese medical devices, and Mexico accepted Japan's request. Therefore, Japanese companies are enjoying this treatment.

In addition, requests have been made relating to the improvement of security (measures to deal with the theft of goods in transit, strengthening of security at tourist spots, and the establishment of a hotline at the Mexican Ministry of Security), the improvement of the environment relating to tourism, and the development of infrastructure, and environmental improvements have been secured. Moreover, the Mexican side has requested improvements in procedures relating to the import of agricultural produce, support for small and medium-sized enterprises, and the establishment of direct flights (since November 2006, Aeromexico has been operating direct flights between Narita and Mexico City). The business environment improvement committee has already met seven times and has been highly appreciated by Japanese companies in Mexico, which are requesting that it continue to meet. Moreover, making use of the channels of communication with Mexican government officials that have been built up through these meetings, the Japanese government is seeking to further strengthen relations from a variety of perspectives, including contributing to strengthening the competitiveness of the Mexican economy.

ii) Japan-Malaysia EPA

In the chapter on the improvement on the business environment (Chapter 11), the parties are obliged to establish a subcommittee on the improvement on the business environment, and to designate a liaison office to receive requests from parties such as local subsidiaries. Furthermore, under Chapter 5 of the implementation agreement, requests from local subsidiaries shall be answered by the liaison office of the other country, and it is envisaged that a liaison facilitation institution will be designated to convey the response from the liaison office in the counterpart country to the local subsidiary. Moreover, this chapter is exempt from the application of the chapter on dispute settlement. The business environment improvement subcommittee holds meetings with the participation of such bodies as the Japanese government (Ministry of Foreign Affairs, Ministry of Economy, Trade and Industry, and the Embassy of Japan in Malaysia), the JETRO Kuala Lumpur Office, the Japanese Chamber of Commerce in Malaysia, and the Malaysian government (Ministry of International Trade and Industry, etc.). The first meeting was held in March 2007 and the latest meeting (fifth) took place in September 2011. In meetings of this subcommittee, the Japanese side has made requests for improvements in relation to such matters as the stable supply of electricity and gas, the improvement of discipline relating to environmental regulations (regulations on the recycling of electrical appliances (currently being formulated) and tax breaks for energy conservation), the improved operation of the duty exemption framework for imported electro-galvanized steel sheets, measures to deal with counterfeit goods (with an intellectual property subcommittee holding separate meetings), the improvement of security (measures to deal with truck hijacking), and the further liberalization of service sectors, and various concrete responses have been adopted. Moreover, from the Malaysian side, requests have been made for improvements relating to cooperative projects in the automotive field, hygiene inspection measures relating to agricultural produce and foodstuffs, and issues related to acquiring the JIS certification for glass wool.

iii) Japan-Chile EPA

The chapter on the improvement on the business environment (Chapter 15) prescribes the establishment of a subcommittee on the improvement on the business environment. This chapter is exempt from the application of the chapter on dispute settlement. The business environment improvement subcommittee takes place with the participation of such bodies as

the Japanese government (Ministry of Foreign Affairs, Ministry of Economy, Trade and Industry, and the Embassy of Japan in Chile), the JETRO Santiago Office, the Japan – Chile Economic Committee, the Japan – Chile Chamber of Commerce, the Chilean government (Ministry of Foreign Affairs, Chilean customs authority) and the Federation of Chilean Industry. The first meeting took place in April 2008 and the second in April 2009. At meetings of this committee, the Japanese side has made requests regarding such matters as improving the convenience of residence permit procedures and driving license conversion procedures, and improvements in port usage fees, and a number of positive responses have been received. Moreover, from the Chilean side, there have been requests relating to such matters as holding seminars about improving the investment environment and introducing a system of digital certificates of origin.

iv) Japan-Thailand EPA

The chapter on cooperation in the field of improving the business environment (Chapter 7), in the implementation agreement, prescribes the establishment of a subcommittee on improving the business environment, as well as the designation of a liaison office to act as a point of contact for accepting requests from local subsidiaries and other parties. This chapter is exempt from the application of the chapter on dispute settlement. The business environment improvement subcommittee takes place with the participation of such bodies as the Japanese government (Ministry of Foreign Affairs, Ministry of Economy, Trade and Industry, and the Embassy of Japan in Thailand), the JETRO Bangkok Office, the Japanese Chamber of Commerce in Bangkok, and the Thai government (the investment committee and ministries, agencies and institutions relating to topics proposed for discussion by the Japanese side). The committee met for the first time in September 2008 and the most recent meeting was the fifth held in November 2013. At meetings of this subcommittee the format is such that the country holding the meeting receives requests from the counterpart country, so at the meetings that have taken place to date, the Japanese side has submitted requests to the Thai side. In the fifth meeting, Japan requested Thailand to resolve issues related to the relaxation of regulations on foreign investments in the Foreign Business Act, measures related to the flood in Thailand, intellectual property, custom procedures, labor policies, steel policies, and business infrastructure improvement, etc. Thailand explained the status of these issues and gave some positive responses.

v) Japan-Indonesia EPA

The chapter on the improvement on the business environment (Chapter 12) prescribes the establishment of a subcommittee on the improvement on the business environment, stipulating that a liaison office shall be designated within the government of each country, to act as a point of contact for such matters as requests from local subsidiaries, etc. This chapter is exempt from the application of the chapter on dispute settlement. The committee operates in coordination with the High-level Joint Public-Private Forum on Investment, which is a framework for improving the investment environment (launched in 2004).

vi) Japan-Brunei EPA

The chapter on the improvement on the business environment (Chapter 8) stipulates the establishment of a subcommittee on business environment improvement. This chapter is exempt from the application of the chapter on dispute settlement.

vii) Japan-Philippines EPA

The chapter on the improvement of the business environment (Chapter 13) stipulates the establishment of a subcommittee on the improvement of the business environment, the

establishment of consultative groups on the business environment and report their findings to the subcommittee, and the designation of a liaison office to accept requests from local subsidiaries and other parties. This chapter is exempt from the application of the chapter on dispute settlement. The business environment improvement subcommittee takes place with the participation of such bodies as the Japanese government (Ministry of Foreign Affairs, Ministry of Economy, Trade and Industry, and the Embassy of Japan in the Philippines), the JETRO Manila Office, the Japanese Chamber of Commerce in the Philippines, and the Philippine government (Ministry of Trade and Industry, etc.). The first meeting was held in June 2009, and the most recent, the ninth meeting, was held in January 2015. Since the first meeting of this committee, Japan has been requesting the implementation and appropriate enforcement of the steel tariff quotas, appropriate enforcement of the automotive component duty rate, development and improvement of infrastructure relating to roads, airports, railways, and ports, swift privatization of power generation assets and electricity companies based on the electricity reform law, improvement of the vulnerability of power lines, and increased computerization of customs offices and implementing measures to deal with the smuggling of used cars and oil products, etc. based on this agreement. The Philippines has been making improvements to meet Japan's requests. At the most recent ninth meeting, in consideration of the trends of increased investments from Japan, discussions were held on topics such as tax issues, inexpensive and stable electricity supply, effective utilization of Batangas Port and Subic Port, additional levies by the Subic Bay Metropolitan Authority (SBMA), industrial human resource development, etc.

viii) Japan-Switzerland EPA

The chapter on closer economic partnership (Chapter 13) provides for the establishment of a subcommittee for developing closer economic partnership, and the designation of a liaison office to serve as a point of contact for requests from local subsidiaries; the implementation agreement states that it is possible to designate a liaison facilitation institution, to act as an intermediary between the liaison office and local subsidiaries. This chapter is exempt from the application of the chapter on dispute settlement. At the first meeting held in Tokyo in June 2010, opinions were exchanged on the further development of economic relationship between two countries.

ix) Japan-Viet Nam EPA

The chapter on the improvement of the business environment (Chapter 11) prescribes the establishment of a subcommittee on the improvement of the business environment, stipulating that a liaison office shall be designated to serve as a point of contact for requests from local subsidiaries and other parties; moreover, it provides for the possibility of designating a liaison facilitation institution to act as an intermediary between the liaison office and local subsidiaries. This chapter is exempt from the application of the chapter on dispute settlement. The actual operation of the committee takes place in coordination with the Japan – Viet Nam Joint Initiative, which is a framework for improving the investment environment (launched in 2003).

x) Japan-India EPA

Chapter 12 provides that “With a view to promoting trade and investment between the Parties, each Party shall, in accordance with its laws and regulations, take appropriate measures to further improve the business environment for the enterprises of the other Party conducting their business activities in its Area,” and “The Parties shall, in accordance with their respective laws and regulations, promote cooperation to further improve the business environment in their respective Areas.”

In the first meeting, held in Tokyo in October 2012, the Japanese side requested improvement in the business environment in areas such as distribution, infrastructure, land expropriation and technical regulations, in addition to the dividend distribution tax and transfer pricing tax system, the alternative minimum tax, the goods and services tax, displaying the maximum retail price, external commercial borrowing, and the foreign investment ratio in the insurance sector. The Indian side requested improved inspections on imported Indian shrimp and trade procedures for marine products, generic medicines, and working visas for IT technicians.

xi) Japan-Peru EPA

In the chapter on business environment development (Chapter 13), the establishment of a subcommittee on business environment development is stipulated. In addition, the chapter provides for designation of a national contact point that will transmit requests from local subsidiaries to the liaison office in the counterpart country and convey the responses from the liaison office to the local subsidiaries. Furthermore, this chapter is excluded from the chapter on dispute settlement. The Sub-Committee on Improvement of Business Environment consists of the Japanese government (Ministry of Foreign Affairs, Ministry of Economy, Trade and Industry, and the Japanese Embassy in Peru), JETRO's Lima Office, the Japan-Peru Economic Committee, the Japan Peru Chamber of Commerce and Industry, the government of Peru (Ministry of Foreign Trade and Tourism, Ministry of Foreign Relations, and the Ministry of Home Affairs), and the Japan - Peru Economic Council.

The first meeting was held in November 2012, and the second meeting in September 2014. At the second subcommittee meeting, Japan presented requests to improve basic infrastructure, improve the legal system, establish transparent administrative procedures, simplify the tax system, improve employment/labor issues, accelerate immigration control procedures, and improve public security issues, etc.; and the relevant ministries and agencies of Peru gave detailed descriptions of the current status of the individual matters and future response plans, etc. Peru made requests concerning accelerated plant quarantine approval of Peruvian agricultural products and import quotas on evaporated milk.

xii) Japan-Australia EPA

The chapter on promotion of a closer economic relationship (chapter 18) provides for cooperation to promote trade and investment, with the aim of achieving a closer economic relationship between the Parties. As with the previous EPAs, this chapter provides for the establishment of a subcommittee, which may invite, in addition to government officials of the Parties, representatives of relevant entities other than the governments.

xiii) Japan-Mongolia EPA

The chapter on improvement of the business environment (chapter 14) provides the basic principles that the Parties shall, in accordance with their laws and regulations, (1) take appropriate measures to further improve the business environment and (2) promote cooperation to further improve the business environment. To promote effective implementation and operation of the basic principles, this chapter provides for the establishment of a "Sub-Committee on Promotion of a Closer Economic Relationship". As with the previous EPAs, this chapter provides that the Sub-Committee may invite, in addition to government officials of the Parties, representatives of relevant entities other than the governments.

Figure III-8-5 Main Improvement Requests Made by Japan at Business Environment Improvement Subcommittee Meetings and the Outcomes Thereof (status of subcommittee meetings held during the period between March 2014 and February 2015)

Item	Request for Improvement	Outcome
Japan-Peru EPA Second meeting of the Sub-Committee on Improvement of the Business Environment (September 2014)		
Basic infrastructure	Development of public transportation facilities in capital region. Development of logistics infrastructure (regional ports and expressway network, etc.) in rural regions for the expansion of trade.	The Peruvian government answered that investments had been made in paving roads with asphalt and the development of airports and seaports, and investment in railway infrastructure was also planned.
Legislative system	Improvement of legislative system on mine development (improvement of education on mine and infrastructure development for neighborhood residents at the government level)	The Peruvian government answered that a government-led training system for the general public with the themes of development, modern mining business, and environmental protection, etc. had been initiated.
Taxation system	Simplification of the withholding tax system and the transfer price taxation system. Introduction of a consumption tax refund system for foreign tourists.	The Peruvian government answered that discussions were being held within the government on ways to reduce impacts of simplifying the procedures of the withholding tax system and the transfer price taxation system, etc. on economic activities, and the introduction of a consumption tax refund system for foreign tourists.
Employment/labor-management issues	Relaxation of regulations on foreign workers (discussion of measures to grant national treatment to employees with citizenship in one of the Pacific Alliance member countries).	The Peruvian government answered that it will consult with relevant government officials regarding the treatment of employees with citizenship in a Pacific Alliance member countries.
Immigration control	Further acceleration of issuance of working visas and alien registration certificates.	The Peruvian government answered that it will make efforts to further accelerate issuance of working visas and in reviewing the examination period, which was the main cause of the delay in issuing alien registration certificates.
Public security issues	Enhancement of public security measures in urban regions.	The Peruvian government answered that it had enhanced laws with the particular aim of reducing minor offenses.

Japan-Philippines EPA Ninth meeting of the Sub-Committee on Improvement of the Business Environment (January 2015)		
Tax	Issue of notice on VAT return procedures	No progress.
	Imposition of local tax on PEZA (De Lima Philippine Economic Zone Authority) companies	PEZA stated that it fully supported this and was willing to bring a lawsuit if necessary.
	Withholding income tax on dividends and royalties, etc.	The Philippine government confirmed that the application of the reduced tax rates was enabled even before the relevant transactions, and the objective of the revision of relevant notifications was the simplification of application forms

Item	Request for Improvement	Outcome
Electricity	Supply of stable electricity	The Philippine government explained that it had been taking measures to secure additional electricity supply volume in anticipation of a possible electricity shortage that summer.
Logistics	Effective utilization of Batangas Port and Subic Port	The Philippine government explained that the measure to promote the use of these ports had been implemented and the use of these ports was increasing.
Consistency as a target for investment	Additional levies (common area charge) by Subic Bay Metropolitan Authority (SBMA)	The Philippine government promised to verify the facts.
Industrial human resource development	Japan-Philippines industrial cooperation	The Philippine government stated that it wished to put the cooperation into effect.

(4) Regular Meetings Between Japan and Various Countries

In addition to the meetings prescribed in economic partnership agreements and investment treaties, there have been many meetings at which matters relating to the improvement of the business environment are addressed. Between Japan and Brazil, for example, meetings of the “Japan-Brazil Trade & Investment Promotion Joint Committee”, which is not based on any treaty, have been held six times since 2009. In these meetings, discussions have occurred on the improvement of trade/business environments on the part of both parties, and there have been achievements such as extension of expiration date of commercial visa and extension of the period of technology transfer contracts, etc. In 2013, industrial cooperation was included in the topics at the “First Meeting of the Japan-Brazil Joint Committee on Promoting Trade, Investment, and Industrial Cooperation”. In addition, as a joint initiative between Japan and Viet Nam, an action plan focused on problems in the investment environment in Viet Nam has been compiled in coordination with the chapter on business environment improvements in the Japan-Viet Nam Economic Partnership Agreement, with initiatives being carried out with the aim of following up on progress regarding these issues. Japan and Indonesia are holding meetings of the Japan-Indonesia Joint Public-Private Sector Investment Forum, which provides a framework for implementing improvements in the Indonesian investment environment and promoting Japanese investment in Indonesia.

Companies are facing problems relating to governmental measures in their export destinations or countries into which they are expanding, as well as conveying requests and submissions directly to the local government, frequently convey these requests and submissions via the Japanese government. In addition to the inter-governmental meetings on improvements in the investment environment prescribed in economic partnership agreements and other agreements, inter-governmental meetings held on both a regular and an ad hoc basis provide an opportunity to raise such issues with other governments.