

**Current Status and Future Outlook for Japan  
on the Japan-EU Business Dialogue Round Table (BDRT)  
Recommendations**

**Government of Japan  
(TENTATIVE TRANSLATION)**

**January 2003**

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## **The 1<sup>st</sup> Working Party (International Trade and Investment)**

### 1. Regulatory transparency

#### (1) Summary of BDRT recommendations

- (a) In promoting regulatory transparency and clarity, Japanese regulators should adopt a pro-active stance. Requests for clarification should be dealt with swiftly, and the findings should be quickly made public.
- (b) The current “No-Action-Letter” system should be strengthened to make it legally binding and more widely used by regulators in Japan.
- (c) As a matter of standard practice, all requests for clarification should be answered in writing.
- (d) The scope of reform should be expanded for tax-related issues to include not only requests for clarification, but also explicit prior-clearance for specific transactions, including corporate structuring.

(Questions)

- (e) Does the GOJ have any plans to strengthen the current NAL system?
- (f) Does the GOJ have any other plans to improve regulatory clarity and transparency besides through the use of the NAL system?

#### (2) State of measures taken thus far

- (a) and (f) As described in the “Three-Year Program for Promoting Regulatory Reform(Revised)” (determined by the Cabinet at its meeting held on March 29, 2002), the GOJ has thus far adopted the following steps: □ Abiding by the Administrative Procedure Laws, and securing transparency in administrative procedures for giving permission/authorization and administrative guidance; □ opening regulation-related administrative information through smooth implementation of the Law Concerning Access to Information Held by Administrative Bodies, and thereby securing transparency of regulatory effects and burdens; □ seeking improvement of transparency of, and ensuring fairness of, the decision-making process related to setting, amendment and abolition of regulations through the procedure for submitting opinions regarding setting, amendment and abolition of regulations (the so-called Public Comments procedure) and improving the predictability of private enterprises’ actions through the procedure for prior confirmation of compliance with laws (the so-called “No-Action-Letter”) followed by administrative agencies, as well as securing of fairness and enhancing transparency by administrative agencies.
- (b) The reply document only shows the view as of the replying time, based solely on facts

submitted by the inquirer, and the administrative agency is considered to pass judgment different from that indicated in the reply document, if it is reasonable in view of law/statute amendment or changes in the situation after the supply of the reply document. As such, we believe it is inappropriate to provide legal-binding force to the reply document. We understand that the “No-Action-Letter” of the U.S. SEC, which is regarded as the representative example of a “No-Action-Letter,” has no legal-binding power.

- (c) As for the Japanese version of the “No-Action-Letter” (according to Cabinet determination), the administrative agency concerned is obligated to reply in writing to the inquiry, in principle, so that the GOJ considers the purpose of recommendations to have already been met.
- (d) Japanese tax authorities have taken the following steps, as part of their service to taxpayers, to ensure uniformity/transparency of tax handling and predictability of tax law interpretation/application for taxpayers.
  - ① Instituting notices about legal interpretation of general tax laws, announcing them through HP, while tax offices, etc., respond to requests for consultation about individual tax transactions, compiling collections of questions and answers and allowing their perusal by taxpayers.
  - ② Providing “written replies” to pre-declaration inquiries, which inquires meet certain requirements with regard to tax handling of individual transactions, and announcing their content through HP, etc.
  - ③ As to tax systems related to corporate restructuring, no prior approval system has been instituted under laws. Since the start of this system, however, national tax authorities have established consultation counters at tax bureaus throughout the nation, and posted consultants at such counters and founded other setups to speedily and smoothly deal with specific prior inquiries from taxpayers concerning application of the tax system for corporate restructuring and the like, thereby trying to give accurate replies.

### (3) Future outlook

- (a), (f) According to the “Three Year Program for Promoting Regulatory Reform (Revised),” Japanese tax authorities also plan to continually secure transparency, etc., regarding regulation in the future.
- (b) Refer to (2) (b) shown above.
- (c) Refer to (2) (c) shown above.

- (d) As shown in (2) above, Japanese authorities will also deal appropriately hereafter. Concerning the summary of recommendations, it is not clear if legal positioning is intended, but the GOJ considers that taxation predictability will be secured due to responses by national tax authorities.
- (e) Regarding the present system, the GOJ is not specifically scheduled to revise it, but it intends to continually promote accurate operation of the system in order to secure its actual effectiveness.

## 2. Regulatory supervision

### (1) Summary of BDRT recommendations

- (a) An independent regulator with a pro-competitive mandate should be established to supervise the telecommunications, energy and transportation sectors in Japan.
- (b) Japan should strive to increase the quality of its regulatory supervision, for example by hiring more staff with specialist knowledge of the sectors that they are regulating (e.g. financial experts for product approvals in the financial sector, economists and anti-trust lawyers to enforce competition policy and qualified scientists for product approvals in the health science sector.)

### (2) State of measures taken thus far

- (a) In the telecommunications, energy and transport sectors, regulatory reform is proceeding step by step. From the viewpoint of promoting fair and free competition in these sectors, the Fair Trade Commission (FTC), an independent organization, has strengthened monitoring of the post-reform markets by establishing the IT-utility business task force in April 2001. The FTC is dealing strictly with cases violating the Anti-Monopoly Law and formulating guidelines as needed with the Ministries and Agencies concerned, to prevent further Anti-Monopoly Law violations.

#### ① Telecommunications sector

The Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) are separate from any telecommunications carriers, including NTT. Accordingly, independence from telecommunications carriers, which is obligatory under the WTO, has already been achieved. The Ministry has maintained neutrality and fairness as a regulatory supervisory organization.

#### ② Energy sector

The Ministry of Economy, Trade and Industry (METI) has so far been a supervisory organization independent from all energy suppliers or energy service enterprises. Accordingly, the Ministry has thus far maintained neutrality and fairness as a regulatory supervisory organization.

#### ③ Transportation sector

The Ministry of Land, Infrastructure and Transport has so far maintained neutrality and fairness in regulatory supervision as a supervisory administrative organization independent from transport enterprises.

- (b) The Fair Trade Commission (FTC) has worked to improve the knowledge and

expertise of its officials, by implementing a variety of training schemes, and positively recruiting human resources from diverse areas, including legal circles, with the aim of dealing strictly with increasingly complicated cases of Anti-Monopoly Law violation.

From the legal circles, the FTC has recruited one judge to preside over examination as a deputy justice, one assistant judge to be in charge of clerical work related to injunction cases and damage cases, and three prosecutors to participate in the examination of Anti-Monopoly law violation cases. Further, the FTC has employed two lawyers, according to the Fixed-Term Employment Law , to take care of examination work.

It has also employed three economists/specialists, to have them engage in research on the real state of economic and industrial affairs and planning of competition policies in the field of intellectual property rights related to software.

#### ① Telecommunications sector

When the Minister for Public Management, Home Affairs, Posts and Telecommunications enforces measures such as permission or authorization in accordance with laws, the Minister is in principle required to consult with consultative bodies, including the Telecommunications Council. Because consultative bodies are composed of lawyers, economists and other specialists, the GOJ recognizes the quality of regulatory supervision.

#### ② Energy sector

Within the Ministry of Economy, Trade and Industry, staff members with much

experience in the Electric Power Market Improvement Division and the Gas Market Improvement Division are posted in the realms of fee systems and business regulation. In addition, the Ministry also has an organizational unit staffed with officials who were appointed to engage in the supervision of electric power business and gas business (Supervisory Team of the Policy Division) separately from the two aforementioned divisions. Thus, through these setups the Ministry is implementing strict and fair supervision.

### (3) Future outlook

- (a) As to promoting competition by eliminating violations of the Anti-Monopoly Law in these business fields, the GOJ considers it appropriate for the Fair Trade Commission, an independent organization, to continually take charge of the supervision.

Concerning the energy area, the Ministry of Economy, Trade and Industry intends to remain a supervisory agency independent from all energy suppliers and energy service enterprises, and to secure neutrality and fairness as a regulation supervisory organization hereafter. However, it plans to study administrative setups designed for system operation, such as monitoring of markets and settling disputes, so that reform of the electric enterprise system will be surely executed, and so that market participants' trust in the fairness of the system operation will be maintained in the future. On that occasion, study will also be made from the viewpoints of energy industry promotion and network regulation.

- (b) The GOJ plans to employ persons with lawyer qualifications, those having specialist knowledge necessary for research on the real states of economy and industry and persons with actual accounting experience. Thus, the GOJ intends to continue positive employment of personnel from various fields in the future.

As to the energy sector, the GOJ recognizes that it is essential to improve the internal setup to operate market monitoring and dispute settlement systems, to surely realize the objectives of the current regulatory reform and to strengthen market participants' trust in appropriate operation of the systems. In this connection, the GOJ specifically plans to improve the quality of regulatory supervision, by promoting positive employment of knowledgeable external persons, and by implementing necessary organizational improvements.



### 3. Product approval liberalization

#### (1) Summary of BDRT recommendations

##### (a) Insurance

① All remaining requirements for prior product approval and pricing involvement by the financial service sector (FSA) should be abolished.

(Question)

② It is requested that BDRT be kept informed of developments in Financial Council deliberations concerning the introduction of a file-and-use procedure for commercial non-life products.

##### (b) Animal health

① Minor modifications to already-approved products should be permitted on a notification basis, without the need to navigate the time-wasting partial amendment procedure.

② The acute toxicity test employing animals of feed grade, which is required for each batch to detect toxic substances, is a test unique to Japan and should be eliminated.

③ The current mandatory assay for biological products should be replaced with a non-compulsory official batch release, as is common practice in Europe. These requirements for in-vitro diagnostic products should totally be eliminated.

④ Reports prepared for New Animal Drug Application should be accepted in their original language with a summary in Japanese, as is the current practice for pharmaceutical products intended for human use.

⑤ Instead of the current zero-tolerance stance the GOJ takes regarding these products, maximum Residue Levels and a required withdrawal period should be established at the time of the first Animal Drug Application, with all residues studies according to accepted international MRL standards.

##### (c) In-vitro diagnostics (IVD)

① An effective product approval process for IVDs according to risk classification (whereby lower risk products would be subject to a simple notification procedure) should be implemented immediately after appropriate amendments to the Pharmaceutical Affairs Law (PAL) currently being deliberated in the Diet are finalized.

(Question)

② It is requested that BDRT will follow the deliberation of the amendments to the PLA.

## (2) State of measures taken thus far

### (a) Insurance

According to the new Insurance Business Law enforced in April 1996, the notification system was introduced for products having sufficient possibilities of protecting insurance policyholders, and products falling under this category have been gradually increased since then. As for products for enterprises, a notification system has been adopted for almost all products.

Meanwhile, as to household-targeted products, regarding which it is highly necessary to secure appropriate insurance policies and protect insurance policyholders and the like, an approval system is still maintained.

### (b) Animal health

① Questions that confirm the quality, effectiveness and safety of animal pharmaceuticals, such as their components and their appropriate volumes, are required for approval according to the PAL. Where items require frequent additions and corrections, as in the case of “cautions in use,” steps are being taken to reach this purpose through a notification procedure.

② As a result of the meeting between the European Business Association and the Ministry of Agriculture, Forestry and Fisheries on Oct. 19, 2000, it was decided to again hold consultations at the working-levels meeting. After resolving issues and collecting data, the two parties have already held a concerned session on Nov. 20, 2002.

③ According to the results of national assay, the partial abolition and simplification of national assay regarding animal-use biological products have been gradually implemented since 1985. Principal partial abolition/simplification cases have been as follows:

FY1985 Abolition of quantitative tests for antiseptic agents and qualitative tests for concentration agents.

FY1986 Abolition of the national assay system for some IVD (antibody measurement).

FY1992 Abolition of special property tests and humidity-inclusive tests.

FY1995 Abolition of pH testing, and partial abolition of abnormal toxicity denial tests.

FY1996 Relaxation of the sealing units of national assay certification stamps.

FY1999~FY2002 Abolition of titer tests for some agents.

④ Where documents attached to applications for veterinary medical products are written in foreign languages, attachment of all Japanese translations is required. Original

language figures are permitted.

- ⑤ In Japan, zero tolerance is the principle concerning the administrative suspension period for veterinary medical products. Pharmaceutical administration withdrawal period for ingredients for which (MRL) residual standard values have been set (according to the Food Sanitation Law), will be set by the law.

(c) In-vitro diagnostics:

Recently, biological and genome-type pharmaceuticals and medical devices have been developed and diversified. In this situation, it is required to maintain quality, efficacy and safety in accordance with the characteristics of individual products. For this reason, in the process of the current Pharmaceutical Affairs Law (PAL) amendment, the GOJ reviewed the regulation related to pharmaceuticals, medical equipment, etc.

In connection with the current PAL revision, newly introduced risk classifications of IVDs have not yet been unified globally. The GOJ, however, plans to formulate Japanese diagnostic information risk classifications in reference to test items that are considered to have high diagnostic information risks (\*) in the EU and the U.S. As to new measurement items and measurement items whose diagnostic information risks are high, the ministerial authorization system is maintained. However, for measurement items with low diagnostic information risks, the GOJ has decided to introduce a non-approval requiring system not requiring approval, or a third-party certification system.

\*Diagnostic information risk : The risk provided by the defect of a certain IVD on diagnosis in consideration with the degree of its contribution to the diagnostic determination.

**(3) Future outlook**

(a) Insurance

Concerning household-targeted insurance products, accurate product examination remains needed. The Financial Services Agency has no intention to abolish the product and rate approval systems.

(b) Animal health

- ① Among the matters of approval, those that can be dealt with through the notification method have already been subject to a notification procedure. Even so, the GOJ will continue to study international handling, etc.
- ② In future, where problems of quality for antibiotics of feed trade have been identified, the GOJ will review the simplified acute toxicity tests for antibiotics of feed grade

according to the data.

③ According to the PAL, the national assay system is maintained, for vaccines and other biological products requiring high-level manufacturing methods. It is also maintained for similarly advanced testing methods which secure safety by using pathogenic agents, among biological products. To authorize distribution of only those products whose safety and efficacy are recognized, maintenance of the present system is considered necessary, particularly in view of the recent assay results (about 1% of total cases are rejected).

④ In connection with applications for approval of veterinary medical products, various attachment data are necessary. Because many documents attached to applications for import authorization are written in foreign languages, it is necessary to attach a total Japanese translation for quick and accurate understanding of these documents and the smooth implementation of the examination.

⑤ Because the Ministry of Health, Labour and Welfare (MHLW) is scheduled to set MRL(residual standard values) according to the Food Sanitation Law one after another, it is also planned to set the pharmaceutical administration withdrawal period in accordance with the setting of such MRL (residual standard values) for veterinary medical products designed for animals.

(c) In vitro diagnostics (IVDs)

To comply with the standard according to the essential conditions of IVD regulations of the EU, the GOJ has decided to adopt the method of examination related to ministerial approval and certification by a third-party. As such, consistency with the review systems of the EU will be further promoted.

The GHTF (Global Harmonization Task Force), where both Japan and the EU are participating, currently conducts discussion of international regulatory harmonization regarding the essential conditions and risk classification of in vitro diagnostic devices, including IVD reagents. In future, with regard to discussions at the GHTF, the GOJ intends to adopt regulations that are more internationally consistent.

#### 4. Product approval harmonization

##### (1) Summary of BDRT recommendations

- (a) The GOJ should, in cooperation with regulatory authorities around the world, continue working towards an approval process that does not require per country approval.
- (b) Japan and the EU should continue monitoring the MRA to make sure it is implemented effectively. Work should begin on expanding the scope of this arrangement to include sectors such as medical devices, professional services, organic food certification, cosmetics and eco-labeling.

(Questions)

- (c) BDRT asks that it be kept informed on the implementation status of the current MRA.
- (d) The GOJ should be vigilant in unilaterally reducing the time and energy needed for companies to bring their products to market by applying regulatory practices already accepted by the international community, such as maximum residue limits developed by the CODEX Alimentarius Commission and risk-based assessment of harmful and non-harmful organisms in the importation of phytosanitary products.

##### (2) State of measures taken thus far

- (a) Currently, the GOJ is promoting the reforms as explained below in the areas of standards and recognition, etc., according to the “Three- Year Program for Promoting Regulatory Reform (Revised).”

As to the systems of standards and recognition are reached through the autonomous actions of enterprises, the GOJ is conducting a comprehensive review as to whether the systems involving government should be maintained.

Concerning the international harmonization of standards, the GOJ is promoting coordination of Japanese standards with established international standards where appropriate, with a view to reducing the burden on enterprises and consumers.

Where such international standards do not exist, the GOJ is proposing and working on the establishment of international standards according to Japanese standards. It is also promoting the acceptance of foreign data as well as mutual recognition.

As to the individual steps related to standards and recognition, etc., please refer to the “Three-Year Program for Regulatory Reform (Revised)” on the website of the Secretariat of the “Kantei Sogo Kisei Kaikaku Kaigi”:

<http://www.kantei.go.jp/jp/singi/kisei/kakugi/pdf/1.pdf> (Japanese version)

<http://www.kantei.go.jp/foreign/policy/kisei/kettei/020309.html> (English summary)

(b)

① Since the Agreement came into force on Jan. 1 of last year, Joint Committee meetings have been held on March 5 in Tokyo and Oct. 15 in Brussels for the steady implementation of the agreement. The Joint Committee at its second meeting had necessary discussion for the smooth implementation of the agreement was conducted, and the sector of GLP for Chemicals smoothly became operational.

② In the sector of electrical products, a Japanese conformity assessment body was registered in November last year. Therefore it is now possible for enterprises to export products to the EU after having the products certified against the European standards in Japan by this registered conformity assessment body.

③ In the telecommunications sector, the GOJ is working towards registering conformity assessment bodies, as well as settling some pending issues.

④ Regarding the sector of GMP for pharmaceutical products, the preparatory work provided for in the Agreement has been conducted. The 1<sup>st</sup> subcommittee meeting was held on Oct. 14 of last year in Brussels, and experts of both parties are visiting each other's facilities.

⑤ When considering the addition of other sectors to the Agreement, firstly, the possibility of including the sector to the structure of the Agreement will be examined—whether the sector has compulsory regulations, whether the conformity assessment procedure in question uses third-party assessment bodies, and so on. After that, the possibility will be studied, taking into account various factors, such as the comparability of the recognition systems, equivalency of technical competence, industrial needs, and competitiveness. The outcome of the four existing sectors will also be considered.

(c) Additional, up-to-date information is available on the websites of related Ministries and Agencies.

(d) Japan's plant quarantine is carried out based on Pest Risk Analysis. Also, on the occasion of setting specifications and standards based on the Food Sanitation Law in Japan, such as residual standards for substances of agricultural chemicals, and specifications and standards for use for food additives, for instance, the GOJ strives to seek conformity to international standards fixed by the CODEX Alimentarius Commission, if any. However, there are cases in which it is necessary for Japan to fix more rigorous standards than international standards, because of a difference in intake between Japan and foreign countries, for instance. Even in that case, however,

the GOJ sets such standards after following suitable procedures, such as notification to the WTO.

(3) Future outlook

(a) Same as (2) (a).

(b)

① Both sides are to make efforts to bring about the maximum effect from the implementation of the Agreement.

② As for the sectors on telecommunications and electrical products, the GOJ intends to continue its PR activities, since more applications from Japanese conformity assessment bodies are desirable for the effective implementation of the Agreement.

③ The 3<sup>rd</sup> Joint Committee meeting is scheduled to be held in the first half of this year.

(c) Upon request, arranging seminars on the MRA could be considered, and specific opinions and requests on PR activities are welcome.

(d)

① Concerning Japan's plant quarantine, its activities will continue to be carried out based on Pest Risk Analysis hereafter.

② When setting specifications and standards based on the Food Sanitation Law, such as residual farm chemical standards, the GOJ would like to continually make every effort to seek conformity to international standards set by CODEX Alimentarius Commission and those of various countries, when appropriate.

③ Also, the GOJ plans to facilitate to establish residual standards, for farm chemicals, for the introduction of a new system for agricultural chemical residues, so-called positive list system, which is proposed in the current amendment of the Food Sanitation Law. Even during such activities, the GOJ intends to establish the standards promptly from the viewpoint of protecting the public health in reference to international standards, if any.

④ Referring to food additives, the GOJ has just started to take new action on designation for food additives whose safety is internationally confirmed and whose use is internationally widespread, apart from the ever-used designation system for food additives based on the petition by individual company, from the viewpoint of international harmonization.

## 5. Regulatory reform to facilitate economic activity

### (1) Summary of BDRT recommendations

The GOJ should continue to place high priority on regulatory reform measures designed to promote and facilitate economic activity in the Japanese market.

### (2) State of measures taken thus far

Regarding the transport sector, the GOJ has abolished the supply/demand regulation in almost all business fields related to passenger/freight transport through recent amendments to the Law for Railway Business Enterprise, the Maritime Transport Law, the Civil Aeronautics Law, the Road Transport Law and the Port Business Transportation Law.

#### (a) Port operations

In regards to port transport operations, the deregulation of nine principal ports\* was

implemented in advance in November 2000. As for the deregulation of local ports other than the nine ports, the new “3-Year Program for Regulatory Reform,” approved by the Cabinet in March 2002, calls for obtaining conclusion during fiscal 2003. Currently, the GOJ is trying to assess the effects of the deregulation of the nine principal ports and the real state of local ports.

As to around-the-clock opening of ports, it became possible, according to the port management-labor agreement of late November 2001, to conduct loading/unloading activities 24 hours a day, on 364 days of the year, and to conduct gate work from 8:30 a.m. to 8:00 p.m. on Saturdays, Sundays and national holidays, like on weekdays. Further, according to the port management-labor agreement of Nov. 12, 2002, it became possible to implement gate work at seven principal ports (Tokyo Port, Yokohama Port, Nagoya Port, Osaka Port, Kobe Port, Kanmon Ports and Hakata Port) until 9:00 p.m. The Ministry of Land, Infrastructure and Transport is conducting verification testing at the Yokohama Port, to realize 24-hour full opening of gate work.

\*The nine principal ports, which together handle about 95% of Japan’s container freight, are the Keihin Ports (Tokyo, Yokohama, Kawasaki), Chiba Port, Shimizu Port, Nagoya Port, Yokkaichi Port, Osaka Port, Kobe Port, Kanmon Ports (Shimonoseki, Kitakyushu) and Hakata Port.

#### (b) Construction



In the sector of construction, to greatly improve transparency, objectivity and competitiveness in connection with tender/contracting systems regarding public work projects, such reform as the full-scale introduction of a general competitive bidding formula – for the first time in 90 years – was implemented in 1994. According to the proposal by the Central Council on Construction Contracting Business in 1998 and the “Three-Year Program for Promoting Regulatory Reform (Revised),” the GOJ is going ahead with the introduction of a variety of tender/contracting methods where private technological initiatives are accepted.

In addition, the “Act to Promote Proper Tendering and Contracting for Public Works” was enforced in April 2001. As a result, total order issuers, including the national government, special public organizations and local public bodies, were obligated to promote announcement of an order placement outlook for each year and various kinds of information related to tenders and contracts, to thoroughly eliminate unjust actions and to secure appropriate construction work. Moreover, these order issuers were obligated to exert efforts regarding matters specified in propriety realization principles formulated under the law. Accordingly, appropriateness enhancement is being pushed for regarding tenders and contracts.

Further, concerning construction work ordered by the Ministry of Land, Infrastructure and Transport, bidding methods characterized by higher competitiveness than the ordinary tenders by specified bidders are being tried in cases of public work projects involving amounts of ¥660 million or less.

### (3) Future outlook

In the transport sector, according to a review of past regulation and the resultant environment improvement methods, competition is expected to be promoted. As a result, such effects as reinforcement of user convenience through improved and diversified services, due to enhanced efficiency/effectiveness of business activities, can be expected.

#### (a) Ports

As to port transport, the GOJ intends to obtain conclusions regarding deregulation of local ports within fiscal 2003, in accordance with the principle of the “Three-Year Program for Promoting Regulatory Reform(Revised).”

#### (b) Construction

According to the “Act to Promote Proper Tendering and Contracting for Public Works,” the GOJ will examine the state of public announcement of tendering/contracting information, arranged under the law and proper public work implementation principles

according to the law, thorough elimination of unjust actions and securing of appropriate construction work, regarding public works by all order issuers, such as the national government, special public organizations and local public bodies. An outline of examination results will be announced, and requests according to the law, as well as guidance toward order issuers, will be implemented appropriately, so that suitable measures will be taken regarding necessary matters. In this way, the GOJ will continue to push for the establishment of proper practices concerning tendering and contacting.

## 6. Regulating dominant positions

### (1) Summary of BDRT recommendations

Dominant market positions in sectors such as telecommunications need to be adequately monitored and effectively regulated to prevent possible anti-competitive practices such as predatory pricing, cross subsidies from monopolies to market based activities, and misuse of customer information.

### (2) State of measures taken thus far

Article 37-2 of the Telecommunications Business Law enumerates activities by telecommunications business carriers that have the market power to cause unfair competition with other telecommunications carriers, and prohibits such activities. In November 2001, the GOJ set forth the “Guidelines for Promotion of Competition in the Telecommunications Business Field”. These guidelines clarify specific activities to be prohibited to the telecommunications carriers with market power, activities subject to such rectification measures as charges change orders and business improvement orders in accordance with the Telecommunications Business Law, and a notion as to how to apply the Anti-Monopoly Law. With the Guidelines, the predictability of problematic cases that should be prohibited among the business carriers concerned has increased. The Guidelines were reviewed in November 2002, when opinions were submitted from interested parties and amendments were made in consideration of the submitted opinions. The amended guidelines were published in December 2002.

In accordance with the Anti-Monopoly Law, the GOJ rigorously deals with actions which risk obstructing fair and free competition. It has established a system to deal efficiently and swiftly with violations of the Anti-Monopoly Law in the telecommunications sector. When anti-competitive actions are taken by telecommunications carriers that have no market power, they will be dealt with by issuing business improvement orders or charges change orders, or by applying the Anti-Monopoly Law.

### (3) Future outlook

From the viewpoint of further improving the fair competition environment, the GOJ intends to flexibly review the aforementioned guidelines as required.

The GOJ will continue to strive for rigorous enforcement of the Anti-Monopoly Law.

## 7. Cross-border share-for-share transfers (and related tax implications)

### (1) Summary of BDRT recommendations

- (a) Cross-border share-exchanges should be made possible in Japan.
- (b) A mechanism should be introduced whereby foreign firms can take advantage of tax deferral incentives currently only available to Japanese corporate reorganization.

### (2) State of measures taken thus far

- (a) Currently, the GOJ is working out a draft amendment to the Law on special measures for industrial revitalization, which includes making an exception for Commercial Law related to the so-called “flexible treatment of considerations for mergers, etc.” It is hoped that, according to the amended law, a business enterprise whose business plan is authorized by the Government will be able to implement a merger, absorption/splitting or share exchanges, using shares of parent companies including foreign enterprises, and cash, as considerations.
- (b) It is a principle to appropriate transfer profit/loss as market price transactions of transferred assets when an enterprise transfers its properties to another entity. In cases of share exchanges or corporate reorganizations that meet certain requirements, however, it is possible, as special measures, to defer tax imposition.

### (3) Future outlook

- (a) The GOJ plans to submit a bill to amend the Law on special measures for industrial revitalization, to the ordinary Diet session convened in January 2003.
- (b) Regarding the contention that some steps should be taken concerning international corporate reorganization and stock exchanges, the GOJ considers that careful examination is necessary for the adoption of such steps, taking all factors into consideration, including securing equitable/fair tax imposition and preventing tax evasion.

## 8. Provision of legal services

### (1) Summary of BDRT recommendations

- (a) The GOJ should make the implementation of the judicial reform according to the Final Report of the Judicial Reform Council a priority.
- (b) In particular, barriers within the legal profession, such as prohibitions on the freedom of association between foreign and Japanese lawyers and requirements for written advice for foreign lawyers advising on third country law, should be removed to ensure access to comprehensive, integrated legal advice in Japan.  
(Question)
- (c) It is requested that the GOJ keep the BDRT informed of concrete measures to implement the proposals contained in the JRC Final Report.

### (2) State of measures taken thus far

Regarding co-operation and collaboration of Japanese lawyers (*bengoshi*) and foreign lawyers qualified under Japanese law (*gaikokuho-jimu-bengoshi*; hereinafter referred to as GJB), the Program for Promoting Justice System Reform adopted by the Cabinet on March 19, 2002, calls for “relaxing requisites for specified joint enterprises from the standpoint of actively promoting collaborations and cooperation between Japanese lawyers and GJB, and submitting legislation to the Diet (planned to be the ordinary session in 2003).” As regards the specific measures, a study was conducted by the Consultation Group on Internationalization for the Office for Promotion of Justice System Reform.

As regards the handling of third country laws by GJB, the GOJ considers it basically necessary and reasonable, from the viewpoint of client protection, to make receipt of written advice from specialists a necessary condition.

Specific measures regarding the reform of the judicial system are included in the Program for Promoting Justice System Reform, and the Program is available to the public on the website.

### (3) Future outlook

In accordance with the Program for Promoting Justice System Reform, the Office for Promotion of Justice System Reform plans to submit legislation to the ordinary session of Diet in 2003, to relax regulations on partnership between *bengoshi* and GJB and

employment of Japanese lawyers by GJB.

## 9. Visas and work permits

### (1) Summary of BDRT recommendations

The Japanese immigration law should make it easier for companies to efficiently allocate human resources on a global basis. Specific proposals include the following:

- (a) The re-entry permit system should be abolished. Foreign workers should free to come and go as they please within the period specified by the original visa.
- (b) Companies should be able to decide independently who is eligible as a transferee, and not be limited by time of employment.
- (c) It is urged that the GOJ take action on liberalizing requirements for specialist workers as soon as possible. It is recommended that the ten-year experience requirement for engineers, skilled labour and humanities specialists should be cut in half.

### (2) State of measures taken thus far

#### (a) The re-entry permission system

In 1999, Japan amended the Immigration Control and Refugee Recognition Act (hereinafter referred to as the “Immigration Control Act”), extending the period of validity of re-entry permission from a period not exceeding one year to a period not exceeding three years. This amendment came into effect on Feb. 18, 2000.

Under the current act, the maximum period for staying in Japan is three years. With the amendment mentioned above the maximum period for staying and the period of validity of re-entry permission have become the same, allowing those who hold multiple re-entry permission to freely enter or depart Japan without taking new procedures during their period of stay.

#### (b) Intra-company Transferee

Regarding the status of residence for an “Intra-company Transferee”, the requirement related to the maximum period of stay (5 years) was lifted in January 1998. However, the GOJ maintains the requirement of employment “at the main office, or branch office or other office abroad for at least 1 year immediately prior to the transfer to Japan.”

#### (c) Ten years of experience

Regarding foreign IT engineers, an academic background equal to a university graduate or work experience of more than ten years is required. The GOJ reviewed

the criteria for landing permission in December 2001, allowing those who passed the examinations or hold the qualifications in IT which are recognized as appropriate by notification by the Minister of Justice to meet the requirement, irrespective of their academic background or work experience.

The Minister has issued such notifications for certain qualifications and examinations in Japan, Singapore, the Republic of Korea and China.

### (3) Future outlook

#### (a) Re-entry permission system

In view of the current international and domestic situations, the GOJ is not at present considering further review of the system related to the re-entry permission system for foreigners.

#### (b) Intra-company Transferee

The status of residence for an “Intra-company Transferee” is an exception where academic career/work experience requirements are exempted for people whose activities in Japan fall under “Engineer” or “Specialist in Humanities/International Services” and who are employed in Japan as transferees. Those who meet the academic career/work experience requirements may enter Japan under the status of residence of an “Engineer” or “Specialist in Humanities/International Services,” without one year of work experience.

The requirement of employment “at the main office, or branch office or other office abroad for at least 1 year immediately prior to the transfer to Japan” is considered a rational standard, aiming to prevent companies from transferring new employees who do not have special skills and knowledge and have not engaged in activities corresponding to the status of residence of an “Engineer” or “Specialist in Humanities/International Services” at the company, only for the purpose of securing a new labor force in Japan.

#### (c) Ten years of experience

Regarding IT engineers, the GOJ is planning to expand the scope of the examinations and qualifications subject to the exception, in accordance with the implementation of mutual recognition of qualifications in future.

## **The 2<sup>nd</sup> Working Party (Accounting and Tax Systems)**

### 10. International accounting standards (IAS)

#### (1) Summary of BDRT recommendations

- (a) Although the progress in the acceptance of IAS by the GOJ and the European Commission is evaluated highly, the early introduction of IAS, and clarification of the IAS application related to the listing of EU enterprises in Japan, are continually being requested.
- (b) There is anxiety over the non-reflection, in the International Accounting Standard Board (IASB), of needs of investors and the real conditions of their business management in various countries. Especially regarding handling of “business reports,” “stock options,” etc., active discussion has occurred in both Japan and the EU.
- (c) The GOJ and the European Commission are asked to be positively involved in the formation of IFRS (International Fiscal Report Standard, New IAS). The reason is that accounting standards require not only theoretical study but also recognition that situations in investor needs, conditions of corporate management, flow of international currents and legal systems, as well as the economic state of affairs, are different from country to country.

#### (2) State of measures taken thus far

- (a) As a principal member of the International Organization of Securities Commission (IOSCO), Japan supported recognizing the use of IAS by issuer entities (enterprises) entering markets of various countries on the occasion of cross-border invitation and listing in IOSCO in May 2000. It has been indicated that Japan and other countries may take additional steps regarding IAS-based financial statements, considered to be necessary, including adjustments, additional disclosure and interpretation, as needed, so the GOJ is examining the need for these steps.
- (b) As to IASB, the GOJ is monitoring its activities in collaboration with the securities regulation authorities in European and other countries of the world, through activities of IOSCO.
- (c) Japan is participating in meetings of the Standard Advisory Commission (SAC), designed to make important recommendations on the order of priority of the agenda regarding IFRS, to be discussed at IASB, as an official observer. In the meeting, not



only principal European members but also U.S. SEC, EU representatives and IASB directors are participating, and representatives of Japan take part in discussion at a public stage, thereby expressing the Japanese position.

(3) Future outlook

- (a) When a foreign company tries to implement fund raising , using financial statements adopting accounting standards, terms, styles and formulation methods utilized in financial statements disclosed in its home country or third countries, the Director General of the Financial Services Agency individually judges if protection of the public or investors is adequate, and approves such raising , on the condition that notes on the content of accounting standards/procedures different from those used in Japan are attached to the related financial statements. Accordingly, regarding fund raising by EU enterprises in Japan, it has become possible to use IAS-based financial documents contained in the disclosure documents released in their home countries or third countries.
- (b) Concerning IASB, the GOJ intends to ask IASB directors and SAC members to set appropriate IAS (IFRS), according to attachment of importance to dialogues with securities regulation authorities of various countries. These dialogues should be held regarding matters, such as the handling of “business reports” and “stock options,” mainly at IOSCO and SAC meetings, which the GOJ is attending as an official observer.

## 11. Consolidated taxation system

### (1) Summary of BDRT recommendations

- (a) No other example of the imposition of 2% of “additional tax” or surtax on companies adopting the consolidated tax system is seen internationally, and the additional tax reduces the merits of the consolidated tax system substantially. The additional tax should be abolished without waiting for a review in two years’ time, as has been proposed.
- (b) The rule that consolidated subsidiaries’ loss carried forward before the adoption of the consolidated tax system shall be denied should be abolished without delay.
- (c) The GOJ and the European Commission are requested to study the possibility of the following measures and to make efforts to realize them:
  - ① Introduction of a consolidated taxation system for local taxes
  - ② Expansion of the scope of application of consolidated taxation system by lowering the threshold below which consolidated tax treatment is not allowed from 100%, the percentage of a subsidiary’s shares owned by its parent company ones the former total shares, down to 50%.
  - ③ To allow companies to terminate the consolidated taxation system after a certain period of time ( e.g. 5 years)

### (2) State of countermeasures taken thus far

The partial amendment of the corporate tax system, designed to institute the consolidated tax system and the like, was put into effect on August 1 of last year, with the consolidated taxation system beginning to be applied from March 2003.

Regarding the introduction of the consolidated taxation system into local taxes (enterprise tax on corporation tax and resident tax on corporation tax ), it was recommended by the Governmental Tax Research Council (in its report on the tax system amendment for FY2002, in December 2001) that “it is appropriate to make an individual enterprise the tax payment unit, giving consideration to the relationship between its benefits and burdens in the region.” According to this recommendation, the GOJ has amended of the Local Tax Law. (The amended law was put into effect on August 1, 2002.)

### (3) Future outlook

- (a) The consolidated additional tax was instituted as a step to increase financial revenue to cover the tax income reduction resulting from the establishment of the consolidated taxation system. Measures to secure financial revenues will be reviewed again during FY2004 as scheduled.
- (b) With the consolidated tax system, it is adopted as a rule, from the viewpoint of proper tax imposition according to the real state of affairs, to make a single enterprise the tax payment unit for income before the system application, and to make a consolidated group the tax payment unit for income after the system application. If a deduction for all the deficits of subsidiaries before application of the system becomes possible, the problem of tax evasive actions through the acquisition of a company with deficits may arise. Such a risk leads us to judge the introduction of a deduction system as above inappropriate.
- (c)
  - ① Regarding local taxes (enterprise tax on corporation and resident tax on corporation), the GOJ intends to continue to make a single enterprise the tax payment unit according to the amended Local Tax Law.
  - ② The consolidated taxation system is a system where a business group that is managed as one and can be virtually regarded as a single business enterprise is treated as a single “tax payment unit,” and imposed tax on accordingly. Therefore, it can be judged appropriate to apply the system to a corporate group characterized by an ownership rate of 100%, with management controlled by one enterprise and profits belonging to that enterprise.
  - ③ If an arrangement that freely allows withdrawal from the consolidated taxation system becomes possible, the problem of arbitrary tax evasion may arise. Such a risk leads us to judge the introduction of an arrangement as above inappropriate.

## 12. Transfer pricing taxation

### (1) Summary of BDRT recommendations

By enhancing mutual understanding with foreign tax authorities through the OECD and bilateral consultation and the promotion of common rule making, sound financial foundations are requested to be built from which there should be progress towards the establishment of international standard rules, which is the final objective.

### (2) State of measures taken thus far

The GOJ has been participating positively in the discussion at the 6<sup>th</sup> working subcommittee (designed to study transfer pricing taxation and other issues) of the OECD Tax Committee, thereby striving to enhance mutual understanding and cooperation. In particular, the GOJ was involved in the preparation and supplementary activities for the “1995 Transfer Pricing Guidelines,” which are the international guidelines for actual application of transfer pricing taxation, as well as monitoring as to if the laws, regulations and actual enforcement work of OECD member states are consistent with the aforementioned guidelines.

In addition, the GOJ has been striving to settle actual taxation issues that actually occurred, through mutual consultations (two-party consultations) under the Tax Treaty.

### (3) Future outlook

To reduce dual taxation risks and observance cost to the minimum, the GOJ intends to continue enhancement of mutual understanding and mutual cooperation with foreign tax authorities through OECD and bilateral consultations.

### 13. Electronic commerce taxation

#### (1) Summary of BDRT recommendations

The GOJ and the EU should actively keep participating in the discussion in OECD and making efforts to establish the best rules of ensuring maintenance of the principles of neutrality, simplicity, fairness, effectiveness, international cooperation and consistency.

#### (2) State of measures taken thus far

Regarding the method for taxation on electronic commerce, it has been internationally established to apply taxation principles of fairness, neutrality and simplicity, as in the case of conventional commerce transactions. In this perspective, OECD is studying methods for determining transaction matters necessary for taxation purposes, from the specialized and technological viewpoints. In May 2001, an interim report on results of such study was issued.

#### (3) Future outlook

Japan would like to continue positive participation in OECD discussion in the future. Along with this, it will study taxation issues involved in electric commerce, while paying attention to trends and results of related international discussions.

## **The 5<sup>th</sup> Working Party (Information and Communications Technology: ICT)**

### 14. Speedy implementation of IPv6

#### (1) Summary of BDRT recommendations

- (a) The governments must clarify their support scenarios and devise policies to promote the speedy implementation of IPv6. The proliferation of IPv6 requires an approach from both ends of its use, namely, the infrastructure and terminal devices. There are various ways to accomplish this, including reducing the tax burden by accelerating depreciation and providing subsidies to the service providers and users.
- (b) In introducing IPv6, Internet crimes and leakage of personal information should be seriously considered when deploying IPv6 to assure privacy protection and avoid social system issues.
- (c) Regarding adoption of e-government systems in administrative functions, it is recommended that, from a longer-term perspective, efforts to adopt information-age systems be pursued with IPv6 in mind.
- (d) At the international level, it is hoped that the governments of Japan and the EU will play a leading role in the speedy implementation of IPv6.

#### (2) State of measures taken thus far

- (a) In August 2002, the Telecommunications Council (a consultative body of the Minister for Public Management, Home Affairs, Posts and Telecommunications) formulated a road map showing comprehensive measures for the Government, Internet service providers and users for a smooth transition to IPv6.

The GOJ conducts research and development of information-related household electrical appliances for a prompt shift to Internet networks equipped with IPv6. To foster human resources which will be the base of the IT society, the GOJ is taking such measures as the computerization of school education, training of IT-sector specialists and adoption of taxation/financial support measures.

- (b) The GOJ has submitted a bill on the protection of personal information to the Diet. With regard to personal data protection in the telecommunications sector, it formulated the “Guidelines on the Protection of Personal Data in Telecommunications Business,” thereby supporting initiatives by telecommunications carriers. From the viewpoint of ensuring information securities, the GOJ is also striving to secure the safety and reliability of networks.

- (c) Regarding computerization of administration, the GOJ is taking such measures as the electronic supply of administrative information, adoption of electronic means for application and filing procedures and information sharing and utilization through information networks.
- (d) Japan and the EU adopted in December 2001 the “Action Plan for EU-Japan Cooperation,” which includes the establishment of close co-operation on the timely introduction of new internet protocol IPv6 as one of the initiatives to strengthen cooperation on ICT. According to this, meetings of public private sectors between the EU and Japan have been held. As private-level exchanges, joint projects are under way between the IPv6 Promotion Council and EUIPv6 Task Force.

### (3) Future outlook

- (a) The GOJ is going to work to shift the Internet basis to IPv6 by holding verification experiments, etc. and to promote transfer of both networks and terminals to the IPv6 systems in an overall manner.
- (b) The GOJ aims to create a society where users can utilize telecommunications services with a sense of security, by ensuring appropriate handling of personal data on users by telecommunications carriers.
- (c) The GOJ plans to implement IPv6-related verification tests to make computerized administration systems fit for practical use.
- (d) The GOJ intends to keep actively contributing to the shift of the world’s Internet basis to IPv6.

15. Protection of IPR (Intellectual Property Rights) through technological protection measures and introduction of Digital Rights Management (DRM) System

(1) Summary of BDRT recommendations

- (a) All stakeholders should facilitate open and interoperable standards for technological protection of contents.
- (b) Proper DRM solutions should also be according to open and interoperable standards. Especially, such solutions should be designed in a way that increases the business opportunities for all such stakeholders.

(2) State of measures taken thus far

- (a) The Ministry of Economy, Trade and Industry (METI) is holding e-Life Strategic Research Meetings, to study sufficient terminal functions seen from contents service enterprises. Through these meetings, METI has just started study of specific content of terminal functions while clarifying utilization of open, existent technology and securing of standard variation and expandability, as basic principles of standards regarding terminal functions, and paying attention to proliferation trends of DVB-MHP.

The Ministry of Public Management, Home Affairs, Posts and Telecommunications, (MPHPT), on the other hand, is conducting verification tests to promote broadband contents production/distribution, jointly with private enterprises. Amid such efforts, the Ministry is particularly tackling the development of meta data format, which will be the premise for appropriate, open and interoperable DRM solution, in view of global standardization activities by the TV-Anytime Forum, etc.

- (b) At e-Life Strategic Research Meetings mentioned above, participants are presented with the view that it is important for the equipment side to deal with the situation so that the DRM approach can be freely determined in depending on each content.

(3) Future outlook

- (a) Regarding technological protection of contents, the GOJ thinks that the matter should be left to private initiatives. However, it will support improving the environment for smooth distribution of contents.
- (b) Arrangements for DRM should be independently set or selected by contents enterprises, and they should be finally judged by the market. The GOJ, however,



will support improving the environment for smooth distribution of contents.

## 16. Promoting the proliferation of the smart card system

### (1) Summary of BDRT recommendations

- (a) The government should actively introduce the use of smart cards in its preparation for building e-Government, and make active efforts for developing the environment for its use, e.g., installing smart card terminals and preparing legal systems associated with its use. Smart cards issued for administrative services should be designed to allow multi-purpose use, including use in private-sector services.
- (b) Further efforts should be made to achieve multipurpose use of smart cards, not dependent on card category, and mutual compatibility among different smart card systems.
- (c) The private and public sectors of Japan and Europe should join forces to create new application services to promote smart card utilization, and to improve the environment for the development of new application services.

### (2) State of measures taken thus far

- (a) Since March 2001, study of methods for unified and consistent utilization and proliferation of smart cards has been carried out at the “liaison conference of the Cabinet Office and Ministries regarding the spread of smart cards in the public sector.” According to this study, the GOJ has formulated basic thinking, operational guidelines and technological specifications.

Since 2000, meanwhile, the Ministry of Economy, Trade and Industry (METI) has been implementing large-scale verification experiments using information systems, centered on multipurpose smart cards, with local public bodies as verification fields. Specifically, it has conducted verification of technological and systematic aspects regarding the supply of administrative service and private service through a single smart card.

- (b) In verification experiments of multipurpose smart cards by METI, technological demonstration was implemented through the use of frameworks related to compatibility of smart card systems.

Also regarding compatibility-related cooperation between Japan and Europe, technological collaboration has been continued within the framework of SmartMEIJI. Further, Japan’s NICSS cooperated in the formulation of GIF (Global Interoperability Framework), which served as the basis for standards specifications

for smart card systems on the SCC side. In addition, agreement was reached among Japan, Europe and NIST (U.S. National Institute of Standards and Technology) on standardization of frameworks for smart card systems.

- (c) METI is pushing for research and verification activities regarding advanced applications of smart cards to further accelerate the use of such cards, as well as research and application by a government-private tie-up-based “community data center,” an institution expected to serve effectively for more efficient development/supply of new smart card applications.

### (3) Future outlook

- (a) Use methods for smart cards in the public sector will be continually studied hereafter at the “liaison conference of the Cabinet Office and Ministries regarding the spread of smart cards in the public sector,” with an eye to realizing unified and consistent proliferation and promotion of such use methods. The GOJ will diffuse results of verification experiments by announcing and publicizing them.

According to the Resident Basic Ledger Law, the delivery of resident basic ledger cards to residents desiring to receive them will be started by municipal, township and village governments in August 2003. In the future, furthermore, the use of stored individual information as the base for public certification of individuals will be started under the Public Individual Certification Law. According to this system, Prefectural Governors will issue electronic certificates to those wishing to receive them. As smart cards are scheduled to be used as their storage media, the utilization of such cards by the administrative sector will go into high gear.

- (b) Regarding Japanese-European cooperation concerning compatibility of smart card systems, the European-side activities in SCC will be terminated this year, but specific future action plans according to SCC2 are being prepared, and the two parties are scheduled to study possibilities for future cooperation, according to such action plans. Concerning the joint framework standardization work by Japan, Europe and the U.S., the GOJ intends to study Japanese setups and related issues in preparation for the said standardization work.
- (c) In efforts to promote utilization of smart cards, the Ministry of Economy, Trade and Industry plans to demonstrate new frameworks, including rights certification related to digital contents distribution on networks, to seek creation of new services, etc., and to study standardization of important technologies, such as security measures regarding smart cards, in view of international trends concerning these technologies.

## 17. New multimedia services

### (1) Summary of BDRT recommendations

- (a) Access conditions must be tailored to ensure that access is open through the chain from content provider to consumer.
  - ① Consumers must be allowed to access any type of service and content by means of standardized conditional access systems.
  - ② Providers of conditional access should further make available sufficient bit-rate for high-speed access to the whole Internet.
- (b) When a regulatory authority is determining the existence of a dominant position in order to impose ex ante rules on an operator, it must not be bound by former decisions on existing markets. Relevant market definition must take into account the potential offered by all technologies available in the market.
- (c) Industry and governments should facilitate the development of an open and interoperable technology environment. The global mobile industry has recently launched the Open Mobile Alliance (OMA), designed to promote open, global standards, protocols and interfaces to enhance market growth for the entire mobile industry. Japanese and European enterprises are positively participating in this initiative.
- (d) Marketing freedom must be consecrated. Ex ante regulations should not lead to the prohibition for the provision of New Multimedia Services on certain network operators and/or service providers.
- (e) Definitions must distinguish clearly between traditional Broadcasting Services and “New Multimedia Services,” the latter being characterized by their individual nature, which presupposes an individual request by the recipient for the provision of a New Multimedia Service. Technically, a “return channel” is necessary to ensure transmission of a signal from the customer to the service provider before accessing the service.
- (f) Safeguard of ethic principles applying to content distribution is better achieved through self-regulation on international level. The GBDe Cyber Ethics Declaration is an important example for successful global industry self-regulation avoiding the limitations of national and regional regulatory approaches.
- (g) Regulatory requirements linked to objectives of “general interest” protection are not applicable to new content services.

(2) State of measures taken thus far

(a) The GOJ is proceeding to open services for the Internet. In connection with approving new services, the Ministry of Public Management, Home Affairs, Posts and Telecommunications, in particular, extends the following guidance to promote system opening related to backbone and secondary providers (connectability and selectability): A type 1 telecommunications carrier should, if interconnection is requested by other telecommunications carriers, comply with the request.

From a viewpoint of ensuring user convenience and fair competition in the future, the GOJ intends to proceed with further network-opening steps hereafter.

① According to the “e-Japan strategy,” the GOJ plans to develop technologies to expand the targets of the Internet to various devices other than PCs, such as information appliance, to realize upgrading of Internet foundation technology. From this perspective, the GOJ is striving to materialize an Internet environment where obtaining, processing and transmission of desired information can be implemented safely, speedily and simply.

The Ministry of Economy, Trade and Industry (METI) plans to develop software designed to operate various business-use servers and storage equipment linked to the Internet as if they are a single computer, and to substantially raise their reliability and safety, thereby providing highly flexible business service.

② In accordance with the “e-Japan strategy,” the GOJ is implementing improvement of the network infrastructure to develop inexpensive, high-speed and large-capacity Internet networks, adoption of necessary competition-promoting policies, reform of regulations hampering electronic commerce, and tax benefit incentives and financial support specialized for broadband infrastructure development.

It intends to arrange for environmental improvement to realize speed acceleration of the Internet and early reduction of communication rates.

(b) Currently, the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) is considering appropriate market definition methods, which have taken characteristics and replaceability of various services in the market of telecommunications for users into consideration, as well as methods to evaluate the state of competition in the said market.

(c) Because progress of research and development in the information communications industry will lead to the creation of knowledge-intensive industries, the GOJ intends

to step up positive efforts in the private sector to promote standardization as part of research and development activities, and to accelerate the spread of development results. In the meantime, the GOJ plans to provide as much support as possible for the standardization, as needed.

In particular, with respect to the global telecommunications standard, the GOJ has actively participated in the standardization work in ITU, under the arrangements where specialists from Japan, Europe and others are cooperating in the activities. The GOJ is eager to continue contribution to the promotion of international standardization in the future.

The GOJ will also accelerate development of open foundation systems allowing to link, easily, with good security and without much knowledge, various kinds of information equipment, including indoor/outdoor information appliances and Personal Digital Assistants in the sectors of information consumer electronics equipment and mobile systems, whose markets are anticipated to expand substantially in the future.

Private-level standardization activities by OMA, etc., are contributing to the formulation of international standards.

- (d) In the realm of telecommunications, it has become possible to combine various kinds of networks and services freely, reflecting the improved flexibility of network buildup that resulted from several series of regulation relaxation measures. The GOJ is scheduled to submit, to the current ordinary Diet session, a bill to amend the Telecommunications Business Law so as to provide for the abolition of the business classifications of the Type 1 and Type 2 and of entry permission system related to the Type 1 telecommunications business (for transfer to the registration/notification systems).
- (e) The Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) plans to adopt, as the basic course for a new ICT strategy, measures to accelerate ICT utilization by carriers and individuals, considering that infrastructure buildup has achieved some positive results. As one such measure, it intends to support research and development for the early realization of services to utilize a single TV receiver to receive both digital broadcasts and the Internet, in order to make use of TV sets, which have been disseminated to every household in Japan, as telecommunications terminals. In addition to support for such R&D, MPHPT also intends to establish an environment where users can enjoy the benefits of ICT upgrading and diversification, by utilizing services meeting their own needs, according to their own selection and judgment.

- (f) Also, MPHPT will continually strive to realize smooth implementation of contents distribution, as well as upgrading and diversification of contents utilization. Simultaneously, it will work to settle new social issues arising as a result of Internet development, jointly with business enterprises concerned.
- (g) The Ministry intends to promote new contents service, while maintaining and improving an environment aimed at fair competition.

## **The 6<sup>th</sup> Working Group (WTO)**

### **(1) Summary of BDRT recommendations**

#### **18. WTO**

- (a) At the outset of the 21<sup>st</sup> century, we are faced by such problems as globalization, sustainable development, the information-oriented society, and challenges related to technological innovations. Amid this state of affairs, we must give consideration to the needs of developing countries, in particular. We hope that Japan and Europe will closely cooperate in the New Round, called Doha Development Agenda, and jointly accelerate negotiations, so that significant specific results will be attained within the negotiation period.
- (b) The BDRT encourages the Government of Japan and the European Union to follow a pro-active approach with regard especially to investment rules, transparency in government procurement, trade facilitation, trade and competition, clarification and strengthening of rules such as on anti-dumping and sustainable development.
- (c) The BDRT also encourages Japan and the EU to deliver meaningful contributions to the “capacity-building” activities under way to help developing countries participate more effectively in the WTO decision-making process.
- (d) The BDRT also encourages the Government of Japan and the EU to fight against protectionist measures (measures allowing abuse of safeguard clause, increases of agricultural subsidies, and so forth) by strengthening the multilateral principles of openness and non-discrimination.

### **(2) State of measures taken thus far**

- (a) To respond to the progress of globalization, Japan is tackling new tasks, such as the establishment of multilateral investment rules. Further, Japan is fully aware that New Round negotiations will not go ahead without taking into account needs of developing countries. To conclude the New Round negotiations within the negotiation timeframe, therefore, the GOJ is positively dealing with development issues, such as implementation issues, S&D, and TRIPS and public health.
- (b) Japan is actively grappling with Singapore issues - investment, competition, trade facilitation and transparency of government procurements - negotiations on rules on such as AD and development issues.
- (c) Last year, Japan contributed, through multilateral frameworks, 1.5 million Swiss

francs (about \$900,000) to the WTO Global Trust Fund for technical assistance. Regarding bilateral frameworks, on the other hand, Japan is implementing the initiative to foster trade-related personnel, according to JICA-AOTS (4,500 trainees for 5 years). Moreover, it arranged for holding of seminars on the new issues, jointly conducted by JICA and the WTO, in Geneva on Dec. 1~2, 2002. As regional frameworks, Japan is holding seminars, on WTO agreements in developing economies in APEC, according to the "Strategic APEC Plan." It has also contributed an amount of \$500,000 as support for LDC.

- (d) Following China's accession into the WTO, a transitional review mechanism was started as a process to review the implementation of the China's commitments under the protocol on the accession, including its commitments regarding intellectual property rights. Japan is striving to ensure China's implementation of its WTO-related commitment by positively participating in this transitional review mechanism.
- (e) Japan is trying to reinforce the multilateral principles of openness and non-discrimination. As to the spread of safeguards in the sector of steel, Japan is deeply concerned, and regarding the related U.S. measures, Japan has been claiming under the WTO dispute settlement procedure, that the US measures violate the WTO agreement and therefore should be withdrawn, while requesting self-restraint on the part of other countries. As for agricultural negotiations, Japan is positively conducting negotiations, with "continuity" with the UR agreements, "flexibility" for allowing the co-existence of different types of agriculture and "balance" among exporter/importer countries and three fields (market access, domestic support and export competition) as keywords, under the mandate of the Doha Ministerial Declaration. Concerning tariff rates and domestic support, Japan is arguing for adoption of the UR formulas, as it considers that the Swiss formula or other forms of radical harmonization, calling for lowering all tariffs below a fixed standard and universal domestic support reduction, will give a fatal blow to the agriculture of many Asian countries, including Japan. The GOJ has been conducting negotiations according to the views that it is important to negotiate according to realistic rules, and that flexible rules should be established in accordance with the fundamental thought that a wide variety of agriculture can coexist. To proceed with agricultural reform in various countries, while giving consideration to sensitive items, the GOJ considers it appropriate to adopt the UR formulas regarding reduction of tariff and domestic support.



(3) Future outlook

- (a) The GOJ will continue to actively engage in developing new rules responding to globalization or development issues, and through this, strive to produce results and successfully conclude the New Round negotiations by the deadline.
- (b) The GOJ will strive to realize the smooth start of negotiations on Singapore issues at the Fifth Ministerial Conference, scheduled to be held in Cancun in September 2003. As for AD, the GOJ would like to initiate the work towards amending of the AD Agreement prior to the Fifth Ministerial Conference, and at the Ministerial Conference, promoting the work should be confirmed by the ministers. Concerning development issues, the GOJ will also tackle them positively, so that specific results can be accomplished through the current New Round negotiations.
- (c) In the WTO, Japan intends to push for steady implementation of the “Technical Assistance Plan” follow-up of pledges to GTF and the like, in cooperation with other members and international organizations. As for bilateral framework activities, the GOJ held an investment seminar, according to close cooperation with the Shanghai WTO Affairs Consultation Center and MOFTEC, at the end of January, and an investment/competition seminar (the third country training scheme of JICA), designed for African members of the WTO, in Egypt, on Feb. 1 ~ 5. As to regional frameworks, it is scheduled to hold investment seminars in China and Thailand, according to the TILF Fund of APEC (on April 15-16, for China). In this way, Japan will actively promote capacity-building in the future.
- (d) The transitional review will take place in each year for 8 years from 2002. Thereafter there will be a final review in year 10. Japan will actively participate in this process hereafter, trying to ensure China’s implementation of its commitments under the WTO agreements.
- (e) Japan will continue to fight against protectionist measures, such as the abuse of safeguards and increases of agricultural subsidies, in the future. Concerning agricultural negotiations, aiming to establish modalities at the end of March, efforts will be made, centered on Japan and the EU, in the future, to establish realistic and comprehensive modalities agreeable to all members.

(End)