

Japan's Priority Proposals For Regulatory Reform in EU

(Tentative Translation)



November 25, 2002 / Tokyo

Government of Japan

**Japan's Priority Proposals for Regulatory Reform in the EU
And Related Japanese Comments**

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The GOJ has reviewed the requests of October 2001, which covered 45 items in 16 areas, from the viewpoints of four areas: regulations concerning cross-sectoral issues, sectoral issues, the environment/food safety, and Japanese residents in the EU. As a result, this list of priority proposals finally covers 34 items in 12 areas, including 6 new items.

Newly added proposals are marked with a star (*).

Overview of the Japan-EU Regulatory Reform Dialogue

Japan and the European Union, as major players in the global economy together with the United States, have great responsibilities for the stability and development of the global economy. They have already been in cooperative relations not only in the bilateral context but also in global frameworks, such as the WTO and the United Nations. The Japan-EU Regulatory Reform Dialogue is a two-way process intended to reinforce the trade and investment relation between Japan and the EU through regulatory reform.

The Regulatory Reform Dialogue enters its ninth round of consultations and has achieved various improvements in this process thus far. Regarding Regulatory Reform on the EU side since the last session in Brussels in January this year, when our requests to the EU were highlighted, progress has been made such as the enhancement of transparency regarding merger inquiry procedures and import liberalization of scallops to the EU.

This dialogue was defined as a priority in the “Action Plan for Japan-EU Cooperation,” agreed upon between Japanese and EU leaders in December 2001. The Government of Japan (GOJ) welcomes the gradually increasing involvement of EU Member States in this dialogue, and look forward to seeing more positive participation by relevant EU Member States in the consultation.

This dialogue is a framework for governments of both sides to express constructive opinions from the viewpoints of vitalizing each other’s economy and improving business environment. In keeping abreast of actual business activities, it has become increasingly important to seek input from the private sectors that are actually subject to related regulations. We consider it important to respect, to the utmost degree, input from the private sectors, including businesses and consumers, not least taking the form of opinions from the EU-Japan Business Dialogue Roundtable (EUJBDRT).

During the last round of dialogues, not only were various expert meetings held in Tokyo and Brussels, but also, video-conferences at expert level were held in some fields. To streamline and reinforcement of the framework, efficient and constructive dialogues should be pursued and enhanced in the future.

The regulatory reform requests submitted to the EU by the GOJ are based on actual requests from companies. The GOJ would like to stress the following points, which need to be studied on a priority basis for further promotion of economic partnership between Japan and EU in trade and investment.

1. Corporate structure

Europe is the largest investment destination for Japan. The GOJ has received many requests from Japanese companies that do business there that profit/loss cancellation should be allowed for SE(Societas Europea) under the Statute for a European Company, and that the statute should be applied to non-listed companies. We hope for the adoption of the requests, since it would further facilitate business activities within Europe.

2. Employment

Rules and practices for employment in such areas as dismissal, transfer, working hours, and wages, etc. Flexibility in labor is a fundamental issue that affects efficiency of all business activities, and it has become a serious problem for companies from outside the Union. If efforts to solve these problems prove successful, benefits will be produced for not only companies operating in Europe but also the entire European economy. As such, we hope for European efforts to rectify rigidity in the European labor market in various ways.

3. Pre-regulation cooperation between Japan and the EU

Economic cooperation between Japan and the EU has proceeded to a considerable degree, and both sides have taken up various issues during the Regulatory Reform Dialogue. To further advance and strengthen the current cooperative relations, Japan and the EU should implement closer exchanges of views before regulations are actually imposed, as already done in the fields of telecommunications and automobiles sectors.

Although we will not go into the details in the Regulatory Reform Dialogue, we received many requests from Japanese companies in Europe for further progress in dialogues for harmonization of taxes in Europe (EU) .

All items shown in the following GOJ list of priority regulatory reform requests represent difficulties faced by Japanese and other countries' business-people, and the GOJ would like to ask the EU to make efforts to tackle them. In particular, regarding

cases in which we suggest specific solution plans, we request the EU's study of these specific plans.

4. Improvement of Work and Residence permits / visas

The first step for improvement is to secure environment for Japanese business-people and their family members in the EU to start new life with sure future prospects. Currently, long period required to obtain or renew work permits and visas makes it difficult for Japanese companies in the Member States on the EU to allocate their employees in smooth and systematic manner. Also, in a several Member States, handling of permit and visa application varies depending on the personnel who handles it; issuance standards are unclear; and procedures are extremely complicated. In some cases, the required period to receive residence permits are so long that Japanese employees are inconvenienced in the conduct of their ensuing life.

For these reasons, problems of Work and Residence permits / visas are matters of great concern for corporate administrators, employees and their family members. In fact, these problems constitute their most common requests. We do positively evaluate the improvements and advances that have been made on the part of the EU in this field, but we would like to seek further improvements in the time required for issuance of Work and Residence permits, complexity of documents and other matters mentioned below.

A. Cross-sectoral Issues

1. Commercial laws and competition policy

(1) Early adoption of the draft directive concerning offset of profits and losses across multiple EU Member States

In its communication of October 2001 (IP/01/1468), the European Commission disclosed that it will withdraw the draft directive issued in 1990, allowing offsetting of losses incurred by a branch and a subsidiary, in Member States, with profits recorded by other subsidiaries in other Member States, and that it will start consultations with Member States on new measures to aggregate profits and losses in the region in 2002.

The GOJ understands that the profit/loss cancellation is considered to be important from the viewpoint of reinforcing the inner market of the EU. However, it is also important for enterprises of third countries, including Japan, operating business in the EU. Accordingly, the GOJ requests that the Commission and EU Member States decide on the profit/loss aggregation as soon as possible.

(2) Improvement of the Statute for a European Company

The GOJ understands that the Statute for a European Company – a statute that enables 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 Europea) in one Member State – will take effect in 2004. Although the GOJ appreciates the long-term efforts of the Commission and others concerned, it has received many opinions that the statute in the present form will not directly contribute to effective reorganization of enterprises. The GOJ requests continued study toward the adoption of profit/loss cancellation across EU Member States and application of this rule and the directive to non-public companies, which account for a majority of Japanese enterprises operating in Europe.

(3) Non-public companies in Europe

In September 2001, the Commission established a high-level corporate law specialist group. While raising awareness of the need to enact the European Private Company Law, it conducted consultations, in April 2002, on the possibility of renovating the European company law, and heard opinions from persons from wide

areas of society.

Considering that the European Private Company Law will benefit not only small- and medium-sized enterprises engaging in operations at the European level but also inner-group enterprises and joint ventures, which don't require public offering of their stocks, the GOJ requests that the Law be enforced by October 2004, when the Statute for a European Company is scheduled to take effect. As to the content of the European Private Company Law, the GOJ requests that attention be paid to the following points:

- It should be a system simple and flexible for shareholders (company members), based on the freedom of contract. Shareholders should be granted maximum freedom regarding business organization and corporate management.
- Establishment of a private company by natural persons and juridical persons should be allowed.
- Establishment by a single shareholder should be permitted.
- No restriction should be imposed on promoters of the establishment, nationality of the shareholders and the countries in which they reside.
- Regarding the verification of the "European" level, conducting business operations or having business plans in multiple EU Member States only should be regarded as sufficient, and participation of partners residing in multiple EU Member States should not be made a condition for the verification.
- If a European private company is to be set up through mergers or conversion of existing enterprises in a Member State, participation by both a private company and a non-listed public company should be approved.
- Regarding the location of a European private company, the established state principle should be applied, to enhance mobility of business.
- As for participation of employees in corporate management, no special procedures for European private companies should be established. Namely, a system similar to one applied to non-public enterprises in the Member State of the EU, where the said European private company is operating, should be applied.
- If unification of the basis for corporate income tax imposition is realized, the arrangement should be applied first to European companies and European private companies.
- European private companies should be allowed, as an option, to implement settlement of accounts based on the international accounting standards, not the accounting standards of the EU Member State concerned.

2. Employment

[General Comment]

Employment regulations and labour practices in Europe impose, in general, a heavier burden on employers compared with those in Japan in many respects concerning the dismissal, transfer of employees, working hours and wages. Therefore, many Japanese companies operating in Europe point out that they are faced with a number of difficulties and that these regulations and practices may make the EU a less attractive place for Japanese companies to do business. According to the EU reply in April 2002, the Commission does not subscribe to the view that “employment regulations and labour practices in Europe are, in general, much stricter than in Japan”. Considering that many Japanese enterprises operating in Europe have actually pointed out the rigorousness of the systems, the GOJ requests that the existing difficulties be rectified.

[Country-specific issues]

Spanish employment contract system and Compensation for dismissal

Under the present Spanish laws, employment contracts can be divided into temporary labour contracts (to cope with the fluctuation in production, for the maximum period of 6 months within the 12-month period after the cause of the demand for labor occurs; subject to an amendment of labour agreement, however, the maximum period may be extended up to 12 months, within the 18-month period; repeated conclusion of such kind of contracts is legally possible), and open-ended employment contracts.

(1) Regarding the temporary labour contracts, in reality, there is a virtual time limit of six months in principle (a maximum of 12 months). If a Japanese company enforces a personnel cut in the middle of the contract period to deal with a decline in production, the company is subject to compensation for mid-term dismissal. Unless this state is improved, it is difficult for Japanese companies to employ temporary labour contracts based local workers according to their business needs.

The GOJ reiterates its request for an amendment of the system so that companies can conclude contracts with time period of their choice without restrictions.

(2) The GOJ understands that the Spanish Government is striving to promote open-ended employment contracts to supply stabilized employment, and that reform is underway to increase the number of employees of unlimited employment terms and reduce the amount of redundancy pay. However, the application scope of the new lower redundancy pay (33 days' pay per year of service), mentioned in the Spanish

reply of April 2002, is quite limited, and this provision is applied only to employees contracts that was concluded after the reform was implemented. Therefore, in many cases, enterprises have to pay large amounts as redundancy pay, as seen in cases of dismissal of aged workers.

The GOJ requests expansion of coverage of lower redundancy pay under the new system, and reiterates its request for further reduction of dismissal compensation. These revisions are also essential to promote open-ended employment contracts.

3. Trade and customs

(1) Appropriate application of anti-dumping (AD) rules

The GOJ notes that there exist cases where anti-dumping measures were arbitrarily used in the EU. For example, in the case of components of television cameras, the European Commission initiated an anti-dumping investigation by its own initiative without sufficient evidence, and in the case of personal fax machines, the European Commission attempted to expand the definition of the product during the re-examination. Anti-dumping is an exception to the principles of the WTO, such as the non-discriminatory principle and the principle that no duty should exceed the bound rate of a duty, and thus should not be abused for protectionist purposes. The GOJ therefore requests that any future investigation be conducted in a fair and objective manner.

In some recent cases of television camera systems, duties were imposed on imports of items determined to be exempted from the anti-dumping duty, for the period before the date of determination in some cases or before the date of the receipt of the application for exemption in other cases. Such implementation makes it difficult for importers to predict whether duties will be imposed or not and how much duties will be required, and in fact has caused troubles between some Member States and importers. The GOJ requests that duties not be imposed on items determined to be exempted from the anti-dumping duty.

(2) Change in tariff classification of digital video cameras (camcorders) and retroactive duty imposition

The EU tariff classification distinguishes between video cameras capable of recording TV programmes, and those incapable. Although these are almost analogous products, the EU has set different tariff rates: 14% and 4.9%, respectively.

Of the digital video cameras which are manufactured by Japanese electronic equipment makers and exported to the EU, the models whose functions for recording TV programmes (DV-IN) are inactivated by software had been declared as products corresponding to the tariff rate of 4.9%, in accordance with the EU's tariff classification.

The EU announced on the Official Journal of the European Communities on 6 July 2001 that camcorders in which the video interface can be subsequently activated as video input are subject to 14% tariff.

In this connection, it has become possible that digital video cameras manufactured by Japanese electronic equipment manufacturers will be interpreted as models subject to 14% tariff, although their DV-IN functions are controlled through software at the time of import customs clearance. In fact, some Member States of the EU stated that the past import declaration was erroneous, and that they would collect unpaid tariffs retroactively for the past three years.

It is quite usual for electronic equipment makers to control the functions of digital products, essential for the spread of IT, through software, and they take measures against tampering with their products. The GOJ requests a fair and consistent interpretation of tariff classification so that Japanese makers are not put at a disadvantage. The GOJ also requests the withdrawal of the claim by some EU Member States for retroactive collection of tariffs.

4. Information and intellectual property

(1) Data Protection Directive

The EU has implemented government-lead measures such as the Data Protection Directive, which requires the EU Member States to prevent the transfer of personal data to countries and regions that do not have sufficient regulatory provision for the protection of personal data.

In connection with the implementation of the Directive, the GOJ requested in October 2001 that the freedom of transfer of personal data between Japan and the EU be secured, recognising the appropriateness of the personal data protection in Japanese law. In its reply in April 2002, the European Commission states that, once the law is adopted, it will be examined to determine whether it can be recognised as adequate by the European Commission. The European Commission also mentions that the Commission services remain at the disposal of Japanese authorities to further explain how the safeguards can be put into place by Japanese companies.

Efforts by the industry such as the formulation of an alternative for the “Standard Contractual Clauses” by the Japan Business Council in Europe (JBCE) are effective in increasing the efficiency, including predictability, of operation related to the transfer of personal data by private enterprises, as provisional measures before the appropriateness of Japanese law is recognised.

Accordingly, the GOJ requests that the European Commission recognise the alternative made by the JBCE as a model for the Standard Contractual Clauses or modify the contents of the Clauses based on its alternative plan, in line with business practices of business.

(2) Membership in the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

The GOJ requests that the EC become a member of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks as soon as possible.

(3) Establishment of the Community Patent

The GOJ welcomes the efforts for the establishment of the Community Patent and requests that the Community Patent be established as soon as possible.

B.Sectoral Issues

5. Legal services

[General comments]

In response to EU requests made during a series of Japan-EU Regulatory Reform Dialogue, the GOJ has taken all possible measures, including the amendment of the law concerning foreign lawyers and the establishment of the Office for Promotion of Justice System Reform. On the other hand, it is quite regrettable that few improvements have been made on the EU side in response to Japan's requests. The situation cannot be justified from a reciprocal point of view in comparison to the status foreign lawyers enjoy under Japan's law concerning foreign lawyers.

In this connection, expecting a strong initiative taken by the European Commission, as the representative of the EU, the GOJ requests that the laws concerned be revised so that Japanese lawyers will be permitted to provide legal services easily and extensively in the EU Member States.

(1) Legal services pertaining to laws of home country foreign lawyers in France

The GOJ has been requesting the EU side that France establish a system that would allow foreign lawyers to engage in 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. The GOJ maintains this request.

According to a reply from France in August 2002, it is currently studying the possibility of changes in the French system for foreign, or non-EU/EEA, legal consultants. The GOJ requests France to provide the information on the current status of the study. The GOJ also requests that France make a legal system open to foreign lawyers through ongoing review..

(2) Legal services pertaining to laws of third countries by foreign lawyers in Germany

According to a reply from Germany in April 2002, Germany takes a position that it should not enter bilateral negotiations with non-EU countries outside the GATS 2000 Round. However, the EU's sectoral commitments in GATS do not preclude each Member State from further liberalising its national legal system beyond the

commitments.

In fact, the GOJ would also like to point out that it has been engaged in discussions on the issue of legal services with the EU, including expert level video conference with the European Commission and the French Government in March 2002 upon request from the French Government.

Germany's reply fails to clarify the rationale for not allowing foreign lawyers to engage in legal services pertaining to third-country laws, thereby failing to address Japan's request for deregulation with this regard. Therefore, the GOJ continues to request the improvement of the system.

6. Telecommunications

(1) Transparency of procedures related to new directives (Telecom Package)

Under the new directives, the Member States of the EU are to enforce necessary amendments of their domestic laws by July 2003. We have learned, however, that some Member States will not invite public comments in the course of amendment of related domestic laws.

Partly because there are matters which a Member State may regulate at its discretion (e.g. Article 8-1 and Article 13 of the Universal Service Directive) under the new directives, and for the purpose of securing transparency of legislation procedures which are completely harmonised among the Member States, the GOJ requests that, in the course of domestic law amendment discussions, opportunities for submission of opinions be secured through the invitation of public comments.

(2) Interconnection

(a) Article 9-2 of the Access Directive stipulates that a reference offer (RO) shall give a description of the offerings broken down into components according to market needs. Under the Regulation on unbundled access to the local loop and this Directive, on the other hand, there are no provisions that the period necessary for the start of interconnection shall be included in the RO. The GOJ believes that the period required before the start of interconnection represents important needs in business for new entrants, because if the said period is stated in the RO, it will become clear for the new entrants by what time interconnection will be realised, such that it will become easier for them to prepare business plans on the occasion of new entry. For this reason, the GOJ considers that the statement of the said period on the RO must be made obligatory as a factor “according to market needs.”

The GOJ therefore requests that the European Commission make it clear as its interpretation of the provision that the standard period from the application for interconnection to the start of interconnections is included in market needs and make sure that the EU Member States will take necessary measures.

It is added that the standard interconnection period is a matter to be provided for in the RO, considering negotiation potential of operators with significant market power (SMP) and new entrants. It is not a matter of purely commercial nature that should be left to post-occurrence dispute settlement procedures.

(b) Article 9-2 of the Access Directive stipulates that, where an operator has obligations of non-discrimination, national regulatory authorities may require that operator to publish a reference offer. The GOJ would like to learn if there are any Member State that does not obligate mobile operators with SMP to publish RO. If there are such States, the GOJ requests, from the viewpoint of securing transparency, that the mobile operators with SMP be obligated to publish RO in the States.

In this connection, the GOJ would like to point out that, according to WTO/GATS reference paper 2.4, committed to by the EU, it is ensured that major suppliers, including the above-mentioned mobile operators, will make publicly available either its interconnection agreements or a reference interconnection offer.

(3) Licensing fees

(a) EU Member States are to calculate licensing fees, based on Article 12 (Administrative Charge) of the Authorisation Directive. In addition, movements for improvement are seen in Germany and France. Accordingly, major differences in licensing fees among Member States are likely to disappear hereafter. From the viewpoint of securing access, however, the GOJ requests that the European Commission publish information on current licensing fees in each EU Member State.

(b) The GOJ is aware that an order on licensing fees in telecommunications came into effect in Germany in September 2002. The GOJ requests that the German Government sequentially provide information with regard to its basic ideas on the ongoing reform of the licensing fees system and the prospect of the reform. The GOJ also requests that the French Government provide information without delay about the results of work to further ensure transparency (accounting audit by the ART).

(4) Simplification of the compatibility assessment procedure regarding automotive audio-visual equipment with vehicle telephone functions attached

Automotive AV equipment with vehicle telephone functions (including car navigation equipment) is required, under Article 3 (Essential Requirements) of the R&TTE Directive (1999/5/EC), to satisfy both safety requirements contained in the Low Voltage Directive (73/23/EEC) and the protection requirements included in the EMC Directive (89/336/EEC).

Of the aforementioned requirements, safety requirements regarding automotive AV equipment with vehicle telephone functions are required to comply with EN60950 standards, based on the Low Voltage Directive quoted in Paragraph 1(a), Article 3 of the R&TTE Directive, but the GOJ considers application of the said standards to be problematic concerning the following points.

First, the Low Voltage Directive originally provides for voltage limit () of object equipment. Although voltage of automotive AV equipment with vehicle telephone functions (12V or 24V) is out of the aforementioned voltage limit, Paragraph 1(a), Article 3 of the R&TTE Directive provides for “with no voltage limit applying” so that the said equipment is included in the range of the targeted objects.

Secondly, “EN60950” standards, which are used for the safety requirements of the Low Voltage Directive, quoted in Paragraph 1(a), Article 3 of the R&TTE Directive, are targeted at information technology equipment, including such equipment in general households and business-use equipment (e.g. copying machines, data processing equipment, personal computers, telephone sets, etc.), and not at AV equipment.

For these reasons, it is not in accord with the reality to apply EN60950 standards as they are, as standards for automotive AV equipment with vehicle telephone functions. Because many testing items are imposed, much labor and cost are currently required. Therefore, the GOJ requests that the European Commission formulate compliance standards specialised for automotive AV equipment with vehicle telephone functions attached, with regard to the safety requirements related to the Low Voltage Directive required under the R&TTE Directive, and publish the list in the EU Official Journal, or alternatively prepare a guideline regarding safety requirements for the equipment.

Alternating current between 50V and 1,000V, and direct current between 75 V and 1,500 V.

7. Financial services

[General Comment]

Japan continues to request that the EU introduce a system that would make activities, products, licenses and others approved by one EU Member State, be automatically approved in the other Member States, with no additional procedures, or only with reporting, because the introduction of such a system would be effective from the viewpoint of creating a single, attractive market, seen from external nations. Regarding documents to be submitted to governing authorities in EU Member States, the GOJ requests that each Member State promptly prepare forms in multiple languages for foreigners, including Japanese, because such an arrangement is considered to be a fast effective step to improve the business environment within Europe. Because the GOJ believes it too troublesome to file reports different in content from country to country, and considers that this arrangement requires improvement from the viewpoint of efficiency, it asks to the Commission to harmonize contents of report items and its style. The GOJ hopes that EU efforts will bring progress to unify the financial services market. Although these matters may not be settled in a short period of time, the GOJ hopes for continual efforts by the Commission.

[Country - Specific Issues]

(a) France unequally treats banks depending on the location of their head offices, as shown below. The GOJ requests that France treat both EU and non-EU banks in the same manner.

- (i) Non-EU banks are required to submit applications and to obtain permission when opening branches, while branches of EU banks are required only to submit reports in advance.
- (ii) The branches of non-EU banks are required to prescribe fictitious capital, which branches of EU-banks are not.
- (iii) The branches of non-EU banks are required to subscribe to deposit insurance, while branches of EU-banks are not.

Moreover, 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 a system. Therefore, the GOJ continues to request that France improve this situation.

The previous reply from France can be interpreted to mean that, because of differences in supervisory and legal systems, it cannot be helped even if Japanese banks

are treated in a discriminatory manner. Because the grounds and reasons for each differential treatment are not explained, the GOJ continues to its original request.

8. Automobile

(1) Japan-EU co-operation in realising international harmonization of standards for pedestrian safety

Because regulations for the safety of pedestrians have effects on the basic chassis structure for automobiles, the international harmonization of the regulations is highly necessary. In this regard, the GOJ continues to request the active co-operation by the EU so that the Global Technical Regulations based on the 1998 Global Agreement can be formulated at the UN/ECE/WP29 as soon as possible, reflecting the results of the study by the International Harmonization Research Project (IHRA).

(2) Japan-EU co-operation in realising international harmonisation of standards regarding the field of driving view

At the 124th UN/ECE/WP29 in June 2001, Japan provided information on the study results, upon which Japan made the draft standards regarding the field of driving view. Japan also submitted information and proposals regarding the content of the draft standards at expert level meetings of the UN/ECE/WP29 after May 2001. Furthermore, at an expert level meeting in October 2002, Japan presented latest information, which was requested in the EU priority proposals, as well as its proposal to revise the ECE Regulation No. 46 and make a new regulation based on the draft standards proposed by Japan so that its harmonisation with the EC Directive can be realised. Through these activities, Japan has been actively working for international harmonisation of standards in this field.

The GOJ made preparations based on its position that discussions at the UN/ECE/WP29 shall be made on harmonisation with the EC directive based on the above mentioned proposal by Japan to revise the ECE Regulation No.46 and make a new regulation.

At the expert level meeting in October 2002, however, a priority was given to discussions on a proposal by the EU to revise the ECE Regulation No.46 and make a new regulation contents of which are the same as the EC directive that is under discussion for amendment, as a result of maintenance by the EU Member States to do so. Consequently, discussions on Japanese proposal were deferred.

In this regard, the GOJ requests that the EU take appropriate actions at the world forum designed to achieve international harmonization of standards. More specifically,

the GOJ requests that the EU refrain from putting a priority on aligning the ECE Regulations to the EC directive and positively co-operate on deliberations of Japanese proposal regarding amendment of regulations.

C. Issues Concerning Environment and Food Safety

9.Environment

[General Comment]

The GOJ appreciates the positive attitude of the EU in tackling environmental issues, which presents a model for other countries. Japan attaches the same importance to the recycling issue as the EU. However, regulations related to this matter should not impose an excessive burden on enterprises, prevent sound economic activities, or create trade barriers. To prevent this, the GOJ requests that sufficient information be provided and that opinions of Japanese industries, including those on enforceability of regulations, be fully reflected.

(1) The Directive on Battery

Research is progressing on alternative products for nickel-cadmium batteries, and in the course of the research, it has become clear that in some areas no other products can substitute Ni-Cd batteries. Particularly, there are no batteries that can substitute Ni-Cd batteries in areas where instantaneous, high electric current is required, and also where minute current is necessary for a long period of time. Accordingly, the GOJ continues to request that Ni-Cd batteries be excluded from the restriction of the aforementioned Directive.

(2) Requests regarding the Directive of waste electric and electronic equipment (WEEE), the Directive of the restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS) and the Directive of end of life vehicle (ELV)

(a) Regarding the Directives on WEEE and ROHS drafts, the GOJ understands that discussion within the European Parliament is progressing and work for their adoption is taking place at present. As Japanese industries concerned have strong interest in the matter, the GOJ requests that sufficient information be continually supplied to Japan in the future process of national legislation by the Member States, after the directives have been put into effect.

(b) Concerning the European regulation related to the use of hazardous substances in electrical equipment, including ROHS and ELV, the GOJ requests that realistic standards be established for the method of analysing hazardous substances, as well as the content volume. (For example, threshold values should be set for cases in which use

is made for purposes other than those specified in the “annex” designed to provide for exemptions of application of ROHS Article 4, since the standard setting of “contained volume zero” cannot be scientifically verified.) In setting the threshold values, there should be a balance between safety and economic considerations, in view of the fact that costs required for the evaluation and measurement of content are reflected in prices of products.

(3) Requests regarding REACH (Registration, Evaluation and Authorisation of Chemicals) System in the White Paper on Strategy for a future Chemicals Policy

The GOJ understands that a draft directive is under preparation based on the White Paper on Strategy for a future Chemicals Policy adopted and announced by the European Commission in February 2001. The White Paper proposes making industrial responsibility for safety (including downstream users), and introducing an authorisation system of substances with certain hazardous that give rise to very high concern. The new directive, therefore, may substantially affect not only Japanese chemical makers that export their product to the EU market and Japanese importers, but also Japanese downstream users. The GOJ intends to express its view in detail when the specific content of the draft directive becomes clear. In the meantime, its views on the major points based on the available information are as follows:

(a) Requests regarding registration of chemical products: Test requirements for existing substances, including those for low-exposure application should be relaxed; Cost sharing should be fair; Confidential information should be secured; and The registration period should be flexible.

(b) Authorisation for hazard-suspected substances, such as Persistent Organic Pollutants (POPs) and Carcinogenic, Mutagenic, Toxic to Reproduction (CMR) should be reasonable. (For example, the decision on authorisation should be based on risks. Also “the precautionary principle” expressed in the White Paper should not be excessively applied beyond the range recognised under Principle 15 of the Rio Declaration on Environment and Development.

(c) Shaped articles should be exempt from the application of the REACH system.

(d) Exemption of low-risk items from of the REACH system should be made clear.

D. Regulations on Japanese residents in Member States of the EU

10. Driving licences

(1) EC Directives on driving licences

Based on the Council Directive on Driving Licences (91/439/EEC), which was adopted in 1991, Member States of the EU enacted and amended their domestic laws. As a result, holders of Japanese driving licences are now required to submit their Japanese licences to the authorities concerned when applying for local driving licences in those countries.

The treatment of the submitted driving licences differs depending on the State. However, in most cases, those licences are either discarded or kept temporarily by the local authorities. Such measures prevent the Japanese residents from driving in Japan when they return home temporarily and cause inconvenience. In some cases, the authorities claim that they have been either destroyed or misplaced, and the submitted Japanese licences are not returned to the submitters, even if the submitters return the local licences before returning to Japan after having completed their terms in the relevant States.

Therefore, the GOJ continues to request that driving licences issued by the Japanese authority be returned immediately at the time of issuing a local licence. Such requests have been submitted by Japanese residents in Spain, Finland, France, the UK, Luxembourg, Portugal, Ireland, Denmark and Italy.

(a) There are no rules at the EU level about the handling of third-country driving licences which have been submitted when applying for local driving licences in the EU Member States, and therefore the matter is subject to the authority of each Member State. Nevertheless, the GOJ understands that the European Commission advised the Member States to apply the rules set forth in the directive for exchanges between EU licenses, in an analogous way. The GOJ requests that the European Commission clarify its advice on this issue has no legal binding power.

(b) Given the fact that the immediate return of the Japanese licences to their holders at the time of issuing the local licences has already been implemented in Germany, the GOJ requests that similar steps also be taken in other Member States of the EU.

(Note) In Germany, it was decided in September 2001 that Japanese licence holders may obtain the local licences without submitting their Japanese licences, as long as they can

report the facts and reasons behind their frequent returns to Japan on business. This decision has already been enforced, and many Japanese residents in Germany appreciate the said improvement.

(c) If a Member State of the EU judges that it is difficult to implement immediate return of Japanese driving licences as the timing of issuance of its driving licenses in a near future, the GOJ requests as a temporary measure, the country to introduce a simplified exchange system between licences issued in Japan and Member States of the EU (a system in which a Member State returns the Japanese licences it has received at the timing of issuing its driving licenses and kept since then to their holders immediately and temporarily in exchange for their local licences) to address the need of Japanese residents who want their Japanese licences temporarily returned.

(d) The reply from Spain in April 2002 states that there is an Agreement on mutual recognition of driving licences issued in Japan and Spain. The GOJ points out that the arrangements are for mutual exemption of testing on the occasion of exchange of licenses and not designed to allow driving in Japan with Spanish driving licences.

(e) The reply from Belgium in April 2002 it was states that, when on holiday in Japan, Japanese nationals can use an international driving license, which can be obtained at the commune. As pointed out in Japan's supplementary requests to the EU in 2001, it is impossible to drive in Japan with an international driving licence issued by Belgium.

(f) In the EU reply of April 2002, no replies from France, Denmark, Portugal and Greece are included. The GOJ would like to know the views of these governments.

(2) Issuance of a local licence for Japanese residents in Italy

Although Italy had once been arguing that a bilateral agreement must be concluded to continue to issue local licences in exchange for a Japanese driving licence after the amendment of domestic law, it agreed with Japan in subsequent negotiations that the problem could be solved by the exchange of notes which do not constitute an international commitment. In July 2001, however, the Italian Government suspended the issuance of local licences for Japanese licence holders before the two governments can reach an agreement.

Currently, the GOJ and the Italian Government are negotiating for early exchange

of notes which do not constitute an international commitment. The GOJ hopes that the said exchange to be realised at the earliest day possible.

11. Work and Residence Permits

[General comments]

It takes an extremely long time to obtain or renew work permits, visas and residence permits of Member States of the EU, and this hinders smooth and timely hiring and transfer of employees at Japanese companies in EU Member States. Also, in some Member States, administrators apply different rules in the issuance of visas and permits, or administrative procedures including the criteria for the issuance of visas and permits are not clear or transparent. In other cases, the procedures are too complicated. (Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Spain and Portugal.) Therefore, the GOJ requests the time for the procedure be shortened and simplified and the term of validity of permits be extended.

Furthermore, the GOJ requests for close exchange of information on the new Directives related to the Schengen Convention, which the EU is currently discussing, considering its potentially significant impacts on stays and travel of visitors from Japan.

(1) Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities

(a) The GOJ understands that the European Commission submitted to the Council of the European Union in July 2001 a proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities. The proposed Directive aims to simplify and harmonise application procedures for work and residence permits throughout the EU. The GOJ wishes that it will reduce the administrative paperwork for Japanese nationals who wish to work in the EU.

(b) According to the draft Directive, the time limit for individual decisions on an application for a residence permit is 180 days for a general case and 45 days for an intra-corporate transferee. According to the replies made by the EU side in April 2002, the time limits proposed in the Directive are maximum periods. Because 180 days are longer than the actual period for processing the applications by most of the Member States, the GOJ requests that the time limit be shortened, from the viewpoint of simplifying the procedures.

(c) The GOJ requests that the details of “a certificate or adequate proof of good life and behavior” and “documents proving the skills which are necessary for the performance

of the envisaged activities” be clarified in the draft Directive.

(d) It is expected that the employees of Japanese companies transferred to EU Member States will fill in applications as “intra-corporate transferees” in many cases. In order to avoid confusion at the time of application, the GOJ requests clarification of the criteria for the status.

(2) Proposal for a Council Directive related to the freedom to travel of third-country nationals in the territory

The Commission proposed a draft Directive related to the freedom to travel of third-country nationals in the territory in July 2001. The GOJ has been requesting that the draft Directive be carefully studied, believing that, if the proposal is implemented as it is drafted, it will have a significant impact on the trips to Europe by Japanese nationals, which have been made under the reciprocal visa waiving arrangements between Japan and European countries. The GOJ understands that the discussions are currently underway based on the draft Directive proposed by Portugal in February 2000 instead of the Commission proposal, and submits the following requests in this regard.

(a) As Japan has been requesting, the new Directive should not undermine the reciprocal visa waiving arrangements between Japan and the Member States of the Schengen Convention, which had been made before the Schengen Convention entered into force.

(b) The GOJ appreciates that the basic idea of the Portuguese proposal is to give favourable treatment to third-country nationals exempt from visa requirement compared to third-country nationals subject to visa requirement. The GOJ requests that, based on this idea, the procedures for extending the period for free movement of third-country nationals exempt from visa requirement be as simple as possible.

(c) The GOJ has a great interest in the discussions on this issue in the EU and, therefore, requests for close exchange of views and timely provision of information by the European side.

(3) Issues of residence and work permits and visas in Italy

(a) The number of work permits Italy issues for a year is quite small both for independent business operators including members of a board (*Autonomo*) and for dependent workers including managers (*Subordinato*). Furthermore, the announcement of the number of work permits tends to be substantially delayed every year. Such situations make it extremely difficult to newly obtain work permits, and work against the smooth change of representatives of Japanese firms. The GOJ requests for an increase of the number of work permits and for the early announcement of the number in the course of the year. For year 2002, an order which allows additional issuance of 2,000 work permits for *Autonomo* and special issuance of 500 work permits for *Subordinato* was signed in October. The GOJ requests that work permits be issued without delay.

(b) Because no extension or renewal is allowed for the two-year work permit issued as a temporary measure for dependent workers, the holders of such permit must apply and obtain a new permit when the old one expires. In addition, since they are required to obtain a new entry visa for stay and work in Italy, those who wish to remain in the country after the expiration of the work permit are forced to return home temporarily. This is creating difficulties in business activities. Because the number of people for whom the two-year work permits were issued was 53, or 25% of the whole dependent workers, the effects are significant. The GOJ understands that necessary procedures for the renewal of work permits can be followed in the issuing country. The GOJ requests the Italian government to extend the term of the work permits and make possible the renewal of work permits in Italy.

(c) The issuance of permits to stay in Italy often takes a long period of time, or three months on average. The GOJ requests that the period be shortened. While the GOJ appreciates the fact that special offices designated to accept applications for the residence permit from foreign nationals, including Japanese, were set up in Milan and Turin, it continues to request Italy to urgently take the same measures in other areas where many Japanese nationals live.

(d) Documents required for the application of work visas differ depending the person or office in charge. Such a situation seems to have been created because changes in operations, including rules, are not thoroughly implemented at local offices. Therefore,

the GOJ again requests to make clear the required documents by issuing booklets or other means and to keep officers in charge well-informed about them.

(e) Spouses of Japanese businesspeople in Italy face difficulties when they apply for a residence permit separately, because they must prepare numerous documents and then wait for a long period of time before receiving a permit. Italy is again requested to improve such time-consuming and complicated procedures.

(f) Resident registration is required to purchase an automobile in Italy. However, Japanese businesspeople often have to wait for a long period of time to first obtain a residence permit, a prerequisite for applying for the resident registration. Since Italy did not refer to this subject in their reply in August 2001, the GOJ once again requests Italy to improve the procedure, among others, by making the resident registration unnecessary to purchase an automobile.

(g) The place of birth seems to be treated as important in Italy, and an Italian translation of a copy of the applicant's family register has to be submitted each time to obtain official certificates, such as work visas. Italy is requested to simplify these procedures. In Japan, a copy of the family register is required in applying for a passport, and passports are issued only after having verified the identification of the applicants in the family register. Therefore, the permanent residence indicated in the Japanese passport is trustworthy, and the Government of Italy can check the place of birth by referring to the passport. Italy did not refer to this point in their reply in August 2001 and the GOJ requests Italy to express their views.

(h) There was no reply from Italy in the EU replies in April 2002. The GOJ requests that Italy give its replies as soon as possible.

(4) Work visas and related issues in Spain

(a) According to the reply from Spain in April 2002, the judicial record must be issued by the authorities of the country of origin *or* the country(-ies) where the person has lived during the last five years when applying for a residence visa. However, there are cases in which applicants are required to submit *both* a judicial record issued by the country of origin *and* those by all countries where applicants have lived during the last

five years. The GOJ requests that Spanish Government to keep officers in charge well-informed of the rules. In consideration of the fact that the GOJ does not require the applicants of work visas to submit a non-criminal certificate issued by their country of past residence, the GOJ requests Spain to limit the requirement to a certificate issued by Japan or by the country of current residence, instead of all countries of residence during the last five years, to alleviate the burden on the applicants.

(b) Visa issuance in Spain is, by and large, getting less time-consuming than it used to be, and the GOJ appreciates the efforts made by the Spanish authorities. On the other hand, it still takes more than half a year in some cases and therefore it is difficult to generally predict how long it will take to obtain visas. From the viewpoint of ensuring smooth business operations, the GOJ requests that Spanish Government further shorten the processing period and that it set and announce the standard processing period.

(c) There are cases where it takes more than half a year to obtain residence permits. Such situation prevent the residents from exchanging Japanese driving licenses to Spanish licenses, which must be done within six months following resident registration. The GOJ, therefore, requests that residence permits be issued without delay.

(d) There are cases where additional documents are required when applying for work permits. The GOJ require that necessary documents and procedures be clarified.

(5) Foreign business identity card (*la carte d'identité de commerçant étranger*) in France

(a) Non-EU nationals are required to obtain foreign business identity cards when they assume a position on the board of directors of a French company. However, the documents necessary for the application are numerous. The GOJ requests that application documents for foreign business identity cards be simplified.

(b) It takes three to four months to obtain foreign business identity cards in regular cases and as many as seven months in some reported cases. On the other hand, foreign business identity cards have to be renewed every year when renewing residence permits which is valid for only one year. According to the reply from France in April 2002, the receipt issued when the renewal application for work and residence permit is

submitted allows the person concerned to continue to reside and work in France. However, business activities as a representative are not allowed before an official receipt of a foreign business identity card, which makes a obstacle to business operation. Therefore, the GOJ requests that the situation be improved by simplifying the procedures for the renewal of foreign business identity cards and by extending the validity period of the cards to two or three years.

Furthermore, there are cases where renewed foreign business identity cards are required in applying for the renewal of residence permits while renewed residence permits are required in applying for the renewal of foreign business identity cards. The GOJ requests the clarification of the procedures.

(6) Work and residence permits in France

The GOJ appreciates the improvement in procedures in France concerning the entry of family members of Japanese business people, as well as those concerning long-term residence permits and work visa issuance. Yet applicants still have to wait at least two months to obtain work permits and one month to renew residence permits. In some cases, the time-consuming procedures cause difficulties for Japanese business people and companies in moving to France as well as in arranging personnel reshuffles. The procedures also make it almost impossible to address urgent and emergency situations. The procedures for the entry of family members of Japanese business people usually take at least half a year. Furthermore, it takes time to obtain residence permits while residence permits are necessary to join social security. The GOJ continues to request further shortening of processing time and simplification of the procedures. Moreover, France is also requested to extend the period of validity of residence permits from the current one year to two years.

(7) Work permits in Belgium

(a) Although work permits and professional cards seem to be issued more quickly than before, it still takes a long time in some cases. It is reported that it took more than five months in a few cases. The GOJ continues to request that the processing period be shortened.

(b) The GOJ has been requesting that work permits for younger people, which limit the

maximum length of the validity of stay to four years, be improved since they present obstacles for Japanese companies in assigning young engineers with expertise in, for instance, information technology to Belgium. The GOJ understands that the validity period will be extended to eight years by the revision of the regulation, which is currently under discussion. The GOJ appreciates this improvement effort and requests that the reform be implemented as soon as possible.

(8) Work visas in Greece

The GOJ hopes that procedures for work permits will be simplified and the time required for them shortened by enforcement of amended immigration law in May 2002. When a new immigration law was enacted in June 2001, some confusion was observed because how to implement the law was not thoroughly understood at local offices immediately after the enactment. The GOJ requests that measures be taken to prevent such confusion this time.

(9) Work permits in Finland

At the Japan-Finland Dialogue on Economy and Trade in November 2000, the Finnish side explained that the validity period for work permits that can be issued by the Finnish Embassy in Tokyo is one year, and that after the first year, one may renew the work permit at local police stations in Finland which have the authority to issue work permits valid for multiple years depending on the applicant's duration of stay. However, according to the explanation at the Japan-Finland Dialogue on Economy and Trade in December 2001 and the reply from Finland in April 2002, a temporary residence and work permit can be issued for one year at a time, and, in fact, work permits that are valid only for one year are usually issued. Furthermore, although the processing period is shortened in general, there are still some cases in which it takes a long period of time. In such cases, every time the applicant needs to take a business trip abroad during the processing period in which his or her passport is kept with the Finnish authority, he or she has to ask for its return. As this procedure imposes a significant burden on the applicants, the GOJ requests the expeditious issuance of work permits that are valid for the period corresponding to the period of the applicants' stay.

(10) Issuance of work permits, etc., in Luxembourg

(a) In Luxembourg, the procedures for obtaining and extending work permits take substantial time, in particular for Japanese employees recruited in Luxembourg. Moreover, the necessary documents often change and the complexity of the procedures has not been solved. The EU's replies in August 2001 and in April 2002 did not include replies from Luxembourg. The GOJ continues to request Luxembourg to improve the system by simplifying the procedures and by shortening the processing period.

(b) Much time is required for resident registration, and purchases of automobiles and other goods are hampered as a result. The GOJ, therefore, requests shortening of the issuance period.

12. Social security

[General Comment]

Harmonisation of social security systems within the EU

The GOJ understands that the EU is deliberating the amendment of Regulation (EEC) No 1408/1971 on the application of social security schemes to employed persons and their families moving within the Community and the expansion of the revised regulations to third country nationals, including Japanese. In the EU, the application of social security and the standards of taxation assessment differ from one Member State to another. The procedures are complicated and additional costs incur. Therefore, the GOJ requests for early progress in the deliberations and that such reform will facilitate the free movement of workers in the EU.

(1) Information exchange with a view to solving the double payment for social security

In European countries that have not concluded social security agreements with Japan, Japanese businesspeople are required to pay for social security in accordance with the domestic law of the country where they reside. As it is also obligatory for them to pay for social security in Japan, they pay double for social security. Many Japanese companies point out that this redundancy imposes an extra burden on them and have been an obstacle to their investment in the EU. To solve this problem, the GOJ has already concluded social security agreements with Germany and the UK. The negotiations with France are now in process and information exchange meetings with Belgium have been carried out. Several countries including some of the other EU Member States are also calling on Japan to start negotiations for a social security agreement. The GOJ is prepared to conduit exchange of information with a view to opening negotiations with those countries, according to the order of priority, taking into account factors including the state of exchange of people between Japan and the country concerned.

(ATTACHMENT)

Taxation

The following issues are introduced as matters pointed out by Japanese private companies, differing from other requests of the GOJ.

(1) The merger directive of 1990 to be applied to mergers, transfer of assets, stock transfer, etc.

The merger directive of 1990 to be applied to mergers, transfer of assets, stock transfer, etc., provides for taxation steps for deferring evaluation if reorganization of a body is carried out within the EU, but the range of such reorganization, which is the object of the taxation steps, is specified, so that the reorganization is rather difficult to implement. In particular, during the inner group reorganization, such as conversion of locally incorporated subsidiaries into branches, executed by many Japanese enterprises in Europe, it is difficult for these enterprises to carry out reorganization based on their needs. This is the draft that can cover the supplement insufficiencies of the Statute for a European Company, and the GOJ requests to expand the application targets to include, especially, the SE in it.

Because unified handling is not implemented in connection with enforcement of the directive, enterprises considering reorganization of their groups in Europe must take the differences into consideration in the handling in related Member States of the EU. This imposes a significant burden on them in terms of work and cost, hampering simplification of organizations.

Specifically, some EU Member States require maintenance of shares obtained in exchange for assets for several years. As a consequence, even when all assets are converted into shares, and the company becomes an empty company, it is necessary to maintain that company to hold the shares. In this case, not only are expenses needed to maintain the company, it is also necessary to give part of dividends from the European Head Office by means of the empty subsidiary, so that there is a possibility of having to pay excessive withholding tax on dividends. The GOJ, therefore, requests that their rules for obligatory possession of the shares will not become substantial obstacles for restructuring of companies.

(2) Harmonization of transfer pricing taxation

Although the GOJ understands that tax authorities of Member States of the EU operate transfer price taxation in line with the OECD rules, enterprises recognize that work to observe the transfer pricing taxation is complicated and costly. It is true that the introduction of advance price arrangements is progressing gradually, but conditions differ from one country to another country, such that enterprises are forced to take different steps depending on the country concerned. The tax system communication announced in October 2001 recognize that the cost of observing the transfer pricing tax is high , and that, for that reason, a forum including Member States of the EU and representatives of enterprises will be established in 2002. It is hoped that a policy to virtually reduce the observance cost of the transfer pricing taxation will be initiated at an early date through such a forum.

(3) Harmonization of value added taxation

The procedures and operation related to value added tax (VAT) are greatly different among tax authorities of individual Member States. This constitutes an obstacle to smooth business operations in recognition of the EU as a unified market . In this connection, it is hoped that the European Commission will take further initiatives to simplify the entire VAT system through efforts including shortening the waiting period required for refund procedures and to make EU-level unified operations of current VAT rules possible.

(4) Communication “Toward the Inner Market without Tax-System Obstructions”

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This communication, announced in October 2001, presented a vision regarding the unification of corporate taxes. While welcoming this more, the GOJ requests that the Commission and Member States of the EU implement policies sincerely and tackle problems identified in that communication.

(5) Tax imposition on transfer of goodwill beyond national borders

In the course of business reorganization in Europe, there is a possibility that taxation may occur if goodwill is transferred beyond national borders. The Commission indicated, in the annex of the aforementioned communication, its

recognition, as a problem, that tax imposition on goodwill transfer will not be an object of deferred taxation based on the merger directive. The GOJ hereby requests that the Commission and Member States of the EU promptly realize a tax system amendment in which taxation on goodwill transfer on the occasion of business reorganization will be an object of deferred tax imposition, with the tax imposition right remaining in the country that the goodwill transfer originates from.

(6) Unification of the corporate taxation basis for enterprises operating in the entire European region

In the aforementioned communication, the Commission stated that, to systematically resolve many taxation obstructions to cross-border economic activities in the single market, it is necessary to unify the basis for corporate tax imposition related to business activities of multinational enterprises throughout the EU. Namely, it pointed out the need to enable these multinational enterprises to calculate profits in accordance with a single rule, in the future, and to execute consolidated settlement of accounts for the purpose of corporate income tax declarations (removing the possibility of inner-group transactions' affecting taxes).

While asking for early realization of that policy, we request that the policy be applied to enterprises to be based on the Statute for a European Company scheduled to be enforced in 2004, and those to be based on the European Private Company Law, expected to be instituted hereafter, ahead of enterprises based on each EU member state company law.