

JAPAN INTERNATIONAL COOPERATION AGENCY (JICA)

MINISTRY OF INTERNATIONAL
TRADE AND INDUSTRY
MALAYSIA

**The Capacity Building Program
on
the Implementation of the WTO Agreements
in
Malaysia**

**FINAL REPORT
(SUMMARY)**

June 2003

UFJ Institute Ltd.

Abbreviation

1. WTO Related Words

WTO	World Trade Organization
AD	anti-dumping
CVD	countervailing duties
DSU	Dispute Settlement Understanding
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
SG	safeguard measures
SPS	Sanitary and Phytosanitary Measures
TBT	technical barriers to trade
GRP	Good Regulatory Practice
TRIPS	trade-related aspects of intellectual property rights
APEC	Asia-Pacific Economic Cooperation
AFTA	ASEAN Free Trade Areas
ISO	International Standardization Organization
WIPO	World Intellectual Property Organization

2. Words related to Government of Malaysia

MITI	Ministry of International Trade and Industry
AG Chambers	Attorney General's Chambers
MDTCA	Ministry of Domestic Trade and Consumer Affairs
IPP	Intellectual Property Protection SDN. BHD
INTAN	National Institute of Public Administration
IPTC	Intellectual Property Training Center
DSM	Department of Standards Malaysia

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I. Introduction

1. Backgrounds, Objective, Scope and Target of the Program

1.1 Objective of the Program

The objective of this program is to conduct capacity building activities on the implementation of duties under World Trade Organization (WTO) Agreements to developing countries, which face many kinds of challenges, such as introduction of domestic laws/regulations consistent with the Agreements and human resource development. The activities include training for the government officials and strengthening of administrative functions, which facilitate the implementation of WTO Agreements.

1.2 Background of the Program

1.2.1 WTO and Developing Countries

In 1995, the WTO was established as a successor organization of General Agreements on Tariffs and Trade (GATT). The Uruguay Round Agreement, which was the last comprehensive negotiation round under GATT, put member countries under several duties and commitments on international trades. In addition to the agreements on boarder measures (tariff and non-tariff barriers), the newly agreed “General Agreements on Trade in Services (GATS)” and “Agreements on Trade-Related Aspects of Intellectual Property Rights (TRIPS)” require Member Countries to harmonize their domestic regulations. Also the Agreement on Technical Barriers to Trade (TBT) starts to cover all member countries comprehensively (under the GATT framework, TBT was only applied to ratified countries separately) and developing countries, which have not yet finished establishing domestic legal regimes in these fields, have found the difficulties to implement their duties under TBT.

The positive participations of developing countries are essential for keeping and developing the WTO-centered multilateral free trade regime. However, a lot of developing countries have faced various problems based on their inadequacies of human, legal and financial capacities.

Now it is not rare to hear the negative impacts of economic globalization based on the facts that many developing countries have not received the benefit of multilateral

free trade regimes. However, a lot of economic analyses show that trade liberalization expand trade among countries, which lead to increases in employment, the active private sectors and have positive impact on the alleviation of poverty and the promotion of economic development in developing countries. For their economic developments, it is fundamental for developing countries to liberalize their domestic markets according to their development stages, to join international free trade regimes and to receive the full benefits.

1.2.2 Launch of “Doha Development Agenda”, the WTO new round negotiations

On November 2001, the WTO Fourth Ministerial Meeting at Doha adopted the “Doha Development Agenda” and stressed the importance of the due consideration for developing countries. In particular the WTO Ministers focused on the importance of the capacity building for developing countries and showed their understanding on the needs for capital funds, bilateral cooperation, cooperation with other international organizations, and technical assistance in information technology fields. Based on this agenda, the developed countries have begun to plan the contents of the capacity building programs, which may expand their target countries.

1.2.3 Japan’s Initiative in Asia-Pacific Economic Cooperation (APEC)

The Japanese Government proposed, at the Meeting of APEC Ministers Responsible for Trade in June 2000, to maintain and develop multilateral trade regimes through encouraging developing economies to build and strengthen their domestic legal and administrative infrastructure for implementation of the WTO Agreements. On November 2000, APEC Ministerial Meeting and informal Leaders’ Meeting, based on the survey of the need for developing economies in APEC, approved “the APEC Strategic Plan,” which intended to build developing economies’ capacity for implementation of the WTO Agreements. This plan was then transferred to bilateral assistance regimes for the implementation of specific assistance in Thailand, Indonesia, Malaysia and the Philippines.

Based on “the APEC Strategic Plan,” Japan International Cooperation Agency (JICA) established the “Committee on the Capacity Building to Implement the WTO Agreements in APEC” and conducted the needs surveys for Thailand, Indonesia, Malaysia and the Philippines from December 2000 to March 2001.

1.3 Scope of the Program

This Program covers the capacity building for the implementations of WTO Agreements in Malaysia as well as Thailand, Indonesia and the Philippines, which are regarded as mid-developed countries in their market/economic development stages. The issues to be covered in this Program are within the scope of existing Agreements of WTO so that the legal framework is already in force to some extent. Therefore, the “new issues” such as trade and investment, trade and competition policy or trade and environment are outside the scope of this Program.

1.4 Scope of the Program under the agreement between the Government of Malaysia (S/W)

The Scope of Work agreed between the Government of Malaysia and the Preliminary Study Team of JICA on July 2, 2001 was as follows:

1. Capacity building for the implementation of Agriculture and SPS Agreements
 - (a) Study on present situation
 - (b) Organizing workshops
 - (c) Development of recommendation
2. Capacity building for the implementation of DSU (Understanding on Rules and Procedures Governing the Settlement of Disputes)
 - (a) Study on present situation
 - (b) Organizing workshops
 - (c) Development of recommendation
3. Capacity building for the implementation of the Agreement on TRIPS (Trade-Related Aspects of Intellectual Property Rights)
 - (a) Study on present situation
 - (b) Organizing workshops
 - (c) Development of recommendation
4. Capacity building for the implementation of the Agreement on TBT
 - (a) Study on present situation
 - (b) Organizing workshops
 - (c) Development of recommendation
5. WTO capacity building in general
 - (a) Submitting the Inception Report, the Interim Report and Work Plans
 - (b) Summing up, review and evaluate the overall program, Submitting the Draft Final Report and the Final Report

1.5 Major Issues and Target of the Program

This Program targeted strengthening institutional aspects and capacities for implementing the WTO Agreements, which the Malaysian government has found difficult to implement. Assistance for the Malaysian government in this field is essential for developments of WTO multilateral trade regimes and also for the

transparent business environments for Malaysia industries and companies. This technical assistance is important, in addition, for the Japanese Government to share its experience and recognition with Asian countries including Malaysia.

This Program is a new type of cooperation program, which assists targeted countries, including Malaysia, to build their capacities to implement the WTO Agreements and to join multilateral free trade regimes fairly. Therefore, this program focused on technical transfer for building and strengthening capacities of targeted government officials to implement the WTO Agreements, in addition to preparing recommendations. In this respect, the focus of this Program is to strengthen and assist institutional building and information sharing.

The concept of the aims of this program, the challenges of developing countries and the background behind them can be shown as the figure I-1-1.

In order to conduct these kinds of technical transfers/activities effectively, the following points were considered.

1) Due consideration to the domestic situations of targeted countries

It is important for effective knowledge transfers to analyze the needs and problems of targeted countries and to design tailor-made programs.

2) Identification of the targeted beneficiaries and appropriate response to their needs

Under this Program, the targeted direct beneficiaries were identified and analysis on their needs were conducted to design each TA program.

3) Recommendations of activities continued after the program and of sustainable institutional capacity

Each component was encouraged to examine the activities continued for sustainable capacity buildings and prepared recommendations from these aspects.

4) Targeting the capacities to deal with the duties under the WTO Agreements

This Program targeted knowledge transfers to strengthen the capacities of specific component issues particular to in Malaysia. From this aspect, various activities were undertaken, such as analyzing the effect to apply the WTO Agreements to domestic legal systems, sharing Japanese experiences to

implement the WTO Agreements, transferring knowledge related to institutional systems and know-how in Japan, and socializing WTO related information.

The Government of Malaysia has actively attended WTO related capacity building programs. However all the programs were based on multilateral or regional framework, such as WTO, APEC, ASEAN and so on. This JICA program is the first attempt, which focused mainly on the whole structure of the WTO and was based on the bilateral framework.

With regard to the whole concepts and details of the activities, see Figure I-1-1 and I-1-2.

Figure I-1-1 Capacity Building on the Implementation of the WTO Agreements

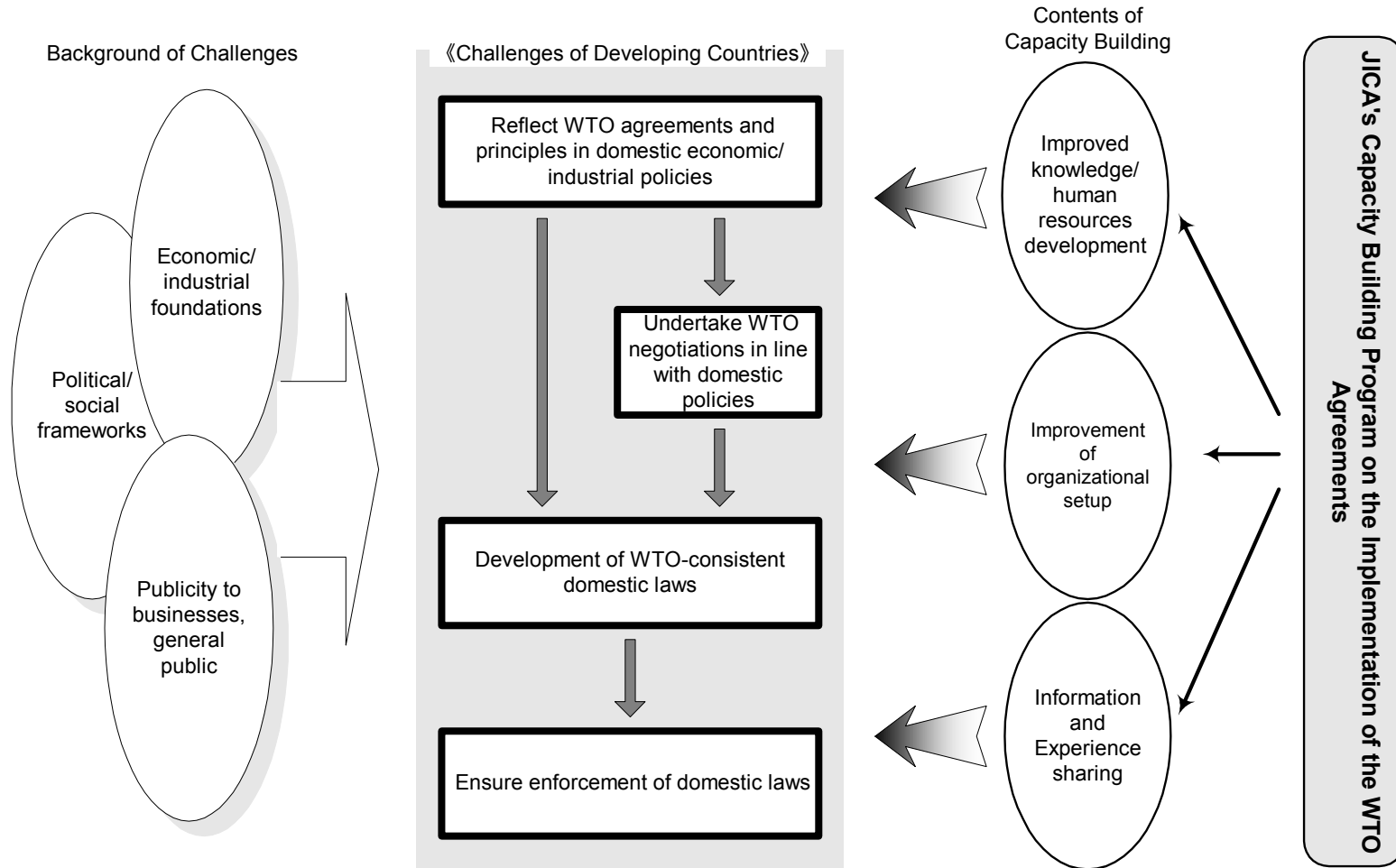


Figure I-1-2 Activities in Malaysia

	Counterpart Organizations	Objectives	Activities
General	Ministry of International Trade and Industry : MITI		<ul style="list-style-type: none"> - Inception Meetings (May 2002) - Work Plan (June 2002) - Interim Report (October 2002) - Wrap up Meeting (March 2003) - Final Report (June 2003)
Agriculture/ SPS	Ministry of Agriculture : MOA Ministry of Health : MOH	<ul style="list-style-type: none"> - Study/analysis on present situation of Agriculture and SPS Agreements implementation - Workshops for enhancement of understanding and knowledge of general and sector-specific related issues - Development of recommendations 	<ul style="list-style-type: none"> - Study/analysis on present situation of Agriculture and SPS implementation - Seminars for enhancement of understanding and knowledge of general issues (August 2002)
DSU	Attorney General's Chambers	<ul style="list-style-type: none"> - Study/analysis on present situation of DSU implementation - Workshops for enhancement of understanding and knowledge of general and sector-specific DSU issues - Development of recommendations 	<ul style="list-style-type: none"> - Study/analysis on present situation of DSU implementation - Workshop for enhancement of understanding and knowledge of general issues (October 2002)
TRIPS	Ministry of Domestic Trade and Consumer Affairs : MDTCA	<ul style="list-style-type: none"> - Study/analysis on present situation of TRIPS implementation - Workshops for enhancement of understanding and knowledge of general and sector-specific TRIPS issues - Development of recommendations 	<ul style="list-style-type: none"> - Study/analysis on present situation of TRIPS implementation - A seminar and a mini-workshop for enhancement of understanding and knowledge of general issues (October 2002) - Utilizing the teaching materials developed at the projects in Thailand and Indonesia.
TBT	Department of Standards Malaysia : DSM SIRIM Berhad	<ul style="list-style-type: none"> - Study/analysis on present situation of TBT implementation - Workshops for enhancement of understanding and knowledge of general and sector-specific TBT issues - Development of recommendations 	<ul style="list-style-type: none"> - Study/analysis on present situation of TBT implementation - Seminars and a closed workshop for enhancement of understanding and knowledge of general issues (September 2002)

2. Malaysia's Policy and WTO-related Organizations / Present Situation and Challenges in Implementation of WTO Agreements

2.1 Agriculture and SPS Agreements< Component 1 >

In June 1999, the Government of Malaysia launched the 3rd National Agricultural Policy (NAP3), which updated the strategic directions for the agricultural development to the year 2010. Compared with the situation in 1992 when the previous 2nd National Agricultural Policy (NAP2) was formulated, the international environment surrounding the agriculture sector in Malaysia has significantly changed due to the fact that there were the agreements under the Uruguay Round during this period, so that the agricultural policy of Malaysia is required to conform with this new international order. In the context of NAP3, there are a couple of statements included below related to the Agriculture/SPS Agreements under the WTO system, in which the Government of Malaysia firmly determined that it will make the agriculture sector more competitive in the international market.

(1) Both the public and private sector institutions involved in agricultural development need to further strengthen their collaboration and cooperation towards making the sector more resilient and competitive to meet the challenges of globalization and the liberalization of agricultural trade.

(2) A National Food Safety Initiative will be formulated to improve the safety of the nation's food supply, which will encompass food safety surveillance, inspections, research, risk assessment, training, education and co-ordination among regulatory agencies.

The Ministry of Agriculture (MOA) and the Ministry of Primary Industries (MPI) are responsible for the implementation of commitments under the WTO Agreement on Agriculture, while the Department of Agriculture and the Department of Veterinary Services are responsible for the implementation of SPS measures pertaining to plant health and animal health. In addition, the Ministry of Health (MOH) is in charge of food safety under the SPS Agreement, and the Food Quality Control Division of the Department of Public Health is the SPS inquiry point on food safety.

All the stakeholders, namely MOA, MOH, MPI, and MITI, are the focal points of the WTO, which recognizes the necessity of capacity building for the implementation of both Agreements due to the following problems.

(1) Insufficient Harmonization of Domestic Laws and Regulations with the Agriculture/SPS Agreements

Regarding the harmonization of the domestic laws and regulations with the Agriculture/SPS Agreements, although both MOA and MOH are steadily improving its harmonization with the WTO standards, there is still need to amend the relevant laws/regulations to ensure WTO-compliance.

On signing the Uruguay Round Agreement, MOA and MOH have been assuming the task of adjusting the laws and regulations related to the Agriculture/SPS Agreements listed below to be in conformity with both Agreements.

- 1) The Food Act 1983
- 2) The Food Regulations 1985
- 3) Animal Ordinance 1953
- 4) Animal Rules, 1962
- 5) Animal Importation Order, 1962
- 6) Federal Animal Quarantine Station By-Law, 1984
- 7) Pesticide Act 1974
- 8) Plant Quarantine Act 1976
- 9) Plant Quarantine Regulation 1983

Taking the Animal Ordinance as an example, although necessary actions have been taken to formulate the Veterinary Act to replace the Animal Ordinance 1953, the authority is required to take additional work to ensure that the new Veterinary Act fulfills the requirements by the SPS Agreement. In this way, it is obvious that in the process of the amendments and enforcement of the domestic laws and regulations, the officials concerned at MOA and MOH, especially those engaged in the said process, are required to fully understand the Agriculture and SPS Agreements.

(2) Insufficient Institutional and Operational System for the Implementation of the Agriculture/SPS Agreements

In addition to the legal harmonization, the institutional and operational system for the implementation of the Agriculture/SPS Agreements is insufficient as well.

For example, while the Food Quality Control Division of MOH has 10 sections with the total of 4,539 staff, Codex which is composed of 29 committees such as i) General Standard Committees (9 committees), ii) Food Standard Committees (12

committees), iii) Regional Coordination Committees (5 Committees), iv) Special Committees (3 Committees) requires staff's massive documentations and participation in many meetings. Thus, even in the field of food safety, which is being assisted by the JICA project-type technical cooperation, the present institutional and operational systems are not sufficient. Therefore, it goes without saying that the capacity building program will be absolutely necessary to build proper institutional and operational systems for the implementation capacities in the fields of the Agreement on Agriculture, the animal quarantine, and the plant quarantine as well.

(3) Necessity of Deeper Understanding of the Agriculture/SPS Agreements

MOA recognizes the need to understand the impact of the Agriculture/SPS Agreements on Malaysia, and, at the same time, it wishes to obtain the technical knowledge of assessing the agriculture market as well as risk analysis on pests. On the other hand, MOH demands for the technical support on food safety, requests the comprehensive capacity building program intensifying of the laboratories, gaining technical knowledge such as risk management, receiving experts from the authorities concerned of donor countries and international organizations.

In summary, it is necessary to hold a seminar which aims at technical transfer in the field of the Agriculture/SPS Agreements targeting relevant officials of MOA, MOH, MPI, and MITI for the purpose of improving the general understanding of both Agreements in order to provide required capacities for the harmonization and implementation of both Agreements.

In response to these needs of assistance, various international organizations and bilateral donors such as WTO, UNDP, FAO, ASEM, and AusAID have been implementing a wide range of capacity building programs through seminars and workshops. The Government of Japan has been directly and indirectly extending assistance in the field of capacity building for the implementation of the WTO Agreements on an ad hoc basis. A typical technical cooperation in this field is the on-going project-type technical cooperation for strengthening of food safety, and MAFF, Japan is extending or will extend more assistance for the capacity building related to the Agriculture/SPS Agreements.

In order to integrate the outcomes of the above seminars and workshops by Japan and other donors, thereby improving the general understanding of Agreements on Agriculture and SPS measures, the technical transfer through the seminar for capacity

building for the implementation of both Agreements whose main beneficiaries are staff of MOA, MOH, MPI, and MITI is urgently required. In addition to the government officials, it is expected that possible participants include the private sector such as producers and traders of agricultural commodities.

2.2 Dispute Settlement Understanding< Component 2 >

2.2.1 Present Capacity of the Attorney General's Chambers, Malaysia

Pursuant to the DOHA Development Agenda, Malaysia is working towards enhancing its capacity to implement and comply with WTO rights and obligations. One of the ways to enhance its knowledge on the WTO Agreements is by transfer of knowledge and experience by countries, which have the expertise and experiences in relations to WTO.

The Attorney General's Chambers, Malaysia (AG Chambers) has been given the task of advising the Malaysian Government on every aspect of Government dealings and is at the age where trade and investment has become a very important area. AG Chambers feels that it is time to build the capacity of its officers to fully understand and be able to advise the Government on issues concerning WTO.

In order to understand and appreciate the Dispute Settlement Understanding (DSU), the officers of the AG Chambers, would need to gain comprehensive knowledge and expertise especially in conducting dispute settlement cases at the Dispute Settlement Body (DSB).

The AG chambers is currently undergoing a re-organisation of the International Unit. An International Trade and Finance Unit would be set up to deal with the increasing demand of the Government to encourage and be involved with the global trading and investment arena. In line with this re-organisation, the International Trade Unit, which currently has four (4) officers, would be increased to ten (10) officers whom are required to be conversant with the WTO Agreements and principles. Projects such as capacity building programs would help build the capacity of the legal officer in the AG Chambers. AG Chambers also attaches its officers to all government agencies and some of these agencies deal with WTO-related issues. Hence, these officers attached at the agencies would also require sufficient knowledge on WTO.

Several WTO member countries including Japan, has contracted legal experts to help them deal with their WTO cases. Malaysia thus far has not engaged any private firms and has managed their WTO cases internally and would continue doing so. Hence capacity building in the area of DSU and other WTO related matters are relevant and crucial to enhance the capacity of legal officers of the AG Chambers to deal with the WTO issues and all the challenges resulting from multilateral trading system.

2.3 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) < Component 3 >

2.3.1 Present Situation of the TRIPS Implementation in Malaysia

(1) Present TRIPS Compliant Legal Situation in Malaysia

Within the Malaysian Government, the Ministry of Domestic Trade and Consumer Affairs (MDTCA) is primarily in charge of issues related to intellectual property rights as a whole. In accordance with the transitional schedule that TRIPS requires for entering signatories, the MDTCA has worked to bring domestic laws and regulations into conformity with the TRIPS Agreement together with World Intellectual Property Organization (WIPO). The necessary legal measures have been developed for TRIPS compliance, for instance the Layout Designs of Integrated Circuits Act 2000, the Geographical Indication Act 2000 and the Optical Discs Act 2000 together with relevant amendments in 2000 on the Patent Act 1983, the Copyright Act 1987 and the Industrial Designs Act 1996. The overview of the major introduction and amendment of domestic laws and regulation compliant to the TRIPS provisions is highlighted as follows.

Recent development on Patent Act in Malaysia has ensured conformity with the provisions of TRIPS Agreement. The revisions have been made on the Act in 1993 and 2000. Revision in '93 ensured conformity mainly with the provisions of Paris Convention, such as speeding up for the processing and granting the patents, and further specification on definition of "publicly known", patent protection for the duration of 15 years after grant, etc. Revision in 2000 provided full compliance with the TRIPS by extending patents protection period from 15 years to 20 years from the filing date, allowing the parallel import, and specifying the requirement on compulsory licensing and limitation of the Government power to exploit the patents.

Recent developments on Trade Marks Act in Malaysia are observed as revisions made on the Act in 1994 and 2000. Revisions in '97 introduced protection of service mark under the Act, and included the provisions to cover the claim of priority under the Paris Convention. The objectives of that revision were mainly focused on speeding up and coordinating the processing procedures. The recent revision in 2000 introduced the provisions for 'well-known marks' and enforcement of border measures to ensure the conformity with the TRIPS Agreement.

The major revision on Copyright Act 1987 was made in 1990 as Malaysia's accessing the Bern Convention in 1989. Recent developments were recorded in 1996 (Act 952), for copyright on the digital network, and 1997 (Act 994), for relations with industrial design and coordination with collecting societies. The basic compliance with the TRIPS Agreement has been ensured at this stage. However, the most recent revision in 2000 (CAA 2000) completed full compliance with the TRIPS by including performers rights.

The new Industrial Design Act has been introduced in 1996. The basic structure of the Act was referred to the Design Registration Act of the UK and full compliance with the TRIPS was observed as it is introduced.

The following are further legal developments to ensure the TRIPS conformity. The new laws have been introduced as Integrated Circuit Designs Act 2000, Geographical Indicators Act 2000, and Optical Disk Act 2001. With regard to the protection of Trade Secret and IP on the digital network, the provisions of common law and Computer Crime Act 1997 include them in their scopes respectively.

As for the law enforcement area, remedies on the civil and administrative procedure are covered in the provisions of Rules of High Court, and Special Relief Act as well as related IP laws and regulations. And Customs Tariff Act for the border control provisions, and Trade Description Act and others for criminal procedures are already in effect. With regard to the border control, the Trademarks and Copyright Acts also have relevant provisions empowering the custom officer to act on behalf of the Registrar at the border. However, there are still not clear explicit provisions as for the Article 53 of the TRIPS, the provisions for Security or Equivalent Assurance. It is handled in operation.

(2) Related Organizations and Agencies

Within the Malaysian Government, the Ministry of Domestic Trade and Consumer Affairs (MDTCA) is primarily in charge of issues related to intellectual property rights as a whole. The Intellectual Property Division (IPD) in the MDTCA is the actual operation section. The IPD consists of 3 major IP areas (trademark, patent, and industrial design and copyright). As for the patent area, sections are separated into 3 areas of operation (engineering, applied science, and formality). Regional offices are located in Sarawak and Saba. The MDTCA also provide the enforcement division.

Under the Ministry of Finance, the Royal Customs & Excise Department is the major authority at the IP border control. Under the provisions of Customs Tariff Act 1967 and Sales Tax Act 1972, the customs office has the authority to investigate, confiscate and arrest over the infringement of IP goods.

As for the police force, the Royal Malaysian Police is the authority of enforcement on IP related crimes and infringement in the market. The related Acts which provide its authority are, Price Control Act 1943, Optical Disc Act & Geographical Indicators Act 2000, Copyright Act 1987, Customs Tariff Act 1967 and others.

Under the Malaysia's court system, the High Court has the jurisdiction as the installment court of the first instance on the IP related cases and claims to the Secretary General for IP. There are two High Courts, High Court of Malaya and High Court of Borneo, sharing the regional jurisdiction as for west Malaysia and east Malaysia respectively. There is no special court that exclusively treats IP cases in Malaysia.

Besides major universities and related research centers, such as Technology Licensing Organizations attached to universities, National Institute of Public Administration (INTAN) and Intellectual Property Training Center of Malaysia (IPTC) provide the most extensive educational and training opportunities for IP related issues. The INTAN has been providing variety of training courses in the area of IP, such as IP promotion seminars and special courses to applicants to the Patent Agent. However, establishment of IPTC in 1997 takes over the most of its function in terms of IP related education and training.

Other related organizations are as follows:

- Malaysia Intellectual Property Association (MIPA): overall promoter of IP related activities in the private sector
- FVPS (M) Bhd.: member to the Motion Picture Association (MPA)
- Recording Industry Association of Malaysia (RIM): consortium of the Malaysian record industries
- Music Authors' Copyright Protection (MACP): collecting society of music authors
- Business Software Alliance (BSA): consortium of the Malaysian computer software industries

2.3.2 Needs of Capacity Building

As indicated above, the Malaysian Government is taking necessary steps to remedy the problems of counterfeiting and piracy, consistent with the laws and regulations in the area of Intellectual Property (IP). However, it is also the reality that there are still issues to be addressed especially in the area of law enforcement.

As for the background of this situation, although the magnitude of international crime syndicate shall not be kept off, one shall be aware that further IP protection is vital to prevent piracy also from the consumer side. In order to realize a healthier circumstance in the area of IP conforming to the provisions of TRIPS, greater attention shall be paid to ensuring more efficient conduct of enforcement. The information and knowledge on IP laws and regulations, related practices and its development, as well as TRIPS shall be well accessed and shared thoroughly among all those related authorities. A further understanding of IP on the part of industry, as well as the general public, shall also be vital in ensuring proper observance of laws and regulations.

As for the Malaysian economy perspectives, among other issues, more focus has been put on encouraging investment and strengthening higher value added industrial activities. The Eighth Malaysia Development Plan is suggesting the enhancement of knowledge-based economy while taking importance on both domestic and foreign direct investment. The Malaysian government continues to promote investment especially in the high technology area. In this context, establishment of profound environment on IP is considered to be inevitable to secure the fundamental platform to support these activities through industrial strengthening and human resource development.

As described above, the scope of an assisting program is expected to cover a wide range of area and issues such as substantiation for institutional foundation not limited to legislative but administrative operation, human resource development, and IP promotion in general term. Having noticed those expectations, it is also recognized that other international organizations and donors of assistance (such as other extensions of JICA, Japan Patent Office, WIPO, World Bank, etc.) have been providing other programs to meet its needs. Considering this circumstance, it has been discussed and agreed through the dialog between two parties that any unnecessary duplication of assistance should be avoided this time. This program, thus, had initiated to provide assistance focusing on the human development side by organizing seminar to share knowledge and information on the basic principles of TRIPS Agreement. And from the viewpoint of

training program development, a workshop shall be provided to share experiences and achievement from the undertakings in Thailand and Indonesia under the JICA project for training material development.

2.4 Agreement on Technical Barriers to Trade(TBT Agreement)< Component 4 >

2.4.1 Activities of Malaysian Government for the TBT Agreement

The following part¹ summarizes the activities of the Malaysian government under the TBT Agreement, roles of the Department of Standards Malaysia (DSM) and SIRIM Berhad (national enquiry point), and the issues that the country is facing in the area of TBT.

(1) Development of International Standards

(a) Policy Guidelines for Development of Malaysian Standards

All standards development committees in Malaysia are required to review the compatibility with international standards for adoption/adaptation. ISO Guide 21 recommendations guide the manner of adoption of international standards. Participation in international standards is being enhanced to facilitate the adoption of international standards.

(b) Use of Malaysian Standards in Technical Regulations

Many publications are available for use of industry or government agencies in a variety of ways. Some Regulatory authorities stipulate mandatory compliance to these standards either by direct reference in regulations or through administrative circulars.

Regulatory authorities also publish their own regulatory standards. DSM/SIRIM have encouraged the adoption of Malaysian Standards as the preferred alternative and would like to see increased use.

(c) Participation in International Standards at Policy Level

The Malaysian Government participates in the following international forum.

ISO: Currently has been elected as Council Member, member of TMB & also participates in CASCO, DEVCO, and COPOLCO. Secretariat of ISO TC45/SC4 (Rubber and rubber products)

IEC: No participation at policy level

ITU, CAC: Participation undertaken by relevant ministries

¹ Explanation of this part is based on the Power Point documents of Mr. Rajinder Raj (General Manager, Standards Management Department, SIRIM Berhad), presented at the TBT Workshop held on September 5, 2002, as well as on the DSM's and SIRIM's web site (<http://www.dsm.gov.my/>, <http://www.sirim.my/>).

(2) Implementation of the TBT Agreement

(a) Management of the Implementation of the WTO/TBT Agreement

In Malaysia, MITI (Ministry of International Trade and Industry) is responsible for the multinational trade negotiation issues. DSM and SIRIM Berhad are both responsible for international standardizing issues and SIRIM Berhad is a national enquiry point of the TBT Agreement.

SIRIM Berhad was appointed by the Malaysian Government to manage the GATT (WTO/TBT) enquiry and notification functions since 1993. Since January 2002, the function is managed by the Standards Management Department, SIRIM Berhad. As the national enquiry and notification point, SIRIM Berhad has played the following roles:

- Assistance in answering foreign enquiries on any existing or proposed Malaysian Standards, regulations and conformity assessment systems
- Assistance in answering domestic enquiries on any existing or proposed standards, regulations and conformity assessment systems affecting trade of other WTO member countries
- Assistance in the preparation and submission of notifications on Malaysia's proposed technical regulations to WTO in accordance with TBT agreement obligations
- Disseminating information on proposed foreign regulations to government agencies, institutions, organizations, associations and other interested parties in Malaysia through the *WTO/TBT Newsletter*
- Managing National TBT Subcommittee (NSC)

(b) National Sub-Committee (NSC) on the TBT Agreement

To handle the issues regarding notification obligation under the TBT Agreement, National Sub-committee (NSC) of the TBT Agreement plays important roles.

Figure I-2-1 Management of the TBT National Sub-committee in Malaysia

Area	Contents
Purpose	<ul style="list-style-type: none">- To examine effective implementation of Malaysia's rights and obligations under the TBT agreement- To co-ordinate implementation issues related to the TBT with other agencies responsible for the agreement
Duties and Responsibilities	<ul style="list-style-type: none">- To monitor the operation and administration of the TBT agreement with regard to the duties of the enquiry point

	<ul style="list-style-type: none"> - To monitor and act on issues/standards of export and domestic markets that are barriers to trade - Coordinate with other ministries/agencies on responses to WTO notifications - Manage Malaysia's notifications to the WTO TBT Committee - To formulate recommendations on TBT matters to the MTN Committee
Membership	<ul style="list-style-type: none"> - Government ministries for trade, industry, consumer affairs, health, agriculture, science - Regulatory agencies - National trade and industry associations - SIRIM Berhad (secretariat)

2.4.2 Past Capacity Building

TA Consultant Team has identified that Malaysian Government still has needs to conduct information-dissemination activities through seminar/workshop. These are programs based on the framework of the multilateral or regional cooperation such as WTO, APEC or ASEAN. JICA's capacity building program is the first bilateral assistance on the TBT Agreement for Malaysia.

Figure I-2-2 Technical Assistance Program in which Malaysia has participated

Title	Date	Place	Donor
Workshop on Enhancing the Participation of Developing Countries and Economies in Transition in International Standardization	14-15 February 2002	Bangkok, Thailand	ISO/WTO/JISC
APEC Symposium on Notification Procedures under the World Trade Organization's Agreements on Technical Barrier to Trade and Sanitary and Phytosanitary Measures	29-31 May 2002	Bangkok, Thailand	APEC/NZ

Source: WTO Document (G/TBT/W/186/Add.1, March 13 2003)

II. Capacity Building Activities

1. Overview of the Assisting Programs

This project, deferring from transient training program or equipment & material offering in general, has achieved substantial technology transfer at every stage of its tasks, both at the stage of program formulation process and at the post-program in addition to the actual conduct stage of visible programs.

In this chapter, major reporting was elaborated through visible program conducted areas. However, it shall be noted that the sections reported as consensus building on objectives and/or agendas of programs are the actual achievement from the program formulation process. The consensus building with counterparts was achieved through numerous discussions and results from various institutional plans of coordination. Along with this effort taking process, extensive technical transfer and tasks contributed to institutional strengthening – which shall meet the overall assisting objective of this project as a whole.

The initial directions and framework of programs were outlined at the time of S/W mission; however, the actual programs at the conduct stage were extensively substantiated and customized through program formulation stages with identification of counterparts' actual needs for capacity building. With regard to recruitment of lecturers, it is effective to enhance the level of customization that the most appropriate personnel be recruited to match their needs from the wide range of human resources from JICA WTO Advisory Committee, Japanese experts from academia, industries and government, WTO Secretariat related experts, and experts from the third countries.

As for the further capacity building activities at the post-program stage, they are elaborated in the following chapter in the form of recommendations. These recommendations were projected through the same tasks as at the program formulation process from the viewpoint of effective utilization of experiences and achievement from this project for the further continuous and sustainable capacity building activities on their self-reliant effort.

The following Figure II-1-1 and Figure II-1-2 are overviews of programs.

Figure II-1-1 Overview of the Capacity Building Program

Component	Counterparts	Program Conducted	Evaluation and Recommendations
General Coordination	Ministry of International Trade and Industry : MITI	2002.5: Inception Mission 2003.3: Concluding the Program by holding the Wrap-up Meeting 2003.6: Final Report	
Agriculture/SPS	Ministry of Agriculture: MOA Ministry of Health: MOH	2002.8: Three-day Workshop on Agriculture/SPS in general Lecturers: Japanese MAFF, and a private sector expert. Organized by MOA and MOH	From the results of the workshops, the evaluation is to be derived and sharing view with the Malaysian counterpart, the recommendations are to be prepared referring the outcome from the discussion held at the Wrap-up Meeting.
DSU	Attorney General's Chambers	2002.10: Two-day Workshop on DSU in general Lecturers: Japanese RIETI, and Japanese academics. Organized by AG Chambers 2002.10: Five-day Workshop on DSU in particular on practical activities Lecturers: Japanese academics, and EU experts. Organized by AG Chambers	From the results of the workshops, the evaluation is to be derived and sharing view with the Malaysian counterpart, the recommendations are to be prepared referring the outcome from the discussion held at the Wrap-up Meeting.
TRIPS	Ministry of Domestic Trade and Consumer Affairs: MDTCA	2002.10: One-day Workshop and Mini-workshop on TRIPS in general Lecturers: Japanese Patent Office, and private sector experts. Organized by MDTCA	From the results of the workshops, the evaluation is to be derived and sharing view with the Malaysian counterpart, the recommendations are to be prepared referring the outcome from the discussion held at the Wrap-up Meeting.
TBT	Department of Standards Malaysia: DSM SIRIM Berhad	2002.10: Three-day Workshop on TBT in general Lecturers: Japanese METI, and private sector experts. Organized by DSM	From the results of the workshops, the evaluation is to be derived and sharing view with the Malaysian counterpart, the recommendations are to be prepared referring the outcome from the discussion held at the Wrap-up Meeting.

Figure II-1-2 Component and Programs

Individual Components	Programs	Targeted Objectives
Capacity Building for Agriculture/SPS <Component 1>	Conduct of Workshops	Deferring from the plain transient training program in general, from the preparatory stage, the program shall aim to transfer technical know-how to design and operate capacity building activities as well as enhance knowledge on the significance of Agreements to contribute to the continuous and self-reliant human resource development.
Capacity Building for DSU <Component 2>		
Capacity Building for TRIPS <Component 3>		
Capacity Building for TBT <Component 4>		

2. Activities in Malaysia

2.1 Capacity Building for Agriculture and SPS< Component 1 >

2.1.1 Whole Picture of the Programs

After a series of the discussions with the counterpart officials, it was agreed to hold a 3-day seminar with 6 sessions. The objectives of the seminar include:

- a) To provide participants, from both public and private sectors, a deeper understanding of the Agreements on Agriculture and SPS measures;
- b) To assist government officials in carrying out risk analysis under SPS measures; and
- c) To give the participants a better understanding of quarantine procedure, and the distribution system of agricultural products in Japan.

Based on these objectives and the request from the Government of Malaysia, the seminar for capacity building for the implementation of Agreements on Agriculture and SPS measures was held during the period from August 26-28, 2002 in Kuala Lumpur. The contents of the Seminar includes the following 6 sessions. Out of these 6 sessions, the 2nd session of “Distribution System of Agricultural Products in Japan” was proposed as a part of “*the ASEAN Plus 3*” activities.

- 1) General Understanding of the Agreement on Agriculture
- 2) Distribution System of Agricultural Products in Japan
- 3) General Understanding of the SPS Agreement
- 4) Food Safety and Risk Analysis
- 5) Animal Quarantine System in Japan
- 6) Plant Quarantine System in Japan

(1) The First Day (August 26, 2002)

(a) The Opening of the Seminar

Y.B. Dato’ Haji Abu Bakar Taib, the Parliamentary Secretary of MOA, the Ambassador of Japan to Malaysia, H.E. Masaki Konishi made opening remarks emphasizing importance of the world trade system and capacity building for WTO agreements. Then, the team leader of TA consultant team introduced the outline of the seminar as well as the lecturers. During the 6 sessions of the 3-day program, the

number of participants was counted as the total of 118, consisting of officials from the Ministry of Agriculture, Ministry of Health, relevant government authorities, experts and the private sector representatives.

(b) Session 1: General Understanding of the Agreement on Agriculture

The lecturer was Mr. Tetsuo Ushikusa, Deputy Director of Planning and Evaluation Division, Ministry of Agriculture, Forestry and Fisheries (MAFF) of Japan. The presentation outlined the Agreement on Agriculture, covering 3 main issues, namely, 1) Market Access, 2) Domestic Support, and 3) Export Regulations. The question concentrated on was: How developing countries can benefit from the Agreement on Agriculture.

(c) Session 2: Distribution System of Agricultural Products in Japan

The lecturer was Dr. Akitoshi Kimura, principal consultant of the Marketing Research Department of Marketing and Research Institute for Agricultural Cooperatives. The presentation outlined the present situation and the future challenge of the Japanese agriculture as well as the distribution system of agricultural products in Japan. The lecturer also highlighted the present situation of Japanese multi-functional agricultural co-operatives, which organize almost all agriculture producers throughout Japan. Then, the lecturer illustrated a wide range of distribution channels of agricultural products in Japan, for example, the distribution system for fresh vegetables and fruits through the central wholesale markets and local wholesale markets, showing several photographs of distribution sites at a central wholesale market. The participants raised a number of specific questions related to the subjects discussed.

(2) The Second Day (August 27, 2002)

(a) Session 3: General Understanding of SPS Agreement

The lecturer was Mr. Shiro Inukai, Assistant Director of International Economic Affairs Division, General Food Policy Bureau, MAFF of Japan. Mr. Inukai's presentation covers the outline of the Agreement on the Application of SPS Measures. The lecturer outlined the framework and general understanding of the SPS Agreement, which covers rights and obligations, harmonization, transparency, dispute settlement, equivalence, and notification procedures. The participants raised 14 specific questions related to measures against GMO products, which implies their keen interest in this

field.

(b) Session 4: Food Safety and Risk Analysis

The lecturer was Dr. Kazutaka Yamamoto, Research Coordinator of Agriculture, Forestry and Fisheries Research Council Secretariat, MAFF of Japan. The presentation covered the concept of food safety, international trade and risk analysis, Codex alimentarius commission, and the structure and contents of the risk analysis. The participants raised 9 specific questions related to the concept and procedures for risk analysis, which implies their keen interests in this field.

(3) The Third Day

(a) Session 5: Animal Quarantine System in Japan

The lecturer was Dr. Shiro Yoshimura, Chief, Department of Animal Quarantine, Animal Quarantine Service, MAFF of Japan. The presentation on the animal quarantine system in Japan is helpful for Malaysia to improve its animal quarantine system to conform to the international standard. Dr. Yoshimura started his presentation by talking about the present situation of the Japanese livestock industry as well as the veterinary service in Japan. The lecturer then touched on the legal framework related to the animal quarantine system in Japan. The lecturer went into detailed explanation of the procedures of the animal quarantine in Japan, specific diseases for the animal quarantine, and the outline of the animal quarantine system in Japan. The participants raised practical questions related to the animal quarantine system.

(b) Session 6: Plant Quarantine System in Japan

The lecturer was Mr. Hiroaki Eguchi, Director of Plant Quarantine Service, MAFF of Japan. The presentation on the plant quarantine system in Japan is helpful for Malaysia to improve its plant quarantine system to conform to the international standard. The lecturer started with the situation of plant import under the present quarantine system and the historical background of the legal framework related to the plant quarantine system in Japan. The lecturer went into a detailed explanation of the procedures of the plant quarantine in Japan, specific diseases for the plant quarantine, and the outline of the plant quarantine system in Japan. The questions asked centered on the market access issues to Japan.

(c) The Closing of the Seminar

Y. Brs. Encik Mohd. Zulkifli bin Abdul Rauf, Deputy Secretary-General of MOA and Mr. Hidekazu Tanaka, team leader of TA Consultant Team, made concluding remarks. The remarks reviewed the Seminar contents and its value for the Malaysian agricultural sector as well as capacity building for WTO Agreements. Words of appreciation were added, for both Japanese and Malaysian counterparts, for the successful conduct of the 3-day Seminar.

2.2 Capacity Building for DSU< Component 2 >

2.2.1 the overall picture of the Program

In May 2002, the TA consulting team conducted the first field survey and had discussions with AG Chambers, who are responsible for the legal matters in Malaysia. The TA consulting team and AG Chambers reached agreements based on the inception reports and also their discussions on problems to be solved, priorities of required assistances, and contents of the program as follows; (1) The program will focus on the transfer of practical knowledge essential for joining the WTO DS procedures. (2) The participants will not be limited to legal officers responsible for WTO DS, but also include other legal officers in the Advisory and International Division of the AG Chambers. This aimed to increase the number of legal officers with WTO DS expertise and to increase the human resources of AG Chambers. (3) The contents of the program consisted not only of DS related specific skills, but also of general and comprehensive issues and Singapore new issues. The TA team and AG Chambers also decided to hold workshops on DSU by WTO experts.

Based on these discussions, the first workshop was held on 7th and 8th of October 2002 in Putrajaya's Marriott Hotel and the second was from 14th to 18th of October 2002 in the office of AG Chambers. The first workshop dealt with lectures on structural and procedural outlines of WTO Agreements and DSU and lectures on Singapore Issues. The second workshop treated DS case studies and conducted a moot court practice. The details were as follows:

2.2.2 The First Workshop

About 70 participants, composed of legal officers from the AG Chambers and from other Ministries, attended the first Workshop (Workshop I). The increase of the number of participants from the original plan was based on the strong initiative of the Attorney General.

Mr. Juichiro Sasaki, deputy director of JICA Malaysia Office, and the Honourable Tan Sri Abdul Gani Patail, Attorney General of Malaysia, delivered opening remarks at the first session.

(1) First Day (October 7,2002)

(a) First Session

Professor Tamura from Keio University gave a lecture on “the WTO Fundamental Framework.” The lecture covered the history of the GATT and the whole picture of the WTO (National Treatment, Most Favourite National Treatment, Trade Restriction Measures.)

(b) Second Session

Mr. Araki, Director of Research Institute for Economic, Trade and Industry (RIETI), gave a presentation on “WTO DS Practices.” He covered all DS related issues, using his experience in the WTO secretariat, from the setting up of a Panel to an adoption of an Appellate Body’s report by the Dispute Settlement Body.

(2) The Second Day (October 8,2002)

(a) The Third Session

Mr. Araki lectured on “Recent DS Related Issues.” The speech covered the issues on the implementation, the review of the DSU and assistance programs of DS for developing countries. In particular, participants showed their interests in his explanations of the assistance programs.

(b) The Fourth Session

Professor Tamura made his lecture on “Issues on Environment and Other Important Matters.” He covered the issues on the relationship between WTO Agreements and Multilateral Environment Agreements, Art. XX (general exemption) cases, eco-labeling and pre-cautionary principles. Participants actively presented several questions, in particular on environmental issues in the WTO.

(c) The Fifth Session

Prof. Tamura presented his speech on “The New Issues in the Doha Round.” The lecture covered the backgrounds of the Doha Round, Trade and Environment, and the several negotiations such as on the Agriculture Agreement and the Trade Remedies.

(d) The Sixth Session

As a concluding part, Ms. Azailiza, Deputy Head II of Advisory and International Division, coordinated a session for questions and answers. The questions from

participants included the following topics: the difference between the GATT and the WTO; the idea of establishing a world trade court; current discussions on E-commerce and amicus curie.

2.2.3 Workshop II

From October 14 to 18, 2002, Workshop II was held at the AG Chambers, Putrajaya. Workshop II focused on transfer of practical knowledge on WTO DS issues. The participants were around 30 legal officers of the AG Chambers. The small number of the participants made it possible to make active interactions between participants and lecturers.

(1) The First Day (October 14, 2002)

(a) The First Session

Professor Shimizu gave his presentation on “Case Study I (cases related to trade and environment),” which included, U.S. – Tuna-Dolphin case, U.S. – Shrimp-Turtle case, EC – Asbestos case, Japan – Agricultural products case. In particular, the participants expressed their high interests in the U.S.: Shrimp-Turtle case, in which Malaysia was one of the plaintiff countries.

(b) The Second Session

In the second session, Professor Shimizu dealt with “Case Study 2 (cases related to trade restrictions),” which covered EU – Bed Linen Case, Canada – Aircraft Credit and Guarantees. Professor Shimizu gave his presentation based on his experience working as a Panelist in the WTO.

(2) The Second Day (October 15, 2002)

(a) The Third Session

Professor Matsushita presented his lecture on “Case Study 3 (cases related to S&D Treatments for developing countries).” He dealt with DSU provisions providing S&D treatments for developing countries and gave some ideas how to utilize these provisions from the aspects of Malaysia. The lecture was provided based on his thorough experiences working as an Appellate Body member in the WTO.

(b) The Fourth Session

Professor Matsushita gave his lecture on “Case Study 4 (cases related to burden of proof-facts available etc.)” The lecture covered procedural issues in DS, such as burden of proof, facts available, standards of review, and *amicus curie*, which were essential for joining properly to WTO DS, which were difficult to master except for persons having experiences in the concerned processes. Based on the experience working as an Appellate Body Member, Professor Matsushita effectively gave his lecture and also Professor Shimizu commented on several points from his knowledge serving as a Panelist.

(3) The Third Day (October 16, 2002)

(a) The Fifth Session

Professor Marco Bronckers and Ms. Natalie McNelis presented the fifth session on “The procedures and techniques on DSU I.” They covered the Panel procedures in the WTO and their current problems, and also, in addition to their lectures, gave several points of advice to the participants. Based on their thorough experiences, they provided the knowledge essential for the DS practice in the WTO.

(b) The Sixth Session

Professor Matsushita provided his lecture on “the procedures and techniques on DSU II.” His lecture covered the procedures at the Appellate Body and also, based on his experience there, gave several pieces of advice to the participants.

(4) The Fourth Day (October 17, 2002)

(a) The Seventh Session

In the seventh session, participants were divided into two groups, the appellate and the defendant, and wrote submissions respectively. Prof. Matsushita, Prof. Bronckers, and Ms. McNelis supported and sometimes gave comments on their works.

(5) The Fifth Day (October 18, 2002)

(a) The Eighth Session

Based on the submissions prepared at the last session, “Moot Court (2) – Moot court and comments-“ was held under the supervision of Panelists, Prof. Matsushita, Prof. Bronckers and Ms. McNelis. First, the appellate country and the defendant country presented their submissions respectively and the panelists questioned on each

submission. Each procedure was conducted following the actual WTO DS practices. Finally, Prof. Matsushita, Prof. Bronckers and Ms. McNelis provided the report with their comments.

2.2.4 The Analysis of the Workshops

At the end of the workshop, questionnaires on the workshops were delivered to the participants. Based on the analysis of the questionnaires, participants showed their satisfaction with the workshops. Also the analysis demonstrated that more than 70% of the participants expressed their intention to transfer the knowledge acquired at the workshops.

The analysis showed the following expectations of the participants to future capacity building activities.

- Transfers of practical and actual knowledge on DS procedures
- Further moot practices
- Transfer of more detailed and comprehensive knowledge on the WTO
- Transfer of knowledge on trade restrictions measures
- Transfer of knowledge on trade and environmental issues in the WTO

2.3 Capacity Building for TRIPS < Component 3 >

Based on the Work Plan, and as discussed between the MDTCA and TA Consultant Team, the one-day Seminar on “WTO/TRIPS Agreement and Prospect for Intellectual Property Strategy”, and the Mini-workshop on “Direction of IP Training” was conducted as the program on the TRIPS component. The following includes an overview and a summary of these two events.

2.3.1 Overview of the Seminar Program

(1) Objectives of Seminar

The objective of this seminar is to share the knowledge and information concerning efficient operation and utilization of the Intellectual Property (IP) system reflecting on the framework of the TRIPS Agreement for the strategic activation of economic activities. The seminar is basically designed pursuant to the objectives targeted for those governmental officials who know the existence of the TRIPS Agreement and basic direction of it but are not as familiar with its details and/or principles and recent development of discussion.

As the major objective requires, the subject taken as IP strategy, which could focus on rather private sectors’ activities, is to be dealt with as the referential foundation of international IP related business activities on which the TRIPS provisions are actually reflected. The consideration on economic value of IP and/or innovation shall also be reflected in the magnitude of IP in the actual business areas while reviewing the significance of its protection in the IP system.

(2) Contents of Seminar

The one-day seminar was held on October 28, 2002 at Kuala Lumpur. The number of participants counted 106 in total from governmental agencies, such as MDTCA, SIRIM, MPI, educational institutions, and private sectors. The composition of participants of the public sector were 41 from MDTCA, 6 to 7 from MITI, MOSTE, MOA and research institutes respectively, and some from other Ministries and Agencies. The proportion of public sector and private sector is approximately 2 to 1.

(a) Session 1: Significance of Implementation of TRIPS Agreement

Mr. Watanabe from JPO (Japan Patent Office), lectured on the overview of basic principles and their implication of the TRIPS Agreement, highlighting major development of discussion and its implication in TRIPS negotiation and/or discussion. The counter keynote speech was made by Ms. Siti Eiasah Mahamad from MDTCA (Ministry of Domestic Trade and Consumer Affairs), on additional related issues and the Malaysian TRIPS compliant situation. Some of the attentions were more specifically drawn from the floor to elaborate certain principles and provisions such as NT, MFN and DS.

In the Q & A session, among other issues, major points discussed were on NT and MFN, latest developments on traditional knowledge and folklore, public health issues, and relations between the TRIPS scheme and development of bilateral arrangements.

(b) Session 2: IP Strategy and TRIPS (Part 1) - Technology Transfer & Licensing

This session has been conducted in a panel discussion form with a keynote speech by Dr. Mifune, from UFJI. Major focus was put on the enhancement of international technology transfer by the vehicle of international IP regime, TRIPS. The discussion covered major and basic elements of international technology transfer. The significance of Trade Secret, Know-How, was also highlighted in relation with the provisions of the TRIPS Agreement. Necessity of international disciplines and/or standardization in this area was stressed in the session.

In the Q & A session, lively exchange of views took place among panelists and between panelists and the floor.

(c) Session 3: IP Strategy and TRIPS (Part 1) - Invention & How to make it work?

Mr. Nishimori, from Aoi International Patent Firm, opened a discussion with his keynote speech on this subject. The discussion highlighted the significance of the patent system and the economic implication of invention under its system providing the major Japanese experiences and cases. The following concerns were projected from floor.

- how to deal with employees' invention?
- how to cope with growing complication in patent procedure?
- any short cuts to enjoy economic interest from the stage of invention (how to catch up to the stage of developed countries?)

2.3.2 Overview of the Mini-Workshop Program

(1) Objectives of Mini-Workshop

The objective of this mini-workshop is to introduce a framework to promote a foundation for sustainable human resource development for IP promotion and smooth TRIPS implementation. The program is basically designed to provide the information on the outcome of tasks conducted in Thailand and Indonesia in terms of IP training material and curriculum development. The model trainings provided are based on the training materials actually developed from the Thai and Indonesian tasks. The authors of these texts have provided lectures based on their experiences as well as careers in Japan.

(2) Contents of Mini-Workshop

The one-day mini-workshop was followed by the seminar on the next day. It was held on October 29, 2002 in Kuala Lumpur. The number of participants was 22 in total. Most were from MDTCA with other participation from SIRIM, MPI, and educational institutions.

(a) Introduction Session

From the TA Team side, Mr. Ishida, sub-leader to the Team, highlighted key points of programs in Thailand and Indonesia under the JICA Capacity Building in terms of development of sustainable training opportunities.

(b) Session 1: Model Training on IP Border Control

Mr. Matsubara, from Matsubara, Muraki & Assoc., highlighted the key points of developing training materials from his experiences in Thai and Indonesian programs. His major focus was on the importance of formulation of common perspectives among

related agencies over IP law enforcement as well as a thorough understanding of laws and regulations, reflecting the activities in Indonesia. This is because, in the IP border control area, law enforcement is not efficiently conducted if done only by the IP authority. It is all linked to related agencies and collaboration is necessary to increase efficiency. This notion has to be applied when one shall develop training programs.

In the Q & A session, the following points were raised and discussed among others:

- cases from Japan and other countries are beneficial to substantiate training programs
- consideration shall be made to adopt some of the information from the Thai and Indonesia training materials when applicable to Malaysian matters

(c) Session 2: Model Training on Innovations/Patents and Economic Value

Mr. Nishimori, from Aoi International Patent Firm, delivered training techniques as well as key points from his experiences in Thailand. This training approach can be adopted both in lecture and workshop style. The significant part of workshop style approach is the effectiveness in delivering immediate sense of necessity for IP protection by sharing realistic situations. It was suggested that educating prospective trainers is important, but more difficult than educating the general public; thus, the appropriate methodology to deliver training know-how has to be thoroughly considered when the program is designed.

(d) Session 3: Application and Possible Customization of Process on Developing Training Materials and Curricula to Malaysia

This session was basically opened to the floor and conducted in round table discussion style.

2.4 Capacity Building for Implementation of the TBT Agreement

< Component 4 >

2.4.1 Overview of the Program

The TA Consultant Team conducted the first field survey in Malaysia from May 8 to 15 in 2002. The purpose was to consult with related organizations on the assistance method and agenda to be covered based on the Inception Report. At the meeting with DSM and SIRIM Berhad, they requested that a seminar/workshop be held to enhance capacity at working level for the governmental agencies and private sectors involved in these issues. DSM/SIRIM Berhad hoped that priority would be placed on enhancing abilities for development of international standards and also knowledge about contents of the TBT Agreement, including the role of the national enquiry points of the Agreement.

According to the needs above, the TA Consultant Team started to prepare a seminar/workshop. The purpose of the two-day seminar is dissemination of information regarding the TBT Agreement to the government officials concerned and also to the private sectors, which have major interests to participate in the activities for developing the international standards. Methodology is one-way lecturing, but the TA Consultant Team had put priority on inviting participants from various technical institutions and private sectors because the seminar itself could be a useful opportunity to exchange views between government and private sectors. On the other hand, purpose of the one-day workshop is to create more interactive discussion, between the Malaysian governmental officials and Japanese experts. Japanese experts and representatives from the Malaysian government made short presentations. Based on those short presentations, active questions, answers, and comments were welcomed.

The following sections are the outcomes of the seminar/workshop.

2.4.2 Result of the Seminar

The two-day seminar was held September 3 to 4, 2002, in Kuala Lumpur. 90 participants, representing governmental agencies in Malaysia and private sectors attended the Seminar. The Seminar started with the opening remarks from Ms. Mariani Mohammad, Director General, DSM and Juichiro Sasaki, Deputy Resident Representative, JICA Malaysia Office.

(1) The 1st day (September 3, 2002)

(a) Session 1: Japanese Standardization Policy and JISC Standards Strategy

Mr. Naotake Fujishiro, Deputy Director, International Affairs Team for Standards and Conformance Policy, METI, lectured on how Japanese international and domestic standardization policy has evolved in the past years, in particular, as a response to the ratification of the WTO/TBT Agreement. He described how JISC (Japanese national standardization body), taking into account the growing importance of international standards, is reforming its structure to respond to evolving market and social needs on standardization, with broad participation from related interested parties such as industries, consumers, and regulators, which is likely to be common issues for national standardization bodies.

(b) Session 2-1: Current Topics in ISO

Mr. Akira Aoki, Immediate Past Vice-President of ISO, lectured on the role of international standardization and ISO, in particular on current issues that ISO is addressing as a response to the changing environment in the age of globalization. He emphasized ISO's efforts to respond to increased market and social needs on international standardization, such as further inclusion of industries, customers, regulators, and developing countries in the process of international standardization, as described in the recent ISO Strategy.

(c) Session 2-2: Current Topics in IEC

Mr. Nobuo Yumoto, Member of IEC Council Board and Corporate Advisor of Sumitomo Electric Industries, lectured on the role of IEC, how it is functioning, and its recent topics. He particularly mentioned issues such as (i) implementation of the Master plan, which is the IEC Strategy that emphasizes need for efficiency and market relevancy of IEC standards, (ii) expansion of IEC family (i.e., inclusion of new members) and operation of Asia-Pacific Regional Center (APRC), (iii) relationship with SDOs (Standards Development Organizations), such as IEEE.

(2) The 2nd day (September 4, 2002)

(a) Session 3-1: Current Topics at the TBT Committee

Mr. Sadanobu Taguchi, Director for International Standards Cooperation, METI, explained the obligations under the TBT Agreement. He used Japanese experiences in the implementation and the recent discussions in the TBT Agreement, including the results of the Second Triennial Review.

(b) Session 3-2: Role of TBT Enquiry Point in Japan

Mr. Oda of the TA Consultant Team lectured on the role of the national enquiry points under the TBT Agreement based on the obligation in Article 2 and 10 of the Agreement.

After these sessions, there was an active Q & A to all the speakers. The seminar successfully concluded with closing remarks by Mr. Rajinder Raj of SIRIM Berhad and Mr. Masaki Oda of the TA Consultant Team.

(3) Outcome of the Seminar

Considering the purpose of the Seminar, this was a good chance to disseminate information with regard to the TBT Agreement to the government officials concerned and private sectors. TA Consultant Team conducted a questionnaire survey of the participants of the Seminar to evaluate its outcome. For many participants, this workshop was their first experience to gain knowledge about the TBT Agreement and international standardizing bodies.

2.4.5 Result of the TBT Workshop

Following the Seminar, a one-day workshop, which was closed for the government officials, was conducted on September 5, 2002 in Kuala Lumpur.

(1) Contents of the Workshop

25 participants, representing governmental agencies in Malaysia and SIRIM Berhad attended the Workshop. This one-day workshop consisted of 5 presentations followed by additional comments, questions, and free discussion.

The Workshop started with the opening remarks from Mr. Rajinder Raj, General Manager, Standards Management Department, SIRIM Berhad.

(a) Session 1: The WTO TBT Agreement

➤ Explanation of its contents

Mr. Oda of the TA Consultant Team presented the important articles of the TBT Agreement on how Japanese international and domestic standardization policy evolved in the past years, especially as a response to the ratification of the WTO/TBT Agreement. Participants had interests in how Japanese Government has managed the obligation from the Agreement, through the regulatory reform of the standards and conformance system.

➤ Implications on trade and significance of standards and conformity assessment issues

Mr. Kuno of the TA Consultant Team pointed out the cost and benefit of the international standardization. Interests of participants were mainly focused on the issues of how to calculate cost and benefit of international standardization.

➤ Role of enquiry and notification point

Mr. Oda presented the establishment of a national enquiry point based on the provision under Article 10 of the TBT Agreement.

(b) Session 2: Implementation of the Agreement

➤ Current situation of international standardizing activities and implementation of TBT agreement in Malaysia

Mr. Rajinder Raj of SIRIM Berhad made a comprehensive presentation on the above topic. He explained the policy on adoption of international standards and the role of the SIRIM Berhad in international standards setting, using statistics reflecting participation levels in international standards development. He also described activities/roles of the Malaysian enquiry/notification point, and National Coordinating System for notification.

➤ Role of trade officials/ regulators

Mr. Taguchi's presentation was about relation between trade and regulation officials.

The Workshop successfully concluded with closing remarks by Ms. Khalidah Musutaf, Director of Standards in DSM and Mr. Masaki Oda of the TA Consultant Team.

(2) Outcome of the Workshop

Through the Workshop, participants could make active discussion and exchange their views with Japanese experts, and also with other Malaysian officials. According to the questionnaire survey of the participants in the Workshop, the TA Consultant Team identified that there still exists a need for future work to enhance knowledge about the TBT Agreement, especially in the area of notifications, alignment of domestic standards with international standardization, and also participation in the international standardizing activities.

III. Evaluation and Recommendation

1. Overall Evaluation and Recommendations

1.1 Overall Evaluation

The evaluation at the time of completion of the Program was collected by three sources directly involved in the activities: participants, lecturers and counterparts. For reference, Project Design Matrix (PDM) prepared at the beginning stage is being attached to this section.

From answers to the questionnaires for the participants, 70% to 80% answered that the seminar/workshop was useful and beneficial. Regarding the contents, some participants indicated that they would like to have more in-depth explanation on target issues, found in the case in Agriculture/SPS, which invited a wide range of participants. On the other hand, the DSU session reached to the professional level with the session for the moot court, but was to a limited number of staff with high level of satisfaction. The participants also answered as the Japanese experience introduced in the workshop was of useful reference, particularly for TBT and Agriculture/SPS.

The overall evaluation of the invited lecturers was at a satisfactory level regarding aspects of program contents, participants' knowledge level, moderator allocation, cooperation by counterpart, and lecturing facility. Some of the comments indicated need for further capacity building assistance for selected topics, likewise in the Agriculture/SPS component.

As for evaluation by the counterparts, a strong ownership and involvement in implementation, particularly in the DSU component with the strong initiative of the Attorney General, was noted as an intention to make full use of the opportunity for their benefit. Although each counterpart has little experience in receiving JICA assisted technical transfer activities, each counterpart indicated their interest in utilizing the knowledge and information delivered by the Program. In the TRIPS component, the counterpart indicated interest with commitment to cooperate in preparation of the Malaysian version of textbooks for disseminating intellectual property protection, originally prepared for the Thai Program.

For the Program in Malaysia, two components, Agriculture/SPS and DSU, were newly taken up in the Program, but not conducted in Thai and Indonesia Programs, and

likewise for the respective counterparts. Their impact to each counterpart organization will be measured after a certain period of time. All the counterparts, including them, have need and interests for further capacity building, which is a clear indication of the benefit and impact being counted.

1.2 Overall Recommendations

The “Strategic APEC Plan” defines that a capacity building cooperation must be conducted based on the needs of the recipient government. The Plan proposed six main issues in capacity building as: 1) Enhancement of knowledge and know-how for implementation of WTO Agreements; 2) Domestic regulation alignment; 3) Development of facility and infrastructure; 4) Obtaining negotiation skill; 5) Obtaining capability in dispute settlement at WTO; and 6) Assistance for joining WTO. In March 2001, Japanese government, together with WTO, UNDP and OECD/DAC, held “Workshop for Trade-related Capacity Building in Okinawa”. As the result of Okinawa Workshop, a direction was indicated on key issues for consideration in carrying out the capacity building cooperation with: 1) Contribution to alignment of domestic regulations to WTO Agreement; and 2) Clear indication benefits in implementation of the WTO Agreement. In addition, a consensus was made on importance of Agreement-wise approach.

The Malaysian government requested selected components to be covered in this Program, based on the country’s policy in industrial development and economic globalization. Due to the relatively smaller number of Malaysian government offices, compared with Thai or Indonesia, a need for capacity building is quite high. Bearing the above points in mind, the followings are overall recommendations.

(1) Strengthening Human Resources and Institutions

As already mentioned, Malaysian government offices are run by a comparatively small number of staff, and contact points for each of the Agreements are being handled by a limited number of staff. Under the requirement of handling a large volume of information flow along with elaboration of details in Agreements, it is a serious issue among developing countries to decide on the appropriate degree of responses with limited capacity. However, a lack of capacity, in terms of number of staff or office scale, can be more critical in smaller countries in Africa and other parts of the world.

Given the above-mentioned condition, a mere increase of number of trained staff

at each contact point would not be a realistic recommendation. While the component-specific issue has to be discussed at each section, a strategic approach is necessary in narrowing down important issues, while bearing in mind the national interest, and prepare realistic plans for institutional and human resource development. The strategy to be considered is a policy matter, to be discussed in each government office. However, a technical input to be required for strategy planning can be obtained from foreign technical assistance.

The Program might have provided a model or opportunity for strategic planning. Hence, further capacity building activity needs to be conducted.

(2) Promotion of Information Sharing and Utilization

In Malaysian government offices, information sharing infrastructure is generally well developed, and there seems to be no major obstacle in use of personal computers and access to the internet. On the other hand, since the amount of WTO related information is enormous, the data volume can be substantially large, for example, collecting all cases in DSU. The information collection is also required with the above-mentioned strategic approach in selecting key issues, while not trying to cover everything.

In the component of Agriculture/SPS, the private sector, such as an exporter, also has a strong interest. Sharing information with the private sector is also needed, which requires development of database and systems in information delivery. For example, information regarding quarantine system of a potential market country will be of strong interest by private sector for their market access opportunity in foreign countries.

(3) Promotion of ASEAN Regional Cooperation

Being supported by developed infrastructure, Kuala Lumpur is recently becoming an attractive venue of regional conference, e.g., holding the World Economic Forum Asia Conference in October 2002, and local media reported that an interest was being expressed to invite secretariat of “ASEAN+3” in the future. This Program has been assisting four ASEAN countries, while conducting individual programs to each country. However, there are issues of common interest among those components being covered in this Program. For extending further capacity building, a program is recommended to take up common interest subjects of the region, in a form of seminar, workshop and

panel discussion in one of the recipient countries. The regional technical assistance can ease constraint in resource persons, and expect stronger ownership by the host country's government.

Malaysian government can take advantage of KL as the venue for the capacity building program for the ASEAN region, in its selected subjects of interest, by requesting foreign technical assistance. The subjects in DSU and TBT can be a potential component for a regional workshop/seminar, while other ASEAN countries might have their own issues of interest for hosting the workshop/seminar. In the case of inviting a Japanese expert, it might be easier to send him/her to a gathering of ASEAN countries.

Figure III-1-1 Project Design Matrix (Malaysia)

Project Name: Capacity Building Program for the Implementation of the WTO Agreements in Malaysia

Implementation Period: January 2002 – March 2003

Narrative Summary	Indicator	Means of Verification	External Assumptions
<p>Overall Goal To obtain further benefits from multilateral trading system through enhanced capacity to understand the WTO Agreement, implement its obligations and to negotiate for national interest.</p>	<p>- The number of and capability of resource officials in charge of WTO agreements and negotiations will be increased, compared with the situation at the beginning stage of this Program.</p>	<p>- Record of government staff's activities related to WTO</p>	<p>-Mid-term/long-term stability of economy in Asian region.</p>
<p>Project Purpose Transfer of knowledge, in the field of Agreements on Agriculture, SPS, AD/CVD/SG and DSU, TRIPS and TBT, improves capacity of officials, and private sector people, to understand rights/obligation of WTO Agreements for the sake of ensuring implementation of the Agreements in Malaysia and further activating their participation to the international negotiations.</p>	<p>- The volume of WTO related information extended from MITI to relevant authorities increases. - The number of relevant staff with extensive knowledge about WTO agreement increases.</p>	<p>- Questionnaire - Interviews</p>	<p>- GOM does not make major changes in its multilateral trade policy including the policy toward WTO.</p>
<p>Outputs (1) Government officials in MOA and other related agencies, and private sector, have extensive understanding of Agreement on Agriculture and SPS (2) Government officials in charge of DS in AG Chambers and other related agencies have extensive understanding of DSU and enhanced capacity to deal with DS cases (3) Government officials in MDTCA and staff in related-organizations, and private sector have extensive understanding of IPR system, TRIPS Agreement and IPR-related administration. (4) Government officials in DSM, SIRIM and related agencies, and private sector, have extensive understanding of TBT Agreement.</p>	<p>(1) The number of government officials and private sector people who have extensive knowledge Agreement on Agriculture and SPS increases by the year 2003. (2) The number of government officials who have extensive knowledge on DSU and enhanced capacity to deal with DS cases increases by the year 2003. (3) The number of government officials and private sector people who have extensive knowledge on IPR system, TRIPS Agreement and IPR-related administration increases by the year 2003. (4) The number of government officials and private sector people who have extensive knowledge on TBT Agreement increases by the year 2003.</p>	<p>- Questionnaire - Interviews</p>	<p>- Sustainable knowledge transfer is provided to public and private sector people concerned. - The number of staff in charge of the WTO issues does not decrease.</p>
<p>Activities (1) Transfer of knowledge to government and private sector through seminar to improve understanding of Agreement on Agriculture and SPS (2) Transfer of knowledge to government through workshops to improve understanding of DSU and to enhance capacity for dealing DS cases</p>	<p>Inputs Japan: Human Resource Consultants External Experts (Government and Academics)</p>	<p>Overseas: Human Resource European Lawyers Malaysia: Human Resource Counterparts Coordinator Local support staff</p>	<p>-Government officials who received technology transfers continuously take charge of WTO related assignments.</p>

<p>(3) Transfer of knowledge to government and private sector through seminar to share the information with regard to utilization of IPR system. Transfer of knowledge to government through mini-workshop to share experience of development process of training curriculum.</p> <p>(4) Transfer of knowledge to government and private sector through seminar/workshop to improve understanding of TBT Agreement.</p>	<p><u>Cost for Program Operation</u> Necessary budget</p>	<p><u>Facility</u> Seminar/Workshop facility</p>	<p>Pre-conditions</p> <p>-Government officials who are responsible for WTO-related work are not negative about this capacity building program conducted by JICA.</p>
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2. Evaluation and Recommendation for each Component

2.1 Capacity Building for the Implementation of Agriculture/SPS Agreements < Component 1 >

The evaluation of the seminar, which aims at capacity building for the implementation of the Agriculture/SPS Agreements, will be based on: 1) the outcome of the questionnaire survey of the participants; 2) the comments from the lecturers; and 3) the evaluation by the counterpart officials through the comments in the interim report.

2.1.1 Evaluations on the Seminar

(1) Outcome of the Questionnaire Survey

The TA Consultant Team conducted a questionnaire survey to the participants of the seminar to evaluate its outcome. 72 participants out of 118 participants responded to the questionnaire with the effective response rate of 61%. According to the outcome of the questionnaire survey, the following 3 points are the major findings.

- (a) The participants found that the seminar was useful for Malaysia, considering the present situation in the fields of the Agriculture/SPS Agreements. The average point for this question was 4.08 out of 5.0 as full score with the effective response cases of 71.
- (b) The fact that the average point for the question “*In your job, to what extent do you think you can utilize the knowledge acquired from the workshop*” was relatively low (3.39) with the effective response cases of 70, implying that some of the participants feel that they need more detailed and practical information.
- (c) Dozen of individual comments also indicate that participants require more detailed and practical contents for further capacity building such as i) concrete case studies, ii) Japanese experiences to harmonize its laws and regulations related to animal and plant quarantine into the international standards, and etc.

(2) Comments from lecturers

The TA Consultant Team received some comments from lecturers after the seminar regarding contents, effects of technical transfer, and logistics of the seminar.

- (a) Majority of lecturers found that the Seminar contributed effectively to the improvement in the basic understandings in the fields of the Agriculture/SPS Agreements and related issues so that the Seminar could beef up human resources in these fields.
- (b) In the Q & A sessions, lots of participants asked questions related to specific and detailed issues of each expertise, demanding additional seminars, which can be done for small-specialized group of participants.
- (c) In order to make the outcome of the Seminar extend to the actual practices under the overall policies of Malaysia, the follow-up activities for the Seminar would be desirable.

(3) Evaluations by Counterpart Officials

TA Consultant Team received some evaluations on the outcome of the Seminar through the comments on the Interim Report by the counterpart officials, and the evaluations can be summarized as below.

- (a) The seminar could improve the participants' basic understandings in the fields of the Agreement on Agriculture, the SPS Agreement, the risk analysis, the Japanese animal and plant quarantine system, and the distribution system of agricultural products in Japan, thereby building up necessary capacities of the relevant staff in each field.
- (b) The presentation on "Distribution System of Agricultural Products in Japan" was very informative, and captured keen interests of the private sector in terms of the market access of their agricultural products.
- (c) In the Q & A sessions, questions concentrated on specific and practical issues in each field, and it implies that there are considerable necessities for further capacity building for more practical knowledge and experiences in each field.

(4) Overall Evaluations

Taking into account of i) the outcome of the questionnaire survey to the participants, ii) the comments from the lecturers, and iii) the evaluation by the counterpart officials through the comments on the interim report, the overall evaluations on the Seminar can be summarized as below.

- (a) In all the components related to the Agriculture/SPS Agreements and "Distribution System of Agricultural Products in Japan", the original objective of the Seminar, which is to improve the basic understandings of the Agriculture/SPS Agreements and related issues, was attained so that the

Seminar could build up the relevant capacities of the government and private sector of Malaysia.

- (b) In order to transform the outcome of the seminar into the capacities for the implementation of the Agriculture/SPS Agreements, it would be preferable to conduct the additional capacity building programs, including practical knowledge and experiences with some case studies in more specific manners.

2.1.2 Recommendations

Taking the background and evaluation of the seminar into account, TA Consultant Team recommends the following 5 points in order to accelerate the capacity building for the implementation of the Agriculture/SPS Agreements in Malaysia.

(1) Strengthening the Agriculture/SPS-related divisions/sections of MOA and MOH

In order to further institutionalize human resources related to the Agriculture/SPS Agreements, which have been trained through this seminar, it would be worth to consider for MOA, MOH and MPI the possibilities to strengthen their Agriculture/SPS-related divisions/sections. While MOA and MPI are basically in charge of the implementation of commitments under the Agreement on Agriculture, the Department of Agriculture and the Department of Veterinary Services have the divisions/sections responsible for the implementation of SPS measures with regard to plant and animal health. On the other hand, the Food Quality Control Division of the Department of Public Health of MOH is the SPS inquiry point on food safety. Since it requires complicated procedures, frequent communication activities with the WTO-related international organizations, frequent participation in relevant meetings, and huge amount of documentations to cope with the Agriculture/SPS-related Agreements, it could be useful to strengthen the Agriculture/SPS-related divisions of MOA and MOH.

As one of the built-in agendas of the New Round, the Agreement on Agriculture will require a wide range of knowledge and experiences to cope with the implementation under the Uruguay Round and negotiations/implementation during the Phase I to Phase III of the New Round. Regarding the SPS Agreement, it is necessary to improve harmonization capacities of domestic laws and regulations with the WTO-conformed standards, operational capacities, and negotiation capacities as inquiry

points of SPS and Codex. So as to smoothly implement these activities related to the Agriculture/SPS Agreements, it would be desirable to strengthen the relevant divisions/sections of MOA and MOH institutionally.

The Food Quality Control Division of MOH, which is in charge of food safety, is composed of 10 sections with 45 staff in the following divisions: 1) development of food standard; 2) research and monitoring; 3) industry; 4) information technology; 5) enforcement; 6) laboratory service; 7) Codex: general principles; 8) Codex: commodity standard; 9) Codex secretariat; and 10) administration. This division is required to cope with all the implementation activities related to food safety under the SPS Agreement. Comprehensive assistance through the JICA project-type technical cooperation is being extended to the Food Quality Control Division, and institutional capacities are being steadily strengthened. Meanwhile, other divisions and sections related to the Agreement on Agriculture, the animal quarantine, and the plant quarantine, seem to face with a challenge to intuitively strengthen themselves in terms of manpower and structure of the divisions/ sections.

Taking the plant quarantine system as an example, there are totally 48 entry points (12 airports, 23 seaport, and 13 border stations), which require the plant quarantine services. Meanwhile, in the headquarters, the Crop Protection and Plant Quarantine Division has only 6 staff in charge of the enforcement of the plant quarantine and 8 staff in charge of the legislative and import control.

The manpower as well as the structure of the Department of Agriculture including the Planning Division, the Crop Protection and Plant Quarantine Division, and the Department of Veterinary Service of MOA, could be reviewed for the purpose of the effective use of institutional and human resources.

(2) Training of human resources in the specific fields related to the Agriculture and SPS Agreements

In addition to strengthening the institutional capacities of the Agriculture/SPS-related divisions/sections of MOA and MOH, it would be preferable to continue capacity building for the purpose of training human resources in the following 6 specific fields.

(a) Capacities in the field of implementing the agreements under the Uruguay Round and the New Round

The negotiations on Agriculture are being presently conducted in the special meetings of the agriculture committee as part of the negotiation of the New Round. So far, 7 meetings were held as Phase I during March 2000 to March 2001, and 5 meetings were held as Phase II during April 2001 to February 2002. During the Phase I, a total of 45 concrete proposals from 121 countries were submitted for discussions and negotiations. During the Phase II, based on these proposals, main negotiation points were made as follows: 1) market access; 2) domestic support; and 3) export restrictions were discussed. Finally, during the Phase III, the modalities for negotiations were discussed. However, member countries failed to meet the deadline for the establishment of modalities, which should not have been later than the end of March 2003.

In addition to the understanding of the Agreements under the Uruguay Round, the knowledge and experiences for the Agriculture/SPS Agreements under the New Round will be necessary for the staff of MOA and MOH. For example, comprehensive knowledge and experiences related to the New Round include:

- 1) market access issues such as amount of access, tariff quota administration, tariff level, special safeguard, state import enterprises;
- 2) domestic support issues such as AMS (Aggregate Measurement of Support), green box, and blue box ; and
- 3) export restrictions such as export subsidies, export credits, export tax, food aid, state food reserve, and state export enterprises.

(b) Capacities in the field of coping with the Trade Policy Review Mechanism

The Trade Policy Review Mechanism (TPRM) is stipulated in the ANNEX 3 of the WTO Agreement, and this mechanism aims at monitoring trade policies as well as trade practices of all the member countries for the purpose of promoting the harmonization into the WTO-related Agreements and securing transparency. Four major member countries, which are most influential in the world economy, are required to report updated information on trade policies and practices of their respective country to the WTO secretariat every 2 years. Twelve main members, including Malaysia, are

required to report every 4 years, and other developing countries are required to report every 6 years. It is necessary for MOA and MOH to cope with these reporting activities, which must prove that the domestic laws, regulations, and practices related to agriculture and SPS are WTO-conformed.

(c) Capacities in the field of coping with the “Implementation Issues”

Since the establishment of WTO, a lot of developing countries have requested “rebalancing”, which means moratorium and exemption for the implementation obligations based on their claims that developing countries have difficulties in perfectly implementing all the obligations under the WTO Agreements. Out of these so-called 100 “implementation issues”, approximately 50 issues were adopted as special treatments for developing countries. It is also necessary to cope with the follow-up for already adopted issues and the negotiation for not yet adopted issues.

(d) Capacities in the field of procedures for dispute settlements such as applying a safeguard

Applying a Special Safeguard (SSG) is a typical practical capacity under the dispute settlement issue in the field of the Agriculture/SPS, and it demands a lot of knowledge and experience for an official applying a SSG. Article 5 of the Agreement on Agriculture which stipulates the SSG provisions urges the relevant officials to understand: i) definition of SSG-targeted agricultural products; ii) conditions for application of SSG measures; iii) contents of SSG measures; and iv) duration for SSG measures. It is absolutely required for the relevant officials to obtain accurate knowledge on SSG to receive the privileges allowed by SSG.

(e) Capacities in the field of coping with formulation of standards such as food safety and harmonization of the domestic laws and regulations with these standards

For the smooth implementation of the SPS Agreements, capacities for coping with the formulation activities of relevant standards in Codex, Office International des Epizooties (OIE), and International Plant Protection Convention (IPPC), and capacities for harmonizing the domestic laws and regulations to their standards are most critical. For example, Codex is composed of 29 committees: 1) general standard committees (9 committees); 2) food standard committees (12 committees); 3) regional coordination

committees (5 committees); and 4) special committees (3 committees). These committees are engaged in formulating a wide range of food-related standards. In order to formulate a Codex standard, 8 official steps are required: 1) CAC general assembly and commencement of formulation; 2) drafting a standard; 3) collecting comments; 4) approval at committee and correction, if any; 5) approval at CAC general assembly; 6) collecting comments; 7) approval at committee and correction, if any; and 8) final approval at CAC general assembly and completion of formulation of a standard. It is necessary for Codex-related staff to cope with all these steps.

In order to meet demands of the capacity buildings in the above 5 specific areas of expertise, the TA Consultant Team recommends that the Government of Malaysia hold a series of short-term seminars/workshops in these 5 specific fields by using the existing Malaysian Technical Cooperation Program (MTCP), which is Malaysia's South-South technical cooperation program for the collaboration between Malaysia and other developing countries launched in 1980. In this program, several training programs related to the Agriculture/SPS Agreements have already been implemented as listed below.

- (i) Training Course in Animal Quarantine Management
- (ii) Training Course in Information and Communication Technology in Veterinary Services
- (iii) Training Course in HACCP-based Inspection System

The TA Consultant Team recommends that the Malaysia Government upgrade this MTCP scheme with assistance from donors so that 5 programs whose contents, lecturers, participants, and urgency are listed below will be included in MTCP, where Malaysian officials together with officials from other developing countries will be able to benefit from the workshops/seminars.

Figure III-2-1 List of Recommended Programs for Training of Human Resources related to the Agreements on Agriculture and SPS

Program	Contents	Lectures	Participants	Urgency
Program 1	Understanding Status and Contents of New Round	WTO Secretariat Bilateral Donors	MITI, MOA, MOH, MPI, Private Sector	High
Program 2	Trade Policy Review Mechanism	WTO Secretariat Bilateral Donors	MITI, MOA, MOH, MPI	Relatively Low
Program 3	Implementation Issues	WTO Secretariat Bilateral Donors	MITI, MOA, MOH, MPI	Medium
Program 4	Procedures for Dispute Settlements	WTO Secretariat Bilateral Donors	MITI, MOA, MOH, MPI	High
Program 5	Formulation of Standard and Harmonization	FAO, Codex, OIE, IPPC Bilateral Donors	MOA, MOH	High

(3) Sharing information on Agriculture/SPS-related Agreements

(a) Knowledge management of information on Agriculture/SPS-related Agreements

It is one of the essential factors for smooth implementation of the Agriculture/SPS Agreements to share knowledge and experiences related to the Agreements among relevant officials through an effective knowledge management system. It is desirable for relevant officials to access the digital information such as the contents of the Agreement on Agriculture under the Uruguay Round, the negotiation status of the New Round, the outline of the SPS Agreement, domestic laws and regulations on animal, plant, and food quarantine, standards of Codex, OIE, and IPPC, documents related to dispute settlements and safeguards, and materials for seminars/workshops.

Regarding the present situation of the information technology in MOA and MOH, MOA and MOH have their own web sites, respectively (<http://agrolink.moa.my> and <http://www.moh.gov.my>). Each web site includes individual web sites of major divisions of each Ministry. The web site for the Food Quality Control Division is especially well designed and has informative contents. Both MOA and MOH are operating the intra-net systems for internal use. For example, MOA has several intra-net systems such as: “On-line Forms” for application for training programs; “Agri-Web” for the general agricultural information; and “PQ-net” for the plant quarantine information.

The TA Consultant Team recommends that MOA and MOH upgrade these

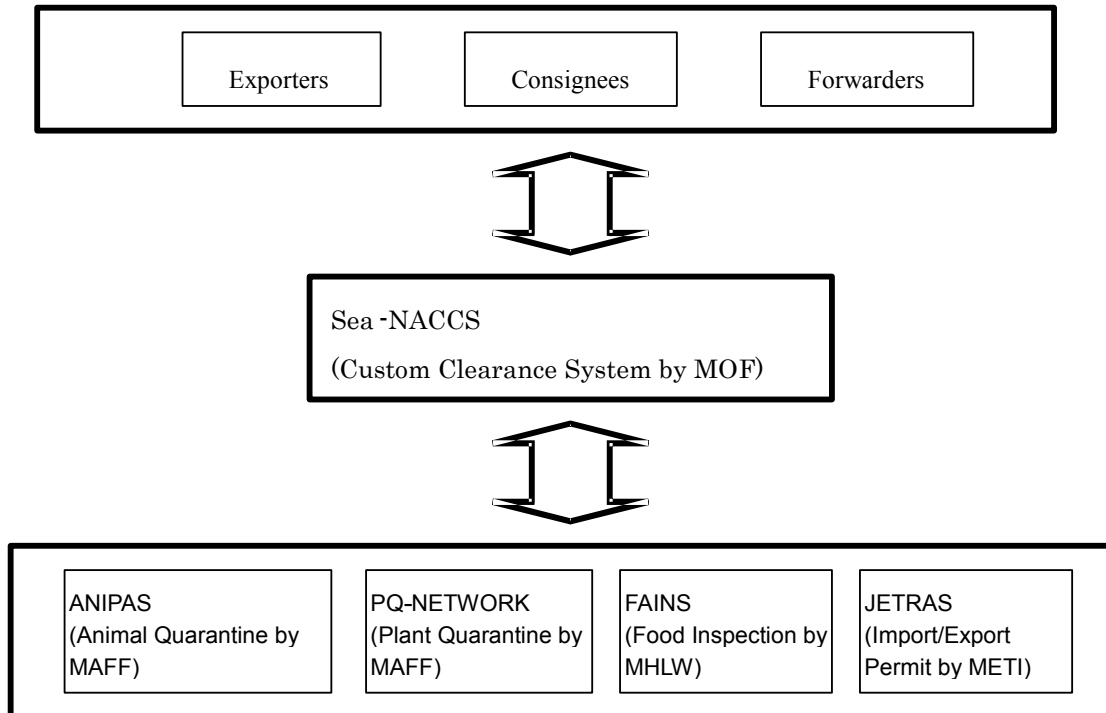
intra-net systems so that all the relevant officials among the Agriculture/SPS-related organizations will be able to share the knowledge and experiences related to: i) the negotiation status of the New Round; ii) the outline of the SPS Agreement; iii) domestic laws and regulations on animal, plant, and food quarantine; iv) standards of Codex, OIE, and IPPC; v) documents related to dispute settlements and safeguards; and vi) materials for seminars/workshops.

(b) Unification of the computer systems for the animal, plant, and food quarantine

In order to smoothly implement the WTO-conformed SPS operations such as the animal, plant, and food quarantine, it is desirable to build a comprehensive network among these systems. MOA and MOH are equipped with the individual systems such as Food Import Information System (FIIS), Food Safety Information of Malaysia (FoSIM), Integrated Veterinary Information System (VEINS), Plant Quarantine Net (PQNet). It is worth to consider the possibilities to unify these individual systems for the purpose of more smooth operations of the animal, plant, and food quarantine in Malaysia.

For example, in Japan, the animal quarantine system (ANIPAS) and the plant quarantine system (PQ-NETWORK) under the Ministry of Agriculture, Forestry and Fisheries, the food inspection system (FAINS) under the Ministry of Health, Welfare and Labor, and the import/export licensing system (JETRAS) under the Ministry of Economy, Trade and Industry, will be soon interfaced with the custom clearance system under the Ministry of Finance, thereby creating a “Single Window System” of the import/export logistical support in Japan. The following pictogram indicates the brief outline of the “Single Window System” which will soon be operated in Japan. The unification of these systems will further improve the WTO-conformed SPS operations in Japan.

Figure III-2-2 Outline of Single Window System in Japan



MOF: Ministry of Finance, MAFF: Ministry of Agriculture, Forestry and Fisheries, MHLW: Ministry of Health, Labor and Welfare, METI: Ministry of Economy, Trade and Industry

Meanwhile, the Food Quality Control Division of the Department of Public Health of MOH embarked on the connection of Food Import Information System (FIIS) with all the laboratories and the Customs Information System with the assistance of the JICA project-type technical cooperation team.

The TA Consultant Team recommends that MITI, MOA, MPI, and MOH start the feasibility study for the full-scale unification of all the related systems for the future “Single Window System” in Malaysia.

(c) PRA-Based Sanitary and Phytosanitary Measures

WTO member countries have the right to take SPS measures necessary for the protection of human, animal, and plant life, or health in their territories. On the other hand, SPS measures could also work as discriminated or disguised restrictions on international trade. Therefore, SPS Agreement requires WTO member countries either to comply with their Sanitary and Phytosanitary measures with international standards, or to establish them based on risk analyses. According to Guidelines for pest risk analysis of IPPC Secretariat, referred to as one of international standards in SPS

Agreement, pest risk analysis (PRA) is composed of pest risk assessment and pest risk management. Pest risk assessment is the determination of whether a pest is a quarantine pest and evaluation of its introduction potential. Pest risk management is the decision-making process of reducing the risk of introduction of a quarantine pest. It is a challenging issue to establish and update national PRA-based Sanitary and Phytosanitary Measures not only for Malaysia but also for all WTO member countries including Japan. International frameworks (including bilateral and multilateral) for information sharing and technical cooperation in the field of PRA would be essential for establishing further transparent and safe Sanitary and Phytosanitary Measures. As one of its long-range objectives, it could be useful for Malaysia to establish databases for risk analysis, such as those of pest records and plant health information.

(d) Provision of information on the market access required for the private sector

It is one of the most important factors for Malaysian producers and exporters of agricultural commodities to accurately grasp the legal framework as well as the regulations related to the animal quarantine, the plant quarantine, and the food inspection in their destinations. For example, mango is one of the potential tropical fruits for export from Malaysia to Japan, and, in Japan, mango is listed in the negative list under the Article 9 of plant quarantine regulation of the plant quarantine law. However, according to the standard procedures for verification of application for lifting import bans in the plant quarantine in Japan, the completion of the following 5 steps are required to lift the ban against mango import from Malaysia into Japan.

Figure III-2-3 Steps Required for Lifting Import Ban against Agricultural Products into Japan

No.	Status	Steps Required
1	Cleared	Application for lifting ban
2	Cleared	Test and research plans are fixed.
3	Cleared	Data from the test and research are obtained.
4	Not yet cleared	Local test and research plans are fixed.
5	Not yet cleared	Local test and research are completed.

Source: Web Site of MAFF, Japan, <http://www.maff.go.jp/soshiki/nousan/syokubou/87-1.htm>

The TA Consultant Team recommends that MOA and MOH provide Malaysian agricultural producers and exporters with information on laws and regulations of export

destinations, which are related to the animal, plant, and food quarantine systems, through the database system. For example, at present, some information related to plant quarantine is provided on the PQNet by the Crop Protection and Plant Quarantine Division of Department of Agriculture. The TA Consultant Team recommends that the Crop Protection and Plant Quarantine Division provide Malaysian exporters of agricultural and food products with the information on laws and regulations of major export destination countries. In the same manner, the Department of Veterinary Service could develop the similar database system.

(4) Establishment of Regional Cooperation Framework

Malaysia could be the center of excellence or the most important hub for the ASEAN-wide regional cooperation framework to distribute the outcomes of the capacity building programs to other relatively less developed ASEAN countries. Possible regional cooperation frameworks include so-called “South-South Cooperation” inside ASEAN countries. The TA Consultant Team recommends that Malaysia actively establish the regional information web page inside the ASEAN website to convey the outcomes of the capacity building programs to other relatively less developed ASEAN countries such as Cambodia, Laos, and Myanmar for their future accession to WTO.

(5) Capacity Building for Newly Emerging Issues

The newly emerging issues are frequently being submitted in the agenda of Agriculture and SPS Committees at the WTO. Bovine spongiform encephalopathy (BSE or mad cow disease) was a typical newly emerging issue, which is related to the SPS Agreement. The TA Consultant Team recommends that, in response to the needs for upgrading knowledge and experience on these newly emerging issues, especially in the field of food safety, capacity building activities which might focus on the following specific issues related to food safety be implemented:

- (a) organically produced foods
- (b) pesticide residues in food
- (c) veterinary drug residues in food
- (d) food additives
- (e) food labeling

Other newly emerging issues such as Genetic Modified Organics (GMO) in the

field of the Agreement on Agriculture will also be included in these capacity building activities.

2.2 Capacity Building for DSU < Component2 >

2.2.1 The Evaluation of the Programs

It is worth to note that the AG Chambers, including the Attorney General himself, had cooperated very positively to the two workshops. For example, the number of participants was substantially increased, under the strong initiative of the Attorney General, from originally planned 30 to 70 and the venue was also changed to Marriott Hotel in Putrajaya. In addition, a steering committee established by Advisory and International Division of the AG Chambers took responsibility for managing the whole program. This project had two goals; building up capacities of officers who were currently responsible for the WTO issues and also of those who could be responsible in the near future. In particular, the latter goal was effectively accomplished by the AG Chambers' constructive commitments. Also their cooperative commitments gave good support to achieve effectively the former goal. For example, the support from the above mentioned steering committee was essential for the smooth process of the moot court. It is not difficult to find that the positive cooperation from the Malaysian Government throughout all the programs affected the attitudes of the participants and facilitated the accomplishment of the programs. The analysis of questionnaires also illustrates that participants evaluated the programs effectively and usefully as follows:

- Usefulness: The analysis showed that the programs worked well. For example, more than 90% of the participants gave high grades to the programs.
- Constituency of Workshop I and Workshop II: The workshops were divided into two phases, based on the knowledge levels of targeted participants. The participants of Workshop I came from not only the AG Chambers but also other ministries. The analysis of the questionnaires shows that the participants attending both Workshop I and Workshop II expressed more satisfaction than those present only at Workshop I. This figure could be based on the program framework that started from an overall outline of the WTO in Workshop I and ended at case studies and moot courts of Workshop II. It is worth noting that these purpose-oriented workshops were conducted within a short period (2 weeks) and worked well.
- Continuance: almost 100% of participants stated their interest in transferring the knowledge acquired at the programs to their colleagues. One of the important issues for this project is a continuance. The communal and organizational knowledge storage is essential to achieve and to make sure there is continuous

transfer of knowledge instead of just holding workshops and the figures show this project started well for the continuance of the project.

- Needs for Further Assistance: Many participants requested strongly that further assistance be given. This could be because DS covers quite large ranges of the WTO Agreements and requires continuous and systematic capacity building activities.

The analysis shows high evaluations from participants. Also lecturers of the workshops showed the following comments:

- Supports from AG Chambers were quite positive. Although knowledge levels of participants were diverse, their commitments to each workshop were quite intensive and lecturers were very much impressed.
- submissions in particular, their commitments to moot court sessions were quite positive and they could be graded as high. Also the lecturers found that the presentations and oral pleadings from participants were fully worked.

Based on the analysis of questionnaires and comments from lecturers, it is possible to evaluate the whole programs as follows:

- Practical Program: The original purpose to develop the overall knowledge levels of the AG Chambers' officers was accomplished. Participants from the AG Chambers, in particular, pointed out that the moot court program was the highlight of the whole project and worked well to provide not only the knowledge of the WTO, but also the skills related to the DS procedures. The submissions provided by the participants reflected the results of the whole program. Lecturers gave them high grades and it shows the effectiveness of the projects.
- New Issues and Case Studies: In particular, the lectures on the new issues, according to the comments from the AG Chambers, were eye openers to the participants. Also the case studies worked well to exchange the opinions between the lecturers and the participants. It is possible to evaluate the whole framework as effective.
- High Commitments of the Attorney General: Positive commitments from counterpart governments are essential for the success of the capacity building activities. Through the whole project, the participants, as many lecturers pointed out, showed their high interests, which could be based on the

commitments of the Attorney General and also the Advisory & International Division.

- Building of the Organizational Capacity: It is difficult to evaluate the program from the aspect of organizational capacity buildings of the AG Chambers. However, the program gave the officers who dealt with WTO matters directly or indirectly a chance to take seminars together. It could be an impact to facilitate building further institutional capacities of the AG Chambers.

2.2.2 Recommendations

As concluding remarks, recommendations are provided as follows:

(1) Difficulties and Advantages

The difficulties and advantages for further developments of DS capacity would be as follows:

- Huge Amount of Required Knowledge: DS procedures require the WTO Member countries deep and comprehensive knowledge including not only those of DS procedures, but also individual WTO Agreements. In addition, both Panels and AB have made public a large number of new reports annually. These special situations make it difficult for developing countries to catch up on the essential knowledge for DS.
- Personnel Reshuffles: Compared with developed countries, personnel reshuffles cause more serious problems in developing countries. Developing countries sometimes face difficulties in compiling specialized knowledge not only in individual personnel but also in the institutions themselves. Several participants from the AG Chambers also pointed out the difficulties coming from personnel reshufflings.
- English Common Law: Malaysia historically has adopted Common Law Systems, which have affected WTO DS very much. For example, several issues under DS reviews, such as *amicus curie*, are quite common under the Malaysia legal system. Malaysia takes its advantage with regard to WTO DS over the countries, which use civil law systems.

(2) From Assistance to Cooperation – Building a New Cooperative Framework-

Based on the analysis of the above-mentioned difficulties and also advantages, the following recommendations are provided for further capacity building of Malaysian Governments. The key word for the recommendations is “From Assistance to Cooperation.”

(a) Continuance of Bilateral Cooperation

The WTO DS procedures require Member countries to have huge amounts of knowledge. This project covered only a part of it. It is essential for further developments of the AG Chambers’ capacities to continue bilateral assistance activities like this project. On the other hand, since Malaysia has the advantage of being familiar with Common Law Systems, cooperative frameworks with Malaysia could also provide Japan many merits. The following is an example for possible bilateral cooperation.

(Establishing a regular framework for moot court exercises)

As stated above, the AG Chambers gave high grades for the moot court session and requested to continue further capacity building programs in the same way as this moot court session. The AG Chambers also proposes to include other ministries into the future moot court session. Although it would be difficult to invite exactly the same lecturers as this project, it is important to establish a regular framework for providing moot court style programs and make available a chance to regularly discuss particular DS cases among concerned officers. Also the new issues, such as trade and investment and trade and competition policy, could be dealt with in future frameworks. Outside experts, such as academics and lawyers from Japan, could be invited as lecturers. Private lawyers based in U.S. or Europe could also be lecturers on a contract basis. Prospective participants could include experts related to concerned case study from other ministries. The contents and materials of the lectures could be recorded as electronic data, such as CDROM and so on, in order to make possible to refer for officers who will be in charge for the WTO matters in future.

(b) Establishment of Regional Cooperation Framework

Although each ASEAN Country has unique diversities, they also share lots of

common difficulties, such as trade and environment issues. Focusing on these common difficulties and problems, it would be useful to organize capacity building programs targeting not only each country but also the whole ASEAN region. As a first step, a project on WTO DS issues, such as moot court practices, could hold and invite government officers responsible for WTO matters from ASEAN countries. It would be important, for the purpose of keeping the project's continuance, to utilize as lecturers both outside experts and also human resources from ASEAN countries themselves.

2.3 Capacity Building for TRIPS < Component 3 >

2.3.1 Evaluation of the Program

After the programs, Seminar and Mini-Workshop, the questionnaire surveys were conducted to evaluate the contents of them. The following is the overview of the analysis on the questionnaire survey.

(1) Seminar

The TA Consultant Team conducted a questionnaire survey with the participants to evaluate its outcome. The number of respondents numbered 38 out of 106 participants at the seminar. Concerning the main purpose of participation in the seminar, about 80% of the response was concentrated on gaining general knowledge of intellectual property rights from the seminar and about 60% for knowledge on specific issues, which ranged from very specific legal interpretation issues, i.e., interpretation issues of Article 31 (f), to general notion, such as licensing strategy². About 60% of response indicated that that the training met their expectations; however, a relatively recognizable share of 30% of the respondents remained at midpoint. This possibly reflects on the proportion of participants between the public sector and the private sector, approximately 2 to 1, where the participants from the private sector tend to pursue for very practical and specific issues rather than basic principles of the Agreement. The participants from the private sector were more interested in strategic issues on licensing. Overall evaluation, concerning questions if the seminar is beneficial to the current situation of Malaysia, approved about 65%, which indicates that the seminar was well received. Also, about 90% of respondents raised the intention that they would share the information gained from the seminar with their colleagues, which was considered to meet the prior objectives of the seminar.

Some of the written comments are as described below. The major evaluations are found to be validation of knowledge on the basic principles of the TRIPS Agreement, and technology transfer and licensing. There were also some comments mentioning that the Japanese experience and development process were informative and beneficial to Malaysia's IP future.

² This section was designed for multiple answers.

- knowledge of the principles of the TRIPS Agreement and the relation between the TRIPS and other international disciplines were clarified
- understanding was deepened on the significant role of the TRIPS Agreement
- new attention was introduced on the development of capacity building activities and their potential (wishes for active participation to those activities were raised)
- understanding was deepened on the licensing strategy and technology transfer
- Japanese experiences on IP development and licensing were beneficial

From the Japanese lecturers' side, it was mentioned that the active discussion throughout the sessions was a good indicator of evaluation on the seminar. Some of the points were touched on for further improvement that the broad issues the seminar had to include were a little ambitious to fit in the one-day time frame. Some duplication of information in keynote lectures could be pre-coordinated in a more efficient manner.

(2) Mini-Workshop

The questionnaire for the Mini-Workshop received 12 responses from the 22 participants. The responses indicated a very high level of satisfaction of over 90% in almost all of the questions. It is believed that the interactive proceeding customized the workshop and resulted in needs oriented sessions. The certain degree of uniformity of participants, mostly from the MDTCA, is considered to have contributed to this result.

As for the written comments including those at the workshop, following points were raised:

- sharing Japanese experience and cases were beneficial
- sharing achievements from Thailand and Indonesia was beneficial
- substantiated training know-how as the model of training was introduced as a module
- duration of workshop should be longer

From the Japanese lecturers' viewpoint, it was pointed out that a longer duration of the workshop was more preferable (i.e., at least one week session). They also believed the uniformity of the participants' knowledge level was best fitted to this occasion.

2.3.2 Recommendation for Further Capacity Building

Reflecting on the outcome of the Seminar, it was recognized that the common perspectives on the significance and basic principles of the TRIPS Agreement have already been shared among officials concerned. Although it is still an effective way to continue seminars/symposiums on the new development of research, discussion and/or negotiations, the more efficient approach to deliver and share this kind of basic information will be considered on a daily basis. Considering the well-organized situation of the digital network among the Malaysian governmental agencies, prior attention will be put to effective and efficient utilization of the Internet for further information sharing. The realistic task shall be substantiation of the MDTCA's existing homepage to this end.

As discussed in the Mini-Workshop, further substantiation and development of the educational/training programs will be essential. It is quite important to make continuous effort to furnish a more concrete foundation on institutional orientation and human resource development as well as development of training materials.

(1) Efficient Utilization of the Internet for further Basic Information Sharing

(a) Substantiation of Navigation Function in the Existing MDTCA's Homepage (Portalization of Homepage)

As matter of course, the WTO homepage has been widely available to obtain TRIPS related information. However, it may take time and could be a little troublesome for some of the officials who are not familiar with the WTO activities to access and reach the exact information they require. Through the initiative of the MDTCA, the existing homepage shall be substantiated and/or redesigned to form a gateway to IP issues that would help officials navigate more easily to reach the required information. This is the portalization of the homepage.

With regard to the WTO homepage navigation, for example, even the hyper links of certain URLs (see below), with some abstract and/or explanation of information available could well serve as a beneficial guide to those who are not familiar with the WTO homepage. It could also be useful to include some explanations on overview of the TRIPS Council activities and/or document symbol system. A simple index type of navigation on the WTO homepage has been provided on the MITI homepage.

However, this type is not an easy or as efficient utilization since the compilation of information is getting more and more complex. The following aspects are some of the clues for further navigation. The MDTCA as the authority of IP shall take appropriate effort to provide a user-friendly homepage.

- URL (http://www.wto.org/english/tratop_e/trips_e/trips_e.htm) is the Gateway for all the TRIPS related issues in the WTO homepage
- explanation notes like “through this Gateway, major issues such as A, B, C, D, and E are available”
- a list of the WTO document symbols is available. Click on the icon at the right side of input cell for the document number in the URL (http://docsonline.wto.org/gen_search.asp)

The navigation function shall be extended to other homepages by related organizations and forums as well as the WTO’s homepage.

Figure III-2-4 Examples of Gateways to IPR related Information in WTO Homepage

- | |
|--|
| <ul style="list-style-type: none">• Gateway page for the Intellectual Property Rights
http://www.wto.org/english/tratop_e/trips_e/trips_e.htm• Basic introduction to the WTO’s intellectual property (TRIPS) agreement
http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm• A more detailed overview of the TRIPS Agreement
http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm• TRIPS News
http://www.wto.org/english/tratop_e/trips_e/t_news_e.htm |
|--|

(b) Uploading Internally Developed Information Materials to the Homepage

Besides designing the portal page for existing homepages, the MDTCA shall consider the system for uploading the internally organized information materials, such as background papers on negotiations, members’ positions, points of newly discussed issues, and others. It shall be considered how this kind of information could be shared among other governmental agencies, educational organizations, and/or the general public as well as its internal use. Although it is the most efficient vehicle to promote general public awareness in this area, the access management shall be introduced into

the system to preserve certain confidentiality.

(2) Substantiation of Existing Educational/Training Programs

(a) Introduction of Streamed Educational/Training Programs

In the current situation, the IPTC has been providing a variety of educational/training programs as described in the chapter I. The coverage of the programs is wide including public awareness. It has been pointed out from the Malaysian side that there is not an immediate requirement for additional program development. However, further consideration shall be taken to design and introduce streamlined educational/training programs including widening the coverage of participants from the existing range to policy makers and/or management level personnel in private sectors.

In order to pursue this task, review and reorganization of existing training materials is essential. The supplemental information shall also be added in this process to customize and fit it to each level of the programs. At the same time, the methodology of program that tends to rely on individual lecturer shall be managed by a certain authority. It is also important to consider providing a system to centralize and control the information for the program materials and lecturers' availability in this respect.

Meanwhile, the review and reorganization task shall include a variety of material resources as well as existing IPTC materials. It is important to take full advantage of international channels. The materials developed in Thailand and Indonesia under this JICA project could be regarded as good candidates.

(b) Standardization of Educational/Training Programs

In relation to the above-mentioned point, a standardized training approach shall be considered. Especially for the streamlined programs, standardized methodology is essential to preserve consistency on subject knowledge received by participants at the same level. In the process of reviewing tasks and designing the program, the aspect of standardization shall be taken into account.

In the mini-workshop program, model training was introduced with the idea of

recruiting prospective trainers from the participants at the workshop. Referring to this opportunity, the training for the prospective trainers shall be considered. The programs shall be more standardized through the common training methodology by these prospective trainers.

(3) Bridging Program Development between Intellectual Property and Information in High-end Technology/Industry Area

In the conventional approach, the training program has been often and mainly provided from the area and standing point of intellectual property issues. However, considering rapid progress and diversification of science and technology, it is becoming the growing necessity that the bridging of knowledge between IP and new technology shall be introduced in the educational/training programs.

The most recent and vital issues are some of the development in the area of traditional knowledge and geographic indication, which have been discussed in the WTO forum as well as with the Malaysian domestic authorities. These may be a starting point of a bridging approach. In order to prepare further development in the IP area, it is essential to start considering bridging IP issues and/or IP related legal issues with higher end technology. The further educational/training program shall be developed taking this aspect into account. The bridging targets initially raised in the workshop were biotechnology, computer/web technology, and the enhanced IC technology.

It is also important to consider the range of participants of the educational/training programs. The IP related programs have conventionally tended to solely invite IP/legal related personnel. However, the future programs shall keep an eye on requirement combinations for participants both from IP/legal and technology expertise areas.

In this undertaking, when organizing seminars and/or other programs, it is very efficient to consult with the extensions of a variety of assisting organizations in inviting experts and/or coordination. As for those organizations, this aspect is considered very important for the future assisting activities.

2.4 Capacity Building for TBT < Component 4 >

2.4.1 Evaluation of the Program

Through the Seminar/Workshop conducted in September 2002, understanding of the TBT Agreement and international standardization of Malaysian officials in charge has been developed. The TBT-related officials in Malaysia are now on the stage to disseminate information regarding the Agreement to officials of other regulatory organizations as well as the private sectors concerned.

On the other hand, the TA Consultant Team has identified that commitments of the Malaysian private sector in participating in standardization activities are not sufficient. There are some sectors in the ISO area, such as rubber and rubber products, for which there are vigorous international standardizing activities. Interchange between government and the private sectors has not been promoted in other sectors, like electric appliances in IEC area. The standards themselves are one of equipment, which the private sector utilizes in production activities, so more commitments of private sectors in standardizing activities are inevitable.

According to the questionnaire surveys conducted right after the Seminar/Workshop, and also the discussion with counterpart agencies (DSM, SIRIM Berhad), the following points have been pointed out in the evaluation of the program;

- Many of participants have not participated in the seminars/workshops related to the TBT Agreement or international standardizing activities. Participants of this program have been satisfied with the contents of the workshops, especially with the 'experience sharing'.
- Regarding the closed workshop conducted on the third day of the program, it is evaluated to have been a good opportunity for the governmental agencies to frankly exchange their views for the TBT-related issues. Because the discussion among ministries and agencies in the Malaysian Government was not sufficiently conducted, the TA Consultant Team believes that this program could facilitate their discussions.
- This program could cover the issues, such as economic impact of the TBT Agreement or the role of a national enquiry point, which the Malaysian Government has not been exposed to so far. Topics covered in the program have contributed to future standardization policy in Malaysia.

Moreover, lecturers/speakers of the seminar/workshop have made comments as follows:

- Malaysian officials who are responsible for the TBT Agreement have already high-level knowledge on the Agreement itself, or importance of international standardization.
- On the other hand Malaysian private sectors should make more active commitments in standardizing activities.

Judging from factors mentioned above, the TA Consultant Team has evaluated this component as follows:

- Malaysian officials in charge of the TBT Agreement have already gained general understanding of the Agreement. As the next step they should utilize their knowledge for their national industrial policy and implement more practical activities through strategic alliances with foreign countries in international standard-setting activities.
- In addition, the Malaysian Government will be expected to take leadership in order to disseminate information, which they have already accumulated, to private sectors in the country or to neighboring developing countries.

2.4.2 Recommendations

The Malaysian Government still has a need to gain some technical assistance of information-dissemination-type activities such as seminars/workshops. But as mentioned above, the TA Consultant Team expects that Malaysia play more leading roles in international standardization activities or suitable implementation of the TBT Agreement, as a leader of developing countries in the Asian region.

The TA Consultant Team recommends the following two issues, based on the activities in this Program.

- (1) Participation in international standardizing activities on a higher level utilizing the private sectors' resources

The wide interest in the private sector must be attracted for disseminating information regarding rights and obligations of the TBT Agreement to the interested parties and make carrying them without exception. Particularly, more commitments of

the private sector in standardizing activities are inevitable because standards have close relationship with their ordinary production, marketing and export activities. In fact, Japanese experts who participated in the Seminar/Workshop have pointed out that cooperation between government and the private sector are indispensable for international standardizing activities, as well as national standard-setting.

Malaysia is now the secretariat of ISO/TC45 (Rubber and rubber products) and its SC4 (Products, other than hoses). In the future Malaysia can undertake secretariat tasks in more TCs or SCs, inviting their private sector into international standardization.

Moreover, through exchanging wider views in international standardization continuously, Malaysia and Japan can make strategic alliances such as undertaking co-secretariatship in the areas in which both countries have common interests. To identify those sectors/areas, it is an important step to have a joint research to survey the current technology/research and development situation of the Malaysian private sector (including foreign affiliates) in order to explore future cooperation programs.

<Example of program for enhancing private sectors' participation in international standardizing activities>

(Preparatory Stage)

- Identification of interested areas of the Malaysian private sector
 - Importance of identified sectors for the Malaysian economy
 - Current status of participation into international standardizing activities
 - Future plans to participate in international standardizing activities
- Identification of the possibility to cooperate with private sectors in foreign countries (such as Japan)
 - Continuous exchange of views with the private sector in foreign countries (human-networking)
 - Possibility of undertaking joint-chairmanship of international standardizing activities in TC/SC level

(Training Stage: Example*)

- Seminar to enhance understanding the importance of international standardizing activities
 - Economic impact of international standardization/international standardizing activities
 - Case studies for cooperation between government and private sector associations in

foreign countries (such as Japan)

- Seminar/workshop to enhance negotiating capabilities at the meetings of international standardization
- Training courses for enhancing practical ability using procedures in developing international standards
- Training courses for enhancing know-how to undertake chairmanship of international standardization

* Requesting cooperation of foreign experts, if needed

(Implementation Stage)

- Hosting various meetings related to international standardizing activities in Malaysia and inviting as many as representatives of the Malaysian private sector to these meetings

(2) Continuous Information-dissemination activities on rights and obligations of the TBT Agreement

In Malaysia, organizations, which have direct responsibility in the TBT Agreement or international standardization, such as DSM or SIRIM Berhad, already have enough level of understanding of the Agreement. For the next stage, they should disseminate TBT-related information to other governmental organizations, which are responsible for developing technical regulations, or to the private sector concerned. At the same time, the Malaysian Government is recommended to strengthen institutional capability of SIRIM Berhad as a national enquiry and notification point. A national enquiry point of the TBT Agreement takes leadership not only in delivering incoming notification to technical institutions concerned, but also in introducing current topics in the TBT Committee or new technical regulations developed in other WTO members. Staffs in charge of an enquiry point of the TBT Agreement have to accumulate wider knowledge in technical background of standards or regulatory policy objectives, going over the role of the 'post office'. To strengthen a national enquiry point, SIRIM Berhad is recommended to make continuous efforts in development of human resources. Especially when a staff in charge has to move to another post, an appropriate mechanism must be established in which the know-how is to be transferred to effectively manage the national enquiry point, and also to her/his successor.

In addition, Malaysia is expected to take initiative for enhancing neighboring developing countries' understanding of the TBT Agreement, as well as for information dissemination to nationals. For example, Malaysia can host regional training courses

inviting officials from other ASEAN countries such as Thailand, Indonesia, Philippines, Cambodia, Laos, Myanmar and Vietnam. When Malaysia hosts a regional training course, it is effective to conduct disseminating activities for both foreign and national interested parties simultaneously, inviting the Malaysian private sector to the course. Enlargement of mutual information sharing between government and the private sector will contribute to the active commitment of the private sector in standardizing activities, prioritized above.

<Model case of the regional training course>

Duration: 2-3 days

Venue: Hotel in KL or SIRIM's auditorium

Targeted participants:

Foreign participant (Government officials who are in charge of TBT-related issues and standardization issues in ASEAN countries, Cambodia, Laos, Myanmar, and Vietnam)

Malaysian participants (Government officials who are in charge of technical regulations and representatives from the private sector): 40-50 in total

Contents:

Structure, rights, and obligations of the TBT Agreement, Importance of the TBT notifications, Current topics in the TBT Committee (Good regulatory practices, labeling issues, or performance requirement, etc.), Introduction of the TBT-related disputes, etc.

Other administrative issues:

Some lecturers can be from Japan or other ASEAN members (ex. Thailand).