

JAPAN'S PROPOSALS
FOR REGULATORY REFORM IN EU

(Tentative Translation)

26 October 2000

Government of Japan

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October 26, 2000

Overview of the Japan-EU Regulatory Reform Dialogue

As we approach the turning point of the century, the world economy is becoming more and more interdependent and creating further economic dynamism. Corporate activities, transcending national borders are also progressing, and economic relations between Japan and the European Union are steadily growing. At this juncture, improving the environment for multilateral free trade and investment will be essential for the sustainable growth and development of the world economy in the new century. To this end, our redoubled efforts for cooperation under a multilateral framework and domestic regulatory reforms are extremely important.

Japan highly appreciates the efforts of the EU toward achieving the free movement of people, goods and services through the process of market integration, and promoting the coordination, relaxation and abolition of numerous regulations existing in the Member States. Japan earnestly hopes that the EU continues such efforts toward the realization of an "integrated open market". However, Japan recognises that there still remain a number of problems that the EU and its Member States must overcome. One example is that individual people and enterprises outside the EU are not given equal treatment in comparison with those of the EU. Another is that some of the EU regulations are not compatible with international standards.

In addition, unique to the EU is a problem that in some cases, social policies, such as employment and environment policies, seem to create excessive restrictions or obstacles to positive business activities by private companies. It is true that such policies, in one sense, are rooted in local history, culture and basic philosophy of the EU Member States. However, full consideration should be given to balancing these policies against the benefits of free business activities.

Another problem, unique to the EU, is that such matters as tax systems and social welfare under the jurisdiction of the Member States, have not yet been well coordinated. The European Commission and Member States have been taking initiatives to carry out regulatory reforms in the EU, but the efforts toward coordinating various systems under the exclusive jurisdiction of the Member States are required in order for the EU to further promote prosperity, fully utilizing the merit of an integrated market.

Keeping such views in mind, the Government of Japan hereby submits to the European Commission and the governments of the Member States the list of proposals for regulatory reform in EU, that takes up the problems actually faced by the Japanese companies in their business activities. The list also reflects proposals that the Japan-EU Business Dialogue Roundtable, a core body of Japan-EU private-sector dialogue, submitted to the leaders of Japan and the EU this July.

The GOJ expects that the EU will seriously address these matters and achieve practical progress. Japan earnestly wishes that interactive dialogue on this framework serves the promotion of regulatory reforms in both sides and eventually contributes to the further strengthening of Japan-EU economic relations and sustainable growth and development of the world economy.

[Chronology]

1. The GOJ submitted a request list to the European Commission at the Japan-EU Deregulation Dialogue held in November 1998 in Tokyo.
2. The GOJ submitted a new request list to the European Commission, based upon the responses of the EU to Japan's original request list, at the Japan-EU Deregulation Dialogue held in November 1999.
3. In February 2000, the GOJ submitted a request list that was revised and renewed, taking into account the development after November 1999.
4. In April 2000, the EU replied to the Japan's proposals.
5. The GOJ hereby submits the list of proposals, covering 120 items in 20 areas, that includes revised or new requests, taking into account the progress made since last year and in response to EU replies. The items marked with a star are new requests.

Note: The Government of Japan intends to introduce the proposals concerning taxation system in this list of proposals with a view to nurturing better business environment within the EU, taking up concrete issues pointed out by the Japanese private sector.

1. Legal services

General comments (as stated in February 2000 Request List 1.1):

The GOJ has taken all possible measures, including the amendment of the law concerning foreign lawyers, sincerely responding to EU requests made during a series of Japan-EU dialogues on regulatory reforms. On the other hand, it is quite regrettable that few improvement has been made on the EU side in response to Japan's requests.

Expecting the strong initiative of the European Commission, as the representative of the EU Member States, the GOJ requests the laws concerned be revised to the effect that Japanese lawyers are permitted to provide legal services easily and extensively in all EU Member States.

(1) The establishment of a system in France whereby foreign lawyers are able to provide legal services with regard to their own country's laws (as stated in 1. of Requests and Comments of November 4 in 1998)

The GOJ has made a request to the EU that France establish a system that would allow foreign lawyers to engage in the provision of legal services pertaining to their own country's laws without taking any special examination, as is duly permitted in Japan under the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers.

According to replies from France at the meeting on March 2 and in the EU reply dated on April 10, foreign lawyers have to pass the French bar examination held in France in French language in order to provide legal services concerning home countries' laws.

The French reply does not fully address Japan's request. In addition, as Japan's corresponding law does not require foreign lawyers to take any examination, the French requirement is inappropriate in terms of reciprocity. The GOJ stands by its original request.

(2) Permission for providing legal services in Germany whereby foreign lawyers are able to provide legal services pertaining to laws of third countries (so called "third country law")

According to replies from Germany at the meeting on March 2 and in the EU reply dated on April 10, Japanese lawyers can not engage in services involving in third-country laws but can practice with third-country laws by co-operating with

lawyers from the third country in Germany.

The Germany's reply fails to clearly indicate any rational reason that foreign lawyers are not permitted to engage in legal services pertaining to third country laws. It also failed to address Japan's request for deregulation that foreign lawyers be allowed to handle third country laws. The GOJ stands by its original request.

2. Business stays and work visas

General comments (as stated in 2.(1) of Requests and Comments of November in 1998):

In many EU Member States, it takes a very long time for Japanese applicants to obtain or renew work visas. Such delays cause considerable difficulties for Japanese companies operating in those countries to ensure smooth and systematic employment or transfer of employees. Furthermore, the administrative procedures regulating the issuance of visa are sometimes not transparent in some Member States (notably, France, Germany, UK, Spain, Belgium, Austria, Greece, Portugal, Luxembourg and the Netherlands), such as different handling depending on official-in-charge and ambiguous guidelines for issuance, and the procedures are often complicated. Thus, Japan requests each EU Member State to shorten the period of procedures, simplify them, and extend the validity of permits.

The EU reply dated on April 10 says that the European Commission is considering integrating systems concerning permits for residence and others. The EU is requested to integrate the systems as soon as possible. A progress report on this matter is also requested.

(1) Residence and work visas in Italy (as stated in 2. (2) of Requests and Comments of February 2000)

(a) According to the Italy's reply, residence permits are issued within 20 days after applications are submitted. The focal point of the GOJ's request is to shorten the time that applicants have to wait to obtain permits. However, it still takes an average of three months to obtain the permit. In some places, moreover, applicants have to queue up at application windows, standing for a long time. Italy is requested to improve such a system among others by issuing reception number cards to applicants so that they do not have to wait in line.

(b) Documents required for work visas are different from one official to another or from one office from another. Such situation seems to be created because changes of rules are not thoroughly implemented at local offices. Italy is requested, therefore, to clarify the documents required for work visas by, among others, issuing the guideline, clearly describing what are necessary, and to keep officers in charge well-informed and to let them follow the instructions.

(c) Officers handling residence permit applications at a foreign affairs section of

local police stations often do not understand English. The GOJ hopes that Italy would make utmost efforts to assign English-speaking officers to a foreign affairs section of local polices as many as possible.

(d) When spouses of Japanese expatriates in Italy apply for the residence permit separately, they actually have to prepare 13 different kinds of documents, not only a certificate of spouses as in the Italy's reply, and have to wait 60 days to receive a receipt of the documents before applying to the Italian Embassy in Tokyo. It causes a tremendous burden to those spouses of Japanese expatriates in Italy. Italy is again requested to improve such time-consuming and complicated procedures.

(e) The resident registration is required to purchase automobiles in Italy, and it takes much time to obtain the residence permit, a prerequisite for resident registration. Italy is once again requested to improve the procedure, among others, by dropping the resident registration from the requirement for purchasing automobiles. Italy is also requested to explain what "remedial actions" in its reply means.

(f) The place of birth is regarded important in Italy. The Italian translation of a copy of the applicant's family register have to be submitted at each time to obtain official certificates such as work visas. Italy is requested to simplify the procedures. In Japan, a copy of family register is required in applying for passports and passports are issued only after having verified the identification of the applicants with the family register. Therefore, the permanent residence indicated in the Japanese passport is trustworthy so that the government of Italy can check the place of birth by referring to passports.

(2) Work visas and related problems in Spain (as stated in 2.(4) of Requests and Comments of November 1998)

(a) In Spain, a work visa applicant must present a non-criminal certificate issued by the police authorities from all the countries where he or she has resided in past five years up to the date of the application. For Japanese applicants who have lived outside Japan, such a requirement is quite time consuming and complicated. In its reply on April 10, the European Commission seemingly says that a certification by competent authorities of the home country is good enough. The GOJ requests the EU to confirm that a single non-criminal certificate issued by competent Japanese authorities should be good sufficient when Japanese citizens apply for the work

visa.

(b) By and large, visa issuance is getting less time-consuming than it used to be, but it takes an average of three months. Spain is requested to speed up visa issuance.

(c) Japan has learned that Spain is deliberating the revision of the law concerning foreigners. The GOJ expects its requests will be taken into account in the deliberation of the law.

(3) Residence and work visas in Portugal (as stated in 2.(4) of Requests and Comments of February 2000)

There seems no sign of improvement regarding the issuance and renewal of residence permits and work visas in Portugal. For example, issuing residence permits takes more than six months. As to work visas, applications for work visas cannot be made due to Portuguese counter measures against unemployment, causing great inconvenience to business operation. Portugal is requested to remedy the situation mainly by speeding up the process.

(4) Work visas in Greece (as stated in 2.(2) of Requests and Comments of November 1998)

Greece has the following regulations in granting work permits to non-EU citizens: (a) a company has to employ at least five EU nationals to hire one non-EU national, and (b) a company employing five EU nationals or more must maintain the employment ratio of EU nationals to foreign nationals at 10 to 1. (In case that non-EU nationals are either executives or those who have specific technological and scientific knowledge or skills, these requirements are not applied.)

At this moment, no Japanese companies are facing this particular problem, and the Greek government replied that it would take note and study the Japanese request. However, investment environment in Greece for foreign companies, including Japanese, would be much improved by relaxing the regulation. Japan reiterates its request that such regulations be abolished.

In addition to this, Greece is requested to shorten lengthy processing time for work visa.

(5) Improvement of the work permits system in Germany

Since 1998, the visa issued by the Embassy of Germany in Tokyo for

Japanese business expatriates to work in Germany was only that for single-entry. But Japan has learned that the German Embassy has resumed issuing multiple-entry visa, meeting our past request. The GOJ would like the Government of Germany to confirm this. Without multi-entry visa, Japanese businessmen had to apply for both residence and work permits upon entering Germany before their work visas expire, and unless having obtained residence and work permits, they were unable to travel to countries that have not signed the Schengen Treaty.

As to work permits, its valid period varies from one state to another giving inconveniences to business operations. The GOJ requests the government of Germany to standardize the formality of work permits.

(6) Improvement and speeding-up (simplification) of issuance, extension and renewal of business stay permission and work visa in France (as stated in 2.(8) of Requests and Comments of February 2000)

The GOJ appreciates the improvement in procedures in France concerning the entries of Japanese expatriates' family members as well as those concerning long-term permits of residence and work visa issuance. Yet applicants have to wait at least two months to obtain work permits and one month to renew their residence permits. In some cases, the time-consuming procedures cause difficulties for Japanese expatriates and companies in moving to France as well as in arranging personnel reshuffles. The procedures also make it almost impossible to address to urgent and emergent situations.

In addition, we learned that bringing family members of the expatriates to France takes at least six months under the current procedures. France is requested to further shorten processing time and to simplify the procedures. France is also requested to extend the valid period of residence permits from current one year to two years. Moreover, as it has often been reported that required procedures are different from one official from another, the GOJ reiterates its request that such situation be corrected.

(7) Work visas in Austria (as stated in 2.(9) of Requests and Comments of February 2000)

Work visa applicants have to wait at least one year after their application. The regulations make it extremely difficult for Japanese corporations to swiftly carry out personnel reshuffles. Therefore, the GOJ continues to request that the processing time should be shortened, the issuance of residence permits should be speeded up, and the

validity of the visa should be extended to two or three years from current one year.

(8) Work visas in Luxembourg (as stated in 2.(10) of Requests and Comments of February 2000)

The problem of time consuming and complicated procedures for obtaining and extending work visas have not been solved yet. Japan continues to request that the Luxembourg's visa system be improved.

(9) Work visa in the Netherlands

Japanese work visa applicants are required to write their specialty, university education background, the reason to work and others and it takes at least three months until the work visa is issued. The Netherlands is requested to simplify the work visa procedures and to shorten the processing time.

(10) Work visa in Belgium

(a) It used to take three or four weeks to obtain work permits in Belgium, but recently it became worse. Now it takes about six weeks. Some documents, including certification of academic background that had not been necessary before, were added to the list of required documents in 1997. Belgium is requested to shorten the processing time of work permits and to simplify required documents.

(b) Japanese members of the board at local companies are required to obtain a professional card upon the issuance of work visa. Since it takes several months to obtain the card at the Belgian Embassy in Tokyo, expatriates obtain work permits in Japan and, after arriving in Belgium, apply for professional cards to change their status in most cases. Changing status in Belgium is also time-consuming. Belgium is requested to speed up the procedure to issue professional cards.

(c) In some cases, the maximum length of the validity of work permits for younger business executives are limited to four years. This presents an obstacle for Japanese companies to assign young engineers with expertise in, such as, information technology to Belgium. Belgium is requested to abolish such a work permits limitation.

(11) Foreign business identity card in France

(a) Non-EU nationals are required to obtain business identity card, that is "la carte d'identité de commerçant étranger", when they assume a position at the board of

directors of French companies. However, documents necessary for the application are numerous. Moreover, they are different from one province to another, that makes the application procedure even more complicated. Necessary documents include, for example, non-criminal certificates both by Japanese and French authorities, curriculum vitae, non-bankruptcy written oath, non-criminal written oath, and certificates of bank balance etc. In addition, some provinces require a copy of a portion of the person's family register, diploma and other documents. The GOJ requests that application documents for "la carte d'identité de commerçant étranger" should be simplified and standardised throughout France.

(b) In addition, it takes four to five months to obtain this identity card and it has to be renewed every year. France is requested to extend the validity period of "la carte d'identité de commerçant étranger" to two to three years.

3. Driving licences

General comments: Requests concerning EC Directive on Driving Licences (as stated in 3.(1) of Requests and Comments of November 4 in 1998)

On July 29, 1991, the Council of the European Communities adopted the Council Directive on Driving Licences (91/439/EEC) [hereafter referred to as the EC Directive], and the EU Member States were to make and amend their domestic laws based on the EC Directive. In some Member States, as a result of the amendment of legislation and/or the enactment of new legislation, Japanese driving licences are confiscated when licence holders apply for local driving licence in those countries. As the treatment of driving licences issued by a third country is a matter of Member States' discretion, there is no standardised EU procedures, and some countries confiscate third country licences and destroy them later while others keep and return them when applicants leave their countries. The GOJ continuously requests that driving licences issued by the Japanese authority be returned at the time of issuing local licence. (The request is submitted by Japanese residents in Germany, France, Britain, Italy, Luxembourg, Switzerland, Belgium, Denmark, Portugal and Spain.)

The EU has recently proposed that the Japanese authority should allow Japanese nationals to drive in Japan by attaching a photocopy of his/her Japanese driving licence to the one issued in EU. The GOJ is unable to accept the proposal that conspicuously lacks reciprocity between Japan and the EU, as well as being against the Japanese Road Traffic Act and other regulations.

(1) Treatment of Japanese driving licence in Italy (as stated in 3.(2) of Requests and Comments of November 1998)

(a) It often takes about six months to exchange Japanese driving licence with Italian one. In addition, licence applicants are required to submit their passports to the Italian authority for about a week in the exchange process. Italy is requested to shorten the period of issuing driving licences as well as that of keeping Japanese passports.

(b) Applicants for international driving licence have to wait nearly one month and a half after the submission of the application. In addition, in applying the international driving licence, applicants are required to submit their driver's licences issued in other country. Italy is once again requested to shorten the processing time,

and to abolish the unnecessary requirement.

(c) Due to the amendment that Italy has made to integrate their national laws with EC directives, it argues a bilateral agreement or other form of agreed document is necessary to continue the exchange of driving licences. The GOJ believes the problem could be resolved through bilateral talks. Italy is requested to take flexible stance to continue the exchange of driving licences as used to be.

(2) Treatment of Japanese driving licence in Greece (as stated in 3.(3) of Requests and Comments of November, 1998)

The exchange of driving licences of non-EU countries to Greek one was terminated by the presidential decree in January 1995 acting upon the EC Directive. Consequently, holders of non-EU driving licences have to obtain an international driving licence or have to take examination and obtain Greek licence in order to drive in Greece.

We learned that the Greek parliament has amended the law concerned in order to revive the exchange system of driving licences and the new exchange system is expected to be put into practice soon. However no details have not been decided yet to implement the revived system. The GOJ requests, therefore, that the exchange of driving licences will be implemented as soon as possible.

(3) Treatment of Japanese driving licence in Luxembourg (as stated in 3.(4) of Requests and Comments of November 4 in 1998)

Medical certificate issued by a physician is required when Japanese nationals exchange Japanese driving licence to local one or newly obtain it. The process is time consuming and costly. The medical certificate requires such items as height, weight, illness such as beriberi etc. that seemingly have nothing to do with driving ability. As those requirements do not seem to be based on a reasonable ground, Luxembourg is requested to alter the required medical checks into minimal necessary one, such as vision and color blindness tests, that can be conducted at near police station etc.

4. Retail business, commercial laws, and business practices

(1) EU response to the French movement to strengthen the law regulating large-scale retailers (as stated in 5.(1) of Requests and Comments of November 1998)

The French Government decided to strengthen the 1973 Royer Law that sets regulations regarding the opening of large-scale retail stores to protect self-employed small-and medium-sized retailers. The bill to amend the Law was approved by both chambers of the French parliament in June 1996. The GOJ requests the French Government that the law should not obstruct the stream of service trade and that it should be implemented fairly and properly.

(2) Treatment of accumulated losses in Spain, France and Italy

The EU Directive (71/91/EEC) requests companies to hold shareholders meetings and resolve a problem of accumulated losses of the company when the losses exceed the 50% of companies' capital. Due to this directive, companies in some EU countries have no other choices than liquidation or capital reduction in such cases. This situation could possibly be an obstacle to business operations of new entrants with smaller capital such as venture businesses. The previous reply of the EU indicated that it would be difficult to change the figure, 50 percent of capital. The GOJ requests again the examination of the abolition of such unique provision that exists neither in Japan nor in the United States.

Spain: In the previous EU reply, it was suggested that the provisions concerned might be reviewed in the course of the diet discussions for the revision of relevant laws. The GOJ requests the information of the progress of the review.

France: The French reply was that the Japan's request was based on misunderstanding. The GOJ has been requesting France to relax such provisions that require, among others, companies to hold a special shareholders' meeting when accumulated losses of the company exceed the level of half of its capital, and the request is not based on misunderstanding.

Italy: In Italy, when the accumulated losses exceeds one third of the capital of a company, it is obligated to hold shareholder's meetings as soon as possible. Moreover, if the accumulated losses go under one third of its

capital continuously in next business year, the company has to reduce its capital. This system is stricter than what is stipulated in the EU Directive, and the GOJ requests Italy to relax it at least to the level of the EU Directive.

(3) Improvement of the credit and debt system in Spain (Commercial Transaction Law)(as stated in 5.(6) of Requests and Comments of November, 1998)

Since the Spanish legal framework for regulating commercial transactions is insufficient, defaults on payments often take place and the settlement of disputes in the court takes long time. Delay in payment is not punished severely enough either. For instance, checks are often dishonored, and even those who repeatedly dishonor checks are not suspended from transaction with banks if they eventually pay. The GOJ continuously requests that the regulations be amended to strengthen and establish the legal framework for regulating commercial transactions, for applying stricter rules on, such as observance of payment days and cost bearing for delay in payment, and for implementing punishment by the authorities or banks.

The GOJ also requests the European Commission to explain the development of the relevant draft EU Directive that was said in a previous reply to be in the procedures for establishment.

(4) Simplification of the application procedures provided in the Commercial Law in Austria (as stated in 5.(7) of Requests and Comments of November 1998)

In Austria, a signature certificate by the executive of parent company is always required in the application procedure under the Commercial Law (application for an amendment to the Statutes of the company, etc.) For example, the parent company's executive has to go to the Embassy of Austria in Japan to obtain the signature certificate each time its subsidiary changes the legal contents of its commercial registry (date of reckoning, etc.). This procedure is extremely time-consuming and burdensome. Japan requests the simplification of the procedure so that the most applications for registration can be completed locally by the foreign company's subsidiary once it is entrusted to do so by its parent company's executives.

In a previous reply, Austria explained that the procedure must be strict enough to prevent illegal manipulation of commercial registries as they are referred by a court of justice. The GOJ requests to improve the system by abolishing at least the signature certificate requirement. Even without signature certificates, we believe personnel identification of executives is quite possible.

(5) Relaxation of the Merger Directive of 1990

The EU Merger Directive of 1990 concerning the tax treatment applicable to cross-border mergers, transfer of assets, exchange of shares, and others within the EU stipulates that profits arising from re-evaluation of assets of companies that carry out reorganization within the EU can be shared in several business years. However, as the Directive limits the scope of "qualifying reorganization," it is difficult for most companies to obtain such tax treatment. Especially, in case of intra-group reorganization such as transformation from local corporation structure to branch structure that many Japanese subsidiary companies carry out in Europe, the Directive makes it difficult to implement the reorganization that fits their needs. Therefore, the requirement under the Directive should be eased so as to facilitate such reorganization. The previous EU reply was that the amendment of the Directive was under discussion. An explanation on the progress of the discussion is requested.

Also, as the implementation of the Directive is not unified throughout the EU Member States in such points as the treatment of company's losses and the duration of prohibition against the disposal of shares, companies that intend to carry out intra-group reorganization in Europe have to take the differences of treatment of each relevant Member States into account. This imposes heavy burden on those companies in terms of the total amount of work and cost. In order to lessen the burden on those enterprises, the advance ruling system that is applicable to all EU Member States should be established. In the previous reply, the EU said that taxation is under the jurisdiction of the Member States and the European Commission pays attention to the development of each Member States' national legislation. An explanation on the current state and prospect of legislative efforts in Member States is requested.

(6) Early adoption of the draft Directive that allows the establishment of Societas Europaea (European Company Law Directive) (as stated in 4.(10) of Requests and Comments of February 2000)

Since the draft Directive, that would enable a multinational enterprise to operate throughout the EU without setting up subsidiaries in each Member State, if it establishes a company in the form of SE (Societas Europaea) in one Member State, was first proposed in 1970, its legislative process stalled several times. Although the deliberation on the draft Directive in the European Council began again in 1997, it is currently deadlocked due to the opposition by Spain despite the collective support by other 14 Member States. As the lack of this Directive constitutes a negative factor

against the efficient business operation in the EU, the early adoption of this Directive is called for. The GOJ would like the EU to disclose new information, if any, including the policy of Spain on this matter.

(7) The offset of profits and losses across the border (as stated in 4.(11) of Requests and Comments of February 2000)

Currently it is not generally possible for a company resident in one EU Member State to offset losses incurred by its subsidiaries in other Member States. Although a draft Directive was proposed in 1991 in order to address this issue, no progress has been made to date. Therefore, early adoption of the proposed Directive is desirable in order to facilitate further investment in Europe. The previous EU reply was that there was no prospects that it would be adopted in a foreseeable future. The GOJ would like the EU to explain the progress that has so far been made as well as the latest future prospects.

(8) Leasing contracts of real estate in Italy

At the time of leasing contracts of real estate, it sometimes takes more than six months to complete the required registration of leasing contract at the private contract registration office which lessors or real estate agents apply to. The GOJ requests the processing time be shortened.

5. Standards and certification

(1) Unification of the standards for plugs and sockets within the EU (as stated in 6. (1) of Requests and Comments of November 4 in 1998)

Japan welcomes that the progress has been made, through the establishment of a voluntary European standard, etc., toward the harmonisation of standards for low-voltage plugs and sockets in the EU Member States, with the exception of the United Kingdom. The GOJ would like to hear the outcome of the conference held on September 12 in Stockholm to which the reply of European Commission of April 2000 referred. The GOJ also continues to request the harmonisation of standards, and would like to obtain information regarding the progress in the EU's efforts to unify the standards for plugs and sockets.

(2) Driver's Helmets in the United Kingdom (as stated in 6. (2) of Requests and Comments of November 4 in 1998)

Japan has been requesting that the competent European authorities should introduce the driver's helmet certification procedures that would allow Japanese helmets to be distributed more smoothly and at a lower cost throughout the EU area. In its Requests and Comments regarding EU Regulations and Access to EU Markets presented to the EU in March 1998, Japan made requests, among others, the application in the United Kingdom of Regulation 22 annexed to the UN/ECE Revised 1958 Agreement.

According to the explanation provided in the EU Reaction in June 1998, the Regulation 22 was supposed to be applied to the UK on July 1 2000 or earlier if the European Community implement the fifth amendment of the UN/ECE Regulation on protective helmets and visors.

According to the EU reply in April 2000, the UK intends to amend its regulation. The GOJ requests the EU to provide information regarding the current state.

(3) Uniformity of sound pressure regulations for stereo headphones (as stated in 6. (3) of Requests and Comments of November 1998)

With regards to regulations on sound pressure for stereo headphones currently under consideration in France and Belgium, these two countries are planning to introduce different regulatory standards.

The EU Reaction in June 1998 states that the Member States are allowed to

enact regulations necessary to protect the health and safety of consumers, even if those regulations constitute obstacles to trade, thus trying to justify the introduction of discrepant standards in France and Belgium. However, it should be borne in mind that such divergence in regulations and standards within the EU will undermine considerably the merits of the Single Market.

According to the reply of the European Commission in April 2000, there is no national regulation on sound pressure for stereo headphones in Belgium, and it seems that France and Belgium have not yet unified their regulations. The GOJ requests that France and Belgium harmonize their regulations, or that the EU establishes unified regulations concerning the regulating values, test methods, and methods of indication throughout the EU countries.

(4) Consistency of the application of related European directives to construction machinery (as stated in 6. (4) of Requests and Comments of November 1998)

(a) The UK's Health and Safety Executive enacted apparently excessive high standard on visibility support equipments for construction machinery (large dump trucks etc.), which is neither required by any other EU countries nor subsumed by the harmonized standard (EN474-1) for machinery. The reply of the European Commission regarding this issue in April 2000 merely explains the process for adopting such regulations in the United Kingdom. As the UK still sticks to its own interpretation that differs from that of other Member States, the GOJ requests the UK to explain the reason why the UK requires visibility support equipments, which are not required by any other EU countries.

(b) We understand that the draft Directive on the "Noise limitation for machinery intended for outdoors use" is expected to be fully implemented on January 3 2001, and the new Directive will repeal the current Directive 95/27/EC in the middle of its implementation at the first stage. Under the current Directive, the manufacturers have already obtained certificates of approval from the Notified Bodies, which are valid until the end of 2002. The GOJ requests that these certificates should be valid as indicated.

As for construction machinery to which the new Directive will be applied, the grace period given to it is the same as that for the machinery regulated under the current Directive. However, the GOJ requests that the present grace period be extended to the end of 2002 so that manufacturers will be able to take necessary measures to adapt to the new regulation.

Furthermore, the GOJ requests that European Commission to publish, as soon as possible, a guideline regarding uncertainties of Guaranteed Sound Power Level that is required under the new directive.

(5) Disharmony of recycling and collecting obligations (as stated in 6.(8) of Requests and Comments of November 1998)

In its latest response in April, the EU acknowledged benefits of unifying recycle marking and collection systems that vary among the EU Member States. However, it said it is difficult to achieve because of differences in cultures and waste policies among the Member States. When foreign manufacturers want to meet the environmental requirements of every Member State, they have two choices. One is that they adopt the toughest requirement of all. It means manufacturers have to bear the excessive cost in all Member States except one. Another is that they manufacture various types of one product to meet requirements of every country. It means they cannot mass-produce them and consequently bear the excessive cost.

As to the recycling system of the EU, we know efforts are being made to set EU standards by the Directive on Waste Electrical and Electronics Equipment (WEEE) and others. Regarding recycle marking, however, no standardized EU system has been established. For example, Germany has a very strict collection system of Ni-Cd batteries, while others do not, and Japanese companies report that such differences in collection systems of batteries makes their operations inefficient and confusing. Therefore, the GOJ continues to request the harmonisation of recycling, marking and collecting systems among the Member States, including that of batteries.

(6) Conclusion of the European Conformance Assessment Agreement (ECAA or PECA) between the EU and the Central and Eastern European countries. (as stated in 5. (9) of Requests and Comments of February 2000)

Japan requests early conclusion of the European Conformance Assessment Agreement (ECAA or PECA) with Central and Eastern European countries. In the course of concluding the Agreement, it is requested that the EU makes efforts to ensure that Central and Eastern European countries would integrate the related EU Directives with the same manner and in the same interpretation as EU countries, since some of the Central and Eastern European countries require foreign companies to comply with their national legislation in addition to the EU Directive and that results in the increase of the cost for these companies.

(7) Inspection system of machinery in the European market (as stated in 5. (10) of Requests and Comments of February 2000)

Some importers sell machinery that is not in compliance with the related European Directives in the European market, clearly describing their non-compliance. The GOJ continuously requests that the information on inspection methods to check such non-compliance and penalties for such violations taken by each Member State be disclosed to give companies an incentive to comply with the related EU Directives.

(8) Export of plant machinery to EU countries

When machinery is imported into Europe, it has to be readjusted to meet European CE safety standards even if its safety has been assured in Japan. As national safety regulations under CE safety standards differ from one country to another, some Japanese companies face lots of inconvenience in readjusting machinery to meet various safety standards. The GOJ requests national safety regulations be harmonized.

6. Tourism

(1) Abolition of nationality requirement for tour guide license in Italy and Spain (as stated in 7. (1) of Requests and Comments of November 1998)

According to the legislation on tour guides in Italy and Spain, only EU nationals can obtain tour guide qualifications. While the EU explained that the nationality requirements for tour guides in these countries are covered by the GATS schedule of the EC and its Member States, Japanese tourists, visiting these countries, are compelled to hire local guides who do not speak Japanese in addition to competent Japanese tourist conductors who speak Japanese, and thus forced to pay totally redundant cost.

(a) According to the reply of the European Commission in April 2000, Spain explained that the conditions of tour-guide services by third country nationals shall be provided by bilateral agreements. The GOJ requests that Spain take a flexible position and abolish or ease the nationality requirement for tour guide license without such a bilateral agreement. In addition, since, at the moment, tour guides have to be employed regardless of the size of tour groups, the GOJ requests groups made of 9 tourists or fewer should be exempted from this requirement.

(b) According to the reply of the European Commission in April 2000, the Italian presidential directive dated on August 31 1999 suggests that it is legally possible for non-EU nationals to obtain tour guide license. Yet Japanese nationals have so far been unable to obtain it. Italy is requested to clearly explain procedures and qualifications for obtaining tour guide licenses.

(2) Easing of excessive investigations of Japanese tour conductors by tourist police in Italy (as stated in 7. (2) of Requests and Comments of November 1998)

The number of Japanese overseas tourists amount to 16.3 million annually (in 1999), and most of them traveled on package tours. They are usually accompanied by tourist conductors, other than interpreters. However, for example, when those tourist conductors give explanations to Japanese tourist groups on time schedules or meeting places for next day, they are often mistaken as conducting tour guides. Such mistakes are often followed by excessive investigations by the local tourist polices that hamper those tour conductors' work.

The European Commission said in its response in April 2000 that it has asked

the Italian authorities to officially reply to Japan. However, no official reply has so far been received and the problem has not been solved to date. The GOJ maintains its request until the problem will actually be solved.

(3) Improvement of the license system for tour conductors in Italy (7. (3) of Requests and Comments of November 1998)

In Italy, to provide services as a tour conductor, it is necessary to pass examination organized by each province and obtain a courier license. Under the current system, tour operators have to employ licensed tour conductors even when only escorting tourists from an airport to their hotels. However, the examination tests organized by each province are held irregularly and infrequently. In addition, some provinces do not accept Japanese applicants. These facts cause great difficulty for Japanese nationals to obtain the courier license.

According to the European Commission's reply in April 2000, it is not easy to solve the problem due to existing differences between the system and its actual implementation. However, Italy is requested either to make it possible for Japanese nationals to take regularly organized tests in all provinces, or to make the escorting of tourists from airport to their hotels an exception of licensing. In addition, as a temporal measure, the GOJ requests the submission that the future schedule (venue and date/time) of conductors licence tests and the chart that describes provinces which accept Japanese applicants and those do not.

(4) Deregulation concerning the operation of sightseeing buses and taxis in Italy (as stated in 7. (4) of Requests and Comments of November 1998)

Sightseeing bus and taxi operators are required to obtain a license for every single vehicle in accordance with the regulation of each province in Italy and new licenses have rarely been issued recently. According to the European Commission's reply in April 2000, the official reply of the Italian Government was under drafting, but we have not received any reply to this date. Italy is requested again that one license cover all or at least five vehicles, as is the case in other EU Member States, in order to reduce sightseeing tour costs through improving efficiency and promoting competition in the Italian tourism sector. Italy is also continuously requested that the issuance of new licenses be promoted.

7. Shipbuilding

Aid to the shipbuilding industry (as stated in 9. of Requests and Comments of November 1998)

The "EU New Regulation on Shipbuilding Subsidies" (the regulation that abolishes the ship price subsidies by the end of the year 2000 as per Council Directive No. 1540/98) was approved in May 1998 at the Council of the EU Industry Ministers, as an alternative means of subsidy to the "7th Directive on Shipbuilding Subsidy". The price supports for ships and the provision of huge subsidies to specific shipbuilders may not be directly restricting non-EU shipbuilders' entries into the market, but they contribute to price differences between EU and non-EU shipbuilders. It means they constitute virtually barriers to block non-EU shipbuilders entering into the market, affecting the business operations of Japanese shipbuilders and obviously distort the market. Although some European shipbuilders wish that the subsidy system to be extended, Japan requests that the extension of shipbuilding subsidies be terminated because the subsidies work against the establishment of the fair competition ground in shipbuilding.

8. Telecommunications

General comments:

The GOJ has been continuously interested in the telecommunication interconnection and licensing rules and practices in the EU Member States since the Plenary Deregulation Meeting between Japan and the EU which took place in March 1998, and has been presenting interconnection and licensing issues at each plenary meeting. Japan has been raising concrete requests to the EU in the meetings especially concerning the interconnection and licensing fees in Germany and France since November 1998.

The GOJ reiterates that the EU should take appropriate measures with regard to the following requests:

(1) Interconnection in the EU and Germany (as stated in 10.2. (1) of Requests and Comments of February 1999)

(a) Based upon Article 7-3 of "The Interconnection Directive" (Directive 97/33/EC), national regulatory authorities are obliged to work out the "reference interconnection offer (RIO)" and to ensure its publication. The GOJ requests the European Commission to clarify the state of progress in the EU Member States concerning the "RIO" and to take necessary measures for the establishment and adoption of the "RIO" against those countries with insufficient "RIO" in utmost expeditious manner (within CY2000). In addition, the GOJ requests the European Commission in this procedure to clearly indicate that "the period for interconnection" should be included in the conditions of the "RIO" and to indicate it to all Member States.

(b) With regard to the interconnection rules in Germany, the European Commission responded at the meeting held in March this year at Brussels that it was studying the German Government's reply to the European Commission's advice. The GOJ requests the European Commission to inform us the content of the German response and the result of the study. The GOJ also requests the European Commission to explain in concrete terms the current situation of the discussions with the German government.

In Germany, the "interconnection basic supply" (interconnection - grundangebot) published in the official gazette of the Regulatory Authority for Telecommunications and Posts and "other conditions" that are published on the

extranet have been established as the "RIO" prescribed in "The Interconnection Directive" (Article 7-3 and 14). However, the standard period for interconnection is not clearly indicated in the German RIO (reference interconnection offer between DT and other telecommunication operators). This leaves room for Deutsche Telecom to delay its negotiations with other telecommunication operators intentionally if it is willing to.

The GOJ requests the German Government to expeditiously include the period for interconnection in the "RIO" in utmost expeditious manner (within CY2000).

(2) Licensing fees in Germany and France (as stated in 10.2.(2) of Requests and Comments of February 1999)

Licensing fees in Germany and France still remain extremely high. They are obstacles for new entrants to the telecommunication markets and are restricting fair competition. In Germany, for example, a license fee for the nationwide telephone service costs 3,000,000DM. In France, the license fee for nationwide ordinary telephone service is 750,000FF at the time of application and another 750,000FF as annual administration fee. This administration fee was cut into half in January this year, but still the total amount remains relatively high. Also this administration fee is imposed on carriers annually. This constitutes excessive burden and obstacles in both countries for new entrants to the telecommunications market.

The GOJ requests that both German and French governments take appropriate measures in utmost expeditious manner (within CY 2000) to address the problem. The GOJ also requests the European Commission ensure that the two governments would address the problem.

The European Commission responded to the GOJ that it had received a reply to its advice from the German government and was studying it. The GOJ requests the European Commission to make a concrete explanation on the content of the Germany's reply and on the current situation of the discussions with the German Government. The GOJ also requests the European Commission to explain in concrete terms the current status of discussions with the French government, including the schedules for the improvement of the situation.

Regarding the "Administrative Charges" stipulated in Article 12 of the proposed Directive of the European Parliament and the Council on the authorisation of electronic communications networks and services" that was published in July this year, the GOJ requests the European Commission to clarify the extent of

administrative costs to be covered by licensing fees before the proposed directive would take effect.

For your reference, a licensing fee (tax for registration and licensing) in Japan is merely ¥150,000 (about 3,066DM or 10,281FF) .

(3) Disclosure of information by the European Commission

It is acknowledged that the European Commission regularly reviews how the Member States implement the series of regulations concerning the promotion of competition in the telecommunications market, and releases the findings to the public as the "Report on the Implementation of the Telecommunications Regulatory Package".

In these reports, the Commission says it will not hesitate to take actions under the infringement procedures stipulated in the treaty, that established the European Community, with a view to ensuring the implementation of relevant Directives. However, it only reports the number of cases under infringement procedures.

Reporting only the number of cases is insufficient to implement the directives effectively. It is important for the European Commission to disclose broader information about the infringement cases. The information should include the progress of infringement procedures and the development of discussions between the Member States and the European Commission as mentioned in the requests (1) and (2).

The GOJ requests the European Commission to work out the system to disclose information about the situation concerning infringement procedures in utmost expeditious manner (within CY2001).

9. Financial services

(1) Introduction of EU common procedures in financial business

Japan requests that, without requiring additional procedures, the EU Member States automatically approve business activities, products, licences and others that have already been approved by one Member State. It is burdensome for companies to make applications in forms and contents that differ from one country to another and thus the current state constitutes an obstacle for their business operations.

(2) Language proficiency of representatives of financial institutions in Germany and France

The french language proficiency of at least one of two representatives of financial institutions is required in France, and so is the German proficiency of newly assigned branch managers in Germany. Such regulations hamper flexible personnel management. They are also inappropriate in terms of reciprocity with Japan. The GOJ requests that such language proficiency requirement be eased.

(3) Unified treatment of banks regardless of the location of head offices (as stated in 14. (1) of Deregulation Requests of November 1998)

(a) Regarding the large loan regulations, in case Japanese bank open branches in Portugal, Austria, Luxembourg and the Netherlands, they are not given the same status as branches of EU Member States banks. The upper limit of exposure that the Japanese bank branches can extend is calculated only on the basis of the fictitious capital of those branches. Therefore, the maximum amount of each loan those Japanese banks can extend is severely limited, and thus, they are at a disadvantage against their EU-based competitors. The latest EU reply said that the problem will be solved if Japanese banks establish subsidiaries within the EU. The GOJ is not satisfied with this solution which restricts the freedom of corporate management. The GOJ requests that the calculation of the upper limit of bank exposures be made on equal capital basis regardless the location of their head offices. Although Japanese banks have no branches in above-mentioned countries except in Netherlands, Japan stands by its original request that the EU countries should supervise banks in the unified manner regardless of the location of their head offices in order to secure the freedom of business operations in the future.

(b) France unequally treats banks depending upon the location of their head offices.

To ensure the freedom of business management forms, the GOJ requests France to treat both EU and non-EU banks equally.

<Some examples of unequal treatment in France>

Non-EU banks are required to submit applications and to obtain permission for opening branches. (Branches of EU banks are required only to submit reports in advance.)

Non-EU banks are required to prescribe fictitious capital. (Branches of EU banks are not.)

The branches of non-EU banks are required to subscribe to the deposit insurance. (Branches of EU banks do not have to.)

Moreover, the branches of foreign banks are also required to pay for insurance and to be a part of the French relief scheme in the same manner as French banks, and insurance payments are calculated based on outstanding loans. No other countries including Japan have such system. Therefore, the GOJ requests France to improve the situation.

(4) Asset assessment in France

There are no written standards for assessing bank's assets in France, which gives inspectors a great deal of discretion in assessing the required reserves of banks. In some cases, administrative instructions concerning loans to a single business partner are different from one inspector from another. Supervising, including assessments of assets, is extremely important to manage banks, and the GOJ requests to clarify the rules in the statutory form, and thus make them transparent and clear.

(5) Taxation to branches of foreign banks due to the lack of equity capital

In case French taxation authorities find the capital ratio of a foreign bank branch lower than that of the foreign bank as a group (in other words, in case the ratio of the fictitious capital to the total asset of a branch in Paris of a foreign bank is lower than the capital ratio of the foreign bank as a group based on BIS standards for consolidated accounting), tax is charged on the amount of the profit that may be gained by investing the amount tantamount to the discretion of capital ratio between the branch and the whole bank. No other countries in the world are levying taxes based on the capital ratio of financial institutions. Originally, a capital ratio is a criteria to maintain sound management of financial institutions and it is utterly

unreasonable, to use it as a basis for taxation. France is requested to remedy the situation.

(6) Regulation on current ratio in France

A foreign bank is required to calculate the current ratio by subtracting standby L/Cs given by its head office from the net money supply to the branch. (The net money supply is the balance between the money supplied to the branch and the money raised through the branch.) The foreign banks are in the disadvantageous position in calculating the current ratio. The GOJ requests to relax or abolish the regulation.

(7) Calculation of the minimum reserve for European Central Bank (ECB)

Money raised in the countries joining the European System of Central Banks (ESCB) is totally deducted from the reserve base that is a basis of the calculation of the minimum reserve. However, funds raised in United Kingdom cannot be deducted. As the UK is the center of the interbank transactions in Europe and a large amount of money is raised in the UK, the GOJ requests the Netherlands that the money raised in the UK be deducted.

(8) Withholding tax to interest revenues of lendings to other EU countries in UK

When London branches of foreign banks, including Japanese banks, book lendings to other EU countries such as Italy and Spain, withholding tax is levied on to interest revenues. Concentrating bookings in the main office is important for foreign banks' regional strategy in Europe, but this tax system interferes their strategy. Therefore, the tax should be abolished, or the tax rate should be lowered.

(9) Entries into credit card business in Austria

Banking license is the prerequisite for starting credit card business in Austria. In addition, the basic qualification for banking license is strict. (Capital must be no less than 70 million schilling, for example.) No other countries have such a regulation. As the regulation serves for protecting domestic card operators, the GOJ requests to abolish the requirement.

(10) Regulation on leasing business

Leasing business companies are classified as general business operators which are not under specific regulations of financial authorities in United Kingdom and

Germany. In France, Italy, Spain and some other countries, however, they are classified as financial institutions that are subject to approval by either the finance ministry or the central bank. This regulation hampers free business operations of leasing companies in those countries. The GOJ requests that leasing businesses within the EU be unified following the British and Germany systems.

10. Construction

(a) Simplification of Procedures for operating construction business in Belgium (as stated in 17. of Deregulation Requests of November in 1998)

In order to conduct construction business in Belgium, it is required to obtain a certificate of approval of business activities in each category of business as well as to obtain a registration of contractor that is necessary in each of the 28 sub-categories of construction. Applications for certificates and registration must be presented at different offices and it is necessary to obtain both certification and registration in each category of business. These complicated procedures increase the entry cost. The GOJ reiterates its requests that the application for both of them be integrated or should be submitted at the same office and that both the number of categories of business for the certification and the number of sub-categories for contractors' registration be reduced by integrating them. According to the reply of the Belgian authorities in April 2000, the Belgian Minister for Foreign Relations sent letters to Finance and Construction ministers. The GOJ requests Belgium to explain if any progress has been made after the said letters were sent.

(b) Draft directive concerning the registration of constructors

According to the reply of the European Commission in April 2000, it is currently working on a draft directive that would enable any companies duly registered in one Member State to carry out construction business with the registration also in any other Member States. The GOJ would like to have detailed explanation of the work schedule of the draft directive.

(c) Payments system of construction fees in Belgium

Constructors receive only 70 percent of the construction fees from their clients in Belgium in case they are not registered because the clients have to pay 15 percent as a tax to taxation authorities and another 15 percent as a social debts to the social insurance agency. The GOJ would like to have detailed explanation on the necessity of the system and to request the system be either abolished or improved.

11. Automobile

(1) Participation of JAMA to relevant conferences concerning laws and regulations on automobile engineering (as stated in 11.1 of Deregulation Requests of February 2000)

Japan appreciates JAMA (Japan Automobile Manufacturer's Association) were permitted to participate in conferences organized by MVWG (Motor Vehicle Working Group), MVEG (Motor Vehicle Emission Group) and others. The GOJ requests that JAMA be kept informed in advance so that the Japanese side has enough time to study matters.

(2) JAMA's participation in EEVC

While technological requirements in the process of adopting new legislation are being discussed at the European Experimental Vehicle Committee (EEVC), the contents of discussions at the committee were not disclosed. The GOJ requests that JAMA be allowed to take part in the EEVC or that the committee disclose what have discussed if its participation is not permitted.

(3) Application of ECE13H (United Nations ECE standards on break) (as stated in Deregulation Requests of February in 1999)

Japan has learned that a draft decision of the Transport Council concerning UN ECE13H is to be discussed at the Council this fall. Japan would like to have information on the progress of the draft decision. In connection with the Whole Vehicle Type Approval (WVTA) directive, Japan assumes that the directive would be amended to follow ECE13H. The GOJ requests that the WVTA be obtainable at the same time when the ECE standards are adopted.

(4) Simplification of type approval test procedures in the WVTA

All of 46 items in the type approval test for the WVTA are covered by the official test. Corporate in-house test data are accepted after case-by-case negotiations. The GOJ requests the European Commission to make the WVTA system more efficient by reducing and utilizing in-house test data.

(5) Establishment of the WVTA system for motorcycles and commercial vehicles

The GOJ requests the WVTA system currently covering only passenger cars should also be applied to motorcycles and commercial vehicles by working out details for implementation.

(6) Harmonization of automobile-related taxes (as stated in 11.6 Deregulation Requests of February in 2000)

Denmark, Greece and Finland charge about 100 percent tax for selling and holding automobiles, creating a great obstacle in car sales business and in harmonizing automobile prices in the EU. It is requested to lower automobile-related taxes in those countries and to coordinate the taxation systems among the EU member countries. A reply of the European Commission in April 2000 said that the Commission was to start an analysis of the differences of automobile-related taxes of the Member States. It is desired to receive the information on the outcome of the analysis.

(7) Regulations concerning pedestrian safety

Although the EU is independently working out regulations to protect pedestrians, it should work in concert with Japan, the United States and other countries to establish harmonised standards under the framework of IHRA (International Harmonised Research Agenda) . The GOJ requests that the legislation process be transparent, and that JAMA be allowed to participate in the deliberation of the legislation. The GOJ also requests that some arrangements be done to allow Japanese car manufacturers to given access to the information that European makers can obtain.

(8) EuroNCAP (Car safety assessment and its disclosure)

The assessment of automobile safety organized by the European Commission (EuroNCAP) has no clear standards for assessment, and some parts of the evaluation are done subjectively. The procedures are not transparent enough.

Although the ACEA(Association des Constructeurs Européens d'Automobiles) participates in the discussions on how to manage the NCAP system as a representative of the car industry, Japanese automotive companies are not allowed to take part in all of the discussion sessions. The GOJ requests that Japanese manufacturers be given more opportunities to participate in NCAP-related conferences so that they can understand the process of the discussions.

(9) Speed meter directive (2000/7/EC)

Our interpretation of a directive concerning speed meters is that the regulations will be applied to all motorcycles at the time of registration beginning in July 2000. There is no lead time for those models which have already been approved.

As a consequence, manufacturers have to remodel them to meet the directive bearing extra costs. The GOJ requests that the EU ease the lead time. Among some past directives is a case in which the lead time was changed one year later than the original schedule. (93/91EEC)

(10) Early implementation of mutual recognition of radio equipments within the EU

With an recent increase of automobiles electrically equipped lately, vehicles subject to electronic frequency laws and regulations have been on the rise. Wireless communication equipments of automobiles are required to obtain permission from telecommunications authorities in every Member State involved. Moreover, procedures to obtain this permission are very complicated. The R&TTE Directive was issued and took effect in April 2000, but our concern is that the actual implementation might be slow because the Member States are allowed to keep their own regulations for the grace period of 30 months.

Accordingly, the GOJ requests that the R&TTE Directive (99/5/EC) be implemented immediately in the EU Member States and that information on its operation in the Member States be promptly disclosed.

(11) International harmonization of the basic items in adopting global technical regulations

Since this October, legislation of global technical regulations based on the 1998 global agreement has been under discussion at the GRSG (Meeting of Experts on General Safety Provision) of the United Nations Economic Commission for Europe (UN/ECE/TRANS/WP.29). The purpose of the present working party is to harmonize internationally the basic items of technical regulations and to reach the worldwide unification of automobile categories as well as weight and measure definitions, which are currently regulated by individual country, such as Japan, the United States and Europe.

Japan requests that the EU willingly participate and cooperate in the discussion at the present working party and reform its regulations flexibly toward establishment of the unified standard.

12. TSE

Prohibition of the use of Transmissible Spongiform Encephalopathies (TSE) risk materials (as stated in 12. of Deregulation Requests of November 1998)

The European Commission has been conducting country-wise assessments of the TSE risk status and it is expected the assessment for Japan will be conducted as usual.

As we reported at Japan-EU Regulatory Reform Dialogue in March this year, mad cow disease has never broken out in Japan as strict measures are enforced to prevent infectious diseases from entering into Japan. We also report our status to the International Office of Epizootics (OIE).

In February 1998, the GOJ submitted papers on the TSE status of Japan to the European Commission and in October 1999, additional data was submitted.

According to the EU official bulletin dated on June 30, 2000, four-rank assessments will be conducted to find out TSE risk status of every country and the Scientific Committee completed the risk assessments on August 1 this year, covering 23 countries.

During the Regulatory Reform Dialogue in March, the EU said that the second assessment meeting would begin in March and Japan's participation is expected. It seems that this meeting has not started yet. The EU is requested to explain the procedures of risk assessment toward Japan as well as future prospects. Anyway, we request that the TSE status assessment toward Japan be conducted immediately and Japan be removed from the list of food restrictions containing specific harmful substances.

13. Pet foods

Abolition of the prohibition to import pet food into the EU (as stated in 13. of Deregulation Requests of November 1998)

Imports of pet food from Japan into the EU have been prohibited on the grounds that Japan is not on the list of the third countries, on the basis of which import of pet foods is allowed. In May 1998, the Permanent Mission of Japan to the European Union in Brussels requested the European Commission through its note verbal to place Japan on the third countries list. No progress has since been made to resolve the problem. The GOJ requests the EU to take prompt actions to allow Japanese pet food exporters to resume the export of their products as in the past.

In the last meeting held in March 2000, the EU said that TSE issue is given a top priority and pet food issue cannot be handled until some time this summer. As the final review on TSE has seemingly worked out, the GOJ would like to know when the EU is going to refer this issue to Japan. The GOJ also requests the EU to inform what kind of examinations European Commission inspectors do and when inspections will be done.

14. Employment

General comments (as stated in 15.(1) of Deregulation Requests of November 1998) :

Employment regulations and labor practices in Europe are, in general, much stricter in many respects than in Japan. Many Japanese companies operating in Europe are faced with a number of difficulties concerning the dismissal and transfer of employees, as well as their work hours and wages. These difficulties may not be necessarily attributable to undue "regulations" or to discrimination against foreign countries. However, efficient labor markets are beneficial also to Europe itself. Japan reiterates its requests, therefore, that these existing difficulties be solved properly.

(1) Problems related to employment in Luxembourg

(a) Reduction of prescribed days of paid leave in the national legislation and the labor-management agreement in the banking sector in Luxembourg (as stated in 15.(2) of Deregulation Requests of November 1998)

In Luxembourg, national legislation as well as the labor management agreements in the banking sector stipulates that companies have to pay their employees during vacations that do not exceed 44 days (including 10 bank holidays) and must guarantee 100 percent pay for sick leave that does not exceed three months. Such constraints result in considerable difficulties for Japanese companies with branches in Luxembourg, most of which are small scale financial institutions with a limited number of employees in their human resources management. Japan requests a reduction of duration of such paid leave, provided either through the Luxembourg's national legislation or in the labor-management agreement in the banking sector of the country. According to the reply of the EU in April 1999 and also in April this year, the Government of Luxembourg does not plan to modify the legislation. The GOJ would like to point out again that this legislation constitutes a negative factor for business environment, causing losses to business operations of Japanese companies.

(b) Flexible application of dismissal procedures in Luxembourg (as stated in 15.(3) of Deregulation Requests of November 1998)

The relevant provisions of the current labor law in Luxembourg make it extremely difficult for a company to discharge employees for its own reason, once they are formally employed. In general, competent employees tend to resign on relatively short notice for better promotion, while less competent employees tend to remain. Keeping the high quality of employees is one of the most important

prerequisites for a company to maintain its competitiveness. According to the reply of the EU in April 1999 and also in April this year, the Government of Luxembourg does not plan to modify the legislation. The GOJ would like to point out again that this legislation constitutes a negative factor in business environment, causing losses to business operations of Japanese companies.

(2) Problems related to employment in Spain (as stated in 15. (4) of Deregulation requests of November 1998)

(a) Annual overtime work in Spain (as stated in 15. (4) of Deregulation Requests of November 1998)

With respect to Japan's request for deregulation of working hours, Spain argued in the reply of 1998 that working hours can be flexibly organized in accordance with the provision of Spanish Workers' Statute which stipulates that overtime work will be compensated by days-off within the four months following the overtime work. Moreover, it says in the reply of the EU in April this year that even with the current overtime regulations, companies can cope with production increase by staggering work days while keeping the average weekly work hours at 40 hours on an annual base, which is allowed by the legislation. In all cases, however, the legal annual maximum overtime is fixed at 80 hours, and companies must always provide vacations for their employees if their overtime work exceeds this threshold. Such a constraint makes it difficult for companies to flexibly cope with a sharp increase of their production and sales. The GOJ reiterates its request the introduction of a new flexible clause in relevant Spanish legislation, which would allow overtime work hours to exceed the limit in certain circumstances.

(b) Collective transfer of workers in Spain (as stated in 15. (4) of Deregulation Requests of November 1998)

With respect to Japan's request for deregulation on the collective transfer of workers, the Spanish authorities explained in the replies of 1999 and this year that an employer has the right to make a decision about a collective transfer after having consultation with the labor union for a certain period regardless the result of the consultation. Actually, the implementation of the law makes it impossible for a company to carry out a collective transfer of workers without having the agreement with the labor union. The GOJ would like to point out again that this implementation constitutes a negative factor in business environment, actually causing difficulty in Japanese companies' operation.

(c) Compensation for dismissal in Spain (as stated in 15.(4) of Deregulation Request of November 1998)

Regarding compensation for dismissal, the Spanish authorities explained in its reply in June 1998 that the new law (63/1997) has reduced the amount of compensation for dismissal to 33 days' wages or salary per year of past service. However, this provision applies only to employment contracts that have been concluded after the law took effect in 1997. As a result, the compensation for dismissal is about twice as much as those of France and Italy in case workers contracted before 1997 are dismissed. The GOJ would like to hear the Spanish Government's opinion on compensation for dismissed employees, which is by far more than the European standard.

Spain also states that the provision regarding compensation for dismissal is applied only to "unfair dismissal." However, it should be noted that dismissal for any reason undertaken by a company is usually regarded as "unfair dismissal" and thus the company must, in reality, always pay a high amount of compensation.

(d) Permanent employment system in Spain

Spanish laws allow employees to conclude temporary labor contracts for no longer than six month in case they engage in specific construction works or jobs, have to meet with growing market demands. When those temporary workers are continuously employed at the same company after the termination of the contract, they are regarded as permanent employees. This makes it impossible to hire seasonal workers for a necessary period when needs arise, causing inconvenience to personnel management of Japanese companies. The GOJ requests that such system be abolished.

(3) Employment issues in Italy

(a) Improvement of short-term employment scheme in Italy (as stated in 15. (6) of Deregulation Requests of November 1998)

According to the reply of the Italian authorities in April this year, it may be possible to renew an employment contract of temporary workers for one year or longer and debates are under way to make the short-term employment scheme more flexible. Italy is requested to explain the current state of debates and future prospects.

(b) Establishment of a strike-mediating institution in Italy (as stated in 15.(8) of Deregulation Requests of November 1998)

In Italy, the mediation procedure for strikes is not clear. In its practice, either

national or local politicians or public institutions plays the role of mediator, depending on the company in which the strike takes place, the type of business of the company, specific background of the strike, labor management relations in the company. Even the designation of an appropriate mediator is so time-consuming that the current procedure may cause a negative impact on company management. With the reply of the Italian authorities in April this year, the GOJ learned the existence of the "Commissione di garanzia" that is responsible for suggesting ways of resolving conflicts. However, the commission's jurisdiction is limited to crucial public services sectors including electricity, gas, water supply, transportation and petroleum stations, and it would not be involved in strike mediation of Japanese companies.

The GOJ repeats its request that an institution specializing in strike mediation be established, which will provide a systematic framework and make it possible to achieve the solution quickly in an efficient and expeditious manner.

(c) The limitation on overtime work in Italy (as stated in 15.(10) of Deregulation Request of February 2000)

The labor-management agreement of the Italian Bankers Association sets the maximum overtime at 150 hours a year. Because of this agreement, employers are unable to assign overtime work to its employees even when it is needed and it causes problems to business operation. In its reply in April this year, the European Commission said that the issue cannot be taken up in the regulatory reform dialogue because it concerns an agreement by an organization in the private sector. Yet the GOJ requests that the Italian Government hold some kinds of talks with the bankers' association to ease the upper limitation of overtime, which is too restrictive.

(4) Employment issues in Belgium

(a) The wage system in Belgium (as stated in 15.(9) of Deregulation Requests of November 1998)

Under Belgian laws, it is impossible to cut the salary of individual employees. In addition, while the Belgian government sets a ceiling on the rate of increase in wages, it annually mandates a minimum wage increase for the entire work force.

The GOJ found the reply of the Belgian authorities in April this year failed to fully explain about the nature of the obligation concerning minimum rate of increase in wages. The GOJ reiterate the request that the determination of wages of individual workers should be made within the capacity of each company.

(b) Work hours in Belgium

Belgian laws restrict companies to let employees work longer than the designated annual work hours. The laws also obligate companies to compensate extra overtime work with additional holidays. Such obligation makes it impossible for companies to adjust increased amounts of work by overtime work, and they have to make the adjustment by new employment. If they increase the workforce, they will face the problem of excessive workforce when the amount of work decreases. The restriction on the designated work hours is an obstacle to timely management of work load. The GOJ requests that the designated annual work hours be increased.

Starting in January this year, the weekly work hours were cut by one hour and the annual paid holidays were increased by six days. Work hours are thus getting shorter in Belgium. The GOJ would like to point out that further reduction of work hours and increase of paid holidays could discourage foreign investment.

(c) Dismissal system in Belgium

Dismissal of employees due to incompetence is regarded as firing by a corporate reason. Companies are legally required to make a notice three months or longer prior to the dismissal. In reality, however, there is a customary practice called "claeys formula" under which companies are required to make longer-than-one-year notices or to pay compensation tantamount to the payment for the advance notice period, depending upon the length of employment and annual salary of the employees to be dismissed. The GOJ requests that such a customary practice given priority to legal obligation be abolished and the longest advance notice period be cut to six months.

(d) Laws and regulations concerning labour unions in Belgium

Corporate management is required to report financial and business reports of their companies monthly, quarterly and annually at the law-designated management-labor council. In making out an annual report, for example, dozens of items are to be covered: cost accounting, position in markets, and contents of researches. This requirement gives a great burden to Japanese companies. The GOJ requests the Belgian Government that the items to be covered by reports should be simplified, limiting them to matters related to important changes of corporate organizations that might give impact to the settlement of accounts, labor conditions and employment. The GOJ also requests that the frequencies of the meetings should be decided by the discretion of each company.

(e) Regulation for protecting representatives of the employees in Belgium

Companies cannot dismiss those employees who run for the election of the employees' representatives until the next election four years later even if their work performance is poor. Those candidates are protected regardless of the results of the election. The GOJ requests that proxy and unsuccessful candidates should be treated same as ordinary employees, by amending the regulation.

(5) Regulation of personnel management in Denmark

In the Danish law (Aktieselskabsloven), at least half of the members of the board of directors and members of the management board are required to live in the country. In case a company is operating internationally, its subsidiary in Denmark may apply for the exceptional treatment. However, qualifications and content of the exceptional treatment are not disclosed. Danish authorities usually decide if they give exceptional treatment to them at the time of registration. Such a regulation hampers the freedom of personnel management in a company's subsidiaries. Denmark is requested to ease the regulation.

15. Trade and Customs

(1) Export permission in Belgium (as stated in 16. (1) of Deregulation Requests of November 4 in 1998)

In Belgium, it takes more than one month for a company to obtain the Government's permission to export machine tools from Belgium to non-EU countries. It is an obstacle to business operations. According to an explanation by the EU, it takes about three to five weeks because a permission has to be approved by both the foreign minister and foreign trade vice minister. The GOJ repeats its request that such permission be granted as soon as possible unless there is any problem identified in the examination of the application.

(2) Simplification of necessary documents of household goods for customs clearance in relocating to Spain

When Japanese expatriates move to Spain, an English translation of a change-of-address certificate issued by Japanese municipal authorities is required. At the same time, as Spanish residency visa (or application for the residency visa) is also required, a change-of-address certificate mentioned above seems unnecessary to submit. According to the EU reply of April 2000, the change-of-address certificate is not included in the list of required documents. However, the decree on the value added tax in Spain (1624/1992) requires the change-of-address certificate. Spain is requested to abolish the procedure to submit the change-of-address certificate.

(3) Improvement of the DETAX system (as stated in 16. (4) of Deregulation Requests of February 2000)

Although tourists to the EU countries can make duty-free declaration only at the final airport when departing from Europe under the current system, the procedure is claimed to be time-consuming and it is often the case that tourists cannot complete them when they do not have much time for transit. The GOJ requests that the system be amended allowing tourists to make duty-free declaration at non-final airports and possibly at other places like offices in town.

(4) Tariff rate of copying machine toner

Regarding copying machine toner, the system is established in the EU as a measure for the promotion of information technology under which the import of toner cartridges is duty-free and the custom-duties for the import of toner powder is

exempted when the applications for temporal tax exemption by importers are accepted. However, as it takes considerable period of time for the temporal custom-duties exemption procedures, the duty-free import of toner powder is virtually impossible. Since some Japanese manufacturers import toner powder to make toner cartridges at their factories in the EU, it is requested to shorten the period for processing applications for the temporal custom-duties exemption as it would also benefit EU industries too.

(5) Inappropriate application of anti-dumping rules

Seen in the case of components of television cameras, the European Commission, by its own initiative, conducts anti-dumping investigations even without enough evidences, obstructing the business activities in the private sector. The GOJ requests that the EU conduct careful deliberation before the opening of authoritative investigations that may disturb business operations.

With regard to personal fax machines, the expanded definition of the product is currently under re-examination by the European Commission. However the re-examination should be made only for judging if the anti-dumping taxation should be continued. The GOJ requests that new procedures for anti-dumping should be taken when the definition of the products is in question.

16. Environment

General comments:

The GOJ has learned that the EU is working out the Directive of End of Life Vehicle. Japan fully acknowledges the importance of environmental issues and supports EU's efforts to lighten the burden imposed on environment caused by discarded cars.

The Japanese Government as well as the car industry, however, are still concerned about parts of the Directives.

The EU is also working on the Directive of Waste Electronics and Electrical Equipment (WEEE) and the amendment of Directive of batteries and accumulators. The GOJ fully understands the importance of environmental issues and supports EU's efforts to lighten the burden imposed on environment caused by waste of electronic and electrical equipments.

However, the GOJ and electronic and electrical industry are still concerned about parts of the directives.

(1) Requests concerning the amendment of the Directive on batteries and accumulators (as stated in 17.(3) of Deregulation Requests of February 2000)

(a) The GOJ requests the EU to ease the limit of percentage of mercury content of button type batteries for sales from one percent to two percent since there are a number of products, such as hearing aid, that need batteries containing one percent or more of mercury.

(b) The GOJ requests that the EU to ease the limit of percentage of the cadmium content in batteries from 0.0005% or more to 0.002% or more, given unavoidable residue of Cadmium that occurs inside of materials being used in primary batteries. The GOJ also requests that the nickel cadmium batteries should be excluded from this regulation since no alternatives can be replaced with Ni-cd batteries in the great majority of cases.)

(2) Requests concerning the Draft Directive of End of Life Vehicles (as stated in 17.(2) of Deregulation Requests of February 2000)

The GOJ would like the EU to confirm that this directive applies only for vehicles that have newly received type approval.

The current list of exemptions from substances prohibited to use is inadequate

because, in many cases, alternative substances are not available or the lead time for research is required. Therefore, the GOJ requests the list of exemptions be expanded.

Following are examples of parts and materials that should be added to the list of exemptions.

- Bearing shells made of lead or bronze and pistons (lead)
- Coatings (lead) for fuel tanks
- Wheel balancers (lead)
- Piezo-electric elements (lead)
- Lubricants and oils (lead)
- Glass (lead)
- Polymers (lead)
- Fluorescent tubes (mercury)

(3) Substance Ban

With regard to the draft directive of WEEE and the Restriction of Substance Ban (ROS) which the European Commission adopted on June 13, 2000, we support its objective such as the control of the abandonment of electronic and electrical equipment and the restriction of hazardous material. However, if these regulations concerning banning of substances and recycling rates contained in the draft directives are applied to all kinds of electronic and electrical equipments, the necessity for such regulation and technical possibility for the application should be examined in all products. For example, the GOJ thinks that regulations on the removal of lead from electronic and electrical equipment and components, and conversion of substance materials with a moratorium, are not achievable in the light of the level of current technology. For this reason, the current draft might not meet the requirement of WTO/TBT 2.2., which requires that technical regulations shall not be an unnecessary obstacle to international trade. The scope of the regulation, i.e. the range of electronic and electrical equipment and components that are under the regulation, should be clarified and made technically feasible. For this reason, the EU should hold thorough consultations with Japanese industries which supply electronic and electrical equipment and components in Europe.

(4) Waste Law in the Flandre region, Belgium

The Waste Law of the Flandre Region in Belgium, that took effect on July 1, 1999, regulates waste vehicles, tires, and white and brown goods. The provisions of

the Law stipulate the classification of computers and computer monitors as brown goods and other demanding regulations for electronic companies.

This law is considered as the duplication of the draft WEEE Directive which is under study by the European Commission. Especially as the law stipulates the "obligation to collect", that has been disputed and deleted from the third draft of the WEEE Directive, the enforcement of the law should be suspended until WEEE obtains a consensus from all Member States.

17. Information

(1) Personal Data Protection Directive (as stated in 18. (1) of Deregulation Requests of February 2000)

The EU implements measures which requires the EU Member States not to permit the transfer of personal data to countries and regions that do not have sufficient regulatory provision for the protection of personal data. The measures include the Personal Data Protection Directive that took into effect in October last year.

As a result, Japanese companies' subsidiaries operating in Europe might be regulated in transferring information such as recruitment and customer data to their head offices, and their business activities could thereby be hampered. Japanese industries have been introducing self-regulation for protecting personal data in accordance with the MITI guideline, JIS Q 15001, and Privacy Marks scheme and the GOJ is also working on legislation for protecting personal information. The GOJ requests the EU positively handled the issue to ensure the freedom of transfer of personal data between Japan and the EU.

(2) Copyright law in Germany

The copyright law allows private copying as an exception in Germany, and those making copies for personal use by using copying machines, scanner and tape recorders have to pay levies (Verguetung) to GEMA (Gesellschaft fuer Musikalische Ausfuehrungs).

Since January this year, 17 Marks have been charged to every CD-W/RW, and in July GEMA notified personal computer manufacturers that 41 Marks will be imposed on every personal computer they produce. It is unreasonable to levy a compensation on machines that are not made exclusively for copying or recording. The GOJ requests Germany to improve this system.

18. Issues concerning social security

Double payment of social security cost:

In European countries that have not concluded social security agreements with Japan, Japanese businessmen are required to pay for social security in accordance with national legislation. As they are also obliged to pay for social security in Japan, they are actually doubly paying social security. Many Japanese companies still claim that this imposes an extra burden on them and has been an obstacle to their investment to the EU. To solve the problem, the GOJ has already concluded social security agreements with Germany and United Kingdom. Negotiations are under way with France. Some other EU countries are also calling Japan for starting negotiations for a social security agreement. Japan would like to promote information exchanges with a view to opening negotiations with European countries, according to the order of priority, taking into account the state of people's exchanges between Japan and those countries.

(1) Uniform application of social security within the EU (as stated in 19. (2) of Deregulation Requests of February 2000)

When people emigrate from one Member State to another, they find the application for social security is different and the standards of taxation assessment are also different. Procedures are complicated and they have to bear additional costs. Therefore, the social security should be uniformed throughout the EU.

(2) Improvement of the social insurance system in Austria (as stated in 19. (3) of Deregulation Requests of February 2000)

The public medical insurance program is compulsory for employees in Austria. At the time of employment, the employees automatically join the social insurance program. Under the system, social insurance policy holders are entitled to free medical services at public medical institutions. When they want to use private medical institutions, however, they have to pay additional fees and buy a private medical insurance. Although we understand what Austria explained in its reply from the EU, the GOJ maintains its request that a system, allowing foreign residents to choose either public or private insurance program, be created as Japanese nationals in Austria tend to use private medical institutions, due to language problems with local physicians.

19. Foodstuff

(1) Lifting of the ban on scallop export

With regard to the lifting the ban on scallop export, the GOJ has completed the procedures that had been agreed between Japan and the EU and the GOJ notified it to the EU on June 28 this year. In September this year, the EU replied that it was considering the dispatch of an inspection team to Japan, but that the legal procedure might be delayed. The GOJ would like to resume the export of scallop as soon as possible, and would like to know the current situation and work schedules in the EU side.

(2) The easing of the criteria and its flexible implementation with regard to the structure of facilities and sanitation control for exporting aquaculture products including processed food to the EU

Exporters of aquaculture products from Japan to the EU are required to meet the criteria on structure of processing facilities and on sanitation (directive 91/493/EEC). Japan recognizes that the EU criteria is based on the philosophy of HACCP as well as that of the U.S. The EU criteria, however, requires to build a physical partition between areas of different work process to prevent crossing pollution while the U.S. criteria stipulates substantial prevention measures, including staggering work hours of different processes, are good enough. It is more flexible and rational than that of the EU.

To fulfill the EU criteria, Japanese producers of aquaculture products have to invest a large amount of money for constructing additional equipment in comparison with their investment for the products intended for the U.S.. Consequently, it makes the export of aquaculture products to the EU extremely difficult. For example, only 10 processing plants are approved in the EU, while more than 120 factories are in operation in the U.S. approval.

Since there is no case that Japanese aquaculture products exported to the U.S. caused sanitary problems, the EU criteria seems to be set beyond necessity with too much caution. The EU is requested to implement the regulations flexibly, referring to the U.S. flexible implementation.

20. Issues concerning taxation

General comments:

It is expected that the EU establishes middle- and long-term prospect for tax coordination. Although the harmonisation of prices is gradually in progress after the introduction of the Euro, manufacturers might face the pressure to lower their prices unless taxes, including VAT, are coordinated. In light of completing the single market in a real sense, steady efforts for completion of tax coordination, including unified interpretation of definition clauses of the Member States' taxation laws and the taxation bases, are crucial.

(1) VAT system (Tax system 1, as stated in Deregulation Requests of February 2000)

(a) Early realization of the definitive VAT system

The definitive VAT system, under which the place of the taxation on cross-border transactions within the EU would be changed from the country of destination to the country of origin, was originally to be introduced in 1997, but the statute is unlikely to be submitted soon. The EU is requested to explain the progress since the previous last reply. As companies conducting business within the EU are thus placed in an unsuitable situation, it is continuously requested that the EU set the specific target date for the introduction of the new VAT system.

(b) National VAT registration system and obligation to appoint VAT agents

The VAT registration systems are different from one EU country to another. All of the EU Member States, excluding the Netherlands, require the appointment of agents to handle VAT. However, so many required documents make the procedure inefficient and agents' fees are also a financial burden in business operation. The EU is requested to establish the common VAT registration system in the future, and that for the moment, the EU work for integrating the system in which the appointment of agents is not compulsory.

(2) Abolition of capital tax in three Benelux countries (Tax system 2, as stated in Deregulation Requests of February 2000)

Three Benelux Countries impose capital tax at the time of incorporation or increase of capital. Such tax, being an impediment to investment, should be abolished so as to establish the good environment for companies to invest. According to the previous reply from the EU, it conforms to the EU directive if the tax rate is

one percent or lower. Since business environment of the Benelux countries is excellent as business infrastructures are well established and English language is being used, the abolition of capital tax would further make the three countries more attractive for investment. It is, therefore, requested that capital tax be abolished.

(3) Unification of implementation of transfer pricing tax system. (Tax system 3, as stated in Deregulation Requests of February 2000)

While progress is being made toward the economic and monetary union with the introduction of the Euro, implementation of transfer pricing taxation differs from one Member State to another. In principle, it bases on the OECD rules, but there are considerable latitudes in implementation and Non-EU multinational enterprises have to undergo cumbersome procedure. Therefore, it is requested that the EU make unified rules that are fair and transparent, including the establishment of the Advanced Price Agreement (APA) system applicable to all EU Member States. In the previous reply, the EU said that the problem could be resolved only through bilateral talks. However, the original request for the establishment of the EU common rules is maintained.

(4) Tax on payment of interests on the overseas loans in Portugal

In Portugal, 5% gift tax (SGIT) is levied on the payment of dividends to the shareholders including those to parent companies. The Portuguese taxation authorities acknowledge it violates the EU Directive as there is a ruling of the European Court of Justice against it. There still remain claims from Japanese companies about this taxation. Information on actual schedule for abolishing the taxation is requested.

(5) Improvement of consolidated tax payment system

There is no EU directive nor other rule concerning consolidated tax payment system or combined tax payment system, and we learned that no discussion has so far been made for the introduction of these systems. As many companies are operating groups of affiliates and subsidiaries within the EU although their headquarters are outside the EU, it is considered necessary to establish the EU common rules and expects the European Commission to actively address the issue.

(a) Portugal

Under the current tax system, the definition of a group of companies is different between the two systems: consolidated tax payment system and consolidated accounting system. In case a parent company owns 60 percent of shares of

subsidiaries or more, it is subject to consolidated accounting. Eligible for the consolidated tax payment are those companies owned by a parent company that holds 90 percent or more. In case one company in a group does not meet the 90 percent rule, the group cannot enjoy the benefits of consolidated tax payment. It is expected that the definition of subsidiaries should be harmonized between these two systems and the 60 percent rule should be applied also to consolidated tax payment.

(b) Belgium

There are neither consolidated nor combined tax payment system in Belgium. United Kingdom has the combined tax system, and under the system, profit and loss of group companies can be combined even if the parent company is registered abroad. Belgium is requested to establish the system as soon as possible.

(c) France

There is no combined tax payment system in France although the consolidated tax payment is already available. France is requested to establish the combined tax payment system.

(6) Salaries of Japanese expatriates in Germany

There have been some cases in which salaries paid to Japanese expatriates from a parent company in Japan working at its subsidiary were regarded by German tax authorities as "hidden dividend to the parent company" for the part that exceeds the level of salaries for local employees and were not accepted as a loss in corporate tax calculation.

It is inappropriate that salaries to expatriates are not regarded as a loss just because they are higher than locally recruited employees. Germany is requested to explain in concrete terms the basis of its judgement.

(7) Tax system for excessive capital loss in France

In case a 100-percent subsidiary received loans from its parent company, the interest for the loan exceeding 1.5 times as much as its capital cannot be regarded as loss for calculating the tax payment in France. It is unrealistic to increase the capital to avoid such a taxation system for rather small companies. France is requested to either implement the system flexibly or thoroughly revise it.

Other issues

(1) Patent system in Italy

The patent agent in Italy is slow to confirm the patent and patent registration fee. Consequently, it takes a long time to confirm the status of patent and Japanese companies may lose a business chances utilizing their patents. According to the reply of the European Commission in April this year, a new system will be put into operation next year. The GOJ requests information regarding the development of the new system.

(2) EUDirective concerning protection of data base (Directive 96/9/EC)

The EU Directive concerning protection of data base adopted in 1996 covers only nationals of the EU Member States, residents in the EU area and companies established by laws of the EU Member States with offices within the EU area. However, as nowadays data base delivery services can easily be done by third countries without offices in the EU area, there is no need to have offices within the EU. Due to this directive, Japanese companies are forced to open offices within the EU area, bearing extra cost. The GOJ requests that the EU amend the directive so that data base of companies having no office in the EU can be protected as well.

(end)