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**Japan's Approach for Improvement Investor-State
Relations As a Tool to Promote Further Direct
Investment and to Prevent Disputes**

Submitted by: Japan



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Japan's Approach for Improvement Investor - State relations

-as a tool to promote further direct investment and to prevent disputes-

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 PREVENTION AND PREPAREDNESS
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1. Japan's Outward and Inward FDI and IIA

Japanese Investment stock (2008)

- FDI from Japan : 680 Billions of dollars
- FDI to Japan : 203 Billions of dollars

Source: UNCTAD, World Investment Report 2009

IIAs concluded by Japan - 24

BITs

1	Egypt	1978/01	date of effect
2	Sri Lanka	1982/08	date of effect
3	China	1989/03	date of effect
4	Turkey	1993/03	date of effect
5	Hong Kong	1997/06	date of effect
6	Pakistan	2002/05	date of effect
7	Bangladesh	1999/08	date of effect
8	Russia	2000/05	date of effect
9	Mongolia	2002/03	date of effect
10	Korea	2003/01	date of effect
11	Vietnam	2004/12	date of effect
12	Cambodia	2008/07	date of effect
13	Laos	2008/08	date of effect
14	Uzbekistan	2009/09	date of effect
15	Peru	2009/12	date of effect

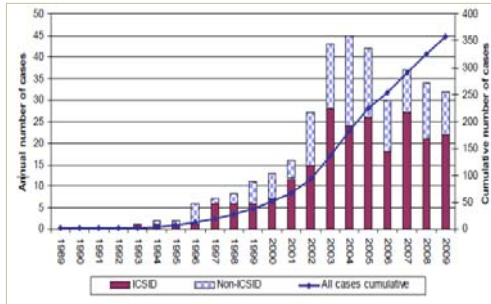
EPAs (Investment Chapters)

1	Singapore	2002/11	date of effect
2	Mexico	2005/4	date of effect
3	Malaysia	2006/7	date of effect
4	Philippine	2008/12	date of effect
5	Chile	2007/9	date of effect
6	Thailand	2007/11	date of effect
7	Brunei	2008/7	date of effect
8	Indonesia	2008/7	date of effect
9	Switzerland	2009/9	date of effect

2. Increase in number of dispute settlements cases

Although numbers of cases have been increased rapidly, respondents tend to be developing countries and NAFTA countries.

**Known investment treaty arbitrations
(cumulative and newly instituted cases), 1989–2009**



source: UNCTAD
Latest Developments in investor-state dispute settlement IIA ISSUES NOTE No.1 (2010)
http://www.unctad.org/en/docs/webdiaeia20103_en.pdf

**Number of cases by country
(up to December 2009)**

Respondent Country	Cases
Argentina	51
Mexico	19
Czech Republic	16
Ecuador	15
Canada	14
Ukraine	14
United States	14
Venezuela, Bolivarian Republic of	11
Egypt	10
Poland	10
India	9
Kazakhstan	8
Russian Federation	8
-	-
Japan	0

source: UNCTAD

3. Japan's Rare Utilization of the ISDS

As a respondent : none

As a claimant : none under Japanese IIAs (but only one case by third Country IIA)

Only one case involving a Japanese-affiliated company

→ Saluka vs. Czech Republic (UNCITRAL rules; Czech-Netherlands BIT)
* Saluka was a Netherlands-based subsidiary of Nomura.

Why so less ISDS are utilized ?

• • • • Unknown

Hypothesis

- Relatively new history of negotiations of IIAs?
- interest in continuing business?
 - ✓ Much investment in manufacturing, services such as retail and distribution
 - ✓ Rather than governmental contract based business in energy and public services or one-shot project based business like infrastructure construction
- preference to amicable methods (less exposure to law-suits)?
- however, ISDS is regarded as last resort and fundamental condition for investments.

4. How does Japan prevent investment disputes ?

To promote further inward direct investment and to prevent disputes, Japan has introduced several tools:

- The Office of INVEST JAPAN
 - Prior Clearance Procedures for application of laws and ordinances by administrative organs
 - Public Comment Procedure
- etc

In addition

Japan has established a regular consultation and dialogue mechanism in its EPA(FTA)s , BITs and other frameworks with some of its counterparts.

Japan’s experience shows that having such a dialogue mechanism could also help to prevent investment disputes .

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5. What is the Investor’s View ?

Most of the requests by Japanese companies for “**Improvement of the Business Environment**” in APEC economies are about facilitation of the investment, namely making the investment activities smoother, such as improving complexity and delay of administrative procedures, in addition to requests about liberalization of the investment.
Investors also have strong interest in **transparency of legislations and administrative procedures**.

Requests for “Improvement of the Business Environment” in APEC economies

Liberalization of investment	Facilitation of investment
Restrictions on entry of foreign capitals	Indigested legislation, abrupt changes
Performance requirements	Inefficient administrative procedures, regimes and practices
Restriction on profits remittance abroad /Exchange controls	Overly protective labor act
Restrictions on movement of natural persons /Requirement to employ persons	Implementation of intellectual property rights
	Price controls/Monopoly etc
	Inadequacy of infrastructure/Lack of incentives for foreign investment

REFERENCES :
Japan Business Council for Trade and Investment Facilitation
-- Issues and Requests relating to Foreign Trade and Investment in 2008 --
http://www.jmcti.org/mondai/top_e.html

6. What is the ideal situation for Investors and host Country ?

Investor and host Country's perspective for ideal situation

- To contribute to or benefit from each other
- Long term business activities (relationship)

(No one wants to be got involved in dispute from the beginning)



Regular and Continues Dialog between Investors and Host Country

- ✓ Creating Win-Win situation by building up trustful relationship (confidence building) between the Investors and host Country



Voluntary and Agreed Actions

- Improvement of business environment
- Solving problems



Preventing disputes!

Home
Country's
support

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7. Basic Concept of Consultation Mechanism

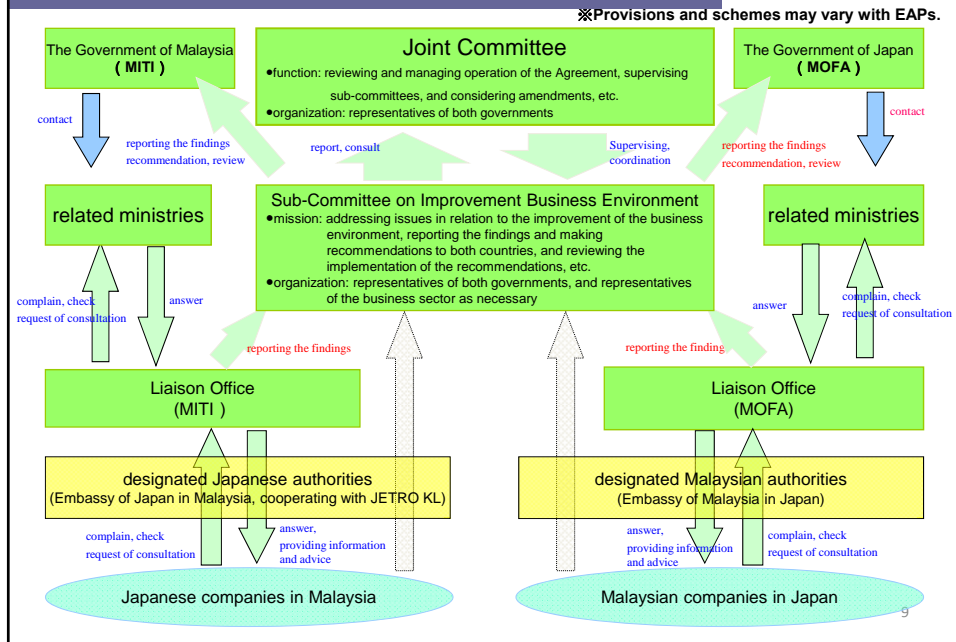
The "Improvement of the Business Environment" Chapter / Article sets up a committee to allow industry and Governments to work together to improve the business environment under the EPA/BIT.

- ✓ Invited industries can discuss directly with the high rank officials of host Country with the help of home Country
- ✓ Basically no limitation in the discussion agenda
(Improvement of the infrastructure, simplification and facilitation of administrative procedures, improvement of public safety and protection of IPRs, etc.)

Committees on Improvement of the Business Environment are established under the following EPAs[Mexico (into effect in April 2005), Malaysia (July 2006), Chile (September 2007), Thailand (November 2007), Indonesia (July 2008), Brunei (July 2008) ,the Philippines (December 2008)] and a BIT[Peru (into effect December 2009)].

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8. Basic Frameworks of "Improvement of the Business Environment" Chapter e.g. Japan-Malaysia EPA



9. Results of business environment improvement in Mexico and Malaysia

Japan has held the Committee with many EPA partners continually.	
<p>Japan-Mexico EPA The Committee held in April 2005, May 2006, May 2007 and September 2008</p>	<p>Japan-Malaysia EPA The Sub-Committee held in March and October 2007, December 2008 and November 2009</p>
<p>Main Participants GOJ (MOFA, METI, Embassy of Japan in Mexico), JETRO Mexico Center, Nippon Keidanren (Japan-Mexico Economic Committee), The Japan Chamber of Commerce and Industry in Mexico, Japan Maquiladora Association, Government of Mexico (Ministry of Economy), etc.</p>	<p>Main Participants GOJ (MOFA, METI, Embassy of Japan in Malaysia), JETRO KL Center, The Japanese Chamber of Commerce and Industry in Malaysia, JAMECA, Government of Malaysia (MITI), etc.</p>
<p>Requests from Japan side</p> <ul style="list-style-type: none"> ➢ Improvement of public safety → Damage decreased by opening a hotline connecting with the related ministry. ➢ Anti-counterfeit. Standards and Conformity → Opening a hotline connecting with IMPI ➢ Improvement of tourism → Introducing custom declaration cards for travelers in Japanese ➢ Improvement of customs and taxation procedure → Opening a hotline connecting with the central customs, considering Japanese enterprises when amending customs procedure ➢ Infrastructure improvement 	<p>Requests from Japan side</p> <ul style="list-style-type: none"> ➢ Improvement of quality of electricity → Budgeting for infrastructure improvement ➢ Improvement of shortage of gas supply → Starting consideration in the government ➢ Improvement of public safety (truck hijack prevention) → Strengthening patrol and setting monitoring cameras, etc. ➢ Anti-counterfeit
<p>Requests from Mexico side</p> <ul style="list-style-type: none"> ➢ Improvement of import procedure of agricultural products ➢ Support for SME ➢ Entering service of nonstop flights* 	<p>Requests from Malaysia side</p> <ul style="list-style-type: none"> ➢ Information provision relating industrial standards ➢ Implementation of EPA (confirmation of ROO etc.)
<p>* Aero México started services between Narita and Mexico City in November 2006. 10</p>	

10. Evaluation by Stakeholders

Host country ... Generally welcome

Knowing investor/ investors' priority

- ✓ Gaining the understanding of investors on host Country's efforts
 - ➔ Keeping good communications with investors
 - ➔ Attracting further (future) investments

Investors... Generally satisfied

Industries can raise issues collectively, when individual companies may not be inclined to raise the issue on its own

- ✓ Creating a good relationship with high rank officials
 - ➔ Keeping good communications with host Country
 - ➔ Planning further (future) investments

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11. Factors for Success of such Mechanism

Factors for Success of such Mechanism

● Structure/Operation

- ✓ Involvement of high rank officials
- ✓ Power of the coordinating agency
- ✓ Choice of issues (Prioritizing common interests)

● Other Factors

- ✓ Influence of investments
(Existence of expectation of host Country)
- ✓ Attitude of investors
(Wish to contribute to the economic development of host Country)
- ✓ Development assistance
- ✓ Good bilateral relationship

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12. "Stage by Stage Approach" and Concluding remarks

"Stage by Stage Approach"

There are three stages of the investor-state relation and investment environment:

- Peace time period
- Early period
- Disputed period

	Peace time period : voluntary improvement	Early period: prevention of the disputes	Disputed period: preparedness for the disputes
Government	Capacity Building (Bilateral, Multilateral, APEC)	Communication by Embassy, bilaterally	
	Internal Checking by Authorities		Arbitration (ISDS), Mediation
	Committee on Improvement of Business Environment		
Investor	Observance of the CSR, or Codes of Conduct on Multinational Corporation	Lobbying activities, cooperation between private sector groups	