

(Provisional Translation)

# Japan's Proposals For Regulatory Reform Dialogue

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November 21, 2005

**Japan's Proposal  
For Regulatory Reform Dialogue  
– List of Proposals -**

November 2005

◆ : New Proposal   EC : Proposal to EC   M.S. : Proposal to Member States

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# Japan-EU Regulatory Reform Dialogue —Japan's Proposals to the EU—

November, 2005

## **Foreword**

### **1. Introduction**

Japan and the European Union (EU), which lead the stability and development of the global economy, share the view to further develop their relations as strategic partners. The Japan-EU Regulatory Reform Dialogue, which is a framework for two-way dialogue for enhancing the trade and investment relations between Japan and the EU and thereby promoting their economic relations, is now in its 12<sup>th</sup> year since it was launched in 1994.

At the 14<sup>th</sup> Japan-EU Summit held in May 2005, the Japan-EU Regulatory Reform Dialogue was appreciated as having continued to deliver concrete outcomes, such as in finding practical solutions to facilitate the living and working environment of expatriate nationals. In 1994, about 110,000 Japanese resided in the then 12 EU Member States, while about 25,000 citizens from the 12 EU Member States resided in Japan. Currently, more than 154,000 Japanese are living in the EU and more than 42,000 citizens from the EU Member States are living in Japan. Among them, if a comparison is made using the figures for the 12 countries, it increased by 1.3 times for the Japanese living in those countries and 1.5 times for the Europeans respectively. Both Japan and the EU should continue to make active use of the Japan-EU Regulatory Reform Dialogue as an effective tool for enhancing economic relations between Japan and the EU.

### **2. Evaluation regarding Japan's Proposals to the EU in FY2004 and its Proposals in FY2005**

The Government of Japan (GOJ) values the more active attendance of government officials of EU Member States at the Brussels meeting in March 2005. This year, the GOJ urges the Member States to participate even more actively in the Regulatory Reform Dialogue process concerning the matters under the competencies of the Member States. The GOJ also expects the European Commission to further continue its efforts to engage the Member States.

The GOJ also appreciates the fact that concrete progress was made with respect to some of Japan's individual requests. It is worth mentioning that Japanese driving licenses, which have to be submitted when exchanged for driving licenses of the EU Member States, will now in principle be returned to the Embassy of Japan in each country.

On the other hand, there are many matters requiring continued discussions in FY2005 in which Japanese companies have expressed a strong interest, namely establishing equivalence between Japanese accounting standards and international accounting standards (IAS), and the proposal for a Regulation on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), among others. The GOJ expects active EU response on these matters.

Japan's proposals for this year have again been consolidated into one document without separating them into priority proposals and supplementary proposals. The GOJ would like to consult with the EU and decide which requests, among many of them, should be discussed at the high-level and other meetings.

The GOJ has strong interest in the European Commission's decision to withdraw nearly 70 draft directives and in its intention to review directives already in force, with a view to simplifying EU law in order to alleviate the burden on companies. The GOJ hopes that these steps will lead to such regulatory reform that will contribute to promoting trade and investment into the EU by Japanese companies, and requests to receive detailed information on this matter.

### **3. How to conduct the Regulatory Reform Dialogue in FY2005**

It is necessary to make continued efforts for the effective management of the Japan-EU Regulatory Reform Dialogue to ensure frank and substantive dialogues. However, despite the GOJ's repeated requests, the EU has not responded in full to all of the proposals made by the GOJ in FY2004, which deviates from the principle of reciprocity characterizing the Japan-EU Regulatory Reform Dialogue. Therefore the GOJ finds such attitudes of the EU extremely regretful.

In concrete terms, among the GOJ's proposals in FY2004, the EU has not yet submitted its replies as of now to the proposals including the following: France (Improving workers' compensation and sick leave system etc.), Belgium (Dismissal system), Ireland (Resuming the suspended application of the Intra-Company Transfer Scheme), Denmark (Extending the term of validity of student visas), UK (Extending the period that students are allowed to work under student visas), Czech Republic (Expediting and simplifying the process of issuing residence and work permits and extending their term of validity). The GOJ cannot help but feel deep disappointment as to the disparity between the EU's stance on its Proposals to Japan and the one on the Proposals from the GOJ.

On the practical issue, the EU's delay in its responses disrupts the cycle of the dialogue. Namely, it has made it difficult for the GOJ to determine whether or not progress had been made on its FY2004 proposals in compiling its proposals for FY2005. It also makes it difficult for the GOJ to make contents of its proposals more effective by establishing the cycle of dialogue and also by avoiding duplication. Therefore, from the constructive viewpoint the GOJ proposes in this year's dialogue to reexamine the method of work from submission of the proposals to exchange of the responses.

## **A: Cross-sectional Issues**

### **A1. Commercial Laws and Practices**

#### **(1) Cross-border offset of profits and losses [EC]**

The GOJ understands that the EU attaches importance to the cross-border offset of profits and losses in the EU with a view to reinforcing the EU Internal Market. This is also a matter of great importance for companies of Non-EU countries operating within the EU. In its reply in October 2005, the EU explained that the preparatory work for a draft directive allowing cross-border offset of profits and losses was close to finalization, and that the technical discussions between the European Commission and EU Member States would start in 2005.

The EU has also expressed its intention to strive for the early adoption of this draft directive in the Cooperation Framework for Promotion of Japan-EU Two-Way Investment. Nonetheless, it is foreseen that the judgement will soon be given on the case C-446/02 "Marks & Spencer" by the European Court of Justice (ECJ) without the EU having established related policy. If each EU Member State responds differently to the ECJ's judgement, then the uniformity of the Internal Market may be undermined.

The GOJ urges that the European Commission take a strong initiative to realize consistent EU policy in a way that reflects the ECJ's ruling. The GOJ continues to urge the EU to provide information on the status of progress regarding this matter, and strongly urges that discussions aimed at the early adoption of the draft directive be swiftly advanced.

#### **(2) A Directive on cross-border mergers [EC, M.S.]**

"A Directive on cross-border mergers" was adopted at the European Council in September 2005. This directive would make cross-border mergers easier for limited liability companies by overcoming obstacles caused by different national laws. The GOJ welcomes the adoption of this directive, and urges that EU Member States swiftly adopt national laws to comply with the provisions of the directive.

#### **(3) Statute for a European Company [EC]**

In the EU, the "Statute for a European Company" entered into force in October 2004, which enables companies to establish one SE (Societas Europaea) in a Member State to operate on a European-wide basis without setting up a subsidiary company in each Member State. However, most Japanese companies in Europe—particularly those in the UK, Germany, and the Netherlands—take the form of non-public company (private company), and cannot establish SE through merger or conversion of existing companies unless they are reestablished as public companies, because such SE establishment will only be permitted for public companies.

In its reply in October 2005, the EU explained that the finalization of the study on the practical needs and problems of the European Private Company (EPC) statute is foreseen



by the end of 2005 and that pertinent legislation activity may be undertaken subsequently. Given the importance of an EPC statute system, the GOJ continues to urge the EU to provide information on the status of progress regarding this matter, and strongly urges that the work toward the early introduction of the statute be swiftly advanced.

#### **(4) Consultation procedures in EU member States [EC, M.S.]**

Given that EU Member States have adopted individual consultation systems, the GOJ has since 2004 requested an explanation on each system. The GOJ reiterates this request since it has not received a response regarding this matter. The GOJ also urges that the systems be harmonized at the EU level, since complying with different systems in respective EU Member States may place a significant burden on companies operating in a wide range of areas within the EU. Furthermore, the GOJ urges the Member States without such a consultation system to introduce the system at an early date, in view of the fact that the EU expressed its intention to make efforts to improve regulatory transparency in the Cooperation Framework for Promotion of Japan-EU Two-Way Investment.

#### **(5) Labeling the country of origin for EU products [EC]**

In July 2004, the EC released a report on the result of consultations with the concerned Member States and parties on the scheme to indicate EU origin. According to this report, there is little support among the concerned Member States and industrial parties for the proposal to make the "Made in EU" label mandatory for EU products and such labeling has not been made mandatory as a result. The GOJ therefore recognizes that there are currently no integrated rules at the EU-level. However, since complying with different country of origin systems for respective EU Member States places a significant burden on companies operating in a wide range of areas within the EU, the GOJ continues to urge that the European Commission take initiative with the aim of achieving harmonization at the EU level.

### **A2. Certification of Standards and Criteria**

#### **(1) Integration of standards for fire alarm equipment[◆, EC, M.S.]**

In order to manufacture and sell fire alarm equipment such equipment must fulfill the European Norm (EN) Standard, which sets out criteria on the safety and technological capabilities of each equipment (smoke and heat sensors, bells and sirens, control and monitoring panels for exhausting and preventing smoke). However, the firefighting administration in some Member States, adopts its own standards different from the EN Standard and companies practically cannot conduct their business activities, unless they fulfill these national standards(especially in Germany, France and new EU Member States). As the EN Standard is not functioning in some Member States, the GOJ urges the Member States to comply with the EN Standard.

#### **(2) Machine tool inspections regime in the EU market (CE mark) [EC, M.S.]**

It has been reported that in several EU Member States, machine tools without CE marking

have been distributed in the market, even after the adoption of the Machine Safety Directive (1989/392/EEC). At present, no EU-wide, unified measures to control such illegal machine tools exist. Although government authorities in some Member States conduct investigations every year and take such actions as prohibiting sales or recalling tools without CE marking, no sufficient investigations have been conducted in many other Member States.

From the viewpoint of improving the safety level within the EU, in 2002 and 2004, the GOJ urged the European Commission to adopt legislations (regulations or directives) to unify investigation and control measures concerning CE marking in the EU, so that the efforts of Japanese and other foreign enterprises to comply with the CE marking system will not be undermined. The EU stated in its written response in FY2004 that the working group for Administrative Cooperation (ADCO) had been established and that the European Commission was preparing a proposal in its review of the "New Approach" on technological harmonization. The GOJ appreciates this effort, and requests the working group for ADCO to take appropriate measures and the European Commission to come up with appropriate proposals.

### **(3) Additional Italian regulation on TV imports [EC, Italy]**

To import TV sets produced outside the EU into Italy, including those already distributed within the EU market, it is obligated under the Ministerial Decree 26/03/1992 to obtain a specification certification apart from the CE mark. To obtain the said specification certification, it is required to put a circuit drawing in the product package. Furthermore, it takes a maximum of three months to obtain the said specification certification. Since technological requirements for products such as TV sets are set by the EU Directive 73/23/EEC and the EU Directive 89/336/EEC, products meeting these requirements should be allowed to be distributed freely within the EU market. The GOJ therefore urges requests the Italian Government to abolish the additional regulation. In its written response in FY2004, the EU explains that the Ministerial Decree is consistent with the EU rules; however, the GOJ would like to emphasize that what it has been urging is the abolition of the additional regulation.

### **(4) Regulation on the shape of plugs and sockets for electrical outlets, telephone lines, etc. [EC]**

The shape of plugs and sockets for electrical outlets and telephone lines differs according to member states of the EU. The GOJ urges the EU to consider integrating the standards, since these differences result in increased costs. In its written response in FY2004, the EU stated that most of the problems are solved with a Europlug, but since purchasing Europlugs creates additional cost, the GOJ believes that integrating the standards is more appropriate to reduce costs.

## **A3. Trade and Customs**

### **(1) Change in tariff classification of digital video cameras (camcorders) and retroactive duty imposition [EC]**

The GOJ has repeatedly urged the EU to make improvements concerning this problem and

it is extremely regrettable that it has not been resolved yet. The EU side has replied that tariff rates have been decided as a result of the General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) negotiations and that the EU is proposing lower tariffs on products of interest to the GOJ at the WTO negotiations. However, the GOJ again points out that its request does not concern tariff rates, but a problem concerning tariff classification based on European unified subdecisions which is applied in the EU member states. Following its requests in FY2004, the GOJ reiterates its request as follows.

The EU tariff classification distinguishes between video cameras that are capable of recording not only signals from the internal camera units but also signals from external equipment, and those that are incapable. The EU has set different tariff rates to these 2 types of video cameras at 14% and 4.9% respectively.

Among the digital video cameras which are manufactured by Japanese electronic equipment makers and exported to the EU, the models whose functions of recording signals from external equipment (DV-IN) are inactivated by software, had been declared as products upon which the tariff rate of 4.9% was applicable according to the EU's tariff classification.

However, the EU announced in the Official Journal of the European Communities on July 6, 2001, that models with potential functions of recording signals from external equipment are also classified as video cameras subject to 14% tariff.

Due to this classification, the possibility arose that digital video cameras produced by Japanese electronic equipment manufacturers will be classified as models subject to the 14% tariff, although their DV-IN functions are nullified by software control before import customs clearance and these models are explained to consumers in catalogues, etc., as those without DV-IN functions. In fact, some EU Member States such as France have stated that the past import declaration was erroneous, and that they would retroactively collect the past three years' worth of unpaid tariffs from local subsidiaries that import products from Japanese export manufacturers.

The GOJ has urged the EU side to provide an official explanation on the rational reasons for the change, if such a change in tariff classification of the products of the Japanese electronic manufacturers by changing its interpretation of the tariff classification for video cameras in July 2001 was a justifiable measure. The GOJ has yet to receive such an explanation. The GOJ has also urged the EU side to explain its views regarding the fact that some EU Member States such as France have made a claim for the retroactive imposition of tariffs, but has not received such an explanation either. The GOJ urges the EU side to respond sincerely with the aim of resolving these issues.

## **(2) Integration of customs clearance forms for goods manufactured in the EU and outside the EU [Austria, EC]**

On one hand, there are products manufactured in a factory of a Japanese company within the EU and kept in warehouse in Vienna, to be sold in Central and East European countries. On the other hand there are also other products manufactured in factories of the some company outside the EU, for example in Japan or other Asian countries, transported via the Hamburger port or Rotterdam port to Vienna through by train, and declared for

customs clearance in Vienna, as products for Central and East European countries. This company prepares customs clearance forms for these two types of products in the Vienna Customs before sending them together from Vienna to the countries in the EU such as Poland, Hungary, Czech, Slovakia and Slovenia. In this case, this company needs to prepare two different customs clearance forms, one for goods manufactured in the EU and the other for those outside the EU, which is complicated and cumbersome. The GOJ therefore urges the Government of Austria to accept the same customs clearance form. The EU side stated in its written response in FY2004 that the EU was unable to reply due to the lack of specific information. The GOJ therefore requests the Austrian Government to provide the specific information to the EU so that the GOJ will be able to obtain a response concerning this matter.

### **(3) Customs declaration in Poland [Poland]**

In Poland, if the slightest mistake is found in the format of customs declarations, they are not accepted even if there are no questionable points in the relevant data or product. Customs declarations should be rejected only when there are doubtful points in the relevant data or product, but no particular improvements have been seen on this matter. As the EU side stated in its written response in FY2004 that it wished to receive detailed information, the GOJ requests that this matter be addressed in bilateral consultations with Poland.

### **(4) Tariffs on audiovisual (AV) and household electrical appliances [EC]**

Within the framework of WTO-ITA, tariffs on IT-related products have been eliminated in the EU. On the other hand, the maximum tariff rate on AV and household electrical appliances is 14%, which is significantly higher than those in other industrial countries (e.g. 0-4.9% in the US; 0% in Japan). Under the current situation, non-EU countries exporting large amount of AV and household electrical appliances to the EU are put in a disadvantageous position. The GOJ is concerned that this reduces the price competitiveness of AV and household electrical appliances and undermines the profitability of related business operations.

With the recent development of technology, an increasing number of AV and household electrical appliances can be connected to networks. Therefore, the demarcation between IT equipment and AV/household electrical appliances is getting obscure. Based on such development, the GOJ has proposed to add digital household appliances to ITA items in the WTO non-agricultural market access (NAMA) negotiations. The GOJ has also proposed "zero-zero harmonization" with a view to further improving market access regarding AV and household electrical appliances. Moreover, the GOJ has recently proposed, along with the countries concerned, to eliminate sectoral tariffs in the electric and electronics field.

Since the EU side stated in its written response in FY2004 that it would take note of the GOJ's interest, the GOJ requests the EU to respond appropriately and provide information on further progress.

### **(5) Landing and customs clearance procedures [◆, EC]**

When Japanese companies unload cargo in an EU Member State and undergo customs

clearance procedures, only individuals (companies) residing and registered in the said Member State are allowed to undertake customs clearance procedures due to issues such as import declarations. The GOJ urges that EU Member States introduce a system in order to facilitate investment activities of Japanese companies. Landing and customs clearance procedures for cargo are flexibly operated in the three Benelux countries (the Netherlands, Belgium and Luxembourg), as the companies registered in one of the three countries can undertake customs clearance procedures in the other two countries. The GOJ urges that landing and customs clearance procedures be operated in a similar manner in all other EU Member States.

#### **(6) Taxation on construction equipment 【◆, UK】**

When hydraulic equipment is exported directly from Japan to construction equipment manufacturers in the EU, a special tariff rate of 0% is applied as it is considered as a product for construction machinery. On the other hand, a tax is levied if Japanese companies export the same product to construction equipment manufacturers in the EU via its subsidiary in the UK. The GOJ deems it unreasonable that the tariff rate differs depending on whether the transaction is handled directly with a construction equipment manufacturer or indirectly via a subsidiary, when the hydraulic equipment is clearly destined for construction equipment manufacturers since the equipment's specifications are unique to these manufacturers. As for indirect imports via subsidiaries, hydraulic equipment is classified as a product for purposes other than construction equipment since it "can be converted to other uses" and the actual use of the equipment is not looked into. The tariff rate should be determined based on the actual use of the product, and the GOJ urges that the special 0% tariff rate be also applied to the transaction conducted through the subsidiary.

#### **(7) Tariff classification of ink cartridges for inkjet printers with IC chips 【◆, EC】**

The EU had classified ink cartridges for inkjet printers under components and accessories for computer output devices (HS8473.30) and applied a tariff rate of 0%. However, the EU changed its tariff classification of ink cartridges with IC chips to a type of ink (HS3215.90) on the ground that it does not have an inkjet head (the part that absorbs and emits ink to print on the paper), bringing the tariff rate from 0% to 6.5%.

IC chips attached to ink cartridges improve users' convenience by recording the quantity of ink left in the cartridge, and protect the inkjet head in the printer unit. Thus ink cartridges with IC chips have additional value different from simple ink. Furthermore, the GOJ considers that the printer unit operates while reading information in the IC chip, making ink cartridges with IC chips printer (output device) accessories. From this perspective, Japan, the United States and many countries outside the EU classify ink cartridges with IC chips under HS8473.30 and apply a tariff rate of 0% to them.

The GOJ urges the EU to provide an official explanation on why it changed the classification of ink cartridges with IC chips. The GOJ also urges the EU to ensure transparency in the procedure of making tariff classification changes and withdraw the said change in the tariff classification.

## **(8) 24-hour clearance and customs declaration system 【◆, Czech Republic】**

Customhouses are open 24 hours in the UK and many customhouses are open 24 hours in Germany as well. However, many customhouses in the Czech Republic currently do not accept clearance (for imports from Japan) and customs declarations (for exports to Germany) in the evening or on holidays. The GOJ urges the Czech Republic to operate the clearance and customs declaration system 24 hours a day through such measures as accepting clearance and customs declarations with the payment of an off-hours excess fee, as is the case in Japan.

## **A4. Information and Intellectual Property**

### **(1) Early establishment of the Community Patent System 【EC, M.S.】**

A political accord on the establishment of the Community Patent System existing in parallel with the patent system of each Member State was reached at the Council of the EU in March 2003. In its replies in FY2003 and FY2004, the EU side explained that intensive consultations were underway in the EU and on a bilateral level, but no drafts for related EU regulations have been adopted yet.

Considering that the EU expressed its intention to work toward the implementation of the Community Patent System as soon as possible in the Cooperation Framework for Promotion of Japan-EU Two-Way Investment, the GOJ reiterates its request for early realisation of a Community Patent System. In particular, given that the EU side stated in its reply in FY2004 that consultations were scheduled to continue in 2005, the GOJ requests an explanation from the EU side on the status of progress of consultations in the EU and on a bilateral level.

### **(2) Objection to the abolition of the design protection for replacement parts of cars 【EC, M.S.】**

(a) The GOJ understands that consultations are underway on the proposal to revise EC Directive (98/71) that stipulates that the design of replacement parts of cars will not be protected. The GOJ urges the EU side to provide detailed information on the current situation and future outlook of these consultations.

Regarding this issue, as mentioned in its proposal in FY2004, the GOJ has taken a position of opposing this revision as there are no rational grounds for singling out replacement parts and denying them design protection in light of the following two reasons:

- i) It is necessary to ensure returns on investments by finished car manufacturers for their development of replacement parts, and
- ii) There exists safety concern given that safety inspections are not obligatory for non-genuine parts including Chinese products whose numbers are increasing, unlike genuine parts.

The GOJ reiterates its position that the proposal for the Directive be revoked unless there exist clear and objective reasons to justify the revision to the said EC Directive.

(b) In its reply in FY2004, the EU side explained that it was ultimately consumers' decision whether to choose genuine or non-genuine replacement parts and that this issue could be adequately addressed by granting exclusive rights to use designs for finished

cars. The EU side also explained that the issue of safety should be discussed separately from the issue of design protection.

- (c) However, based on the fact that in many cases replacement parts are mainly developed by finished car manufactures, due to the increased diversification and differentiation of automobiles, investment returns by such finished manufactures for design development should be guaranteed in some way.

As for the safety issue, the GOJ underscores the risk of undermining consumers' interests as a result of free competition which may progress without due consideration to the safety of replacement parts. On this point, the GOJ appreciates that the EU side, in its reply in FY 2004, conceded to the Japanese position by stating that non-genuine replacement parts need to provide the same level of safety as required for genuine replacement parts. Also in this connection, the EU side explained that the European Commission was organising a study on the possible safety implications of the design rights proposal. The GOJ urges the EU side to provide a detailed and updated explanation on the study.

### **(3) Protection of personal information in the commercial registry of the Czech Republic [Czech Republic]**

- (a) In its proposal in FY2004, the GOJ requested improvements regarding the commercial registry of the Czech Republic. The GOJ considers the current registry problematic from the viewpoint of protection and safety of personal information, as the registry explicitly mentions name and address of the representatives of companies and that such information can be anonymously accessed through Internet. In this light, the GOJ has requested reforms, for example, introduction of browsing system enabling tracking of the browsers' identity.
- (b) In its reply, the EU side only stated that amendments of the related legal provisions were not foreseen, not providing sufficient explanation to address the Japanese concerns. Hence, since the issue is still unresolved, the GOJ reiterates its proposal and continues to urge that the Czech Government make necessary improvement.

## **A5. Employment**

### **(1) Overview [EC, M.S.]**

The GOJ is aware that the EU side stated in its written reply to Japan dated July 2005 that existing EU legislation in the employment and social field lays down only minimum requirements, and that many of the issues raised in Japan's list of proposals fall within the exclusive competency of the Member States. The GOJ is also aware that the employment has a sensitive aspect stemming from the historical background of labor practices and labor law that are unique to each Member State.

Nonetheless, Japanese enterprises operating in EU Member States continue to point out that employment regulations and practices in Europe frequently bring about difficulties in terms of dismissal, work hours, wages and other aspects, which may present obstacles for enterprises starting or continuing their activities in Europe. The GOJ understands that such points have been raised not only by enterprises of other non-EU countries, but also by enterprises of EU countries. Therefore, the GOJ is convinced that listening to the

viewpoints of enterprises and striving to rectify the problems will not only promote Japanese investment to the EU, but also lead to employment creation, economic revitalization and increased competitiveness in the EU. Therefore, the GOJ requests the EU side, in the undertakings to achieve the European Employment Strategy (EES), to continue taking steps to improve the labor market, both at the EU level and member state level, with a view to improving the business environment.

Furthermore, as the GOJ has not received responses from the EU side to many times in the field of labor and employment in particular for a long period of time, the GOJ requests the EU side to improve the situation.

## **Country-specific issues (individual requests to the Member States)**

### **(2) Italy 【◆, Italy, EC】**

Abolishment of the regulation on temporary employment

The number of temporary workers in the total employment is regulated to be less than certain percentage of permanent workers. However, companies belonging to industries such as component manufacturing, in particular, need to adjust their production volume according to fluctuations in the orders placed by their customers, assembling and processing manufacturers. Because this regulation prevents such manufacturers from flexibly adjusting their employment, labor costs increase, causing their products to lose competitiveness compared to imported components. As this regulation presents an obstacle to Japanese manufacturing companies in considering investing in Italy, the GOJ requests the Italian Government to abolish this regulation.

### **(3) Spain 【Spain, EC】**

#### **(a) Revisions to the temporary labor contract system and compensation for dismissal**

The response from the EU side (Spain) in June 2003 states that there are four types of temporary labor contracts set by law and that Spain's regulation of temporary employment is flexible enough to allow businesses to cope with market trends. In reality, however, there is a virtual time limit of six months in principle (at most 12 months) and it is difficult for Japanese companies to employ workers based on temporary labor contracts 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.

The response from the EU side (Spain) in October 2005 explains that regarding the situation before and after the last legislative reform concerning compensations for dismissal, application of the different criteria to workers whose labor contracts were signed before the reform fully justified. However, enterprises still have to pay significant amounts in redundancy pay in many cases, such as the cases in which they are compelled to pay a large sum when dismissing an elderly employee.

Therefore, the GOJ continues to request the expansion of the scope of application for the redundancy pay, which was reduced under the new system, as well as the further



reduction of the redundancy pay. The GOJ believes that these measures are also essential for promoting open-ended employment contracts.

### **(b) Greater flexibility in the annual overtime work**

The response from the EU side (Spain) in October 2005 states that the limit of 80 hours' overtime a year is not laid down in absolute terms and can be flexibly implemented, whereby overtime is not the only way to regulate the working schedule of company personnel. However, the annual maximum overtime is fixed at 80 hours, and companies must always allow their employees to take vacations if their overtime work exceeds this threshold. Continued existence of such a regulation makes it difficult for companies to promptly cope with a sharp increase of their production and sales. In some cases, companies are obliged to operate inefficiently, repeating hire and dismissal in order to keep their production abilities flexible. The GOJ fears that this regulation could make Spain a less attractive place for industry.

The GOJ therefore reiterates its request for the introduction of a new flexible clause in relevant Spanish laws and regulations, which would allow overtime work to exceed the 80 hours limit.

### **(4) Belgium 【Belgium, EC】**

No responses from EU side (Belgium) are given to the following requests (a) through (e) in Japan's Supplementary proposals in March 2003. The GOJ requests the EU side (Belgium) to improve the situation.

#### **(a) Dismissal system**

##### **(i)**

On the dismissal of employees, a contract can be terminated by establishing a period of notice. A period of notice of 28 days to over three months is required by law, depending on the employee's occupation, length of employment and annual salary. In reality, however, companies are required in some cases to give notices exceeding one year in advance or to pay compensation corresponding to the salary for the period of notice, calculated according to a recent judicial precedent called "the Claeys formula", and depending on the length of employment and annual salary of the employee to be dismissed. As Belgium has not provided a response to date, the GOJ continues to underline the problem of giving priority to a formula based on judicial precedent over the law to determine the period of notice, and requests that the longest period of notice be reduced to six months.

##### **(ii) Regulation for protecting representatives of employees**

Companies cannot dismiss those employees who have run for election as employees' representatives, regardless of the outcome of the election, until the next election is held four years later, even if their work performance is poor. The reply from the EU side (Belgium) in April 2002 states that the reason for this protection is to protect labour union members and candidates to trade union elections from pressure of companies that this protection does not mean that those employees cannot be dismissed, and that Belgian

law provides that under certain circumstances, the employer can initiate a procedure to dismiss a protected employee for urgent reason. However, in the case of the dismissal of these protected employees, high amounts of compensation must be paid, and the dismissal is practically difficult. It is also reported that there are some cases in which union members run for election in order to protect themselves. The GOJ therefore continues to request that the relevant provisions be amended so that proxy and unsuccessful candidates be treated in the same way as ordinary employees.

### **(b) Employment system**

The GOJ understands that under the Belgian law, the period of employment contract is basically open-ended and that temporary labor contracts with a maximum period of two years are possible in some special cases (i.e. cases in which there are justifiable reasons such as employment of temporary staff for projects or special events). However temporary labour contracts are to be converted into open-ended ones after being renewed once or twice. Therefore, it is difficult to employ company members for the medium to long term. The GOJ requests the Belgian Government to revise the temporary labor contracts system so that companies can conclude employment contracts that last for the period they choose without restrictions.

### **(c) Wage system**

Under the Belgian law, it is not allowed to reduce the salaries of individual employees. In addition, while the Belgian Government sets a ceiling on the rate of increase in wages, it also obliges the companies to make a minimum annual wage increase for the entire workforce.

The GOJ found the reply of the EU side (Belgium) in April 2000 on this point insufficient and reiterates its request that the determination of wages for individual workers should be left to the companies' discretions.

### **(d) Work hours**

The Belgian law restricts the weekly working hours to 38 hours. The law also obligates companies to compensate extra overtime work with holidays. Such an obligation makes it impossible for companies to respond to the change of work volume by extending overtime work, and they have to make the adjustment by new employment. They will face the problem of having an excessive workforce when workload decreases again. The restriction on the weekly working hours is an obstacle to the timely response to the change of workload. The GOJ requests that the weekly working hours be increased.

### **(e) Laws and regulations concerning labor unions**

Corporate management is required to submit their companies' financial and business reports monthly, quarterly and annually by the law-designated management-labor council. The annual report must cover a large number of items such as cost accounting, position in market and contents of research. These requirements place a great burden on Japanese companies. Since there was no response from Belgium on this matter, the GOJ continues to request that the Belgian Government streamline the items to be covered by reports, limiting them to matters related to important changes of corporate organizations that

might affect the settlement of accounts, labor conditions and employment. The GOJ also requests that the frequency of the council meetings be decided at the discretion of each company.

#### **(f) Improvement of the sick leave guarantee system**

The current system allows employees to obtain sick leave only with a physician's certificate without mentioning the name of the illness. Under this system, it is impossible to tell how long an applicant needs as sick leave, and this poses major obstacles for companies with respect to business management, including drawing replacement plans for employees on sick leave. Although the GOJ understands the purpose of this system in terms of privacy protection, the GOJ hopes this system be improved in such ways as the immediate superiors of the employees concerned or those in charge of personnel administration can be informed of the employees' illnesses with obligation to protect confidentiality.

#### **(5) The Netherlands 【Netherlands, EC】**

##### **Compensation for dismissal and sick guarantee system**

Regarding to the response from the EU side (Netherlands) in October 2005, the GOJ reiterates the following request, as problems are still reported from the Japanese companies.

When carrying out restructuring to respond to changes in the business environment, each company is required to pay a substantial amount of compensation which may be the continuation of the corporate activities. The GOJ, while understanding that the scope of possible intervention by the Dutch Government is limited on this issue, requests that the Dutch government continue to make further efforts to limit the burden of the compensation for dismissal.

Also the criteria used by ARBO doctors (corporate doctor) and UBW (specialized government organization) to determine whether or not an employee obtains sick leave are not clear and there are cases where the impact of illness on employment cannot be confirmed. The GOJ continues to request the Dutch Government to reform the sick leave guarantee system.

#### **(6) Germany 【Germany】**

As for "Relaxation of Sunday/holiday work regulation" and "Relaxation of the employee protection system" included in Japan's Supplementary Proposals for Regulatory Reform in the EU in March 2003, the GOJ hopes that the situation will be improved among the parties involved towards consultations between the Embassy of Japan in Germany and the relevant German authorities.

#### **(7) France 【France, EC】**

No response from the EU side was given to the following GOJ request in Japan's Proposals in November 2004. The GOJ requests the EU side (France) to improve the situation.

## **Improving workers' compensation and sick leave system**

Abuse of workers' compensation and sick leave systems due to easy approvals by some physicians has given an adverse effect on the activities of Japanese companies. The GOJ understands that the French Government is currently discussing measures to deal with these issues as a part of its medical insurance reform and hopes that improvement be made in the workers' compensation and sick leave approval systems.

### **(8) Sweden 【Sweden, EC】**

No response was given to the GOJ's following request in Japan's Supplementary Proposals in March 2003. The GOJ requests the EU side (Sweden) to improve the situation.

#### **Last-in, first-out rule relating to dismissal**

Many Japanese companies operating in Sweden are small- or medium-sized and the number of their employees is limited. At the same time, these companies need competent employees with advanced technologies to meet the progress of high technologies including IT. However, due to the "last-in, first-out rule" (the rule under which, when a company reduces its workforce, employees with longer history of employment with that company are protected over those with shorter history of employment. Companies therefore must fire employees with shorter service history first when it intends to dismiss its employees), it is difficult to discharge persons who cannot deal with new technologies. Furthermore, as these companies are unable to increase the total number of employees in large numbers, they have difficulty in securing qualified personnel. Such a situation impedes the establishment as well as the expansion of business activities by Japanese companies in Sweden. The GOJ requests that this last-in, first-out rule be relaxed at an early date.

In the 23<sup>rd</sup> Japan-Sweden Trade and Economic Consultation and additional explanatory notes, the GOJ obtained a response that exceptions to the rule include (a) cases where functional categories based on expertise are established and applied, and (b) small- and medium-sized enterprises with less than certain number of employees are exempted from the application of the rules. Nonetheless, the exemption measures mentioned in (b) cannot be applied in many cases given the scale of employment of Japanese companies. The GOJ continues to make the abovementioned request since neither (a) nor (b) serves as an essential solution to the obstacles hindering free business activities.

### **(9) Czech Republic 【Czech Republic, EC】**

#### **Reducing the percentage of workers on sick leave**

According to a report of the Ministry of Labor and Social Affairs of the Czech Republic, the average absentee rate in 2002 for workers was about 31 days. This figure is extremely high among European countries including Central and East European countries. The GOJ appreciates the efforts that the Czech Government which led to getting into force of a law last year to reduce the percentage of workers on sick leave. However, the high percentage of workers on sick leave is a complex problem composed of the systematic problem of compensation by the state, the problem of medical system and the abuse of the system.

Therefore, it is important for the Czech Government to tackle the problem toward reduction of the percentage of workers on sick leave. The Czech Government should follow up on this issue to improve the situation, and take further steps when measures taken are deemed insufficient. The GOJ would like to underline that without efforts of the Czech Government, the high percentage of workers on sick leave may have a negative impact on the establishment of new Japanese enterprises to the Czech Republic.

The response from the EU side (Czech Republic) in October 2005 explains that according to amendment of the sickness benefit law before Parliament approval, sickness benefits for certain days from the start of the sick leave should be paid to the employees directly by the employing companies. However, it is not clear how this amendment could reduce the number of workers on sick leave.

#### **◆Relaxation of job description-based employment contracts**

Job description-based employment contracts are common in the Czech Republic. However, employees' aptitude often becomes clear after they join a company and there are cases where their job is changed in view of on-the-job training (OJT). Currently, companies must conclude the relevant job description-based employment contract with employees every time their job is changed, thereby impeding smooth corporate activities. The GOJ hopes that the current system of employment contracts will be relaxed to include a certain range of job fields from the perspective of training and utilizing human resources appropriately.

## **B: Sectional Issues**

### **B1. Legal Services**

#### **(1) General Comments 【M.S., EC】**

Taking seriously the requests concerning legal services made by the EU side, the GOJ has taken measures such as amending the law concerning foreign lawyers and establishing the Office for Promotion of Justice System Reform. Likewise, the GOJ continues to request that the EU side make sufficient improvements regarding Japan's requests concerning activities of Japanese lawyers in Germany and France.

#### **(2) Foreign Legal Consultants (FLC) in France 【France, EC】**

At the Japan-EU Regulatory Reform Dialogue in Brussels in March this year, the GOJ requested France to establish a system that allows foreign lawyers to engage in legal services pertaining to their home country laws without passing any special examination in France. The GOJ appreciates that France, in response to this request, has stated that it is making an effort to introduce the Foreign Legal Consultant (FLC) system at an early date. However, the GOJ has not yet received information that this system has been introduced. The GOJ continues to request that France establish a system that allows foreign lawyers to engage in legal services pertaining to their home country laws without passing any special examination, as is duly permitted in Japan under the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers.

#### **(3) Permission of legal services pertaining to third-country laws by foreign lawyers in Germany 【Germany, EC】**

Germany allows EU lawyers to provide services on all laws, but does not allow non-EU lawyers including Japanese ones to provide legal services on third-country laws. At the Japan-EU Regulatory Reform Dialogue in Brussels in March this year, the GOJ requested Germany to rectify this situation, but there was no German attendance neither last year nor this year. Bilateral consultations were subsequently held on 12 May this year, and the GOJ appreciates that Germany expressed its intention during these consultations to address this matter as much as possible within the framework of the Japan-EU Regulatory Reform Dialogue in the future. Meanwhile, Germany has not changed its position in the written responses in August this year that this matter is to be handled in the General Agreement on Trade in Services (GATS) negotiations. However, since the GOJ understands that whether or not a commitment will be made in the GATS and whether or not improvements will be made in domestic law on this matter are different issues, the GOJ reiterates its request this year that improvements be made regarding this situation.

### **B2. Telecommunications**

#### **(1) Unbundling of backhaul networks 【EC, M.S.】**

(a) In its proposal of FY 2004 the GOJ pointed out the delay in the advancement of local

loop unbundling in the EU with respect to widespread broadband services, based on data in the EU 9<sup>th</sup> Implementation Report regarding ICT field. The EU explained in its reply of FY2004 that, referring to the 10<sup>th</sup> Implementation Report, during the one year period until July 2004 there had been an increase in the number of unbundled local loop lines and a decrease in the fees for those lines. The GOJ welcomes the efforts by the EU.

- (b) Nevertheless, the GOJ believes that it is still difficult to conclude that the EU has achieved a satisfactory level of environment for spreading broadband services in the EU, in the light of the fact that while in Japan the shared access fee is approximately 0.86 euros per month (as of the end of October 2005), the fee amounts to 3.1 euros on average in the EU (EU15 average).
- (c) It should be pointed out that one of the major reasons why broadband services have become widespread in Japan is that the Telecommunications Business Law has obliged dominant telecommunications carriers to unbundle not only their subscriber lines but also their backhaul networks as designated telecommunications facilities.
- (d) In this light, the GOJ believes that the EU side, without being satisfied with current situation, should promote necessary policies for ensuring equal access to economic bottlenecks, with a view to further accelerating the spread of broadband services. In this connection, the GOJ urges that the EU, following Japanese examples mentioned above, oblige, in the regulatory framework for the electric communications sector, dominant telecommunication carriers in particular to guarantee unbundled access to backhaul networks as well as subscribers lines.

## **(2) Ensuring government neutrality in competition 【M.S., EC】**

- (a) In its proposal of FY2004 the GOJ urged the EU improvement in ensuring government neutrality in competition in the EU Member States. The EU explained in its reply of FY2004 that in the EU's new regulatory framework independence of regulatory authorities was considered as one of the key principles, and that it was provided that national regulatory agencies should be legally and functionally independent from all organisations providing electric communications networks. The EU therefore concluded that safeguards measures existed in ensuring government neutrality in competition in the Member States.
- (b) However, as already pointed out by the GOJ in its proposals of FY 2004, in some EU Member States the governments are directly involved in the management of telecommunications carriers, by allowing their government officials to serve as directors, auditors and alike. In this connection, it is concerned that there is a risk of potentially anti-competitive behaviours, especially when those government agency officials who are responsible for, among others, the internal legislation of EU Directives occupy positions such as directors of those companies which are subject to the related regulations.
- (c) Therefore, the GOJ continues to urge that the European Commission take steps to ensure government neutrality in market competition, in particular by prohibiting those currently serving as government officials of the EU Member States from concurrently serving as directors or auditors for telecommunications carriers.

## **B3. Financial Services**

### **(1) General comments [M.S., EC]**

The GOJ continues to urge 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 required, or only with reporting, as the introduction of such a system would be effective from the viewpoint of creating an attractive single market for external countries. Regarding documents to be submitted to governing authorities in EU Member States, the GOJ urges that each Member State promptly prepare forms in multiple languages for foreigners, including Japanese nationals, because such an arrangement is considered to be a fast and effective step to improve the business environment within the EU.

Since the GOJ believes it too cumbersome to have to file reports with different content and form from country to country, and considers that the current arrangements have a room for improvement from the viewpoint of efficiency for business, it asks the European Commission to harmonize the contents of report items and its form. The GOJ recognizes that the European Commission is aiming at unifying regulations and systems of financial transactions and their settlements in the EU Member States under the Financial Services Action Plan. The GOJ expects continued efforts for this reform by the European Commission.

### **(2) International Accounting Standards [EC]**

Under the Prospectus and the Transparency Directives, the European Commission will require non-EU companies, which have made or will make public offerings or have listed or will list their securities within the EU, to prepare their financial statements in accordance with International Accounting Standards (IAS) or other accounting standards equivalent to IAS from January 2007. Related to this matter, the European Commission will also make a final decision on equivalency of Generally Accepted Accounting Principles (GAAP) of Japan, the United States and Canada by the beginning of the year 2006. This is a serious concern of international credibility of Japan GAAP, which was rapidly developed through "the Accounting Big Bang" in the late 1990s and became coherent with IAS. This is also an important issue for around 210 Japanese companies, which are currently financing within the EU, to see their possibility of future access to the EU capital market.

The technical advice of European Securities Regulators (CESR) to the European Commission, which was issued as part of verification of equivalence of the three GAAP with IAS on 5 July this year, evaluated that each GAAP of the three countries was, taken as a whole, equivalent to IAS. However, it also demanded these three countries to take supplementary measures for their GAAP. While the GOJ welcomes comments of CESR, which evaluated Japan GAAP equivalent to IAS as a whole, it still has serious concern about imbalance between costs and benefits of the supplementary measures and negative consequence of integrating accounting standards for European investors. If the costs burdened by Japanese companies, which have to prepare financial statements complied with IAS, exceed benefits of European investors, these costs will eventually be



shifted to these investors. In addition, many Japanese companies announced their intention of leaving the EU market. If such departure becomes reality, it may lead to decreasing investment opportunities of European investors and deteriorating effectiveness of the EU market.

The GOJ recognizes that the European Commission needs to accept equivalency of Japan GAAP with IAS in order to maintain the global and open nature of the EU market. In addition, to avoid adverse effect of integrating accounting standards on the EU market and European investors, the GOJ also believes that the European Commission should decrease the number of items for which Japan GAAP needs to take supplementary measures and replace these measures for numeric adjustment with narrative disclosure.

Furthermore, since last March, the Accounting Standard Board of Japan (ASBJ) and the International Accounting Standard Board (IASB) have been implementing a joint project which aims at convergence of the accounting standards, and working towards decreasing the gap between Japan GAAP and IAS. The GOJ recognizes that it would be the best to realize the convergence through the force of the market. As long as GAAP, including Japanese one, are evaluated their equivalent as a whole with IAS, these GAAP should be allowed to compete with IAS, not be excluded from the EU markets.

Therefore, the GOJ, considering this issue as of critical importance, strongly urges the European Commission to strongly consider this issue also in terms of the place of EU market in the global market in making its final decision on the evaluation of the equivalency to be made by the beginning of 2006, to establish equivalency of Japanese GAAP and to decrease supplementary measures needed.

### **(3) New entry to credit card operations in France 【EC, France】**

In France, Groupement des Cartes Bancaires (GCB) established under French law manages the CB payment card system (CB cards, but also credit cards) and determines the specifications of card processing equipment. GCB prevents credit card companies from entering the market except for a certain international credit card brands. The payment card system in most countries including Japan can be used by all credit card brands, and there are no barriers to entry. The GOJ understands that the European Commission has sent a statement of objections in July 2004 to GCB on this issue but that no final decision has been taken. Therefore, the GOJ seeks the opinion of the European Commission and the French Government on this issue and continues to urge that the CB payment card system be opened to all new entrants.

### **(4) Regulations related to settlement among residents in Poland 【Poland】**

Although Euro-denominated settlements in commercial transactions are increasing in Poland, settlements with the euro (or with other foreign currencies) among residents are not possible, as the residents are obliged to make internal settlements with the local currency. In its reply in October 2005, the EU explained that there are some exceptions to this regulation. However, as some new EU Member States have already removed the restriction, and enabled internal settlements with the euro or other foreign currencies among residents. The GOJ continues to urge that Poland relax this regulation.

## **B4. Broadcasting Services**

## **(1) Enhancing international exchange of contents (relaxation of regulations on the quota system) 【EC, M.S.(especially France)】**

### **(a) Background**

The "Television without Frontiers" Directive (89/552/EEC, revised by 97/36/EC) requires that broadcasters reserve for European works a majority (more than 50 percent) proportion of their transmission time (quota system). However, it is concerned that the existence of such a regulation may become an impeding factor to cultural exchange of good quality through television programmes. In fact, in 2003 in France, Manga Channel (a cable channel specialised in Japanese cartoon programmes) was ordered to pay a fine of 70,000 Euros for having violated French domestic laws based on the Directive. This demonstrates that the Directive is caused adverse effect on the distribution of quality contents produced in Japan.

Furthermore, in its review of the Directive currently underway at the European Commission, there is argument in favour of maintaining the present quota system and further expanding its scope to "non-linear audiovisual services" which include Video on Demand (VOD) services.

As stated in the public comment submitted to the EU on the review of the Directive, while GOJ fully recognizes the value of cultural diversity, it believes that cultural diversity should be realized not through a quota system but through active exchange with cultures outside the EU, considering the background that European culture has attained rich and creative development through cultural exchanges with non-European regions.

### **(b) Requests by Japan**

#### **i) Relaxing regulations on the quota system on broadcast programme (EC)**

Currently in some Member States, the quota system is applied to each channel, effectively excluding specialized channels that broadcast exclusively non-European programmes. While GOJ does not necessarily agree with the quota system, it urges improvement in its application such as to relax the regulation on the proportion of European works to multi-channel broadcasting programmes, such as satellite broadcasting and CATV, which mainly consist of specialised programmes, since such forms of broadcasting provide viewers with sufficient range of selection.

#### **ii) Flexible definition of co-production between non-EU and EU producers (EC)**

In response to the GOJ's request in FY2004, the EU side explained that those works made mainly by authors and workers residing in the EU Member States are considered as European works to an extent corresponding to the proportion of the capital from the European co-producers contributed to the total production cost, even when they are not regarded as European programmes in their entirety

However, even in such cases, it is still unclear as to how those works are actually treated

depending on the ratio of their capital contribution, and it is difficult to foresee what results would entail from such contribution. Therefore, the GOJ believes that the situation still poses a major obstacle to the co-production of programmes between Japan and the EU. Therefore, the GOJ urges that the EU adopt more flexible definition of co-production, by granting the status of co-production at least to the cases when non-European and European producers work together with positions of equal-footing.

**iii) Reduction in the regulatory level of quota in Member States to the EC Directive level 【EC and Member States】**

While the EC Directive in question requires that a majority proportion of the transmission time be reserved for European works, some EU Member States such as France have a regulation that requires even higher proportion of European works. The EU side responded to our request in FY2004 stating that decisions on whether to assign stricter rules than the EC Directive fall within the freedom of each Member State.

The GOJ does not necessarily agree with the current quota system; however, the GOJ contends that the Directive (which stipulates a majority proportion of the transmission time to be reserved for European works) should be regarded as setting the maximum level of obligation, with a view to securing as much opportunity as possible for cultural exchange with other regions outside the EU.

**iv) Objection to the introduction of a quota system to “non-linear audiovisual services” 【EC】**

In the current review process of the said EC Directive, there is discussion to expand the scope of the quota system to “non-linear audiovisual services.” The GOJ believes that such regulation should be withheld because viewers are already provided with sufficient level of selection and because the services are still in the cradle phase.

The GOJ is also aware that in the same review process a scheme is under consideration to oblige suppliers of “non-linear audiovisual services” to select and register themselves to particular Member State. The GOJ views that various contents on the Internet are all the more valuable because they are accessible from basically all over the world. Therefore the GOJ believes that the registration system proposed in the EU will undermine such merits and constitute significant obstacles both for the development of the non-linear audio visual services, which are still in the cradle phase, and the development of cultural exchange.

## **B5. Marine Transport and Automobiles**

### **(1) International harmonization of regulations for pedestrian safety 【EC】**

Given the need to have internationally harmonized regulations for the safety of pedestrians, European, American and Japanese governments are cooperating with a view to establishing Global Technical Regulation(GTR) based on the 1998 Agreement of the UN/ECE/WP29 by the end of 2005. Meanwhile, the GOJ appreciates EU’s statement in the

written responses of this fiscal year that much of the proposed detail has been accepted and that agreement on the EU's draft document is very close with regard to reviewing the draft directive for the protection of pedestrians. The GOJ hopes that the EU takes into account the deliberations on GTR when reviewing the draft directive for the protection of pedestrians and cooperate for the establishment of GTR. The GOJ also hopes that the EU continues making an effort for reducing pedestrian accidents globally and secures the interests of users, government and industry by harmonizing the regulations.

## **(2) The 1% Sludge Rule in Germany 【Germany, EC】**

In Germany, based on the assumption that vessels produce sludge more than 1% of the amount of the consumed fuel oil, there exists a rule to penalize the incoming oceangoing ships with fine in case where the sludge contained in the fuel oil is found to be less than 1% at the inspection, since those ships are regarded as having discharged sludge into the sea.

In its reply in May 2001, the German Government stated that the 1% sludge rule was the most suitable method to detect sludge discharge out of a ship, and that the rule was operated flexibly, exempting such vessels that use sludge treatment equipment to reduce the water content of the sludge to less than 1% of the total fuel oil. However, the sludge generation ratio differs depending on various conditions, such as ship facilities designed for environmental conservation and types of fuel oil. Therefore, the criterion based on the assumption that sludge always exceeds 1% of the fuel oil consumed by vessels unless special equipment is installed should not be uniformly applied.

In the EU's replies in September 2002 and October 2005, European Commission stated that there was no EU legislation pertaining to this matter and that it was Germany's domestic legal issue. European Commission also stated that it would convey the GOJ's concern to the German Government and that it would ask for information. The GOJ appreciates the European Commission's cooperation, but the GOJ has not received any response from the German Government since 2001.

Moreover, in the EU's response in 2005, in the process of communication between the European Commission and the German authorities, the GOJ has been requested to provide further information on the type of equipments used on board of ships operated by Japanese shipping companies. In general, Japanese ship-owners install "centrifugal separators" and "back-wash filters" for onboard fuel treatment, which are estimated to discharge on average sludge of 1-1.5% (including water) out of total fuel consumption. In some cases, that level may be lowered to less than 1.0% after water evaporation.

Hence, as it did last year, the GOJ proposes the following requests that:

- (a) the German Government:
  - (i) give their view on this matter,
  - (ii) repeal the abovementioned rule or review the rule to make it more reasonable and
  - (iii) clarify standards for equipment that will be exempted from the application of this rule, until the rule is repealed or amended.
- (b) European Commission: continue to urge the German Government to provide related
- (c) information to the GOJ and Japanese enterprises concerned.

### **(3) Review of EU regulations on exemption of competition legislation concerning liner shipping services 【EC】**

Regarding the review of Regulation (4056/86) on exemption of competition legislation concerning liner shipping services, the GOJ urges that European Commission have sufficient policy-coordination with the GOJ before the system is revised in order to ensure that there will be no conflict with the legal systems of the EC's trading partners such as Japan.

## **B6. Construction**

### **(1) Entry into construction work in Belgium 【Belgium】**

In order for non-EU enterprises to register as construction contractors in Belgium, it is necessary for them to establish an office within the EU that has functions of headquarters (for instruction and managements).

If an enterprise is unregistered, the enterprise must make a prepayment of 15% of the construction fee as a tax and 15% as a social security payment, which amounts to 30% in total, in order to obtain an order. This leads to disadvantages in competition.

Furthermore, the client who orders the construction work from a non-registered enterprise must guarantee a certain debt (for taxes and social security payment) of the non-registered enterprise. The GOJ believes that these obligations are excessive requirements.

It is difficult for Japanese construction enterprises to register since many of them do not have an office in Europe that has functions as headquarters. If the enterprise is not registered, it will be treated unfavorably as described above when they receive an order. Therefore, as the GOJ urged last year, the GOJ again urges that improvements be made to this system.

In addition, the GOJ urges Belgium to submit the documents and data as soon as possible as Belgium committed to do so in the Brussels Meeting in March 2005.

### **(2) Enforced insurance system for construction work in France 【France】**

In France, when carrying out building construction work, the contractor for the construction must accept liability for 10 years after the construction is completed (Article 1792 of the French Civil Code). The French Insurance Law (Article L241, Supplementary Provision I to Annex Article A243-1) provides for obligatory insurance in order to ensure that this liability is assumed. In the past, contractors were obliged to join an insurance to assume liability for buildings, but builders were not fully protected because it took an extremely long time to clarify where the responsibility lay due to the nature of compensation insurance. For this reason, insurance against damage to buildings, which does not mention the responsibility for compensation, was also included in the obligatory insurance.

While the GOJ fully understands the need to protect builders, given that this obligatory insurance system is unique to France, there are very few insurance companies outside France that can provide the aforementioned insurance under appropriate conditions. Furthermore, since French insurance companies consider the past record of the construction company in France when calculating the insurance premium, construction companies from other countries than France such as Japan must pay higher insurance premiums compared to French companies and are in a disadvantageous position to compete for contracts. According to the EU reply, this insurance system is the matter of risk management of private companies. As the GOJ urged last year, the GOJ urges the EU to clarify its position on the method that the past records of the construction activities outside of France are not taken into account. The GOJ also maintains its request to the EU that steps be taken to rectify the situation since this system effectively creates barrier to the Japanese companies.

## **B7. Health care and Pharmaceuticals**

### **(1) Compliance with the examination period stipulated in the Clinical Trial Directive [ ♦, EC, M.S.(UK, France, Germany and the Netherlands in particular) ]**

The Clinical Trial Directive of the EU stipulates that the examination period required by the regulatory authorities regarding the application for clinical trials is up to 60 days (except in the case of trials involving medicinal products for gene therapy or somatic cell therapy or medicinal products containing generically modified organisms). However, as the validation of the applied documentation for clinical trials sometimes takes over 60 days in some EU Member States, the GOJ urges the EU side to ensure that all EU Member States comply with the maximum of 60 days as stipulated in the Clinical Trial Directive.

### **(2) Notification to the new EU Member States of the mechanism of the Declaration of Conformity with the Medical Devices Directive (MDD) [ ♦, EC, Poland, other new EU Member States ]**

Medical devices to be circulated in the EU need to be checked for conformity with the Medical Devices Directive (MDD), which was established to protect the health and safety of users and patients. Then, MDD Declaration of Conformity proves that the devices fulfill the standards set forth in the MDD. Products in compliance with the MDD with the CE mark are ensured of free distribution within the EU.

However, in some new EU Member States, there have been some instances in which medical institutions request a notarized copy of the MDD Declaration of Conformity for products with the CE mark (e.g., such instance happened recently in a medical institution in Poland). This greatly impedes the activities of the Japanese companies concerned.

Thus the GOJ urges that domestic laws and regulations on the MDD be promptly introduced in these countries in which the MDD has not been applied yet. Even if a transition period is established, the GOJ requests that the countries concerned avoid imposing complicated and burdensome measures that would hinder activities of non-EU companies.

### **(3) Provision of information and exchange of opinions on the application of the Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) 【◆, EC】**

Medical devices are classified as Category 8 of the Directive on waste electrical and electronic equipment (WEEE), which sets out regulations on the appropriate disposal and reusability of waste electrical and electronic equipment. The application of the RoHS Directive, which restricts the use of certain hazardous substances contained in electric and electronic devices to Category 8, has been provisionally postponed.

Currently discussions are underway to apply the RoHS Directive to the said category 8 as well. However, there are only few alternatives, if at all, to substances such as lead, currently in use for medical devices. Even if there are alternative materials, they are extremely costly with no prospects of their practical use. If the continued use of the said substances is not allowed, the medical device manufacturing business will not be viable. Hence, this is a crucial matter for medical device manufacturers.

Therefore, regarding Category 8 to which the application of the RoHS Directive has been postponed as provisional measure, the GOJ, in light of concerns for the excessive burden to be borne by companies and obstacles to healthcare and medical services as a whole, urges the EC to provide the most recent information on the future application of the RoHS Directive to Category 8 as well as opportunities to exchange opinions.

### **(4) Countermeasures for the parallel importing of pharmaceuticals 【EC, UK, Germany】**

Since the prices of pharmaceuticals in the EU are regulated by different national medical insurance systems in each EU Member State, companies cannot freely set sales prices. In some Member States, it is required to set a very low price for pharmaceuticals compared to the companies' suggested sales price. This leads to a large price gap for the same pharmaceutical within the EU, caused by the differences in pharmaceutical pricing systems in each Member State. At the same time, as the freedom of movement of pharmaceuticals is guaranteed in the EU as is the case with other products, parallel importers in the EU can purchase pharmaceuticals in Member States where prices are low without concluding licensing agreements with manufacturing companies and sell the said pharmaceuticals at high prices in other Member States.

As was confirmed at the meeting in Brussels in March this year, the GOJ understands that discussions are underway on "a single EU price" as a countermeasure to parallel importing of pharmaceuticals. This idea was expressed in the report by the G10 Medicines Group, which is composed of high-level members from governments as well as the public and private sectors. The GOJ urges the EU side to inform it of the current situation concerning measures to promote "a single EU price" as well as its specific content.

In addition, parallel importers could make mistakes; e.g., mistakenly interchange attached documents, and if medical malpractice occurs, then the responsibility can be shifted to the manufacturer of the product in question. Therefore, the GOJ urges that the responsibility of parallel importers concerning repackaging be clearly stipulated, and that punitive measures be introduced as necessary, in order to fully ensure the safety of parallel imported items and to thoroughly prevent inflows of defective products.

## **(5) Review of the reference price system in Germany 【◆, Germany】**

Under the reference price system, pharmaceuticals with the same or similar components are placed in one group and the same reimbursement price is applied for the same group. In the statutory health insurance of Germany, products for which generic pharmaceuticals already exist had been subject to this system and products for which generic pharmaceuticals do not exist had been exempted from this system from the viewpoint of promoting R&D investment by pharmaceutical companies.

However, since January 2005, some products for which generic pharmaceuticals do not exist have become subject to the reference price system, which greatly undermines the incentive for pharmaceutical companies to make R&D investments in Germany. It is also unclear what sort of standards have been used to group pharmaceuticals that have newly become subject to the reference price system as a result of the expanded scope of application of the reference price system, which was implemented without prior consent of the pharmaceutical industry. Such a measure cannot be considered fair and transparent.

The GOJ therefore urges Germany to explain how it has grouped pharmaceuticals in the reference price system since January 2005. The GOJ also proposes that consultations with industries concerned will be held prior to any changes to the system.

## **B8. Tourism**

### **(1) Residence permit applications in Italy 【Italy】**

The GOJ appreciates the amendment that has been made to the law in Italy, which extended the exempting period for a residence permit application from 8 days to 30 days. However, as neither this amendment nor the implementing procedures have yet been put into effect, the GOJ urges that such actions be taken promptly.



## **C: Environment**

### **(1) General comments [EC, M.S.]**

The GOJ appreciates the EU for taking lead in tackling environmental issues. With regard to the recycling issue, in particular, Japan shares common awareness with the EU. On the other hand, regulations in the field of environment may not only have significant impact on non-EU enterprises including Japanese enterprises, but also have an effect which is not negligible on the EU's efforts to strengthen economic competitiveness in Europe based on the Lisbon Strategy. Therefore, the GOJ believes that an appropriate balance should be ensured between the expected achievement in the field of environment and its effect on corporate economic activities, international trade and investments.

Furthermore, in the Cooperation Framework for Promotion of Japan-EU Two-Way Investment, the GOJ and the EU, with their intention to continue dialogue in both the formulation stage and implementation stage of regulations in order to promote two-way investment, have designated as one of the priority areas.

The GOJ continues to urge that such regulations should not impose an excessive burden on enterprises, impede sound economic activities or create trade barriers.

### **(2) New chemical regulations in the EU: Proposal for a Regulation of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) [EC, M.S.]**

The GOJ has repeatedly conveyed its concerns regarding the EU's REACH Proposal on bilateral occasions such as at the Japan-EU Regulatory Reform Dialogue and Japan-EU Industrial Policy Dialogue, as well as at the WTO/TBT. In brief, the following concerns have not been eliminated yet:

- (a) The REACH should not impose excessive burdens in light of its objective, such as duplication of registration for the same substance.
- (b) The REACH should not impose adverse effects on international trade, such as being discriminatory toward non-EU manufacturers (in particular, the registration of chemical substances contained in article).
- (c) The REACH should be consistent with relevant international approach.
- (d) Each EU Member State should ensure consistency in implementation of the REACH.

Deliberations on the REACH proposal have come to a critical point, since in the near future, this proposal is scheduled for adoption at the European Parliament Plenary Session (first reading) and the European Council is expected to hold consultations on its "common position." The GOJ strongly urges that Japan's points when future revision is made to the proposal. Moreover, the GOJ urges that the EU continue to provide information on the status of its deliberations on the proposal since the GOJ and Japanese industry have strong interest on this matter.

### **(3) "Directive on waste electrical and electronic equipment (WEEE)" and "Directive on the restriction of the use of certain hazardous substances in**

## **electrical and electronic equipment (RoHS)” 【EC, M.S.】**

- (a) With respect to WEEE and RoHS, both of which came into effect in February 2003, the GOJ understands that all Member States had to prepare the necessary national legislation to transpose both directives by the end of August 2004. However, many Member States have not completed such legislative process yet, although the said deadline has already passed. The Japanese industries concerned request that the EU inform the GOJ of the actual content and status of the related legislation including domestic laws, government and ministerial decrees in those Member States that have completed their legislative process. They also request the EU to urge those Member States that have not completed their legislative process to do so at an early date. Furthermore, the GOJ urges the EU to continue to provide sufficient related information.
- (b) As for the WEEE, the GOJ is aware that there still remain some issues, such as vagueness in its scope of parties that are obliged to comply with the requirement of the directive and unclear scope of products subject to the directive. The Japanese industries concerned have made every possible effort, within the limited time frame, in accordance with the purpose of the WEEE. However, challenges still exist in implementing, the obligation to provide information as stipulated in Articles 10 and 11, e.g., the delay in the establishment of related domestic laws in EU Member States and relevant regulations by the European Committee for Electrotechnical Standardization (CENELEC), and ambiguities surrounding the scope of products that should bear the label. The GOJ thus urges the EU to respond flexibly in implementing the system.
- (c) The GOJ is aware that some problems remain regarding the ROHS. For example, the products subject to ROHS, the scope of the items of exemption and their interpretation remain unclear, and the items of exemption are scheduled to change. Furthermore the handling of Categories 8 and 9 is unclear. The GOJ understands that considerations on the aforementioned problems with both directives are currently underway in the Technical Adaptation Committee (TAC) and urges that the EU provide an explanation on the most recent situation of such considerations.

Moreover, some EU Member States are attempting to impose an obligation to present the certificate of conformity in their national languages when translating the RoHS into domestic law. However, in view of the legal nature of RoHS which is based on Article 95 of the Treaty Establishing the European Community, whose objective is to integrate the market, the GOJ would like to receive confirmation for the EU that there will be no regulations to be imposed on producers in addition to the regulations stipulated in the directive.

Bearing in mind the lead time required by the companies exporting products from Japan to Europe require to develop products and introduce them to the EU market, the GOJ urges the EU to solve the aforementioned problems as soon as possible so that they do not present obstacles to Japanese enterprises in complying with the said directives.

Furthermore, the GOJ urges the EU to continuously respond flexibly when the Japanese industries concerned, among others, raise individual requests on this matter.

#### **(4) Proposal for a new Battery Directive 【EC, M.S.】**

- (a) The GOJ received a reply from the EU that the proposal for a new Battery Directive, on which the Council adopted its view in December 2004, includes the ban on the use of nickel-cadmium batteries, while at the same time, items of exemption were established and that their effect would be limited. The GOJ continues to urge, as it did last year, that the ban on the use of nickel-cadmium batteries not be included in the Proposal for the Directive. The GOJ also urges that due consideration be given to concrete scientific grounds and social convenience with respect to regulations on batteries.
- (b) The GOJ welcomes that the articles regulating the use of lead were removed from the European Commission's Proposal for the Directive on Battery. The GOJ urges that this article not reappear during the process of deliberation in the European Parliament in the future.
- (c) As the information on the webpage the EU referred to in its response is insufficient, the GOJ urges the EU to explain the purpose and cost-effectiveness of collecting and recycling primary batteries, which leads to an excessive increase in social costs. The GOJ continues to urge that opportunities be offered to exchange information and opinions.

#### **(5) Proposal for a framework directive for setting eco-design requirements for Energy-using Products (EuP) 【EC, M.S.】**

Given that the International Electrotechnical Commission (IEC) has been making progress in creating environment-conscious design standards concerning items required in the Framework Directive and Implementing Measures, the GOJ urges that international standards in EU be given priority when setting harmonized standards so as to allow non-EU businesses to respond smoothly. Furthermore, as the Japanese industries concerned has intention of making useful comments in the process of formulating the Implementing Measures, the GOJ urges the EU to provide Japanese companies with opportunities to participate in the Consultation Forum and in other venues for prior consideration such as preparatory studies.

#### **(6) Proposal for a regulation on greenhouse gases 【EC, M.S.】**

Automobile air conditioners are subject to the type certification requirements in the proposal for a regulation on greenhouse gases currently under consideration in EU. Since the use of refrigerants with a Global Warming Potential (GWP) of over 150 is prohibited in the aforementioned proposal for a regulation, R152a and CO<sub>2</sub> are two possible choices for automobile air conditioner refrigerants that meet the standards in the said proposal for a regulation. However, because R152a is combustible, it is difficult to be used as a refrigerant at this point from a safety perspective. Thus it is foreseen that CO<sub>2</sub> will be used as an automobile air conditioner refrigerant in Europe.

On the other hand, as a result of considering an overall viewpoint including the environmental one, R134a (GWP1,300) is used as an automobile air conditioner refrigerant in Japan since a recovery system has been established for this refrigerant. The GOJ also understands that the US has made its position clear that it would continue to use R134a air conditioners.

Therefore, if Europe alone uses CO<sub>2</sub> as an automobile air conditioner refrigerant as a result of implementing the proposal for a regulation on greenhouse gases, while the US, Japan and other regions use R134a, European and other manufacturers will need to continue producing two types of automobile air conditioners. This will result in a significant increase in burden for automobile manufacturers and suppliers, which may lead to a major problem in trade. The GOJ thus believes that instead of selecting automobile air conditioner refrigerants based solely on GWP value, it is important to compare the overall global warming prevention effect bearing also in mind the kinetic impact on the vehicle. At the same time, there is a need to give certain consideration to the cost to be borne by automobile manufacturers and suppliers. Therefore, the GOJ urges the EU to consider allowing the use of R134a, a highly efficient, leak-free refrigerant, in automobile air conditioners until an optimal alternative refrigerant can be found. One of the technical challenges of CO<sub>2</sub> is that its performance declines in high-temperature environments. There are concerns over the use of CO<sub>2</sub> as an automobile air conditioner refrigerant in the warm regions of Southern Europe, such as insufficient cooling capability and expanded fuel consumption caused by increased consumption of power.

## **D: Fundamental Matters Related to the Business Environment**

### **D1. Work and Residence Permits**

#### **(1) Overview: Improving procedures for obtaining work and residence permits 【M.S., EC】**

Because lengthy periods are required for obtaining or renewing visas, work permits and residence permits in many EU Member States, Japanese companies operating in these countries have difficulty in transferring and employing their staff members in a planned and smooth manner, and that also hampers the lives of business people and their families. The problems of work permits and residence permits have become the largest concern for business managers and employees operating in Europe as well as their family members. Although the situation has improved in some countries, there are many countries in which problems persist. The GOJ continues to urge that improvements be made with regard to the following point. As to Hungary, Denmark and UK, there have been neither replies from the EU nor substantial developments. The GOJ therefore urge the EU to improve the situation

(Requests to Member States on obtaining work and residence permits)

#### **(2) Work visas in Italy 【Italy】**

- (a) A new regulation went into effect in February this year (Presidential Decree No. 334 of October 18, 2004), which extended the maximum length of stay of those who enter Italy on non-quota work visas from two years to five years. The GOJ appreciates the efforts made by the Italian Government, but this new regulation has yet to be fully implemented. Similarly, the "Sportello Unico per l'Immigrazione", or the Single Contact Point for Immigration, which Italy decided to set up with the aim of simplifying the application and issuance procedures for work permits and visas, is not fully operating. As a result, there are such hindrances as considerable time is necessary for procedures to be completed. The GOJ urges Italy to promptly implement and fully operate the new regulations at an early date.
- (b) The GOJ also urges Italy to make sure that after five years, which is the maximum length of stay permitted by the non-quota work visa, a Japanese national can extend the non-quota work visa without having to return to Japan.

#### **(3) Visas in Spain 【◆, Spain】**

Regarding students who are to be sent abroad by companies, there are cases in which those applied for visas in March this year did not receive any indication even after three and a half months. That has significantly affected their schedules for studying in Spain. Also, there are cases in which expatriates who had already received their work and residence permits applied for their and their families' entry visas, and visas issuance for their family alone delayed more than 6 months. The GOJ urges Spain to address the issue, including through promptly issuing the said visas and establishing a system to monitor the visa issuance process.

#### **(4) Work permits in France 【France】**

In France, work permits need to be renewed annually, and the renewal process requires nearly the same amount of procedures as a new work permit. Thus the GOJ urges France to extend the term of validity and simplify the procedures.

#### **(5) Work and residence permits in Greece 【Greece】**

Regarding foreign expatriates to which Article 35 of the current Immigration Law pertains, the GOJ understands that an amendment to this law is planned to simplify and expedite procedures, including omitting the process of obtaining work permits and integrating application offices into the Ministry of Interior, Public Administration and Decentralization. The GOJ appreciates the efforts by Greece and hopes that the aforementioned measures for improvement are promptly and surely implemented.

#### **(6) Work permits in Germany 【Germany】**

The Japanese Embassy in Germany and relevant German authorities are in the process towards holding consultations. Thus, the GOJ wishes the situation will be further improved.

#### **(7) Working visas in Portugal 【Portugal】**

Handling of applications for renewing work visas depends on the local Labor Bureau or person in charge, sometimes accepted beginning a month prior to the date of expiration, in other cases only three days in advance. According to the EU reply, extension of working visa is granted at the same time as the authorities receive the demand. But the GOJ understands that at some application offices several days of waiting is necessary. The GOJ continues to urge Portugal to uniformly extend the period of time during which applications for renewing working visas can be accepted.

#### **(8) Intra-Company Transfer Scheme in Ireland 【Ireland】**

Although temporary measures have been taken since the Intra-Company Transfer Scheme (ICT) was suspended in 2002, Japanese business people have continuously expressed their dissatisfaction over the lack of transparency and consistency of these measures. The GOJ therefore hopes that the Irish Government fully resumes this system at an early date. In addition, the GOJ also urges that efforts be made to expedite, clarify and simplify the normal type of work permit application and renewal procedures.

#### **(9) Work and residence permits in Austria 【Austria】**

The GOJ understands Austria's policy on work and residence permits when employing non-EU foreigners. However, those types of business having Japanese tourists as customers, in particular, need a high level of Japanese language proficiency, and it is practically difficult to find qualified people in Austria. The GOJ therefore urges Austria to improve the situation by further simplifying or expediting the procedures of first trying to find qualified people among the unemployed people in Austria.

**(10) Work and residence permits in the Czech Republic 【Czech Republic】**

The GOJ understands that deliberations are underway in the Czech Parliament to amend the domestic law so as to allow simultaneous application of work permit and long-stay visa, and to extend the period of long-stay visas for business purposes from one year to two years. The GOJ highly appreciates the Czech Government's proactive efforts. Furthermore, the GOJ observes that the Czech Government is positively considering the introduction of a system to track the visa issuance screening process over the Internet. The GOJ hopes the Czech Republic to promptly implement these measures for improvement.

**(11) Work and residence permits in Hungary 【Hungary】**

The GOJ urges that the residence and work permits be issued smoothly and that the term of validity of residence permits be extended from one year to over two years. The procedures are cumbersome because it is necessary to obtain the family register from Japan every time a residence permit is renewed. The GOJ therefore urges Hungary to simplify the documents required for submission.

**(12) Work and residence permits in Belgium 【Belgium】**

Belgium explained in its written replies two years ago that work permits are generally issued within four weeks. However, there are cases where the process took nearly two months. The GOJ therefore urges that Belgium will continue to strive to promptly issue work permits. Besides, Japanese business people are dissatisfied with the overly cumbersome procedures since Japanese expatriates and their families are to renew their residence permits (ID cards) every year. The GOJ thus urges Belgium to extend the term of validity of the residence permits.

**(13) Residence permits in Poland 【◆, Poland】**

There are cases where proxy applications for residence permit (temporary cards), which are allowed by law, were rejected. There are also some cases wherein over three months from the date the application was received until the residence permit was issued. The GOJ thus urges Poland to standardize the implementation and simplify the procedure.

**(14) Implementation of procedures in Finland 【◆, Finland】**

As a result of the enactment of the new Foreigners' Law in 2004, improvements have been made regarding work and residence permits, including an overall reduction in the time required for procedures and extension of the period of renewal(one year to three years). The GOJ thus appreciates the efforts by the Finnish Government. Meanwhile, the GOJ urges that Finland standardize the implementation of the procedures since they differ by region.

**(15) Residence permits in the Netherlands 【Netherlands】**

The GOJ appreciates that the issuance criteria for residence permits that are integrated with work permits were relaxed following the introductions in the Netherlands of a new scheme (knowledge migrants) in October 2004. Nonetheless, it still takes five to six weeks

for residence permits to be issued. The GOJ urges the Netherlands to expedite the issuance of these permits.

#### **(16) Student visas in Denmark 【Denmark】**

Currently student visas have a term of validity of one year and it requires an enormous amount of work for Japanese school, which was established in Denmark by Japanese university, to annually renew every student's visa. In addition, students face inconveniences since they do not have their passports at hand while their visa applications are being processed. Another European country is issuing visas that are valid throughout the period of schooling. The GOJ urges the Danish Government to extend the term of validity of student visas from one year to cover the entire period of schooling.

#### **(17) Student visas in the UK 【UK】**

A special category for student work during summer vacation is established to allow university students to work 40 hours a week. However, this does not apply to students who stay for a short period of time, such as students studying at language school. The GOJ is aware that with the legal amendment in autumn 2003, the payment for a visa renewal, which ranges from 400 to 500 pounds, was made mandatory in October 2003. This amendment is imposing a burden on the cost of living for many language students. In view of such a change of circumstances, the GOJ urges that the UK establish a special category, similar to that for university students, that allows language students to work during summer vacation.

#### **(18) Green Paper on an EU approach to managing economic migration 【EC, M.S.】**

The GOJ has a strong interest in the EU's future approach toward economic migrants since it will affect the lives of Japanese nationals living in EU Member States. In response to the Green Paper on an EU approach to managing economic migration, Japan submitted comments in April 2005, requesting the EU to clearly distinguish intra-corporate transferees from economic migrants and apply simplified procedures to intra-corporate transferees, as well as to establish a single application procedure for a combined residence and work permits in all EU Member States. The GOJ hopes the European Commission will pay due consideration to Japan's comments. The GOJ would also like to receive an explanation on the status of consultations within the EU concerning this Green Paper.

## **D2. Driving Licenses**

### **(1) General Comments 【EC】**

The EU requires through the Council Directive on Driving Licenses (1991/439/EEC) Japanese nationals living in EU Member States surrender their Japanese driving licenses when exchanging them for driving licenses issued by the EU Member States in question. If Japanese nationals return home to Japan having surrendered their Japanese driving



licenses, they cannot drive in Japan, which hampers their smooth economic and social activities. The GOJ has requested as the best solution to this problem that the Japanese driving license be returned immediately and directly to the license holder when exchanging it for that of the EU Member States.

In February 2004, the European Commission proposed that when Japanese nationals exchange their Japanese driving licenses for those issued by the EU Member States, the authorities of the EU Member State concerned return the surrendered Japanese driving licenses they received to the Embassy of Japan in that EU Member State. In October 2004, the GOJ informed the European Commission of its acceptance of the proposal, and explained the GOJ's position through the European Commission at the Meeting of the Committee on Driving Licenses held in November 2004.

Through bilateral consultations, the GOJ and EU Member States are currently coordinating the procedural details concerning the return of Japanese driving licenses to the Embassy of Japan in respective Member States. During this process, cases have been reported where it took approximately one month to exchange the driving licenses. Although the GOJ appreciates the positive response taken by the UK and other countries, the GOJ reiterates its request to the European Commission to urge the EU Member States to expedite the procedures for the exchange and return of driving licenses and to promote bilateral consultations with Japan.

## **(2) Exchange of driving licenses in the Czech Republic 【◆, Czech Republic】**

The GOJ appreciates that from October 2004, as a result of efforts made by both Japanese and Czech officials, Japanese nationals are allowed to drive in the Czech Republic if they carry with them Japanese driving licenses and Certificates of Japanese Driver's License. However, since this Certificate is not by itself a Czech driving license,, Japanese nationals are not allowed to drive in other EU countries, which causes significant inconveniences for Japanese business circles in conducting business. The Czech Government is providing for legislation necessary for exchanging Japanese driving licenses for Czech driving licenses. The GOJ appreciates the Czech Government's efforts. At the same time, the GOJ continues to urge the aforesaid legislation to be realized in a way that ensures prompt, assured and smooth exchange and return of driving licenses.

## **(3) Exchange of driving licenses in Greece 【Greece】**

Since the GOJ submitted its request last year, the Government of Greece began reforming its system and is working to amend the governmental decision. The GOJ appreciates the efforts of the Greek Government, and hopes that the aforementioned amendments are promptly implemented and that the smooth exchange and return of driving licenses is realized at the earliest possible date.

## **(4) Driver licenses in Slovakia 【◆, Slovakia】**

At present, the long-term Japanese residents in principle need to possess either an international driving license issued in Japan or a Slovakian driving license, in order to drive in Slovakia. However, in the former case, the term of validity of a Japanese international driving license is one year and its frequent extension is necessary. In the latter case, even those Japanese residents with sufficient driving experience are required to complete

designated training courses. The GOJ expects that the close consultations will be held between the Embassy of Japan in Slovakia and relevant Slovakian authorities with the view to resolving the inconvenience for the Japanese residents in Slovakia.

### **D3. Others (Developing an investment environment)**

#### **(1) Measures to deal with animal rights extremists (ARE) 【UK, EC】**

Animal rights extremists (ARE) typified by Stop Huntingdon Animal Cruelty (SHAC) are staging violent and antisocial protest activities against local Japanese pharmaceutical companies, particularly in London. Such activities have frequently occurred since March 2003.

Thanks to the efforts made by the UK authorities, there have been some improvements and steps have been taken to bring the situation under control to a certain extent: the court has issued injunctions to stop the said organizations from holding protests; the police authorities have tightened their control; and necessary legal amendment was made (signed by Her Majesty The Queen on April 7, 2005). However, protest activities continue to take place in a variety of forms.

The GOJ therefore continues to urge the UK to strengthen regulations and take vigorous control, and also urges that appropriate control measures be introduced at EU level.

### **Additional Point**

#### **(1) Eliminating the problem of double contributions for social security system**

Although the GOJ recognizes that Japan-EU cooperation is progressing in this field, the double contributions for social security system imposes a great burden not only on companies already operating in Europe, but also on companies planning to extend their business in Europe. The GOJ hopes that both Japan and the EU will continue to make their efforts to reduce the burden on them since it has a negative impact on Japan's investment to Europe.

This problem should ultimately be resolved by the conclusion of bilateral agreements between Japan and each of the EU Member States. Japan has already concluded social security agreements with Germany and the UK. In February 2005, Japan signed social security agreements with France and Belgium, and the agreements were approved by the Diet in July 2005. The GOJ hopes that the procedure of concluding these agreements will be promptly completed in both countries. Negotiations are on the way aimed at the conclusion of a social security agreement with the Netherlands. The GOJ intends to proceed with the exchange of information with a view to launching negotiations to conclude social security agreements with EU Member States in order of priority, according to the situation of exchanges of people between Japan and these countries and the need for social security agreements.

## **Attachment: Taxation**

*The following issues on taxation are, unlike other proposals of the GOJ, presenting matters pointed out by Japanese private companies (hereinafter referred to as the Japanese business).*

### **(1) General comments: Harmonization of taxation 【EC, M.S.】**

The Japanese business continues to request that company tax systems in the EU be harmonized and unified as soon as possible. The European Commission is looking into the harmonization of corporate tax systems. However, there is discrepancy among the tax systems of the EU member states with regard to, among others, transactions across national borders within the EU, which imposes tax and administrative burdens upon companies operating in the EU.

(Specific examples)

- Transfer Pricing Taxation
  - A reduction of compliance costs of transfer pricing through unification, simplification and rationalization of transfer pricing regimes would increase international competitiveness of the Japanese and EU business. The Japanese business would like to be informed of the latest status of the “EU Joint Transfer Pricing Forum” established in 2002. Furthermore, the Japanese business continues to request that through this forum a policy to reduce compliance costs of transfer pricing will be formulated at an early date.
- VAT
  - The Japanese business highly appreciates the efforts of the European Commission in this area. Although VAT is a common taxation system in the EU, differences in the practical application by EU Member States constitute obstacles for Japanese companies operating within the Internal Market. The Japanese business continues to request that the application of the VAT system will be uniformed. More specifically, the Japanese business continues to request that the proposals of the European Commission, which include harmonizing the VAT rate and items subject to the VAT, as well as simplifying and expediting registration and refund procedures, will be realized at an early date.
- Provision of information related to each country's taxation
  - The Japanese business continues to hope provision of information well in advance on the direction and timetable of the tax system reforms scheduled in each EU Member State. It will be beneficial not only to existing Japanese companies already operating within the EU but also to companies newly starting their operations in the EU.

### **(2) The Merger Directive – Deferred taxation on unrealized gains on goodwill 【EC, M.S.】**

The Merger Directive (2005/19/EC) provides for the deferred taxation on capital gains arising from cross-border business restructuring carried out in the form of mergers, divisions, transfers of assets or exchange of shares within the EU. However, unrealized

gains on the cross-border transfer of goodwill are not included in the scope of deferred taxation. Japanese companies operating within the EU are restructuring their business groups in order to remain competitive in the Internal Market. In such cross-border restructuring, they often transfer goodwill within the group, resulting in substantial tax imposition. This constitutes an obstacle to reorganization, and some companies have in fact given up reorganization.

In the annex of the communication COM(2001)582, the European Commission recognized the problem that unrealized gains on the cross-border transfer of goodwill are not included in the scope of deferred taxation by the Merger Directive. While highly appreciating the recognition by the European Commission, the Japanese business continues to request that the European Commission and the EU Member States promptly extend its scope of the deferred taxation, in the form of preserving the tax claims of the Member States from which goodwill was moved.

The Japanese business also continues to request that the European Commission and Member States explore extending the scope of deferred taxation by the Merger Directive to the transfer of real estates and other intangible assets in reorganization.

### **(3) The Merger Directive - Shareholding requirements 【EC, M.S.】**

As the Merger Directive is not uniformly implemented in the EU, the different application in each EU Member State constitutes obstacle for Japanese companies considering restructuring of their groups in the EU in terms of work and cost.

Specifically, in certain EU Member States, companies are required to hold shares that they have received in exchange for contributed assets for a number of years. As a consequence, even if all assets are converted into shares and that those companies lose their functions as an operating company, there is a need to maintain those empty companies in order to hold their shares.

In addition to the cost of maintaining these empty companies, it will increase the risk of double taxation. Corporate taxes paid by the subsidiaries of the new holding company will not qualify for Japanese foreign tax credit for the portion distributed through the empty company, because the scope of Japanese foreign tax credit is limited to the second tier companies of the original holding company.

Therefore, the Japanese business continues to request that the European Commission take an initiative in the uniform application of the Directive and that the Member States would not impose the long-term shareholding requirement causing substantial obstacles to restructuring of companies.

### **(4) Common consolidated corporate tax base 【EC】**

It is desirable that Japanese companies operating within the EU compute the taxable income of the entire group in EU according to one set of accounting standards. However, under the current situation, companies need to create multiple sets of financial statements based on multiple accounting standards and are thus bearing a significant

burden.

In the communication COM(2001)582 of October 2001, the European Commission confirmed the importance of the common consolidated corporate tax base. The Japanese business is aware that the European Commission is moving ahead with its consideration of the common consolidated corporate tax base, such as establishing a working group composed of experts from Member States administrations in November 2004.

This initiative demonstrates the continued efforts toward the integration of the EU single market. At the same time, since the common consolidated corporate tax base will bring about a great improvement in the EU business environment also for Japanese companies, the Japanese business continues to expect the continued progress towards early realization.

#### **(5) Passenger car taxation 【EC, M.S.】**

The passenger car taxation systems in the EU vary widely among EU Member States, and this not only causes substantial obstacle to sales of automobiles, but also hampers price harmonization of automobiles in the EU. It has been pointed out that the price difference distorts fair competition and hinders the integrated market. Therefore, if passenger car taxation is harmonized, it will lead to the further integration of the EU single market, which is also desirable for consumers.

In July 2005, the European Commission released a draft proposal for a directive calling for EU Member States to restructure their passenger car taxation systems. The Japanese business hopes that this draft proposal directive will be surely put into effect and that information on the status of progress will be provided.

In formulating a new taxation system that includes the fuel tax, due consideration should be paid to ensure that this does not cause disruptions in the automobile market or on the part of consumers. Moreover, the Japanese business continues to hope that EU Member States, when implementing the abovementioned directive, take steps to ensure that the changes in the taxation system in EU Member States do not effectively raise various types of passenger car-related taxation, increasing the burden on consumers .

#### **(6) Exemption of international transport corporations from the obligation to submit documents to the tax authority in Italy 【Italy】**

Under Article 8 of the Japan-Italy Taxation Convention, international transport corporations of a contracting state is exempt from tax on gains acquired in the other contracting state. However, Japanese international transport corporations in Italy are required to submit tax returns and financial statements based on Italian taxation laws to the Italian tax authority though they are among the corporations exempt from corporate tax in the end. As they are not required to submit these documents in the other Member States, the Japanese business requests that they be exempt from the obligation to submit these documents in Italy.