NO.

Directions for Cooperation in Institutional Development in Developing Countries (Trade, Investment, and Competition Related Institutions)

March 2003

Committee on Cooperation in
Institutional Development for Markets
Working Group on Strengthening Industrial Competitiveness
Japan International Cooperation Agency

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Introduction

In order to contribute to the industrial and economic development of developing countries, Japan has been providing technical assistance such as the transfer of industrial technologies to developing countries and the recommendation and proposal of various policies for industrial/economic development. The Asian currency crisis and other events have brought about an increased awareness in Asian countries with regard to the importance of improving the systems and policies that will provide the foundation for sustainable industrial development. Also the rapid progress in economic integration and trade liberalization in East Asia has brought recognition needs for international standards. Developing countries must respond appropriately to this situation and study and implement strategies to obtain the benefits of globalization. Also Japan must study approaches to assistance in the area of systems improvement in order to bring about economic and industrial development in developing countries.

Based on a recognition of this situation, and with the objective of considering future assistance policies and effective assistance methods in order to help developing systems and strengthening markets in developing countries, a "Committee on Cooperation for Institutional Improvement Toward Stronger Markets" was set up in October 2001 by the Asian Regional Department 1 and Mining and Industrial Development Study Department of the Japan International Cooperation Agency (JICA). With the participation of experts and relevant government agencies and institutions, this committee studied the future direction of assistance for systems improvement, primarily in the East Asian region, and discussed the approach to Japan's assistance in this field. Discussions by the committee were conducted in two working groups: the "Working Group on Economic Soft Infrastructure ," which dealt with systems to ensure the smooth circulation of funds and capital, and the "Working Group on Strengthening Industrial Competitiveness," which dealt with systems relating to facilitate corporate activities in the marketplace in terms of trade, investment and competition.

The chair of the Working Group on Strengthening Industrial Competitiveness was Professor Shujiro Urata of Waseda University. In a total of seven meetings, discussions were held regarding the future direction of assistance to developing countries in terms of improving systems relating to trade, investment and competition. This report sums up these working group discussions in the areas of "International trends in institutions," "Situation of affairs and problems in Asian countries" "Assistance situation by Japan and other donors." It is hope that this report will contribute to future examination of assistance for developing countries in this area.

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As of August 2002

(1) Up to the 5th meeting: Yuichi Baba (Deputy Director, Trade Development Division)
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(8) Up to the 5th meeting: Kae Yanagisawa (Director, East, Central Asia and the Caucasus Division)

Discussions by the Working Group on Strengthening Industrial Competitiveness

1st meeting	Delineating the overall discussion and issues November 13, 2001 - Ranking of this working group and procedures for discussion Professor Urata (Waseda University), Secretariat - Progress of globalization and new developments in external economic policy Kawamoto (Deputy Director, Research and Analysis Division, Trade and Industry (METI)) - Case studies in analysis of industry competitiveness in Asian countries Secretariat
2nd meeting	Delineating the overall discussion and issues December 17, 2001 - Areas of cooperation relating to strengthening of industry competitiveness: perspectives and achievements Mr. Baba (Deputy Director, Trade Development Division, Japan External Trade Organization [JETRO]) Mr. Hayashi (Deputy Director General, Research Institute for Development and Finance, Japan Bank for International Cooperation [JBIC]) Mr. Ueshima (Director, Industrial Development Study Division, Japan International Cooperation Agency [JICA]) - Economic cooperation and assistance with economic integration of the countries of East Asia taken into consideration Professor Kimura (Keio University) - Thailand's industrial structure coordination project and Japanese assistance: background, development and issues for future study Professor Suehiro (Tokyo University)
3rd meeting	Competition law and policy January 21, 2002 - Economic development and competition policy Professor Nagaoka (Hitotsubashi University) - Current situation of issues relating to competition laws and policies in Asian countries Professor Yasuda (Nagoya University) - Current situation of assistance to developing countries in the area of competition policy and future efforts Mr. Hosoda (Director, International Affairs Division, Fair Trade Commission of Japan) - Approach to competition law and policy in developing countries on the part of international organizations and donors and situation of assistance Secretariat
4th meeting	Trade facilitation February 18, 2002 - Issues relating to strengthening industry competitiveness and trade facilitation Professor Enkawa (Tokyo Institute of Technology) - Efforts at facilitation of trade procedures Mr. Matsumoto (Deputy Director) and Mr. Gouda (Deputy Director) (Customs and Tariff Bureau, Ministry of Finance) Mr. Fukuda (Deputy Director, Trade and Investment Facilitation Division, Ministry of Economy, Trade and Industry [METI]) - Trade activities in Asian countries, procedural barriers, awareness of problems, etc. Fukuda (Manager, Toyota Motor Corporation) Mr. Nagaoka (Manager, NEC Corporation) - Approach to trade facilitation on the part of international organizations and donors and situation of assistance Secretariat

5th meeting	Investment promotion and facilitation March 12, 2002 - Situation of investment related systems in Asian countries and review of donor assistance Secretariat - External investment-related economic policy Mr. Shimizu (Director, Multilateral Trade System Department., Ministry of Economy, Trade and Industry [METI]) Mr. Soegaya (Deputy Director, Trade and Investment Facilitation Division, Ministry of Economy, Trade and Industry [METI]) - Issues relating to investment related laws in developing countries and future direction of assistance for institutional improvement Professor Kaneko (Hiroshima University) - Investment rules in Asia Professor Urata (Waseda University) - Next year's committee and summary of achievements Secretariat
Joint working group meeting	Joint working group meeting May 17, 2002 - Working group review Secretariat - Need for institutional improvement and future steps Professor Kimura (Keio University) , Professor Asanuma (Hitotsubashi University) - Summary Professor Urata (Waseda University), Professor Asanuma (Hitotsubashi University), members of both working groups
6th meeting	Preparation of working group report June 27, 2002 - Interim report on baseline survey of trade facilitation Secretariat - Content of working group report Secretariat
7th meeting	Preparation of working group report August 2, 2002 - Content of working group report Secretariat

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List of Abbreviations

AIA	ASEAN Investment Area
APEC	The Asia-Pacific Economic Cooperation Conference
ASEM	Asia-Europe Meeting
BIT	Bilateral Investment Treaty
CAP	Collective Action Plan
CEPT	Common Effective Preferential Tariff
CIS	Customs Intelligent Database System
CSS	Customs Service System
FDI	Foreign direct investment
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
ICA	Industry Coordination Act
IEG	Investment Expert Group
IFC	International Finance Cooperation
IMD	International Institute for Management Development
IPAP	Investment Promotion Action Plan
JBIC	Japan Bank for International Cooperation
JETRO	Japan External Trade Organization
JSEPA	Japan-Singapore Economic Agreement for a New Age Partnership
MAI	Multilateral Agreement on Investment
MIGA	Multilateral Investment Guarantee Agency
NAFTA	North America Free Trade Agreement
NBIP	Non-Binding Investment Principles
OECD	Organization for Economic Co-operation and Development
PFP	Partners for Progress
SADC	Southern African Development Community
SAF	Special Assistance Facility
SAL	Structural Adjustment Loans
SCCP	Sub-Committee on Customs Procedures
SL	Sensitive List
TEDI	Trade Electronic Data Interchange
TEL	Temporary Exclusion List
TFAP	Trade Facilitation Action Plan
TRIMs	Trade-Related Investment Measures
TRIPS	Trade-related Aspects of Intellectual Property Rights

UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
WB	World Bank
WCO	World Customs Organization
WTO	World Trade Organization

Chapter 1 Basic Approach

1.1 Background to Discussions and Present International Trends

(1) Progress of globalization and formation of international rules

In the 1990s, as a result of the transition of former socialist countries to market-oriented economies and the rapid progress in information technologies, the world economy entered a period in which technology and information, as well as goods, services, and capital, travel across international borders on an enormous scale. This globalization of the economies has expanded not only to the point that no single country's socioeconomic system is immune from its effects, but to the point that it is irreversible, and the trend is expected to continue in the future.

In the midst of this trend toward the globalization of the economies, there are moves to establish uniform rules for corporate activities, national trade, and investment policies, and to standardize these rules on the local or global level. There are also moves toward integrate economic systems. For example, in the 1970s, the Organization for Economic Co-operation and Development (OECD) established the Guidelines for Multinational Enterprises, which contained non-binding regulations covering the activities of multinational corporations in developed countries, and the organization has continued to revise these guidelines. The World Trade Organization (WTO) is already formulating rules concerning the restrictive measures and relevant investment measures of countries with regard to trade in goods and services, including those related to agriculture. In the current Doha Round, rules governing investment in general and the new areas of the environment, competition policies, and government procurement are being discussed. The Asia-Pacific Economic Cooperation Conference (APEC) has established guidelines for simplifying the procedures that facilitate trade and improve the investment environment. In this way, activities aimed at the creation of rules governing the activities of both government and companies are now underway. Furthermore, numerous free trade agreements, investment accords and comprehensive economic cooperation agreements have been concluded between both countries and regions. To prepare for the establishment of multinational rules, the parties concerned have been working on institutional coordination in a wide range of areas including trade, investment, competition, the movement of people, electronic transactions, the environment, and labor. For its part, Japan signed the Japan-Singapore Economic Agreement for a New Age Partnership (JSEPA). Moreover, during his visit to ASEAN countries in January 2002, Prime Minister Junichiro Koizumi proposed an agreement aimed at comprehensive economic cooperation between Japan and ASEAN countries. In this way, progress is being made on forging cooperative ties in East Asia based on the "ASEAN plus three" (China, South Korea, and Japan) framework.

(2) Implications for developing countries

How should the countries of Asia deal with this irreversible trend toward globalization? A symbolic example to consider is the Asian currency and economic crisis of 1997. The speculative behavior of so-called global money has been suggested as one of the direct causes of the Asian currency and economic crisis. However, it has also been pointed out that one of the reasons that the crisis was so serious and long-lasting was the fragility of the financial and corporate systems in these Asian countries. In other words, the lack of a systems infrastructure, resulting from the opaqueness and inefficiency of policies and systems, etc. This suggests that improving basic policies and institutions is also important for improving competitiveness in a world that is rapidly globalizing.

The countries of Asia are now forming rules for the various levels described above. However, for developing countries, there is some resistance to formulating multilateral rules because of concern that these rules will have a major impact on industrial policies. Yet these rules make it possible for these countries to receive the benefits of globalization, and improving domestic institutions and industrial policies will strengthen the industrial competitiveness of these countries.

Moreover, even in a major trading country such as Japan, it is important to improve the institutions that are concerned with industrial activities on both the world and regional levels and stimulate economic activities while maintaining harmonization and cooperation with other countries. There is considerable significance in providing international assistance for improving the appropriate institutions. The economic stimulation strategies prepared by the Council on Economic and Fiscal Policy in June 2002 also proposed that, in the midst of globalization, efforts should be made to promote the new WTO round, promote and strengthen free trade agreements and other economic ties, remove various trade barriers, and standardize and integrate institutions to create a framework for a new and free business area among East Asian countries.

1.2 Institutional Development to Strengthen Industrial Competitiveness

(1) Determining Factors for industrial competitiveness

Before discussing institutions that strengthen industrial competitiveness, it is necessary to consider exactly what industrial competitiveness means. Normally, economic "competitiveness" is analyzed in terms of three levels:

1) National competitiveness

This level measures competitiveness by country, using macro data such as the rate of GDP growth, per-capita GDP, export performance, etc. [1]

2) Industrial competitiveness

This level determines whether a certain industry in a certain country is competitive internationally. It is measured using the world market share of a specific industry, the rate of return on investments, etc.

3) Company competitiveness

This level measures the competitive advantage of a company in the market, using product market share, cost comparisons, productivity comparisons, etc.

In terms of this analysis, industrial competitiveness is a level between national competitiveness and company competitiveness. However, it is normally assumed that the objective data for an industry as a whole is comprised of the data for all of the individual companies affiliated with that industry. In most cases, this has been considered the sum total of company competitiveness.[2] Nevertheless, with the trend toward globalization, it is

[1] Conversely, there is another school of thought that holds that a true measure of a nation's competitiveness cannot be adequately made with objective data only. The World Competitiveness Yearbook, released annually by the International Institute for Management Development (IMD) in Switzerland, uses 139 objective data items and 110 opinion survey items to create a comprehensive ranking of a nation's competitiveness. (See BOX 1-1) In addition, Paul Krugman contends that the living standards of a country are based not on its productivity relative to other countries but on th increase in productivity within the country, and it is a mistake to gauge a nation's competitiveness in the same manner as company competitiveness, since national competitiveness is impossible to determine. Paul Klugman: *Pop Internationalism* [MIT Press, 1996]).

[2] For example, the report entitled "U.S. Industry in 2000: Studies in Competitive Performance," released in 1999 by the Board on Science, Technology, and Economic Policy (STEP) of the National Research Council, contained an analysis of the

becoming difficult for a single company to improve overall economic productivity, and this, coupled with increasingly fierce competition, is making it impossible to consider industrial competitiveness as the sum total of the competitiveness of individual companies. For this reason, when considering industrial competitiveness, it is becoming important to consider not only the competitiveness of companies but also such external factors as business environments and institutions.

As a result, the following two major determining factors for industrial competitiveness are considered:

1) Company capability (technology, management skill, personnel resources, etc.)
2) Institutional factors such as economy, government, society, etc.

Although improving corporate ability is a very important factor for strengthening industrial competitiveness, this report describes the importance of an improvement in systems by focusing on institutional factors, particularly economic institutions, which are likely to have an immediate effect on industrial growth.

BOX 1-1 IMD Competitiveness Rankings

Since 1990, the International Institute for Management Development (IMD) in Switzerland has released annual data on country competitiveness for OECD member countries and major developed and developing countries. Since 1994, the IMD has prepared a comprehensive "competitiveness ranking" based on uniformed techniques and indicators, and it continues to release rankings to this day. The competitiveness of countries is defined by the following 4 aspects:

(a) Attractiveness vs. Aggressiveness

Aggressiveness (Exports, direct investment, etc.) and attractiveness (benefits in terms of attracting direct investment)

(b) Proximity vs. Globalization

Strength of domestic economy and globalization

(c) Assets vs. Processes

Natural resources, infrastructure, cultural and educational assets, and capacity to process natural resources

(d) Individual Risk Taking vs. Social Cohesiveness

Individual risk taking (Anglo-Saxon type institutions that encourage the acquisition of wealth by individual risk taking through easing of restrictions, privatization, etc.) and social cohesiveness (continental European type institutions that encourage the equal sharing of wealth through social consensus and cohesiveness)

According to the 2002 rankings, Japan ranked 30 out of the 49 countries, down from the previous year's rank of 26. Number one was the United States, followed by Finland (No. 2) and Luxembourg (No. 3). In Asia, Taiwan ranked No. 24, Malaysia was No. 26, the Republic of Korea was No. 27 and China was No. 31. Japan received the lowest ranking in the categories of "difficulty of hiring foreigners," "possibility of public works projects being contracted to foreign companies," "applicability of university education to competition and economic needs," "diffusion of entrepreneurial spirit," "clarification of shareholders' rights and responsibilities" and "cultural openness."

(2) Strengthening industrial competitiveness and institutional development

In considering the importance of improving economic institutions for strengthening industrial competitiveness, the following two approaches are crucial:

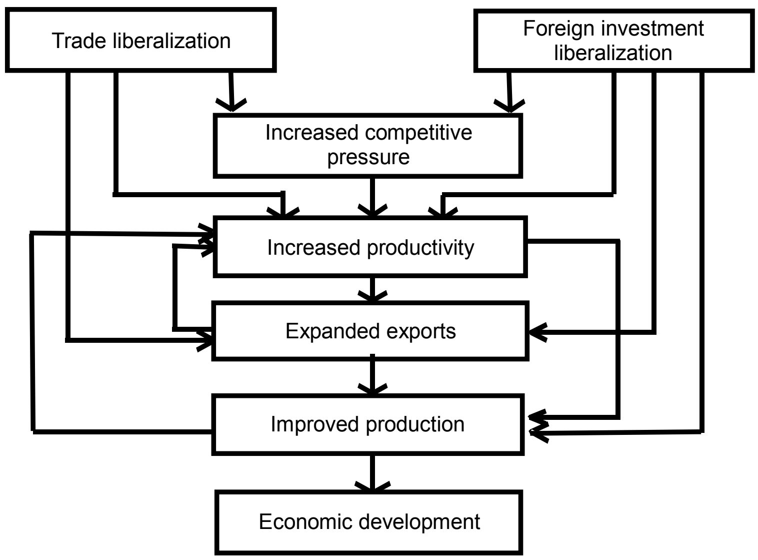
(a) Reducing transaction costs

competitiveness of eleven U.S. industries, but the analysis was almost synonymous with company competitiveness.

(b) Establishing a competitive business environment

The first approach (a) focuses on the transaction costs generated by various institutional problems (providing insufficient information and barriers to business activities such as inefficient government procedures, regulations, etc.) and establishes institutions that make it possible to conduct transactions at the lowest cost (i.e., the most efficient transactions) in order to improve productivity in industries and strengthen competitiveness. The second approach (b) aims to create an environment in which companies can conduct business in a free and fair manner so that the principle of competition works in every aspect of business. This increases competition pressure, which enhances productivity and strengthens the competitiveness of the industries.

Following these institutional approaches, specific measures can be implemented to bring about ever-increasing speed and level of advancement of the movement of goods, services, capital, technologies and information. For example, under approach (a), reducing transaction costs, one can focus on efforts to facilitate trade and investment with the aim of reducing the costs of corporate activities. Using approach (b), establishing a competitive business environment, efforts can be directed at liberalizing trade and direct investment, as shown in Fig. 1.1 below, under which greater market competition pressure will produce higher productivity. Establishing competition laws and policies is indispensable to both efforts in order to reduce the costs of maintaining brands and excluding factors that can be barriers to market access.



Source: Shujiro Urata. 1995. *Trade Liberalization and Economic Development*

Fig. 1.1 Liberalization of Trade and Foreign Investment and Economic Development

Efforts to facilitate trade are intended to complement and expand the continuing trend toward trade liberalization, and accordingly they should be focused on simplifying and harmonizing trade procedures. For instance, if any two countries resolve an incompatibility in their import and export permission procedures and they are able to standardize and harmonize those procedures, or if government agencies processing such procedures improve their own efficiency and it results in efficient customs procedures, then companies can reduce their expenses for these procedures. It can lead also to an increase in productivity and an expansion of exports and outputs, which will further improve their productivity, and thus a process can be formulated that advances economic development.

International transfers of investment funds, technologies, and economic expertise can be expected to be used efficiently and will improve productivity in the country that receives the investment.[3] At the same time, abolishing restrictions on investment and simplifying and harmonizing investment procedures will reduce the costs of direct investment by multinational corporations.

Moreover, countries should make an effort to protect intellectual property rights, achieve harmony among environmental, safety, and other standards, and ensure stability and transparency in labor laws and other economy-related codes. This can be expected to reduce foreign enterprises' expenses for direct investment, production activities, etc., and also help to raise the productivity of the countries in which they invest.

Laws and policies relating to competition had the original purpose of establishing and maintaining a forum for free and fair competition. They can be called the foundation of free business activities. Eliminating acts that restrict competition, such as abusing one's dominant position, and cartels, will create a competitive business environment. Eliminating exclusionary acts and unfair competitive acts will also make it possible to reduce transaction costs. Furthermore, as a result of the recent trend toward globalization, the need to deal with anticompetitive acts that transcend national boundaries is increasing the need for new rules between countries.

Improving various institutions is extremely important for promoting appropriate economic development in developing countries. For Japan as well, there is great significance in promoting the establishment of harmonious institutions in cooperation with other countries, and therefore cooperation in this area is recognized as being important. In the following chapters, the approach to international cooperation as it relates to the improvement of institutions is discussed, focusing on three areas: trade, investment, and competition. In addition to these areas, there is a wide range of issues that are linked to the strengthening of industrial competitiveness, including promoting personnel training and exchanges, ensuring a stable energy supply, and stabilizing currency and financial systems. The committee's Financial Infrastructure Working Group discussed currency and financial systems, while the other institutions will be considered at a future time. This study will focus on the aforementioned three points.

[3] The World Bank, Global Development Finance: Analysis and Summary Tables 2001 demonstrates that the inflow of private capital through direct investment contributes to the economic development of developing countries in accordance with the "absorptive capacity" of that country.

Chapter 2 Trade

2.1 Current Situation of Trade-related Institutions

(1) Importance of institutions and their development for promoting and expanding trade

Because trade has a major impact on economic development, the government in each country has established various institutions and procedures relating to trade activities. Amidst a series of movements toward trade liberalization, and with the rapid progress in globalization, institutions and procedures to promote and expand trade must be established and improved from an overall and medium- and long-term perspective. Particularly in the new trade environment with the evolvement of multilateral free trade regimes centered around the World Trade Organization (WTO) and active efforts to conclude regional and bilateral trade agreements, it is important for developing countries to fit into this new framework and, carry out their trade activities in line with it.

Institutions for promotion and expansion of trade can be divided into two concepts: “trade liberalization” and “trade facilitation.” "Trade liberalization" refers to efforts to improve existing policies and institutions, primarily the reduction or removal of tariff and non-tariff barriers that restrict free competition based on international rules. "Trade facilitation," meanwhile, refers to efforts to improve and establish institutions and procedures in terms of import and export activities (import/export procedures and their activities, import/export institutions, procedures in private sector, international framework, and so on). The specific content of these two categories is shown in the table below.

Table 2.1 Trade Liberalization and Trade Facilitation

Trade Liberalization	Trade Facilitation
? Reduction of custom duties • Reduction of protective duties • Reduction of financial duties ? Removal of non-tariff barriers	? Import/export procedures and their activity • Import/export permits, import/export clearance, international transport, port procedures, customs warehousing, etc. ? institution of import/export • Tariff institutions, plant and animal quarantine institutions, etc. ? Private sector procedures and their activities • Trade transactions (financial and practical aspects) ? International institutions • Standards and certification institutions, etc.

(2) International trends

At present, rules regarding trade liberalization for goods and services tend to be established by efforts made through the WTO. In developing countries, the establishment and fulfillment of domestic institutions that are in accord with the agreements are required. The Asia-Pacific Economic Cooperation (APEC) and other entities are providing assistance to developing countries in connection with the execution of the WTO agreements. With regard to trade facilitation, while the WTO covers some aspects, there are no all-encompassing rules. The WTO has decided to study the modalities of creating rules in the area of trade facilitation and to begin negotiations before the next ministerial meeting.[4]

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[4] Ministry of Foreign Affairs reference (Doha Ministerial Declaration Framework, November 14, 2001) At the 4th Ministerial Conference held in Doha, Qatar in 2001, the WTO declared that, with regard to trade facilitation (here the speeding up of goods in transit and trade procedures and the like), it had been agreed "...that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations."

The point that trade and investment liberalization and facilitation should be promoted has also been confirmed by APEC.[5] In any case, there are no all-encompassing international rules relating to trade facilitation, and efforts to establish such rules have barely begun. However, capacity-building assistance to developing countries is considered important for implementing the agreements that are expected to be concluded and maintaining and expanding free trade regimes. In the following pages, the discussion will be focused on trade facilitation.

(3) Efforts in Asian countries

Important efforts relating to trade facilitation in Asian countries are being made through APEC and the Asia-Europe Meeting (ASEM).

1) Efforts at trade facilitation at APEC

At APEC, trade and investment facilitation is ranked as one of the three most important areas, along with trade and investment liberalization and economic and technical cooperation. While the WTO places primary emphasis on liberalization (reducing tariffs and eliminating non-tariff barriers), APEC places emphasis primarily on facilitation.

APEC began its trade facilitation efforts in earnest at the summit and ministerial meeting held in New Zealand in 1999. A year and a half later, the APEC Principles on Trade Facilitation, comprising a preamble, nine principles and examples, was established. The preamble expressed the recognition that overall efforts to liberalize trade - were required through (a) ensuring of compatibility with legitimate policy objectives (b) aligning business and (c) improving capabilities for customs, quarantine and relevant government agencies. The principles and examples are shown below.

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[5] Ministry of Foreign Affairs reference (APEC Meeting of Ministers Responsible for Trade) (overview and evaluation) (May 30, 2002)

At the APEC Meeting of Ministers Responsible for Trade in Mexico in 2002, with regard to trade and investment liberalization and facilitation, the ministers "confirmed the need to further promote trade and investment liberalization and facilitation activities in accordance with the Shanghai Accord (adopted at the APEC summit in October 2001)." The detailed content is as follows:

(a) Trade facilitation

A variety of work is being undertaken within APEC in the area of trade facilitation. Parliamentary Secretary for Foreign Affairs Kenichi Mizuno, who attended the meeting, stated that in order to realize the goal of a 5% reduction in trade transactions costs,* the "APEC Trade Facilitation Action Plan" should be endorsed by the APEC Ministers responsible for trade. This statement received support. It was decided that in order to reduce transaction costs, work would be conducted on drawing up a list of concrete actions and measures, which would be approved at the leaders' and ministerial meetings this autumn.

* The goal of realizing a 5% reduction in transaction costs across the APEC region over the next five years was agreed at the Shanghai Leaders' Meeting in October 2001.

(b) Individual Action Plans (IAPs) and Collective Action Plans (CAPs)

Concerning the Individual Action Plans (IAPs) of each member economy implemented for achievement of liberalization and facilitation of trade and investment, Japan proposed that IAP peer review be strengthened (with emphasis on prior face-to-face discussions between experts and relevant government agencies in the economy under review, and on comments and discussions of all member economies in the peer review session) in August 2002, and Japan decided to be the first to undertake the strengthened peer review this year. All ministers welcomed Japan's position. Concerning the Collective Action Plans (CAP) among APEC economies, Japan presented a proposal for the establishment of an Intellectual Property Rights (IPR) Service Center Network, which received the understanding of ministers. With regard to this proposal, it was decided that review should continue among the officials and a report be made at the ministerial meeting to be held in October 2002.

(c) Expansion and Updating of the Osaka Action Agenda (OAA)

To ensure that APEC activities respond to the changes in the global economy, the Osaka Action Agenda (OAA) is being broadened and updated. An interim report on the work in progress was approved.

(d) Pathfinder approach

It was confirmed that Pathfinder Initiatives would also be adopted (advance implementation of initiatives by multiple economies) in order to promote efforts towards the achievement of the Bogor goals.

Table 2.2 General principles of trade facilitation (general principles and examples)

General Principle	Example
Transparency	Public presentation of trade-related regulations via electronic homepages
Communication and consultation	Discussions with representatives from industry and consumer groups
Simplification, practicability and efficiency	Provision of one stop shopping services
Non-discrimination	Prohibition of discrimination both domestically and internationally
Consistency and predictability	Adoption of consistent and predictable administrative decisions
Harmonization, standardization and recognition	Implementation of Revised Kyoto Convention
Modernization and the use of new technology	Computerization of procedures and implementation of "paperless" trade
Due process	Introduction of clear appeal provisions in the legislation
Cooperation	Building of cooperative relationships with trade authorities and international transport entities

The Shanghai Accord adopted at the APEC Ministerial Conference held in October 2001 included a call for specific measures for implementing the general principles of trade facilitation to be identified prior to the Minister's Conference in 2002, with the objectives of reducing transaction costs in the APEC region by 5% within five years, and for these measures to be implemented by 2006. With regard to concrete measures, Japan has already submitted four items at the last Ministerial Conference, including ratification of the Kyoto Convention of the World Customs Organization (WCO), expansion of "paperless" trade, and adoption of Trade Electronic Data Interchange (TEDI).

Next in importance were the efforts of the APEC Sub-Committee on Customs Procedures (SCCP) established in 1995. From the standpoint that efforts in the area of customs are important for trade facilitation, at present, fourteen Collective Action Plan (CAP) have been established. The key to action is the steady implementation of the CAPs in question by all member countries through technical cooperation. The details are shown below.

Table 2-3 Collective Action Plan (CAP) by APEC Sub-Committee on Customs Procedures

- Harmonization of tariff structure with the HS convention
- Transparency of custom procedures
- Simplification and harmonization of customs procedures on the basis of the Kyoto Convention
- Adoption and support for UN/EDIFACT – paperless trading
- Adoption of the principles of the WTO Valuation Agreement
- Adoption principles of the WTO Intellectual Property (TRIPS) Agreement
- Introduction of clear appeals provision
- Introduction of an advanced classification ruling system
- Provisions for temporary importation
- Harmonized APEC data elements
- Risk management techniques
- Guidelines on express consignments clearance
- Customs integrity
- Customs – business partnerships

2) ASEM efforts at trade facilitation

ASEM efforts at trade facilitation comprise the establishment and implementation of a Trade Facilitation Action Plan (TFAP) that aims to promote trading opportunities among the countries of Asia and Europe and reduce non-tariff barriers and transaction costs. Eight areas are specified (customs procedures, standards and conformity assessment, government procurement, quarantine and SPS procedures, intellectual property rights, mobility of business people, physical distribution, and electronic commerce) and efforts aimed at achieving facilitation are conducted. Specifically, concrete objectives ("deliverables") are established in each area and efforts made to achieve these objectives.

Table 2.4 Specific ASEM Objectives in the Area of Customs Procedures

- Implementation of HS commodity list (version 2002) to promote harmonization of customs categories
- Continued discussion between EC and interested Asian members regarding customs mutual assistance agreements
- Updating of ASEM customs procedures database to improve transparency
- Holding of second ASEM Seminar for customs and business entities
- Public release of information, introduction of modern customs techniques and encouragement to ratify the revised Kyoto Convention, in order to improve forecasting potential
- Improved uniformity of legal interpretations
- Promotion of document standardization and simplification, and commencement of study aimed at harmonization of customs procedures data items, based on the G7 data set
- Providing of one-stop service for customs procedures (if possible)
- Preparation of employee ethics regulations
- Formation of a joint approach on the part of WTO and WCO (if appropriate)
- Implementation of technical cooperation to simplify customs procedures

In addition, general trade barriers are important within the framework of the ASEM. In terms of securing the effectiveness of the ASEM framework, content that will contribute to concrete facilitation, centering on private sector companies, will be identified and efforts made toward a resolution. At present, the following six points have been established in the customs procedures area.

Table 2.5 General Trade Barriers in the Area of Customs that have been Specified Within the ASEM Framework

- Lack of transparency
- Complex and/or costly regulations – no streamlining of structure
- Delays in customs clearance procedure
- Problems with customs valuation
- Inconsistent interpretation and application of existing regulations
- Irregular, illegal and/or non-transparent practices in return for compensation

2.2 Current Situation and Problems in Asian Countries

As full-fledged efforts toward the formation of a framework for trade facilitation begin in Asian countries, the Japan Business Council for Trade and Investment Facilitation [6] conducted a survey toward its member organizations between February and mid-March

[6] This is a consultative body made up of private sector organizations in Japan, set up with the objective of studying problems faced by Japanese companies engaged in overseas business activities in the area of international trade, direct overseas investment and so on, and gathering together views to call for improvements on the part of the Japanese governments and foreign governments. Currently it is made up of approximately 150 wide-ranging organizations.

2001, entitled "Issues and Requests relating to Foreign Trade and Investment in 2002." The results show clearly the factors in each country that are barriers to facilitation. The following table shows issues and problems identified in the results of this survey, with the factors inhibiting trade in Asian countries categorized according to the themes of the APEC trade facilitation principles.

Table 2.6 Problems by Trade Facilitation Item

Individual topics for APEC Trade Facilitation Principles	Issues and requests related to foreign trade and investment from the Japan Business Council for Trade and Investment Facilitation	Presumed causes of problems, etc.
A. Fairness and equality	(1) Arbitrariness of tariff evaluations (2) Import regulations, restrictions, and prohibition measures (3) Tariff disparities (by commodity, by producing area and country, by customs house) (4) Illegal import/export	(1) Excessive individual range of discretion due to accumulated lack of systematization (2) Lack of policies and institutions that contribute to trade facilitation (3) Information not disseminated internally (4) Weak punitive regulations
B. Uniformity and Predictability	(1) Inadequate external publicity of institutional revisions (2) Lack of external communication regarding institutional revisions	(1) Lack of policies and institutions that contribute to trade facilitation (2) Non-gathering of information to one-stop centers
C. Transparency and accountability	(1) Nondisclosure of institutional revision process (2) Lack of accountability in (customs) evaluation (3) Nondisclosure of categorization methods	(1) Private sector views not solicited in policy and institution revision process (2) Lack of clear rules for information dissemination
D. Standardization and harmonization	(1) Non-compliance with the Common Effective Preferential Tariff (CEPT) Agreement	(1) Lack of punitive regulations for compliance (2) Lack of continuity between complying organization and implementing organization
E. Efficiency of implementing entities	(1) Troublesome customs procedures, export permits procedures etc. (2) Delays caused by procedures	(1) Lack of process evaluation and review system (2) Lack of incentive system accompanying pursuit of efficiency (3) Views from the private sector not solicited
F. Pursuit of simplification, social welfare, and efforts to improve efficiency	(1) Import permit and institutional restriction (2) Delays caused by (1)	(1) Lack of process evaluation and institutional review (2) Lack of incentive system accompanying pursuit of efficiency (3) Views from the private sector not solicited

Regarding "Clarification of employee discipline" and "Modernization and use of scientific technologies," since all of the problems from A to F would be improved by adding these items, they have been omitted from the primary problems.

The clear conclusions that can be drawn from this analysis can be summarized in the following four points.

1) Adverse effects from non-establishment or incompleteness of policies and institutions that contribute to trade facilitation

The first thing that should be pointed out is that a large number of issues and problems are caused by the fact that policies and institutions that contribute to trade facilitation based on the flow of international trade activities are not established or are incomplete. For example, under the Common Effective Preferential Tariff (CEPT) Agreement, the goal of which is the removal of tariffs and quantity restrictions among ASEAN member nations, it is necessary to acquire proof of origin for eligibility. However, there are some examples in which the agreement is applied even though the domestic policy or institution does not suit the main purpose of the international agreement. In the case of CEPT, certificates of origin for the included retail components are needed at the time of application, and acquiring these may involve a great deal of time and trouble. In addition, in some cases the immaturity of the institution results in a large range of individual discretion, or the route for the dissemination of information is unclear and the information is not transmitted properly, with the result that the tariff is arbitrarily evaluated and disparities occur in duty rates among countries.

2) Inadequate awareness of reform in policies and institutions required and lack of a systematic management organization

If policy and institution reform is to be conducted, soliciting the honest views of private sectors that are actually engaged in trade activities can lead the way to the correct approach. However, in many cases, private sector views are not adequately solicited, and so the reform of policies and institutions is delayed and little progress is made, with the issues and problems faced by private sectors not properly recognized. Even if a state that requires policy and institution reform is recognized, unless there is an adequate and systematic management organization to conduct the reform efforts (in other words, without the existence of arrangements, etc. for periodic progress evaluations and reviews), these efforts will not lead to policy and institution reform.

3) Adverse effects resulting from insufficient cooperation within and among organizations

Complications and delays in the granting of permits and official procedures, resulting from inadequate ties within and among organizations, are a major barrier to trade facilitation. It is clear that the sharing of information is an important means of correcting this situation. However, if clear rules for the transmission of information are lacking, fairness and justice, as well as transparency and predictability, are greatly impaired.

4) Lack of an incentive system for efficient pursuit

Fundamentally, trade facilitation will become a reality only when the environment for efficient policy and institution operation is established. However, the lack of an incentive system to accompany the pursuit of efficiency makes efforts to improve and simplify relevant organizations and enhance social welfare difficult.

2.3 Current Situation of Assistance by Japan

(1) Japan International Cooperation Agency (JICA)

The efforts made by JICA in the area of trade promotion and facilitation can be generally divided into the following two categories.

1) Efforts to help improve customs administration

Examples include (a) advice to the customs administration (training and dispatch of specialists) and (b) customs improvement tasks and employee training (dispatch of specialists). Specifically, the "customs administration course (training in Japan) (held yearly) can be cited as an example. Another effort being conducted is (c) the establishment of customs institutions development plans (development studies). Specific projects include the "Study of Improvement of Customs System in Indonesia" (1997-99).

2) Efforts to assist the formation and implementation of trade related institutions and rules

(a) Trade insurance and financing
Training is conducted in the understanding and operation of trade insurance institutions. A specific example is the Trade Insurance Training Course (conducted yearly).

(b) Improvement of customs institutions and procedures
Advice in order to improve post clearance audit systems are conducted through the dispatch of specialists.

(c) Conformance to WTO and free trading system
Assistance to enhance the capability to implement WTO agreements (development studies, dispatch of specialists, and training) and assistance for gaining WTO accession (development studies, dispatch of specialists, and training) are conducted. A specific example is the "WTO Capacity Building Program on the Implementation of WTO Agreements in APEC Countries" (held since 2001).

Box 2-1 Study of Improvement of Customs System (Development Studies)
Case studies: Indonesia

Each of the government ministries in Indonesia is in the process of computerization. With regard to the computerization of customs procedures in particular, countries in the region are under pressure to speed up and simplify their customs procedures, as is also stated in the APEC joint declaration. Due to the need to begin post clearance audit system and strengthen efforts to catch lawbreakers who commit acts harmful to society, a comprehensive customs database must be introduced, and existing customs institutions must be rebuilt to improve tasks and make them more efficient.

In this study, in order to make Indonesian customs procedures faster and more accurate and promote trade, a draft policy for the system design needed to construct a Customs Intelligent Database System (CIS) and to improve the Customs Service System (CSS) was established, and the transfer or technology to relevant entities in Indonesia was conducted.

- CIS: Analysis of the existing system, definition of required conditions, design of system outline, preparation of a proposal for system creation, economic and financial analysis, task design, system design and development, testing plan, introduction plan, operation plan, system design documentation
- CSS: Analysis of the existing system, definition of required conditions, preparation of a proposed policy for improvement, economic and financial analysis

(2) Japan Bank for International Cooperation (JBIC)
The efforts made by the JBIC in the area of trade promotion and facilitation can be generally divided into the following two categories.

1) Efforts to assist industrial (corporate) trade activities

(a) Export loans

Export loans are conducted by foreign governments or government agencies, or by an entity commissioned by the government or a governmental agency, and involves the loan of funds, debt guarantees, insuring agreements, or interest rate subsidies to promote exports by that country. Specific examples include the Buyer's Credit for Rayong Olefins in Thailand (fiscal 2000). This project was designed to promote trade with Thailand from Japan, and to contribute to the development of the petrochemical industry, one of Thailand's key industries.

2) Efforts to help improve the trading environment for industry (companies)

(a) Project loans

Project loans provide the funds needed to implement development projects, or the funds necessary to achieve projects relating to economic stabilization in the region in question. A specific example is the "Shenzhen Dapeng Bay Yantian Port Construction Project in China" (fiscal 1991). This project involved not only harbor construction but also the construction of a railway and expressway stretching for several dozen kilometers as a transportation network for outlying areas.

(b) Commodity loans

Commodity loans provide assistance in the form of Structural Adjustment Loans (SAL), in which commodity loans are provided on the condition that policy changes are made by the other country's government. A classic example is the "Economic Reform Support Loan" provided to Vietnam during the Asian currency crisis.

(3) Japan External Trade Organization (JETRO)

The assistance projects conducted by JETRO in the area of trade promotion and facilitation include the following:

1) Study and analysis of economic institutions in various foreign countries

With the aim of complementing the multilateral trade system created by the WTO, JETRO conducts research into free trade agreements, focusing on the embodiment of Japanese free trade agreement negotiations in the future, and issues various proposals. Specific examples of studies being implemented include the Joint Research on Japan-Mexico Free Trade Agreement (results was released on April 2000), the Joint Research on Japan-Korea Free Trade Agreement (results was released on May 2000) and the Joint Research on Japan-Chile Free Trade Agreement (results was released on June 2001).[7]

2) Other assistance aimed at contributing to trade facilitation in developing countries (promotion of industrialization and fosterage of industries, etc.)

To provide assistance for self-sustaining economic and industrial development through self-help efforts on the part of the developing country, JETRO promotes industrialization

[7] With regard to the Japan-Singapore Economic Agreement for a New Age Partnership (JSEPA), the agreement is a tri-level one made up of the agreement itself, the intra-administrational arrangements and the joint declaration by leaders. The chapters dealing with small and medium-sized company promotion and trade and investment promotion in the intra-administrational arrangements stipulate matters relating to cooperation between JETRO and the corresponding organization on the Singapore side. Specifically, these call for providing a Singapore BSC, sharing of various databases, dispatching and acceptance of missions, and joint dispatch of missions to third countries.

by fostering export industries through such measures as promoting exports to Japan, supplying parts to Japanese-affiliated firms active in the country, and other measures to strengthen the manufacturing infrastructure. Typical projects include the following:

(a) Product import promotion projects
To expand imports of products manufactured in developing countries and nurture export industries, specialists in discovering promising products for export to Japan are dispatched to buy samples and hold trade fair negotiations. These specialists conduct product surveys and dispatch product improvement specialists based on the results.

(b) Trade fairs for products from developing countries (country exhibitions)
JETRO holds trade fairs designed to promote exports to Japan and increase international understanding, featuring not only products made in developing countries but introductions of the situation in the country and the investment environment. Specific examples include the Caucasus 3-nation exhibition, 3 Baltic States exhibition, Mongolian exhibition (in fiscal 2001), the Jordan-Lebanon-Syria Exhibition, Sri Lanka Exhibition, SADC Exhibition and Caribbean Exhibition (2002; includes planned exhibitions) and so on.

(c) Projects to encourage local industry interchange
Integrated wide-area industry interchange fairs that include reverse trade shows, trade fairs, seminars and so on are held with the aim of nurturing a wide range of broad-based industries, beginning with automobile related manufacturers and electrical and electronics manufacturers, and expanding local parts suppliers for Japan-affiliated firms, and also promoting mutual investment and technical interchange between Japan-affiliated manufacturers and local suppliers. Specific examples include the 4th Conference on ASEAN Auto Supporting Industries (July 2002).

2.4 Current Situation of Assistance by Other Donors

(1) World Customs Organization (WCO)
In connection with trade facilitation, the World Customs Organization (WCO) has long been engaged in working to ensure effective and efficient customs operations. The benefits provided by effective and efficient operation of customs business include the followings:

1) Increased revenue from increased efficiency in customs duty collections
2) Ensuring of social safety
3) Environmental preservation
4) Collection of data
5) Response to trade needs
6) Trade facilitation
7) Preservation of cultural assets

The WCO considers these benefits to be helping governments to carry out financial, economic, and social programs.

The WCO assistance has six objectives:

1) Creation of simple, standard and harmonized procedures that can be accessed fairly and easily
2) Execution of restrictions and prohibitions
3) Strict adherence to international trade rules
4) Pursuit of efficiency and effectiveness

5) Ensuring incorruptibility and transparency
6) Promotion of basic trade principles (proper legal procedures, nondiscriminatory nature, minimization of trade restrictions, predictability)

The specific content of assistance comprises the following:

1) Training
2) Seminars
3) Dispatch of specialists
4) Workshops

(2) United Nations Conference on Trade and Development (UNCTAD)

Trade facilitation efforts by UNCTAD can be generally divided into three types:

1) Promotion of multimodal transport, trade facilitation and transport efficiency
2) Introduction of the Automated Customs Information Service (ACIS)
3) Introduction of ASYCUDA (Automated System for Customs Data)

Trade facilitation efforts by UNCTAD are wide-ranging, encompassing six fields (customs, transport, banking and insurance, trade information, commercial practices, and telecommunications). Introducing these techniques makes trade more efficient and reduces the costs required for trade transactions; UNCTAD estimates that the amount can be 7-10% of the price of all world trade.[8] The principle behind these efforts is that establishing international trade business and reducing the costs needed for the procedures accomplishes the following:

1) Reduction of costs needed for importing
2) Reduction of transaction costs and securing of export competitiveness through the introduction of new technologies
3) Establishment of efficient door-to-door material handling
4) Increase in revenues from customs duties and improved control
5) Establishment of appropriate bilateral and multilateral relationships

The objectives of UNCTAD assistance are threefold:

1) To make effective use of existing physical infrastructure
2) To provide the necessary user-oriented service that will contribute to trade facilitation
3) To eliminate unnecessary transaction fees, time-consuming outdated procedures, and institutions that require the submission of miscellaneous non-standardized documentation

For this purpose, kept uppermost in mind is the goal of reducing the transaction costs borne by private sector users through modernization comprising (a) door-to-door material handling systems, (b) trade facilitation, and (c) customs reform. In addition, efforts at different levels are needed by both the government and the private sector in the three aspects of institutions, operation, and infrastructure development. Specifically, close cooperation among the following three parties, who are the pillar of trade activities and thereby are responsible for its facilitation, is a precondition for the successful delivery of UNCTAD assistance.

1) The government (the ministries and customs authorities involved in transport, trade, and financial administration), which is responsible for establishing and

[8] "Columbus Ministerial Declaration on Trade Efficiency," Report of the United Nations International Symposium on Trade Efficiency, TD/SYMP. TE/6, November 1994.

promulgating laws and regulations
2) Private sector companies (customs brokers, ship companies, banks, insurance companies, etc.), which are responsible for providing services, primarily trade and transport, based on market principles
3) Import companies that are able to derive benefit from promoting trade facilitation

Accordingly, in order to make trade facilitation a reality, measures such as the following will be needed:

1) Formation of the sound legal and institutional framework that is needed for trade transactions
2) Implementation of reforms by trading companies and transport companies that are executable in monetary terms
3) Acceptance of appropriate consultation

ACIS and ASYCUDA are examples of methods to achieve trade facilitation through the introduction of computer systems. ACIS is a data management system that aids in trade facilitation by speeding up combined transport systems and providing information on such matters as cargo delays and incomplete documentation. ASYCUDA is an automated customs data system used for customs reform and modernization. It includes almost all international trade procedures and is a customs management system that is used on the UNIX and DOS systems prevalent in Africa and other up-and-coming markets. This system helps to speed up customs procedures and make import and export price assessments and customs duty collections more advanced.

Box 2-2 UNCTAD trade facilitation assistance

Case study: Nepal

At the beginning of 1998, when the Nepalese government was promoting an infrastructure development project (the construction of three inland customs centers along its border with India), it asked UNCTAD to provide technical assistance for the project and for achieving optimization of its capacity. In accordance with the objectives of the Nepalese government, UNCTAD provided assistance in improving trade and shipment means and introducing the Automated Customs Information Service (ACIS) and ASYCUDA-the Automated System for Customs Data. The sum of the technology provision was US$3 million and the project was completed in 2001.

Case study: Jordan

In Jordan, a pilot project using ASYCUDA began in 1997 and was implemented in three locations: at the customs headquarters, at the Queen Alia International Airport and at the Amman regional customs center. In an evaluation of the project conducted in 1999, it was concluded that the following had been achieved:

(1) Tax revenues from customs duties were steady despite lowering of the tax rate
(2) Accuracy and speed of trade statistics were ensured
(3) Integration of tax rate, standardization of government documents, and ensuring of risk management were achieved

(3) World Bank (WB)

From the standpoint of assisting developing countries in improving trade policy and implementing the Uruguay Round agreements, the primary objectives of trade facilitation assistance by the World Bank in the context of development can be summed up in the following basic principles:

1) Transparency
2) Proper legal procedures
3) Non-discrimination

4) Minimization of trade restrictions

The major contents of the assistance are as follows:

1) Promoting transparency and modernization of customs operations
2) Regulatory reform and standardization
3) Expanded transport access and modernization of infrastructure

A specific example of major assistance schemes is the world facilitation partnership for transport and trade, centering on structural adjustment lending.

The World Bank's efforts at trade facilitation began in the 1980s, when almost all efforts were conducted with the aim of achieving transport facilitation.[9] Subsequently, these efforts changed in the mid-1990s to efforts at trade facilitation rooted in trade liberalization (1st generation project), with resulting in improvements in quantitative restrictions, customs duties, subsidies, export financing, and customs. Around the year 2000, trade facilitation focused on content that contributed to even greater trade facilitation: privatization, public corporation reform and regulatory reform (2nd generation project).[10] This trend is expected to become even more important due to the progress in trade liberalization worldwide and the increasing adoption by companies of supply-chain-management.

Table 2.7 World Bank Trade Facilitation Projects (excerpted) (US$ million)

Category	Country	Project Title	Term	Sum
Shipment	Poland	Upgrading of physical and managerial infrastructure of port facilities	2001 -	US$ 38
	Mozambique	Increasing of port-rail systems efficiency to accommodate freight	2000 -	US$ 100
	Honduras	Repair and improvement of trade corridors damaged by hurricane	2001 -	US$ 66
	Nicaragua	Infrastructure improvement along international trunk road corridors	2001 -	US$ 75
Customs	6 countries in southern and eastern Europe	Strengthening and modernizing customs administration	1999 -	US$ 78
	Tunisia	Streamline and modernization of customs procedures	1998 -	US$ 35
Standardization	Turkey	Modernization of laboratories and residue control	1992 -1999	-
	Poland	Modernization of food processing facilities	1990 - 1995	-
	Madagascar	Vaccination of livestock	1980 - 1988	-
	Guatemala	Programs for certification and product quality evaluation	2001 -	US$ 20
	Hungary	Reduction of Danube River pollution to comply with EU standards	2000 -	US$ 89
Regulatory reform	Guatemala	Regulatory reform in the area of competition policy	2001 -	US$ 20

[9] Wilson, John S. 1998. Trade Facilitation, presented at the Trade Facilitation Symposium, WTO, Geneva (March 9-10, 1998).

[10] World Bank Report. 2000. Trends in World Bank Trade-Related Lending – Part I (May 4, 2000).

Category	Country	Project Title	Term	Sum
	Algeria	Strengthening of regulatory capacity to facilitate trade	2000 -	US$ 5
	India	Strengthening of regulatory framework to enhance private investment	2000 -	-
	Malawi	Strengthening of regulatory framework in telecommunication and electricity sectors	2000 -	US$ 29

Source: Wilson, John S. 2001. Trade Facilitation Lending by the World Bank: Recent Experience, research, and Capacity Building Initiatives, for Workshop on Technical Assistance and Capacity Building in Trade Facilitation, Geneva (May 10-11, 2001), by the World Trade Organization (WTO).

(4) The United States Agency for International Development (USAID)

Behind the USAID's promotion of trade facilitation is the recognition that trade facilitation has the following benefits:

1) Promotes investment and technology transfers through exports
2) Enables the country to take advantage of its inherent competitive advantages
3) Offers manufacturers economy of scale
4) Opens manufacturing to international competition
5) Stimulates innovation
6) Makes it possible to supply consumers with a wide range of low-priced products

The USAID also considers it important to provide assistance for capacity building in order to combine the progress of international trade liberalization with trade institutions based on rules. For this reason, in order for developing countries to recognize, agree with, and participate in the WTO and the worldwide trading institutions, and in order for these countries to receive the benefits of trade facilitation, they must improve their capacity in terms of institutions, physical infrastructure, and personnel. Specific efforts can be divided into four areas:

1) Strengthening the capability of government agencies with regard to trade facilitation and providing market and statistical data
2) Nurturing private sector trade promotion organizations and establishing ties between American companies and companies in developing nations
3) Providing telecommunications technologies to small and medium-sized companies in developing nations
4) Transferring a variety of technologies and promoting the application of world standards

Box 2-3 USAID trade facilitation assistance

Case study: Mozambique

Trade policy reform was implemented through an initiative by actual business participants from the view that these participants would have the greatest recognition of the benefits provided by trade in Mozambique. In response to a request from the Confederation of Mozambican Business Associations, the focus was placed on the Southern African Development Community (SADC) in particular, and assistance was provided for a national debate on the possibility of trade liberalization and the costs that this would entail. As a result, the Mozambican government switched to a policy in line with the other SADC countries and became determined to implement a free trade agreement.

2.5 Issues and Future Direction for Assistance

(1) Basic approach

Efforts toward trade facilitation up to now have been limited to those implemented by the international organizations such as the WCO and UNCTAD, relating to specific issues in individual countries. The trade facilitation efforts of the WTO also have been either complementary in nature or implemented as an issue of secondary importance. However, due to the progress in economic globalization and the resulting increase in the importance of trade facilitation, there are few objections from developing countries with regard to working to promote trade facilitation, unlike the other institutions for trade liberalization, investment, competition and so on, in which maintaining a balance with domestic industrial policy is a problem. Moreover, the trade facilitation being promoted for entire regions, primarily East Asia, and the stimulation of economic activities provides great benefits to Japan as well.

On the other hand, in order for each country to obtain mutual benefit from the progress of trade facilitation, efforts based on cooperative rules are needed. However, at the present stage, there are no international rules in the area of trade facilitation, and the reality is that, as in other issues, developing countries are reluctant due to the prospect of unnecessary rules being established. Accordingly, in order to obtain agreement on such rules, it would be best to provide assistance, such as sharing information with developing countries and establishing a common consensus, as well as providing incentives that ensure a degree of latitude and assistance for establishing the organizations needed to achieve the agreed-upon rules.

Box 2-4 White Paper on International Trade (2001 edition) "Toward 21st Century Style Rule Making"

Particularly since the 1980s, international rule making has developed from its former emphasis on facilitating economic activities spanning international borders (for example, posts, telecommunications, weights and measures, etc.) to the establishment of domestic institutions. In other words, rule making has moved from border measures to domestic measures, and the scope of application has expanded from trade areas to non-trade areas. Moreover, with the arrival of the 21st century, the important issues became investment, competition policy, and e-commerce transactions.

The rapid increase in the number of countries holding negotiations and the diversification of target areas, has created a need for increased allowance for diversity in the form of (1) flexibility with regard to agreements on the part of participants and (2) the creation of institutions that recognize a certain degree of latitude. In addition, for developing countries, it is also necessary to establish incentives for participating in negotiations, and to provide assistance in establishing organizations to facilitate rule execution. Furthermore, in some cases the private sector, which has specialist expertise and capabilities in the field of international accounting standards and international standards, will play a leading role in rule making, and the government must make strategic efforts that are different from those implemented in Asian and Pacific countries up to now.

(2) Need for assistance at each stage

Even though the importance of trade facilitation has been gradually recognized, the situation of trade facilitation efforts in East Asia varies by country. Taking this fact into consideration, assistance must be conducted in stages based on the situation of each developing country. The primary approaches are as follows.

1) For countries in which efforts at trade facilitation have not made much progress, a mutual consensus must be reached through discussions on the benefits that trade

facilitation can bring. Moreover, assistance should be offered by explaining worldwide trends and introducing advanced case studies and past experiences to ensure that a proper awareness of problems is attained and appropriate efforts can be commenced. Furthermore, the scope of trade facilitation is extremely broad and it involves a host of agencies responsible for not only customs procedures but also ports and quarantine, standards & criteria, health & sanitation, trade control procedures, etc. It is also necessary to recognize that efforts are needed both from an individual perspective and from an overall perspective.

2) In order to support further improvements in countries in which trade facilitation efforts are already underway to some extent, it is first necessary to make an accurate determination as to where bottlenecks exist in the overall procedures and correct these bottlenecks. Cases in which there is a discrepancy between the objective of the institution being implemented and its actual operation are often observed; for this reason, it is necessary to consider and analyze not only the content of the institution but also the situation surrounding the actual trade procedures and issues to be resolved. In addition, in conducting comprehensive trade facilitation, there are limits to the improvements that can be made through only individual efforts, and ultimately coordination and ties among organizations will be indispensable. In many developing countries, ties among organizations have been late in coming, and assistance to promote and intensify such coordination and liaison is also needed.

(3) Content of assistance and issues

Based on the aforementioned basic approach and the need for assistance at each stage, the issues in promoting assistance for trade facilitation and the content of the assistance are as follows.

1) In order to support trade facilitation, it will be necessary to deal with multifaceted issues that involve many related parties. A variety of issues exist, such as the need to speed up and simplify procedures, the need for transparency, and the need for uniformity. Also needed is a thorough determination of what problems exist in what areas. Furthermore, it is also necessary to solicit the views of the authorities and the actual companies, trading firms, and other entities that will actually be involved in trading activities. For these types of issues, the survey and analysis type of assistance, such as a survey of the time required for customs procedures,[11] is effective. This type of assistance has the advantage of being able to serve as a basis for more specific assistance to follow, by suggesting approaches to improvement and also being able to be used as benchmarks of the results of improvement.

2) It is effective to offer assistance in establishing policies that can bring about the governance of relevant organizations as principal actors and strengthen ties among organizations. The lack of progress in many of the efforts made in this area is due to the fact that the importance of trade facilitation has not been understood by

[11] The WCO's "Guide to Measure the Time Required for the Release of Goods" gives a general idea of surveys of the time required for customs procedures. According to this Guide, this type of survey involves conducting quantitative measurements at each stage of the time required between the arrival of the cargo ship in the port until the permit is granted. The results are used primarily for structural reform of customs operations, establishment of customs regulations and relevant laws and ordinances, improvement of the customs process, review of personnel deployment, and other efforts to promote facilitation of customs operations.

individual entities. In this sense, in order to enable trade facilitation to be promoted with a clear understanding of the need to identify its benefits and to allocate functions and roles, the relevant organizations must identify their own mission and roles and use this as a basis for studying how to achieve a shared recognition for strengthening mutual ties (by establishing task forces laterally within the organization, holding workshops, etc.). This is effective in clarifying the roles of each related organization and building a structure for mutual cooperation. In the area of personnel training, which includes such efforts as introducing and operating new institutions and improving the capacity and ethics of employees, it is effective to conduct assistance through capacity building at individual centers and through training (with emphasis on the training of the trainers who will be the core of the trade facilitation effort) and the dispatch of specialists. In this context, there are cases in which institutions designed to bring about mechanisms such as CEPT that are established within the framework of economic integration are not established thoroughly within the country; accordingly, it is also important to maintain a perspective of providing assistance for the enforcement of rules that contribute to trade facilitation when regional trade has increased and economic integration is to be promoted further.

3) Assistance in the changeover to digital procedures is also effective from the standpoint of promoting ties and increasing the efficiency of clerical work. Computerization is effective for many issues, not only increasing speed but also ensuring uniformity and eliminating corruption. Ultimately, assistance in creating EDI systems that allow the exchange of information with applicants and the sharing of information among relevant organizations is thought to be valuable. In this sense, a thorough study to determine the processes in which the system should be introduced is needed. In addition, as specific efforts, a study must also be done from the perspective of whether to introduce from the top down as in the Singapore model, to ensure that the content can be established both efficiently and effectively, or to start from the areas in which introduction is possible, as in Japan. Interoperability with TEDI [12] must also be studied from the standpoint of utilizing the resources of Japan.

[12] In order to cope with the expansion of trade accompanying the globalization of economies, trials of the use of electronic data interchange (EDI) to facilitate and simplify trade procedures are being conducted on a worldwide basis. In Japan, Trade Electronic Data Interchange (TEDI), whose objective is the conversion to EDI of the entire trade process in the private sector, from the signing of import/export agreements to the handover of goods, has been in actual use since November 2001.

Chapter 3 Investment

3.1 Current Situation of Investment Institutions

(1) Expansion of foreign direct investment and investment institutions

Foreign direct investment (FDI) has grown rapidly since the 1980s. The world volume of FDI inflows in 2000 rose to $1,271 billion, up from $57 billion in 1982, while FDI outflows rose to $1,150 billion, up from $37 billion in 1982. This upsurge is due largely to cross-border mergers and acquisitions involving over 60,000 multinational enterprises. Advanced countries accounted for nearly 80 percent, or $1,271 billion, of the FDI inflows. Developing countries accounted for the remaining 20 percent and over half of that was invested in Asia.

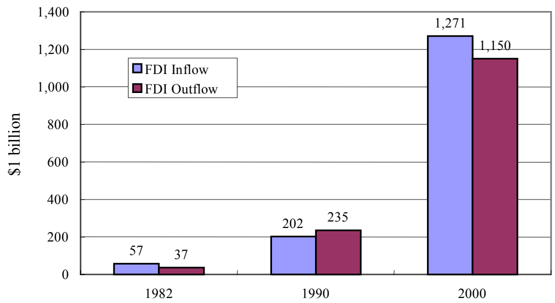


Fig. 3.1 Trends in FDI

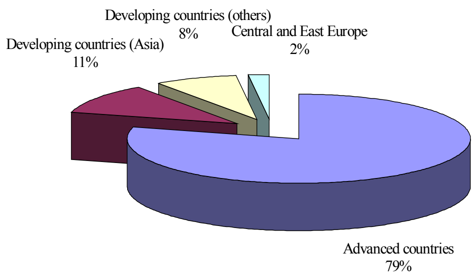


Fig. 3.2 FDI inflows by region (2000)

Source: UNCTAD, World Investment Report 2001

With this increase in FDI, a growing number of countries are accelerating their deregulation efforts in order to further liberalize the direct investment market. Between 1991 and 2000, national FDI regimes introduced 1,185 regulatory changes, of which 1,121 were intended to promote these activities.[13]

Table 3.1 Changes in national regulations related to direct investment

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Number of countries that introduced changes in their investment regimes	35	43	57	49	64	65	76	60	63	69
Number of regulatory changes that are:										
More favorable to FDI 1)	80	79	101	108	106	98	135	136	131	147
Less favorable to FDI 2)	2	-	1	2	6	16	16	9	9	3

1) Rules that were changed to promote liberalization and strengthen market functions (including more incentives)
2) Rules that were changed to increase control (including fewer incentives)

Source: Ibid.

[13] UNCTAD, World Investment Report 2001: Promoting Linkages, p.6

The following table shows governmental policies and systems related to direct investment, categorized in terms of liberalization and facilitation.

Table 3.2 Policies and systems related to liberalization and facilitation of investment

Liberalization	Facilitation
1) Reduce and eliminate restrictions on foreign investment i. Industries restricted or banned ii. Ratio of foreign equity participation iii. Regulations on land ownership iv. Regulations on capital Minimum authorized capital, minimum paid capital, etc. v. Domestic-content requirements vi. Other performance requirements Export requirements, technological transfers, etc. 2) Reduce and eliminate restrictions on foreign resident and local citizen employment i. Regulations on foreign resident employment ii. Obligation to employ local citizens Laws on immigration, employment, etc.	1) Protect investments i. Investment protection agreement 2) Simplify tax systems and enhance their transparency i. Corporate tax ii. Bilateral tax treaty iii. Others Sales tax, VAT, service tax, stamp tax, etc. 3) Facilitate procurement of funds and remittances i. Foreign exchange control system ii. Foreign currency exchange system iii. Local funding system 4) Protect technologies and industrial and intellectual property rights i. Patent law ii. Trademark law iii. Copyright law 5) Simplify procedures for establishing companies 6) Human resources i. Labor laws ii. Social security system iii. Secondary education system and job training system 7) Improve infrastructures i. Land ii. Basic infrastructures for electricity, water, telecommunication, transportation, etc. 8) Strengthen procedures for dispute settlement i. Enforce laws and rules ii. Establish dispute settlement body iii. Ensure the transparency of procedures iv. Accessibility to external procedures for dispute settlement v. Establish a government- and private-sector cooperation system 9) Ensure transparency and accountability i. Disclose the objectives of policies and systems ii. Participation in policies and systems planning by the government and private sectors 10) Ensure the efficiency of implementing agencies i. Reform organizational structures ii. Introduce information systems iii. Develop human resources

Liberalization of investment is defined as improvements of current policies and systems that curb investment activities and competition. This means abolishing the restrictive measures often employed by developing countries, such as limiting market access to specified industries or investment forms, or requiring particular levels of local procurement (domestic-content) of the materials and parts used in production. Other performance requirements imposed by recipient countries include a minimum ratio of exports to output, and technological transfers. Restrictions on job markets, including employment restrictions, also should be removed.

Facilitation of investment refers to policies and systems that are established to promote business activities and competition through investment. It includes protecting investments; simplifying and enhancing the transparency of corporate and other tax systems as well as the transparency of foreign exchange control systems and foreign currency exchange systems relating to the procurement of funds and the repatriation of profits; protecting technologies and industrial and intellectual property rights by establishing laws to protect patents, trademarks, copyrights, etc; simplifying procedures for establishing commercial presences; establishing labor-related laws and social security systems to ensure an adequate supply of employees; improving infrastructures; and strengthening procedures for settling disputes. In addition to improving this wide range of policies and systems, governments must also improve the overall capabilities of administrative agencies, including ensuring transparency in all policies and systems and improving the efficiency of the implementing agencies.

As mentioned earlier, implementing these policies and systems is expected to reduce costs for investment, production, and other activities by foreign enterprises as well as increase the productivity of the recipient countries. However, in the short run, particularly in developing countries, such policies and systems do not always improve industrial competitiveness. For instance, to create a competitive business environment, restrictions on investment should be abolished, and foreign investors, both those already in the market and those who will enter in the future, should be guaranteed legal equality with domestic businesses. Equalizing the competitive environment between foreign and domestic enterprises, however, can destroy feeble domestic industries. Furthermore, an increasing number of countries want to abolish the practice of encouraging foreign investment in certain types of industries as well as the practice of giving various types of preferential treatment to foreign investors. These countries consider such practices to be hindrances to the efficient allocation of resources. They also argue that domestic businesses should be given the same incentives provided to foreign operators. Still, these practices continue to be accepted as effective means of promoting transfers of technology and expertise that have strong impacts.

With these in mind, in their efforts to liberalize and facilitate investment, governments should continue to improve and establish the policies and systems described above in order to increase the productivity of their industries over the long term. At the same time, governments should also implement temporary policies that reinforce their domestic industrial structures, as well as implement measures that encourage investment. These policies should be eventually abolished in phases. The parties concerned must consider this two-pronged approach.

In other words, policies and systems that are designed to liberalize and facilitate investment should be studied not only from the viewpoint of "trade" but also from the perspective of "development," which varies from country to country.

(2) Discussions on the formation of multi-investment rules

National policies to promote direct investment do not always fit within the framework above, and, in fact, restrictive measures often remain in place. Moreover, foreign entrants are increasingly required to act according to certain standards. Against this backdrop, international bodies have continued with the discussions described below in order to work out multilateral investment rules, corporate norms, etc.

1) Discussions in OECD

a) MAI (Multilateral Agreement on Investment)

The OECD began discussions in May 1995 with the aim of formulating a comprehensive and binding multilateral agreement on liberalizing and protecting investments, but the participants failed to reach an agreement by May 1997 as planned.

France withdrew in October 1998 and the discussions were discontinued in December 1998.

b) Guidelines for multinational enterprises
In 1976, the OECD adopted guidelines regarding behavioral standards for multilateral enterprises to observe in their investing countries. These guidelines were part of the "Declaration on International Investment and Multilateral Enterprises." After undergoing a few revisions, the ministerial board of directors adopted in June 2000 a revised proposal that required stricter control of employment, the environment, human rights, etc., as well as specified measures to implement this control. However the basic non-binding nature of the guidelines remained unchanged.

2) Moves toward investment rules in WTO
The WTO has established partial investment rules in the following three agreements.

a) Trade-Related Investment Measures (TRIMs)
The Agreement on TRIMs applies only to investment measures relating to trade in goods and contains the basic principles of the GATT, including the principle of equal treatment for both local and foreign enterprises, the prohibition of quantitative restrictions, and the assurance of transparency. Developing countries are allowed, however, to temporarily suspend the equal treatment requirement and the ban on quantitative restrictions[14].

b) General Agreement on Trade in Services (GATS)
In GATS, trade in services is divided into four categories. For each industrial field to be deregulated, the agreement establishes such obligations as the principle of most favored nation, the rational and objective implementation of domestic regulations, improved market accessibility, and the principle of equal treatment for both local and foreign enterprises. Services delivered through business bases (the third mode) relate to direct investment.

c) Trade-related Aspects of Intellectual Property Rights (TRIPS)
The TRIPS Agreement establishes international standards for intellectual property rights and the legal procedures for their enforcement to be observed by the member nations. It does not establish specific investment rules. However, because effective and appropriate protection of intellectual property rights is important for promoting freer trade and investment, there have been calls to implement and upgrade this agreement.

Aside from the agreements above, the general relationship between trade and investment continues to be studied. Participants in the Doha Ministerial Conference, held in November 2001, agreed to prepare for negotiations to start after the fifth ministerial conference (2003), on establishing direct and other investment rules.

Not all of the countries concerned have agreed to place the establishment of investment rules on the agenda for the WTO talks. The European Union, Japan, Canada, the United States, the former Eastern European block, and the Latin American countries are in favor of it, while India, Malaysia, and the African nations are against it. Brunei and Pakistan are between the two camps. Also, each camp is not completely unanimous. In particular, the opponents are divided into the India and Malaysia camp, which is

[14] Jiro Tamura, "WTO Guidebook" (Kobundo, 2001) p.208

concerned about the coordination between such rules and their domestic policies, and the African and Caribbean countries camp, which is concerned about the lack of capacity.

A planned working group will continue until the fifth ministerial conference, to study such matters as the 22nd paragraph of the Doha Ministerial Declaration citing "trade and investment."

3) Development of intra investment regime in APEC, ASEM, and ASEAN

a) APEC

APEC aims to liberalize the overall investment regime in its member countries through agreements regarding most favored nation status, equal treatment for both local and foreign enterprises, and transparency. It also aims to facilitate investment activities through technical assistance and cooperation among countries. For these purposes, the member countries are phasing out exceptions and restrictions related to investment activities. This will be done by employing the Non-Binding Investment Principles (NBIP), the "menu of options" for liberalizing investment and facilitate business operations, and other agreed upon measures.[15]

b) ASEAN

Member nations signed the "Agreement on the ASEAN Investment Area (AIA)" at the 30th economic ministerial conference in October 1998. Its goal is to remove investment barriers and liberalize investment rules and policies, targeting direct investment (not including securities investment) in the sectors of manufacturing, mining, agricultural, forestry, fishery, and related services. By 2010 for the ASEAN area and 2020 for areas outside ASEAN, the markets in those sectors will be opened more widely except to items listed in the Temporary Exclusion List (TEL) and the Sensitive List of Unprocessed Agricultural Products (SL).

c) ASEM

The second London Conference of the Asia-Europe Meeting (ASEM) in April 1998 produced an Investment Promotion Action Plan (IPAP) to encourage investment between Asia and Europe. The plan consists of two core subjects: "investment promotion activities" (supplying intra investment information through the Internet, holding roundtable talks at the managerial level, etc.), and "investment policies and regulations." The Investment Expert Group (IEG) is now discussing their implementation.

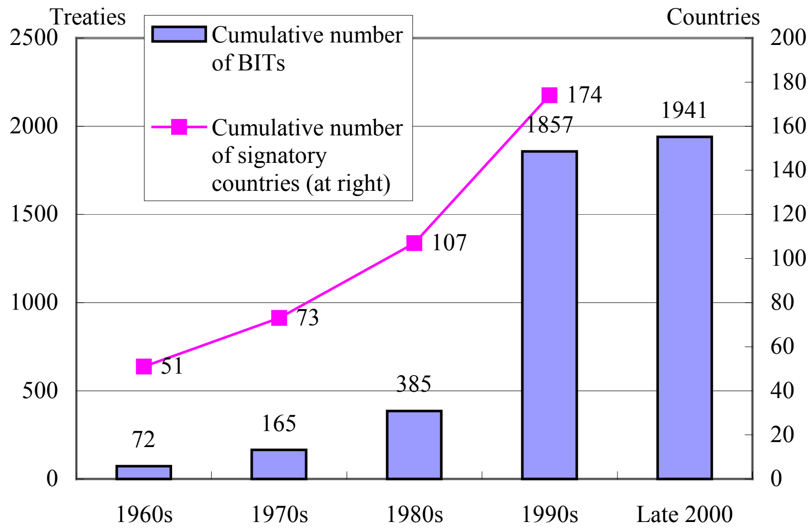
4) Establishment of bilateral investment treaties and regional agreements

Establishing a comprehensive set of investment rules among multiple countries is still only at the discussion stage, as described above. In contrast, recent years have seen a surge in the number of bilateral investment treaties, bringing the world total to 1,941 as of the end of 2000. Also, some regional agreements contain provisions for investments as does NAFTA (North America Free Trade Agreement) and the EU-Mexico Free Trade Agreement.

In the past, investment treaties focused on protecting investors' post-investment business activities and invested assets, as evidenced by such measures as compensation for the expropriation of a foreign investor's assets by governments and the freedom of repatriation of gains, compensation, etc. These days, a growing number of countries are

[15] APEC, "Chairman's Report of the IEG Meeting: 16th-17th August 2002, Dalian, China"

signing investment treaties with stricter rules that include rules on liberalization (a ban on performance requirements, etc.) and facilitation (transparency, etc.)[16].



Source: Ministry of Economy, Trade, and Industry, "Trade and Commerce White Paper 2001," p.137, etc.

Fig. 3.3 Current situation of the signing of Bilateral Investment Treaties (BITs)

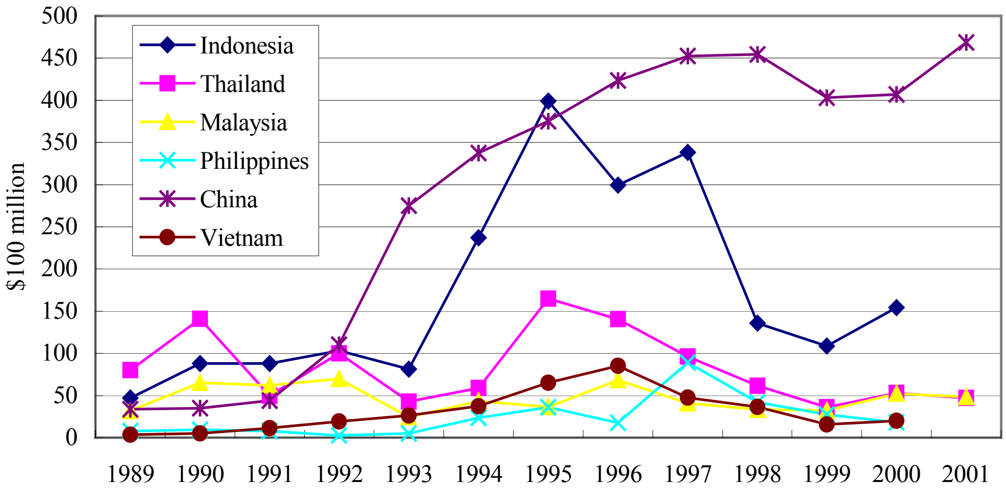
Japan has signed or implemented only seven bilateral investment treaties thus far, which puts it behind other advanced countries. Recently, however, the government has begun signing more such treaties on the understanding that bilateral investment treaties and multilateral investment rules can supplement each other [17]. Japan and South Korea have substantially agreed to conclude a high-level investment treaty containing a broad range of deregulating elements. Japan also signed its first-ever bilateral free trade pact, the Japan-Singapore Economic Agreement for a New Age Partnership, which abolishes tariffs and liberalizes trade and investment between the countries. Japan is currently negotiating with Saudi Arabia, Mexico, Indonesia and Vietnam.

3.2 Current Situation and Problems in Asian Countries

(1) Trends in direct investment in Asian countries

Figure 3.4 shows the trends in FDI inflow volume since 1989 in Indonesia, Thailand, Malaysia, Philippines, China, and Vietnam. With the exception of China, which is enjoying high and steady growth, all of these countries have suffered downturns that started shortly before or after the Asian Currency Crisis.

[16] Ministry of Economy, Trade, and Industry, "Trade and Commerce White Paper 2001" p.138.
[17] Ibid., pp.137-138



Notes: 1) Data for China are actual. For other countries, authorized volumes are shown.
2) Investment volumes published in local currency are converted to dollars at the average exchange rate for the term.
3) Figures for Malaysia are investments in the manufacturing sector only.

Source: JETRO, "JETRO White Paper on Investment"

Fig. 3.4 Trends in inward direct investment in Asian countries

(2) Overview of policies and systems for receiving direct investment in Asian countries

The direct investment reception policies and systems for each Asian country are described in detail in the schedule at the end of this report. They can be summarized as follows:

1) Investment promotion body

Every country has a public body in charge of investment promotion. Malaysia and the Philippines each have more than one agency. In Indonesia, local governments are given considerable authority due to political decentralization.

2) Control of foreign investment

Every country bans in some manner foreign investment in certain industries. Some countries (Indonesia, Thailand, and Philippines) permit full ownership by foreign investors under certain conditions, while some (China and Vietnam) demand higher capital ratios. The Thai and Malaysian governments impose limits on the percentage of foreign equity participation in some industries. Land ownership by foreign investors is restricted or prohibited in all countries. In Malaysia, foreign investors must satisfy domestic-content requirements and obtain a manufacturing license under the Industry Coordination Act (ICA). The Philippine government imposes obligations on foreign currency acquisition and local procurement ratio requirements on foreign automobile assemblers. Foreign entrants into the Vietnamese market are required to increase in stages the local content of manufactured automobiles, motorcycles and electronic goods. At one time, the government of Thailand required local procurement ratios for automobiles, motorcycles, diesel engines for agricultural use, milk, and other goods, but it abolished the ratio for automobiles as required by the WTO Agreement on TRIMs.

3) Encouraging foreign investors

Except for Indonesia, which accepted the recommendation of the IMF to prohibit the "Tax Holiday" system, all countries have a list of industries that encourage foreign investment. These countries offer a broad range of incentives, from corporate tax breaks to benefits for importing materials and capital goods. Indonesia also offers preferential treatment in specified areas.

4) Tax system (bilateral tax treaty)

Each country has bilateral tax treaties with other countries including Japan.

5) Restrictions on establishing foreign businesses, obtaining residency permits, and employing locals

Indonesia, Thailand, and Malaysia restrict or prohibit the employment of foreigners in some industries and business categories. The other countries require foreigners to obtain a work permit for all types of work. Foreigners working in all of these Asian countries must also have a residency permit. Local citizens must be hired in Indonesia, Thailand, and Vietnam. In Malaysia, foreign operators are requested to reflect the ethnic composition of the country in their hiring of local citizens.

6) Procuring funds

While local financial institutions can provide funds in all countries, foreign investors must satisfy certain conditions in Indonesia and Malaysia.

7) Foreign exchange control and foreign currency exchange systems

Basically, all countries permit participation in foreign exchange markets and repatriation of dividends and gains to other countries. However, the Philippine and Vietnamese governments require registration with, or permission from, their central banks in advance. In China, investors must comply with foreign exchange controls.

8) Technologies and industrial and intellectual property rights

Every nation has laws or regulations governing patents and trademarks. The Malaysian authorities have recently placed computer programs and other items under the protection of copyright law, while in China, intellectual property rights are considered an "investment in kind."

(3) Problems in investing in Asian countries

The "Japan Business Council for Trade and Investment Facilitation" comprises about 150 trade-related organizations. The council conducts an annual survey of its member companies to find, compile, and make public the problems they face in their trade and investment activities. The problems that were identified in Indonesia, Thailand, Malaysia, the Philippines, China, and Vietnam in the FY2001 survey are listed below.

Table 3.3 List of investment problems faced by Japanese companies (2001)

	Indonesia	Thailand	Malaysia	Philippines	China	Vietnam
Restrictions on entry of foreign capital	6	1	9	3	9	1
Domestic sourcing requirements, local procurement, and incentives	1		4	2	4	3
Export requirements		1	2	2	4	2
Restrictions on withdrawal	1	1				
Restrictions in parts industry policies	1	1	1	1	1	3
Reduction in incentives to foreign investment	1	2		2	6	1

Procedures in foreign investment law		2			2	2
Problems with appropriate government authorities	1	3				1
Restrictions on activities in free trade areas and special deregulation zones	7	1	1		6	1
Recovery of profits		1	2		5	2
Foreign exchange control	2	4	7	2	10	5
Financing	5	3	3	3	7	5
Tax system	25	14	4	5	17	8
Price control	3	1				
Employment	14	6	8	6	14	4
Intellectual property system	4	8	3	2	6	2
Technological transfer requirements			2		2	5
Industrial standards and approval to safety standards	3	2	2	1	8	1
Monopoly			1			
Restrictions on land ownership	1	1	1	1	2	3
Environmental and waste disposal problems	1	5	1	2	3	1
Local systems, practices, and inefficient administrative procedures	4	11	4	3	19	7
Lack/absence of legal systems and their unexpected revisions	3	3	2	2	8	4
Government procurement	5		6		1	1
Others	16	5	4	8	14	6

Note: The top two problems (except for "others") for each country are highlighted.
Source: Compiled from page 3 of the "Characteristics of Problems in Trade and Investment faced by Japanese Companies in Europe, Americas, and Asia" (September 2001) published by the Japan Machinery Center for Trade and Investment.

Many respondents consider the following problems to be common among all countries: the tax systems (unclear rules and procedures, arbitrary tax imposition by taxation officers, high corporate tax rate, complex procedures and delayed responses, etc.); and employment (frequent revision of minimum wage, retirement and dismissal codes designed to overprotect workers, labor disputes, difficulties developing human resources, etc.). Other major problems that were identified are local systems and practices, and inefficient administrative procedures. Most of these items are not yet regulated by international rules, while others are difficult to control by means of laws. As required by IMF conditions for assistance and by WTO agreements, the governments of Indonesia and Thailand have refrained relatively well from protecting domestic industries through such direct measures as restricting entry of foreign capital and establishing domestic sourcing or export requirements. In Malaysia and other countries, however, these restrictions and performance requirements still exist and are obstacles to deregulation.

Developing countries use these restrictions and performance requirements to protect domestic key industries, foster peripheral businesses in manufacturing, and acquire foreign currencies. These restrictions and performance requirements, however, are closely related to industry promotion policies, so these countries find it difficult to strike a balance between protection and deregulation. Moreover, while measures have been taken in some countries to improve their legal systems, implementations have been delayed or are arbitrarily applied by individual officials. This suggests that these are problems in terms of both institution and operation.

3.3 Current Situation of Assistance by Japan

(1) Japan International Cooperation Agency (JICA)
JICA assistance projects that promote and facilitate foreign investment can be divided into the following three types:

1) Development of investment environment (infrastructure)
To promote investment, the JICA conducts development studies of construction plans and feasibility studies for export processing zones and special economic zones. A specific example is the "Study on Bang Saphan Industrial Complex in Thailand" (1995-97).

2) Development of investment promotion policies and assistance in their implementation
After studying the situation, the JICA extends cooperation to administrative agencies engaged in investment promotion. The JICA does this by formulating investment promotion policies (development studies) and transferring knowledge (via specialists and in training programs) concerning investment promotion policies. As a development study, the JICA established a pilot project that publishes on its web page information about enterprises that may be prospective investment partners. Specific examples are the "Master plan study for Industrialization and Investment Promotion in Sri Lanka (1999-2000) and the Investment Promotion Seminar (held in Japan for agencies dealing with practical affairs regarding foreign investment promotion).

3) Establishment of systems and rules relating to investment and assistance in their implementation
The JICA helps countries establish legal systems, rules, etc., relating to investment, largely through training programs (general knowledge) and advice from specialists. Projects implemented thus far include the Training Program for Development of Investment Infrastructure and Legal System (held in Japan for administrative officials on investment committees who are in charge of legal policies, etc., or who help develop legal systems that promote direct investment).

(2) Japan Bank for International Cooperation (JBIC)
JBIC assistance projects that promote and facilitate foreign investment can be divided into the following two types:

1) Direct assistance for business projects
One JBIC method for directly assisting business projects is the overseas investment loan. The JBIC lends funds (except short-term funds) that are directly or indirectly allocated to projects carried out overseas by Japanese corporations, foreign governments, or foreign corporation investors. The JBIC then takes over loans related to the funds from banks, and guarantees the liabilities relating to them. For Japanese corporations, the JBIC guarantees the liabilities relating to the funds for foreign corporations. One project that was implemented was the Loan to Indonesia P.T. Sumimagne Utama, which provided assistance to a local subsidiary of a Japanese company for a ferrite magnet production project (2000).

2) Assistance in infrastructure development for industrial activities

Japan’s major methods of providing assistance in infrastructure development for industrial activities are yen loans, the Special Assistance Facility (SAF) program, and untied loans. Yen loans are provided for infrastructure development, which is vital for promoting economic growth and business activities in the recipient countries. Yen loans are also provided for consulting services for infrastructure development. The SAF program provides intellectual assistance for improving the legal systems of developing countries. Untied loans include long-term funds for overseas projects carried out by foreign governments, foreign financial institutions, the IMF and other international bodies, etc. Untied loans are also used to generate a surplus in the international balance of payments or to stabilize the currency of the recipient country. One such project is the "Baiyun International Airport Construction Project" (China, 2001).

(3) Japan External Trade Organization (JETRO)

JETRO-sponsored assistance projects relating to the promotion and facilitation of foreign investment include the following.

1) Study and analysis of economic systems in foreign countries

With the intention of supplementing the WTO’s diversified trade system, the JETRO studies the FTA and offers general suggestions that support Japan’s FTA negotiations. Major projects thus far are the "Japan-Mexico FTA Joint Study" (with the Ministry of Commerce and Industry Promotion of Mexico, June 1998 to April 2000), the "Japan-South Korea FTA Joint Study" (by the Institute of Developing Economics and the Korea Institute for International Economic Policy of South Korea, December 1998 to May 2000), and the "Japan-Chile FTA Joint Study" (with the Foreign Ministry of Chile, November 1999 to June 2001). In addition, a series of symposiums ("Symposiums on Economic Legal Systems") are held to discuss legal systems covering enterprises, bankruptcy, and competition and their operations. Attendants come from economic policy-making agencies, universities, and research institutes in China, Thailand, Indonesia, Singapore, and other countries.

2) Other assistance

As part of their structural reform efforts and to enhance the international competitiveness of Japan’s midsize enterprises through foreign investment and overseas markets development, JETRO sponsors both foreign investment infrastructure study missions and overseas advisors. It has also set up "Business Support Centers" to provide office space to Japanese operators overseas. Major projects thus far include the "Singapore and Thailand Investment Infrastructure Study Mission" (February 2000), the "Philippines Investment Infrastructure Study Mission" (March 2001), the "Nigeria Investment Infrastructure Study Mission" (May 2002), and the "China Investment Infrastructure Study Mission" (May 2002). At present, Business Support Centers have been opened in Thailand (July 2000) and Singapore (October 2001).

3.4 Current Situation of Assistance by Other Donors

(1) United Nations Conference on Trade and Development (UNCTAD)

Direct investment can play a significant role in helping developing countries to improve their technologies and industries. These countries need to enhance their ability to develop investment policies and implementation programs and implement them. They also need to better understand international collaborations in investments. Recognizing this, the UNCTAD provides assistance in the following forms:[18]

- Assistance in formulating, implementing and monitoring direct investment policies
- Dissemination of successful cases on direct investment policies and linkage programs
- Analysis of the relationship between performance requirements and the TRIPS Agreement, cooperation between foreign investors and local enterprises, and the impact of direct investment on the international balance of payments of recipient countries

[BOX 3-1] UNCTAD advisory service on investment

Assistance project in Bangladesh:

At the request of the Board of Investment (BOI) in Bangladesh, UNCTAD prepared a report and a recommendation for One Stop Service (OSS) set up by the BOI for investors. Before this, a workshop was given, targeting the BOI staff and representatives of investment promotion-related sections. Invited as resource persons and advisors: representatives of the Malaysian Industrial Development Authority (MIDA), Board of Investment of Sri Lanka, Board of Investment of Thailand, Ireland and Scotland investment promotion bodies, as well as representatives from the private sector. Following the workshop, UNCTAD developed an action plan for OSS, a portion of which (training activities, etc.) is to be implemented.

Assistance project in Vietnam:

At the request of the Vietnamese Prime Minister's Research Group on External Economic Relations (GEER), UNCTAD organized a conference to develop long-term strategies aimed at the integration of the Vietnamese economy into the world economy. In July 2000 in Geneva, Switzerland a workshop was held jointly with a Canadian overseas assistance body, CIDA. The participants in the workshop focused on the development of investment-related regulations, the impact of direct investment on economic development, and other matters. Comments were also offered on the foreign direct investment law that was revised in June 2000.

(2) World Bank Group (WB)

The World Bank Group's basic view of investment assistance is that direct investment, particularly continuous investment in the private sector, helps to reduce poverty and improve the standard of living in the recipient countries.

The group's assistance programs for liberalizing and facilitating investment are handled by the Multilateral Investment Guarantee Agency (MIGA) and the International Finance Cooperation (IFC).[19]

The MIGA primarily offers three assistance programs: capacity building (assisting in the development of direct investment promotion strategies), investment facilitation (organizing investors meetings, missions, etc.), and information provision (providing information via the Internet about investment opportunities, investment infrastructure, and business partners).

As a foreign investment advisory service, upon the request of developing countries, the IFC offers assistance concerning policies and systems on direct investment, including reviewing legal systems, removing obstacles in administrative procedures regarding foreign direct investment, evaluating investment invitation policies, etc.

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[18] UNDP, "Report of the Commission on Investment, Technology and Related Financial Issues on Its Sixth Session", January 2002; UNDP, "Report of the United Nations Conference on Trade and Development on Its Tenth Session," September 2000.

[19] IFC, *The IFC Difference: 2001 Annual Report,* October 2001and MIGA's homepage (http://www.ipanet.net/miga/miga.cfm)

[BOX 3-2] Direct investment promotion assistance by MIGA/IFC

MIGA: Capacity Building in Thailand

Based on an evaluation conducted in 2000 on the needs for systems, a capacity building workshop was held for 60 staffers of the Board f Investment of Thailand (BOI). Focusing on the micro-business environment as well as the development and implementation of a comprehensive program targeting investors, the MIGA used its resources to describe a training program that helps identify domestic industries for potential investment. Through this practical training, participants learned how to search for information about trends in direct foreign investment and for detailed data on targeted enterprises, industrial sectors, etc.

IFC: Investment advisory service in Turkey

Turkey has been suffering from a financial crisis since 2000 and has called upon the IFC for assistance in improving the country's investment environment. The IFC jointly carried out a few advisory projects with the Turkish Finance Ministry, then in early 2001, as proposed in the initial evaluation study, conducted a detailed study on administrative barriers. Based on the findings of the study, the government adopted reform strategies in the form of government ordinances that are intended to extensively streamline the procedures. The strategies concern legal systems for investment, the tax system and tax breaks, enterprise registration, tariffs and their standardization, intellectual property rights, licensing in industrial activities, employment, etc. Nine different technical committees were set up and are evaluating these reform initiatives, which are based on the IFC study, and their implementation.

(3) The United States Agency for International Development (USAID)

The USAID is foreign assistance agency of the U.S. government. Its basic view on investment assistance is that developing countries that open their markets to direct investment will diversify their economies and attract technologies and management skills. To promote direct investment, it is essential to have open and fair investment policies and to develop a stable investment climate and private sector. Government intervention should be reduced.[20]

The USAID provides assistance so that recipients can develop a market economy oriented investment infrastructure. Moreover, it engages in private sector development (assistance in developing legal systems and regulatory systems to promote direct investment and domestic investment) and capacity building in the trade field (assistance in reducing barriers to trade and investment), and WTO-related assistance (reforming legal systems for compliance with the TRIPS Agreement, offering training programs, etc.).

[BOX 3-3] Private sector development assistance by USAID

Assistance project to Egypt:

After declaring in 1974 the "Open Door Policy," which was intended to introduce foreign capital, the government decided to include growth of the private sector in the objectives of all development plans carried out through cooperation with the U.S. Since 1991, the U.S. has provided $245 million for promoting direct investment and legal reforms in order to advance privatization. As a result, the end of 2000 saw the privatization of 125 enterprises that generated over ￡15 billion in sales. In addition, U.S. assistance has brought about privatized enterprises called "Law 203 enterprises" as well as some new government and private joint ventures. It has also successfully encouraged ever-larger numbers of private enterprises to participate in infrastructure projects. Efforts to strengthen the competitiveness of the overall Egyptian economy are expected to continue through privatization and the expansion of the private sector.

[20] USAID, "A.I.D. Policy Paper: Trade Development", July 1986 (Last revised in May 2001)

3.5 Issues and Future Direction for Assistance

(1) Issues in assistance

As described above, there have been many arguments over establishing a comprehensive set of investment rules. The WTO and other bodies are not likely to make progress towards reaching an agreement on this issue, even as an increasing number of countries sign bilateral or regional investment accords. This situation is due to the fact that investment policies and systems have to be worked out as policy issues from the different viewpoints of "trade" and "development" as mentioned earlier. From this, the problems faced in establishing investment policies and systems can be addressed in the following manner.

1) Conflict over principles, and obstacles to the development of liberal rules

If one views the ongoing disputes over this issue as a conflict of policies for legal systems related to investment, they can be divided into the following perspectives.[21]

- Ultra liberalism: Based on the premise that the global market works, efficiency can be achieved by completely eliminating market interventions by means of regulations or policies.
- Liberalism: This group assumes a "failure of the market" in the global market and supports corrections based on clearly established laws and regulations in order to avoid a "failure of the government" resulting from its intervention.
- Interventionism: This group broadly accepts intervention by governments in order to correct the "failure of the market" in the global market. This group is particularly concerned over the widening gap between the developed and the developing countries.

At issue among the parties concerned are the various fields of the legal systems governing investment. When focusing on "investment rules," however, the following picture can be drawn.[22]

"Investment rules" means common international rules that define the foreign investment policies of the recipient countries, and the issues arising from these rules concern the definition of investment, the treatment of foreign investors, the performance requirements, and the incentives for investment.

First, investment is defined narrowly or broadly, depending on the agreements worked out thus far. A typical case of the former is the WTO Agreement on TRIMs, which limits its definition to "investment measures related to trade" as intended by developing countries wishing to have the freedom of formulating their own foreign investment policies. A typical case of the latter is the OECD Agreement on MAI draft, which defines investment as "all the assets directly or indirectly owned or managed by investors." The

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[21] The following paper provides a detailed analysis of policies for legal systems concerning investment. Yuka Kaneko, "Issues of Legal Systems on Investment in Free Trade Agreement Era - Toward Institutional Infrastructure to Promote Direct Investment" Report of JICA visiting researcher for FY2001, March 2002

[22] Kaneko, ibid., pp.10-19

WTO GATS is an accord concerning services but it broadly defines them as "services in all sectors except public services" and thus, the GATS can be included in the broad-definition group. Behind these disagreements, it is pointed out that there is a dispute between the U.S.-led camp and the camp of the developing countries. The U.S. and other countries advocate the liberalization of investments in services or indirect investments such as financing. Developing countries have the traditional view that the merit of direct investment is the technological transfers it brings about, usually in a manufacturing sector.

Concerning the treatment of foreign investors, countries are particularly divided on the issue of equal treatment for both local and foreign investors. The liberal forces want to use official policy to prevent inappropriate acts by recipient countries, such as unreasonable expulsion or arbitrary use of foreign capital. On the other hand, interventionists resist equal treatment on the grounds of protecting domestic industries, etc. As a result, while equal treatment for both local and foreign investors has been defined, it is allowed to be considered a part of the gradual deregulation plans of each country. This compromise stipulation, which can also be found in the WTO-GATS Agreement, is predominant

Stipulations concerning performance requirements (promoting exports and local procurement, etc.) and incentives for investment (tax breaks, free use of infrastructure, etc.) vary in different international agreements. Demands for a tightening of these performance requirements while welcoming investment incentives that favor investors have been growing in recent FTA moves. Support is dwindling for the liberal stance of demanding strict control of both performance requirements and investment incentives. Most developing countries support allowing policy-making agencies greater discretionary authority to determine both performance requirements and investment incentives. Japanese investors, who have been burdened by frequent performance requirements arbitrarily determined by local officials in the Asian countries they have entered, strongly wish that investment rules would be expressly stated and not changed arbitrarily.

2) Capacity issue in developing countries

In developing countries, there are many cases in which policies and systems are in place but are arbitrarily enforced or basically do not work. Using the example of intellectual property rights protection, the following issues can be defined.

The protection of intellectual property rights is one of the most important issues for building a institution geared towards liberalization and facilitation of trade and investment. As described earlier, the TRIPS Agreement has established international standards for intellectual property rights and the legal procedures that member nations should use to protect them. It also requires them to fulfill the obligations of the equal treatment for both local and foreign enterprises and the most favored nation status, and further demands that they improve their domestic legal systems governing these rights in order to comply with the agreement.

Developing countries are allowed five years and the least advanced countries eleven years to prepare for implementation of the agreement. Asian countries went through this preparation period and thus have their legal systems in place and have now begun to implement their obligations under the agreement. However, their markets still allow pirated, copied, or otherwise illegal products to be distributed. This is an infringement of intellectual property rights, and these rights are not fully protected at the present time. In other words, in implementing the agreement, it is necessary to pay adequate attention to ensuring enforcement of these rights in addition to improving the legal systems.

The agreement is implemented by various government agencies that deal with intellectual property rights, including customs (which checks for illegal goods), the police, public prosecutors, legal courts, and many other concerned parties. Moreover, in order to ensure due compliance with the laws related to these rights, businesses and the general public need to better understand the rights. It is therefore essential that both the government and public sectors provide additional qualified personnel and improve their capacity to handle the intellectual property rights protection system.

Problems in implementing policies and systems relating to intellectual property rights can be said to arise fundamentally from 1) a lack of awareness in the developing countries of the effects that a patent system originally has, i.e., the inflow of technological innovation; and 2) a lack of capacity in terms of organization and personnel. In short, it is important to "develop" knowledge, organization, and personnel during the implementation phase of policies and systems.

3) Labor and environment standards

Some advanced and other countries have deeply rooted concerns that favorably treating foreign investors in order to promote direct investment will lower labor and environment standards and lead to so-called labor dumping and environmental dumping in the developing countries. In contrast, many developing countries strongly oppose the introduction of international standards. The WTO also has difficulty reaching agreements on "trade and environment" and "trade and labor" issues.

Many economists and economic institutions argue against concern over the possible deterioration of labor and environment standards.[23] However, there remains the problem of how to maintain and enhance those standards in developing countries in terms of "development." Although the view of the advanced countries, which is based on their experiences, that deregulating trade and investment will increase productivity and incomes and thereby enhance the quality of labor conditions and environments, is not erroneous, it is essential for governments to formulate adequate labor and environment policies.

Regarding labor standards, the ILO is currently formulating rules that will form the core of the standards, as confirmed at the WTO Ministerial Conferences in Singapore and Doha, Qatar. Regarding environmental standards, the member nations have agreed only to launch negotiations on such matters as the relationship between trade restrictions in multilateral environmental accords and WTO rules. Discussions will soon begin on establishing a broad set of rules that will promote the coexistence of trade and investment policies and environment policies.

Undoubtedly, it is important to develop adequate labor and environment standards in order to establish investment policies and legal systems for deregulation. The approach, however, should begin from the standpoint of "development" by individual developing countries. The member nations should then set rules within the above framework.

(2) Future Direction of Assistance

Viewing the conflicting situation among the concerned parties over the three policies based respectively on ultra liberalism, interventionism, and liberalism, it is considered that Japan, which takes a liberal stance, should develop a set of rules that will avoid the negative impacts that can result from deregulation.

[23] The OECD has also presented many arguments against the view that liberalization of trade and investment will immediately degrade the labor and environmental conditions in developing countries. Rather, the body has indicated that low labor standards help to hamper direct investment and that deregulation is likely to enhance the environmental standards in developing countries. OECD, "Open Market Matter: The Benefits of Trade and Investment Liberalisation", 1998.

Thus far, Japan's approach to investment liberalization and facilitation in the developing countries shows that Japan has helped to facilitate investment activities as well as to develop and nurture local industries and legal systems in terms of both "commerce and trade" and "development." In the future, Japan will need to further clarify its stance on this basic point.

To ensure balanced delivery of assistance in terms of both "trade" and "development," it is essential to coordinate the different opinions expressed during the process of formulating rules and to have a deep understanding of these opinions, while providing assistance for creating a desirable investment environment. From this point of view, forums are very effective. These forums should consider various subjects on a country-by-country and industry-by-industry basis so that the countries can better understand the needs to establish legal systems for investment, to supply information, including examples of policies already made in other countries, to form a consensus, etc. Furthermore, it is very important to render assistance in building capacity in the developing countries. In other words, donor nations need to build capacity in the investment sector for government officials—administrative, legislative, and judicial—in recipient countries by developing an understanding of the WTO and other international accords, transferring knowledge regarding their implementation. This can be achieved through collaboration with the WTO (Global Trust Fund and Committee on Trade and Investment) and other international bodies (UNCTAD, OECD), at a regional or bilateral level or in other forms.

Since new rules can have a great impact on the domestic industries of the developing countries (e.g., the impact of abolishing regulations concerning the entry of foreign capital on industrial composition and employment, and the impact of costs and benefits from establishing environmental standards), it is important for donors to help these countries to deal with the impacts and to develop mid- and long-term strategies for investment deregulation. To do this the advanced countries should conduct a joint study to analyze the design of policies and systems, and the influences exerted by these policies and systems, and develop a process of gradual progress for selecting policies and establishing legal systems that are suited to each recipient country and that match international trends.

Finally, for the specific development and operation of investment-related systems, it may also be helpful to check their consistency with existing legal systems and improve their transparency, as well as develop new infrastructures. It is also important to establish new laws and regulations after the new rules are applied and to review existing systems according to the conditions of their administration. This can be efficiently done by providing assistance for the "long-term development of legal systems"[24] after the introductory phase for the new rules ends. Such assistance can include continually reviewing and correcting these systems and thoroughly understanding the conditions of their administration. This is an attempt to establish a body of clear rules and a legal framework for their judicial application in Asian countries, where legal systems are in disorder and makeshift solutions prevail as a result of frequent institutional reforms enacted by "development dictatorships" or under conditions required by international organizations for assistance delivery. This attempt will also benefit Japanese manufacturers who are active in direct investment in Asian and other countries and hope to resolve the problems they face, such as a lack of transparency in taxation, employment, and other local codes, and their arbitrary administration.

[24] Kaneko, ibid., pp.65-66