

Chapter 5

Regulatory/Systemic Reforms for Maintaining/Enhancing Competitiveness: The Importance of Developing a Multi-tiered Strategy

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Policy recommendations of this chapter

1) The TPP should constitute the core of a strategy for regulatory/systemic reform. Japan should aim to achieve broad-based and highly effective regulatory/systemic reforms through the TPP and to develop the regulatory/systemic reforms incorporated in the TPP into the de facto global standards in the future by expanding the community of countries participating in the TPP and by referencing the TPP in all FTA negotiations with other countries/regions.

2) Japan must exercise leadership in endeavoring to achieve international regulatory/systemic harmonization and standardization via the WTO and other multilateral forums. This will require, however, that Japan's regulatory/systemic experiences as well as those of East Asian countries, which learned many lessons from Japan's experiences to achieve their own economic growth, be carefully considered, theorized and then presented as feasible regulatory/systemic models for other countries as well.

3) Alongside the measures referred to in 1 and 2 above, Japan must pursue regulatory/systemic reform on its own as well in parallel cooperation with other key economies in developing and implementing a strategy for multi-tiered regulatory/systemic reform.

Introduction

What measures should be taken to maintain and enhance the economic power and competitiveness of Japan in the increasingly challenging internal and external environment surrounding the country? This chapter argues that domestic regulatory/systemic reforms are indispensable in order to maintain and enhance Japan's economic power and competitiveness. This chapter further argues that for the steady promotion of regulatory/systemic reforms, Japan's

independent efforts to improve its regulatory/systemic framework alone is insufficient and a multi-tiered strategy for regulatory/systemic reforms is required that encompasses, among others, bilateral talks on regulatory/systemic reforms with major powers, regulatory/systemic reforms through bilateral and regional free trade agreements such as Economic Partnership Agreements (EPAs) and the Trans-Pacific Strategic Economic Partnership Agreement (TPP), and the achievement of international regulatory/systemic harmonization and the acquisition of international standards through multilateral forums in individual regulatory areas.

There is a consensus in public economics that in order to foster market competition and revitalize the economy, regulatory/systemic reforms that promote deregulation and the increasingly limited scope of government intervention in the market with an appropriate safety net are effective. Japan and other major developed countries alike have actually been implementing broad-based regulatory/systemic reforms since early 1980's. However, with the advancement of globalization, the international environment of regulatory/systemic reforms today has significantly changed. With the increasingly reduced room for unilateral implementation of regulatory/systemic reforms by individual countries, it is now considered critical to promote international regulatory/systemic harmonization in a multi-tiered manner through the effective use of bilateral, regional, or multilateral forums and ensure global dissemination of regulatory/systemic frameworks that are favorable to one's own country as international standards.¹

Today, it is the U.S. and Europe that lead the movement toward international regulatory/systemic harmonization and the establishment of international standards that is underway in a broad spectrum of regulatory areas.² The most important reason why the U.S. and Europe have been able to take a leadership role in the movement toward international regulatory/systemic harmonization and the establishment of international standards is that these countries have the largest and strongest economic power in today's increasingly global economy combined with their dominant position as a source of international standards and best practice in the regulatory and systemic areas (i.e., "soft power"). In 19th century Europe, there were multiple empires that had colonies all over the world. The U.K. in particular had overwhelming national power during the period from the late 19th century to the early 20th century. The U.S. rose to supremacy during the period of peace after the First World War and held sway over the world economy following the Second World War. It has maintained the position as the world's largest economy to today. In addition, these countries undertook regulatory/systemic reforms before the

rest of the world and disseminated the reform results internationally, thereby making earnest efforts toward regulatory and systemic harmonization on a global scale and the acquisition of international standards. In particular, Europe, with an increasing sense of danger and feelings of rivalry toward U.S. economic supremacy during the process of its own economic integration, has promoted regulatory and systemic harmonization within the European region and strived to reflect the results of such harmonization in the ongoing movement toward global regulatory and systemic harmonization and the establishment of international standards.

Japan compares unfavorably with the U.S. and Europe in terms of both economic power and the ability to disseminate international standards or international best practice with respect to regulatory/systemic areas. Although Japan is currently the world's third largest economic power, it was only during the 1970's that Japan achieved rapid economic growth and joined the ranks of the major economies, once having been defeated in WWII and stripped of all its colonies. By that time, many of the international forums aimed at regulatory and systemic harmonization on a global scale and the establishment of international standards had already been established, and Japan was a latecomer to them. From then until today, Japan has focused on catching up with, rather than taking the leadership role in, such movement toward international harmonization and the establishment of international standards in the area of regulatory/systemic reforms.

In order to maintain and enhance its economic power and competitiveness in the world today, Japan needs to grow out of such a position and, along with the U.S. and Europe, take a leadership role in the global movement toward international harmonization and standardization of regulations. Based on this awareness, this chapter argues that Japan needs to develop and implement a multi-tiered strategy for regulatory/systemic reforms and explores specific measures to do so. This chapter consists of three sections. Section 1 reviews the historical development of regulatory/systemic reforms in Japan and observes how the international context of regulatory/systemic reforms today is vastly different from that in the past. Section 2, after systematically discussing the measures that should be taken to address the political challenge of trade/investment liberalization and expansion, which is particularly important for the maintenance and enhancement of the economic power and competitiveness of Japan, clarifies how the efforts to realize such trade/investment liberalization and expansion often involve regulatory/systemic reforms in Japan as well as in its investee countries and trade partners and how, to that end, Japan needs to deploy regulatory/systemic reform efforts in a multi-tiered manner by combining

unilateral regulatory/systemic reforms with regulatory/systemic reforms pursued through bilateral, regional, and multilateral agreements. Section 3 discusses the merits and limitations of regulatory/systemic reforms pursued through the Trans-Pacific Strategic Economic Partnership Agreement (TPP), which at present has the biggest strategic importance for Japan as a means to promote regulatory/systemic reforms. Lastly, this chapter concludes by summarizing the conclusions of this chapter and shedding light on future challenges.

1. Historical development and the international context of regulatory/systemic reforms

(1) Historical development of regulatory/systemic reforms

The current Democratic Party of Japan (DPJ) administration also recognizes the importance of regulatory/systemic reforms in the maintenance and enhancement of Japanese economic power and competitiveness. The “Basic Policy on Comprehensive Economic Partnerships” adopted pursuant to the Cabinet decision on November 9, 2010 under the Kan administration stated that “while opening up the country and importing the best management resources in order to enhance its potential for growth, the Government of Japan, with a view to achieving active economic partnerships and eliminating non-tariff barriers, will decide on a concrete plan (on regulatory/systemic reforms [note added by the author])... through the Government Revitalization Unit.”³ The “Strategy for Rebirth of Japan” compiled by the Noda administration on December 24, 2011 also supported the promotion of regulatory/systemic reforms in multiple sections such as those on the redesigning of energy/environmental policies⁴ and on the improvement of productivity in the service industry and the creation of new industries/markets in response, among others, to the declining birthrate and aging population.⁵ Regulatory/systemic reform efforts are currently being made under the leadership of the subcommittee of the Government Revitalization Unit, a unit of the Cabinet Office, on regulatory/systemic reforms.⁶

Since the establishment of the Second Ad Hoc Research Committee on Administrative Reform (“*Daini Rincho*” chaired by Toshio Doko) in 1981 under Prime Minister Zenko Suzuki’s administration, Japan has already been working on regulatory/systemic reforms for three decades.⁷ Regulatory/systemic reforms in this period, as part of administrative and public finance reforms aimed at the reconstruction of public finances, were centered around the privatization of inefficient public sector businesses such as the privatization of Nippon Telegraph and Telephone Public Corporation (1985) and Japan National Railways (1987)⁸. In 1995, a deregulation subcommittee

(chaired by Yoshihiko Miyauchi) was formed under the Administrative Reform Committee of the Government to broadly discuss regulatory/systemic reforms (deregulation) aimed at reducing government intervention in the market through regulations. The body to promote regulatory/systemic reforms has since continued to exist in various names and organizations,⁹ leading to the current subcommittee on regulatory/systemic reforms within the Government Revitalization Unit, which assumed that function in 2010. During this period, the results of the Government's regulatory/systemic reform efforts have been documented as regulatory/systemic reform promotion plans and implemented in phases for each successive three-year planning period.¹⁰

Looking back the progress of regulatory/systemic reforms in Japan since the early 1980's, as already mentioned, the initial reform efforts were focused on the privatization of public sector businesses, which had significant implications as a measure to reconstruct public finances. However, the reform priority was gradually shifted to the full revision and elimination/deregulation of government regulations that prevented competition in the market. The "Implementation Policies for Regulatory/Systemic Reforms" (June 2010), which is the latest regulatory/systemic reform plan, set forth 61 reform items in total, which are categorized into four areas: green innovation, life innovation, agriculture, and other. Most government agencies are subject to these reforms.¹¹

(2) The international context of regulatory/systemic reforms

A characteristic feature of the international context of regulatory/systemic reforms today is that it has significantly changed from that of the past.

It is not quite accurate to view Japan as having promoted regulatory/systemic reforms independently based on internal motives even in the early 1980's when Japan started to undertake such reforms for the first time on a full scale. Japan has been promoting regulatory/systemic reforms by referencing the experience of various foreign countries, particularly the U.S.¹² Amid the intensifying trade friction and investment friction, Japan had been incessantly requested by the U.S., Europe, and others to open its market since the late 1980's. One aspect of regulatory/systemic reforms in Japan was that they were promoted as a response to such foreign pressure.

The first example of regulatory/systemic reforms as part of a response to foreign pressure was the Structural Impediments Initiative (SII) talks held during the period from 1989 to 1990. These

talks were held to address and improve the structural issues of both Japan and the U.S. underlying the current account and trade imbalances between the two countries. The requests for improvement made by the U.S. through these talks included measures that led to regulatory and systemic reforms in Japan, such as reform of the distribution system, regulation on exclusive trade practice, and reconsideration of intragroup transactions. Based on the results of these talks, Japan implemented various regulatory/systemic reforms including the amendment of the Act on the Adjustment of Business Activities of Retail Business at Large-scale Retail Stores and the more effective enforcement of the Anti-monopoly Act.¹³ After the SII talks, Japan and the U.S. continued bilateral talks whose main themes included regulatory/systemic reforms. In particular, from 1997 to today, Japan-U.S economic talks have been held under names that highlight regulatory/systemic reform topics such as deregulation, regulatory reform and economic harmonization (U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy (1997-2001), U.S.-Japan Regulatory Reform and Competition Policy Initiative (2001-2009), and U.S.-Japan Economic Harmonization Initiative (2010-)). Japan has also continued to have talks with the EU on regulatory/systemic reforms toward trade and investment liberalization and/or facilitation since 1994 under the name of Japan-EU Regulatory Reform Dialogue.¹⁴ As outlined above, the international context of regulatory/systemic reforms in Japan until recently can be characterized by (1) regulatory/systemic reforms undertaken by referencing and imitating regulatory/systemic reforms in foreign countries, particularly in the U.S. (unilateral referencing and imitation) and (2) regulatory/systemic reforms through regular talks with the U.S. and Europe (response to foreign pressure between two countries).¹⁵

The current international context of regulatory/systemic reforms is significantly different from that in the past in the following three aspects. First, as globalization advances, the activity of companies has extended freely across national boundaries. Companies now determine the optimal location for their activity (e.g., production location, source of procurement of raw materials/parts, and market) in consideration of regulatory and systemic differences by country. The era has arrived in which companies choose countries.¹⁶ Regulatory authorities of each country have started to work on regulatory/systemic reforms that provide regulatory/systemic environments that are more favorable to companies than other countries in order to attract foreign companies to and to keep domestic companies in the domestic market (regulatory competition).¹⁷ Second, for fear of such regulatory competition leading to a regulatory race to the bottom, countries started to work on the achievement of international regulatory and systemic harmonization more earnestly than ever

before by coordinating the content and the pace of regulatory/systemic reforms through multilateral forums, the most important of which is the OECD. The OECD started to conduct research and studies on regulatory reform in the mid-1990's. In the latter half of 1990's, it conducted extensive research on regulatory reforms in various countries around the world and compiled and published the research results as regulatory reform best practices that are relevant in various regulatory areas and topics.¹⁸ Furthermore, the OECD has been conducting research and evaluations on regulatory reforms in its member countries since the late 1990's, the results of which have been published one after another.¹⁹ Although the OECD's evaluation on regulatory reform in itself does not have any binding power, it works as a pressure on the member nations toward gradual convergence of their regulations and systems to the best practice as it is supported by a broad research and studies on regulatory reform and is based on the best practices of regulatory reform. In addition, since the mid-1990's, the activities of multilateral forums oriented toward international regulatory and systemic harmonization have been gaining momentum. In particular, the WTO established in 1995 not only established international agreements oriented toward international regulatory and systemic harmonization directly related to international trade such as those on rules of origin (Agreement on Rules of Origin) and dumping regulations (Anti-Dumping Agreement), but also established international agreements on international harmonization of intellectual property rights (TRIPS Agreement) and food sanitation/safety standards (SPS Agreement), fostering the significant development of international regulatory and systemic harmonization in these areas.²⁰

The third important change that characterizes the international context of regulatory/systemic reforms today is the rising movement toward international regulatory and systemic harmonization through bilateral or regional free trade agreements (FTAs) or Economic Partnership Agreements (EPAs). The movement toward concluding FTAs/EPAs gained momentum in the late 1990's. The underlying factor was that by that time, the WTO was practically dysfunctional as a forum for international regulatory and systemic harmonization. The GATT, which is the predecessor of the WTO, was a club-type international organization that strongly reflected the intentions of major trading countries.²¹ However, under the WTO system, it was difficult for a few major trading countries to take the initiative in the decision-making process as the number of member nations increased. This is clearly indicated by the recent collapse of the Doha talks 10 years after their inception in 2001. In combination with the failed efforts of the major developed countries to expand the agendas of the Doha talks to include new areas such as competition and investment,²²

the major developed countries, particularly the U.S. and Europe, shifted the focus of their trade policy to international regulatory and systemic harmonization through FTAs and EPAs in the late 1990's. Notifications to the WTO indicate that the number of regional trade agreements (FTAs, EPAs and customs unions) increased from only 27 in 1990 to 511 as of January 15, 2012.²³ Japan has also entered into 13 EPAs so far starting from the EPA with Singapore signed in January 2002.²⁴ In addition, EPA negotiations with South Korea, the Gulf Cooperation Council (GCC), and Australia are currently underway and a Japan-China-South Korea EPA and a Japan-EU EPA are undergoing discussions toward the commencement of negotiations. In February 2012, preliminary talks started toward participation in the Trans-Pacific Strategic Economic Partnership Agreement (TPP) negotiations.

FTAs and EPAs cover not only the liberalization of trade (products and services) between the parties to the agreement, but also the liberalization of the government procurement and investment markets. They also cover regulatory and systemic harmonization at levels that are higher than those under the WTO framework in the areas that are not governed by WTO orders in addition to those governed by these orders. For example, they include such areas as trade facilitation, intellectual property rights, e-commerce, investment protection, competition law/policy, labor, and the environment.

In this way, the international context of regulatory/systemic reforms in Japan today has become more complex and multi-dimensional than before. In addition to regulatory/systemic reforms through traditional channels such as (1) unilateral imitation or referencing and (2) response to foreign pressure between two countries, regulatory/systemic reforms are currently promoted in a multi-tiered manner, in consideration of (3) the intentions of both domestic and foreign companies, through (4) multilateral or (5) bilateral and regional forums.

2. Regulatory/systemic reforms aimed at trade and investment liberalization and expansion

What regulatory/systemic reforms are needed for Japan to maintain and enhance its economic power and competitiveness? This study report is based on four pillars: (1) securing labor resources and youth employment, (2) liberalizing trade and expanding domestic investment, (3) harmonizing regulations and establishing R&D systems for international standards, and (4) human resources development for Japan's international competitiveness, and is aimed at clarifying necessary measures for each of these policy objectives. However, (3) above, which is the topic of this chapter,

is considered to be a means of achieving the other three policy objectives rather than an independent policy objective in itself. This is because many of the measures to be taken by the government to achieve any of these policy objectives are implemented through regulatory/systemic reforms²⁵ and various measures to achieve these policy objectives are often overlapping and complementary to each other. Therefore, this chapter focuses on the policy objective (2) liberalizing trade and expanding domestic investment in particular and discusses regulatory/systemic reforms necessary to achieve it. If such regulatory/systemic reforms are also effective in achieving the other policy objectives ((1) and (4) above), this will be pointed out in each case.

Then, what regulatory/systemic reforms are necessary for promoting trade liberalization and domestic investment expansion? In the rest of this section, measures for trade liberalization and domestic investment expansion in an era in which companies choose their markets are classified into (1) measures to support the expansion of Japanese companies into overseas markets, (2) measures to maintain and enhance the locational competitiveness of domestic Japanese companies and (3) measures to promote investment in Japan by foreign companies, based on the combination of companies choosing markets (Japanese companies and foreign companies) and the markets being chosen (overseas markets and Japanese markets), and necessary regulatory/systemic reforms are discussed separately for each category.

(1) Measures to support the expansion of Japanese companies into overseas markets

Measures to support the expansion of Japanese companies into overseas markets are generally classified into three groups: (1) securing investment access to overseas markets by Japanese companies, (2) improvement of the investment environment in overseas markets for Japanese companies, and (3) resolution of taxation and pension issues associated with overseas expansion by Japanese companies. What measures are included each group? Which among these measures can be implemented through regulatory/systemic reforms in overseas markets and in Japan? What forums are appropriate for promoting them?

(a) Securing investment access to overseas markets by Japanese companies

Measures necessary for securing investment access to overseas markets by Japanese companies include (1) relaxation or elimination of investment restrictions in overseas markets and (2) opening up of the overseas government procurement markets.

The most effective measure to realize relaxation or elimination of investment restrictions in overseas markets is to conclude bilateral investment treaties (BITs) or EPAs with major investee countries and to hold them responsible for relaxation or elimination of investment restrictions as an obligation under the international agreement. The number of BITs is rapidly increasing as developing countries and countries with economies in transition are taking increasingly aggressive policies for attracting foreign investment capital.²⁶ BITs generally include provisions for investor protection after investment is made (national treatment, most-favored-nation treatment, expropriation and compensation, dispute settlement through investor state arbitration,²⁷ etc.) (investment protection agreement). Recently concluded BITs often provide for national treatment not only after investment is made, but also at the stage of investment approval. National treatment at the stage of investment approval is particularly effective for relaxation or elimination of investment restrictions as it means the liberalization of investment in the relevant sector (investment protection/liberalization agreement).²⁸ Japan has so far entered into 15 BITs, of which 6 BITs concluded in or after 2002 are investment protection liberalization agreements.²⁹ In addition, most of the EPAs concluded by Japan include in their investment chapters the same provisions as investment protection liberalization agreements.³⁰

The government procurement market (purchase of goods and services by government agencies), which is said to account for 10 to 15% of GDP, is a promising investment target for Japanese companies, but countries often impose various restrictions on foreign companies' entry to the government procurement market for the protection of domestic industries and other reasons. The WTO Agreement on Government Procurement (GPA) permits foreign companies to enter into government procurement markets whose scale exceeds a certain amount and encourages the parties to the agreement to open up the government procurement market by increasing the transparency of government procurement (introduction of an open bidding system, disclosure of bidding information, etc.).³¹ However, the parties to the WTO Agreement on Government Procurement are only 15 countries/regions including Japan, the EU, and the U.S. Therefore, in order to secure

investment access to the government procurement markets of other countries by Japanese companies, Japan can only negotiate opening up of these markets through bilateral or regional EPAs. Japan entered into an EPA with Mexico in which Mexico promised to open up its government procurement market. However, the current EPAs with other countries/regions merely provide for exchange of information on government procurement and future negotiation for opening up the government procurement market due to strong opposition of the other party to the agreement to the opening up of such a market.³²

Within the government procurement market, infrastructure improvement is one of the areas expected to grow rapidly in the future, particularly in the emerging economies of Asia. For the promotion of Japanese companies' entry into this market, aggressive support by the government through such means as summit diplomacy, information gathering, and loans and guarantees provided by government-affiliated financial institutions is effective. Under the "New Growth Strategy" approved by the Cabinet in June 2010 that identified the packaged promotion of overseas expansion of infrastructure-related industries as a national project, the Japanese government is currently working on the creation of a system for such promotion through public-private collaboration.³³

(b) Improvement of the investment environment in overseas markets for Japanese companies

Measures necessary for the improvement of the investment environment in overseas markets for Japanese companies include those related to the improvement of the business environment of investee countries such as the improvement of regulations and systems of investee countries and the application and administration thereof. More specifically, they include (1) improvement of the legal system that is fundamental to business activities (e.g., accounting system, companies law, contract law, and bankruptcy law), (2) prohibition of performance requirements,³⁴ (3) lower customs duties imposed by the investee country, (4) trade facilitation in the investee country (e.g., simplification and digitization of the customs procedure and increased transparency of the customs procedure), (5) facilitation of the acquisition or renewal of a working visa by Japanese employees, (6) international harmonization and increased transparency of the standards/authentication system of the investee country, (7) restriction on government intervention in technology transfer agreements, (8) increased protection of intellectual property rights in the investee country (including improved enforcement), (9) fair enforcement of the competition law in the investee

country (in particular, more effective enforcement with regards to the state enterprises of the investee country), (10) guarantee of free transfer of funds in and out of the investee country (including transfer of profit out of the investee country), and (11) guarantee of an appropriate settlement procedure for disputes with the investee country (e.g., investor-state arbitration).

The most important means for Japan to promote the measures listed above is to include these matters in the investment chapter of a BIT or EPA with the investee country and to hold the investee country responsible for the compliance with them as an obligation under the international agreement. Most of the investment chapter of the BITs and EPAs concluded by Japan include provisions concerning (2) through (11) above, thereby striving to improve the business environment in the investee countries for Japanese companies, although the specific content of the agreement differs slightly from one agreement to another. In addition, many of the EPAs concluded by Japan include a chapter on the improvement of the business environment, which proscribes the establishment of a formal opportunity for discussion toward the improvement of the business environment (subcommittee on the improvement of the business environment), thereby striving to include in the agenda and resolve certain types of issues such as those that are faced by Japanese companies, those that are difficult to be proposed as a discussion agenda by any single company, and those that are relevant to the industry as a whole.³⁵ Among the measures listed above, (1) improvement of the legal system that is fundamental to business activities is an issue that is related to the legislative power of investee countries. As such, it is difficult to address this issue through BITs or EPAs. However, Japan is offering technical assistance to support the improvement of the fundamental legal system in certain investee countries that are countries with economies in transition such as Vietnam and Laos.³⁶

In addition, mutual recognition of the authentication system for industrial products of the investee country under a bilateral agreement can be used as a complementary measure for promoting (6) international harmonization and increased transparency of the standards/authentication system of the investee country (mutual recognition agreement). Japan concluded its first mutual recognition agreement with the EU in 2001 in four areas including telecommunications equipment (effective on January 1, 2002) and has subsequently concluded mutual recognition agreements with the U.S., Singapore, the Philippines, and Thailand (in the case of Singapore, the Philippines, and Thailand, a mutual recognition chapter is included in the EPA).³⁷

In order to improve the investment environment in overseas markets for Japanese companies, the effective use of multilateral agreements and multilateral forums is also important. In particular, the WTO has established many agreements that lead to the improvement of the investment environment in overseas markets. The TRIMs Agreement of the WTO addresses (2) prohibition of performance requirements, while the TRIPS Agreement provides for (7) restriction on government intervention in technology transfer agreements and (8) increased protection of intellectual property rights in the investee country (including improved enforcement). With regard to (6) international harmonization and increased transparency of the standards/authentication system of the investee country, detailed disciplines are prescribed in the SPS Agreement (covering food sanitation/safety standards) and the Agreement on Technical Barriers to Trade ("TBT Agreement," covering the standards/authentication system for industrial products other than those covered by the SPS Agreement). In addition, with regard to (4) trade facilitation in the investee country, detailed rules are prescribed in the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures (effective February 3, 2006) adopted by the World Customs Organization (WCO).³⁸ As for (9) fair enforcement of the competition law in the investee country, active efforts are being made toward the international convergence of the competition law and competition policy through the International Competition Network (ICN), which was established in October 2001 under the leadership of the U.S. and in which most countries in the world that have their own competition law/policy participated.³⁹

Lastly, regarding (6) international harmonization and increased transparency of the standards/authentication system of the investee country, it is important for Japan to make a positive approach through public-private collaboration to the relevant global forums (such as the International Organization for Standardization (ISO) and the Codex Committee on Food Hygiene) so that the standards made in Japan will be adopted as international standards. Japan established strategic objectives on international standardization in 2006 and started to create a system to strategically promote international standardization.⁴⁰

(c) Resolution of taxation and pension issues associated with overseas expansion by Japanese companies

Expansion into overseas markets by Japanese companies entails such issues as (1) international double taxation on income from a foreign operation or international tax evasion using tax havens or

transfer prices in intra-group transactions and (2) situations where employees who are assigned to a post in a foreign country for a long term may be forced to participate in pension plans in both Japan and the foreign country at the same time or may not be qualified to receive pension benefits when they retire due to the lack of the number of years of participation to either the Japanese pension plan or the pension plan of the foreign country or both. In order to resolve these issues, Japan needs to enter into international agreements with the relevant foreign countries to take necessary measures.

Countries generally address the problems of international double taxation and tax evasion by concluding bilateral tax treaties. Tax treaties take measures to prevent international double taxation, for example, by limiting the taxing power of the country of origin and by limiting the scope of the income that is taxable by the source country (the country in which income is generated) (the source country can impose taxes only on the business income generated from the activities of a foreign operation such as a foreign branch and tax rates applicable to investment income (dividend, income, and rent) is subject to certain upper limits). They also take measures to crack down on international tax evasion, for example, by providing for the exchange of taxpayer information (including bank secrecy) between the tax authorities of the parties to the treaty and by adjusting the transfer pricing taxation of the parties to the treaty (i.e., taxation based on fair transaction price rather than transfer price). As of October 31, 2011, Japan was a party to 52 tax treaties.⁴¹

Countries generally deal with the pension issues associated with overseas business expansion by entering into bilateral social security agreements. In order to avoid double payment burden of pension premiums, social security agreements provide that expatriate employees should be exempted from the participation in the pension plan of the foreign country to which they are dispatched if the period of domicile in that country is within a certain period. They also address the issue of insufficient years of participation in the pension plan by providing that, for expatriate employees, the number of years of participation in the pension plans of both the home country and the foreign country to which they are dispatched should be aggregated so that they will be qualified to receive pension benefits based on the aggregated number of years of participation either in the home country or in the foreign country. Japan has so far entered into social security agreements with 15 countries including the U.S. and South Korea and is currently under negotiation for the conclusion of such agreements with 8 countries including China and Australia.⁴²

Table 5-1 summarizes the measures to support Japanese companies' expansion into overseas markets and the means to implement them as discussed above in this section.

Table 5-1 Measures to support Japanese companies' expansion into overseas markets and means to implement them

Objective	Measure	Domestic measure*1	Bilateral agreement	Multilateral agreement
Securing investment access	Relaxation/elimination of investment restrictions	×	BIT, EPA investment chapter	WTO (GATS)
	Liberalization of the government procurement market	×	EPA government procurement chapter	WTO (GPA)
	Packaged promotion of overseas expansion of infrastructure-related industries	○*2	Nuclear agreement	×
Improvement of investment environment	Improvement of the legal system that is fundamental to business activities	×	Legal system improvement support	×
	Prohibition of performance requirements	×	BIT, EPA investment chapter	WTO (TRIMs)
	Lower customs duties imposed by the investee country	×	EPA bound tariff schedules	WTO bound tariff schedules
	Trade facilitation in the investee country	×	EPA trade facilitation chapter	WTO, WCO Revised Kyoto Convention
	Facilitation of the acquisition or renewal of a working visa by Japanese employees	×	EPA investment chapter, trade in services chapter	×
	<i>International harmonization and increased transparency of the standards/authentication system of the investee country</i>	○*3	EPA, mutual recognition agreement	WTO (TBT/SPS)

	Restriction on government intervention in technology transfer agreements	×	EPA intellectual property chapter	WTO (TRIPS)
	Increased protection of intellectual property rights in the investee country	×	EPA intellectual property chapter	WTO (TRIPS)
	Fair enforcement of the competition law in the investee country	×	EPA competition chapter	ICN
	Guarantee of free transfer of funds in and out of the investee country	×	EPA investment chapter	×
	Appropriate settlement procedure for disputes with the investee country	×	BIT, EPA investment chapter	×
	Improvement of the business environment of the investee country	×	EPA business environment improvement chapter	×
Taxation / pension	<i>Prevention of international double taxation on income from a foreign operation and measures against international tax evasion</i>	○*4	Tax treaty	×
	<i>Resolution of the issues of double participation in pension plans and insufficient years of participation</i>	○*5	Social security agreement	×

*1 Indicates measures to be taken by Japan in its domestic market and does not include measures to be taken by investee country in its domestic market.

*2 Strategy for packaged promotion of overseas expansion of infrastructure-related industries

*3 Strategic objectives on international standardization

*4 Measures under domestic tax laws to be taken in response to tax treaties

*5 Measures to be taken by Japan in its domestic market in response to social security agreements

(Source: Prepared by the author)

In Table 5-1 above, the items written in bold characters indicate those requiring regulatory/systemic reforms in the investee country and the items written in italic characters indicate those requiring regulatory/systemic reforms in Japan. The item written in bold italic characters, i.e., international harmonization and increased transparency of the standards/authentication system of the investee country, requires regulatory/systemic reforms in both Japan and its investee countries.

(2) Measures to maintain and enhance the locational competitiveness of domestic Japanese companies

The maintenance and enhancement of the locational competitiveness of the companies that choose to stay in Japan is a necessary measure to prevent the industrial infrastructure in Japan from hollowing out and to secure domestic employment. Measures necessary for achieving this objective are classified into four groups: (1) trade liberalization and facilitation, (2) regulatory and systemic improvements in export destination countries, (3) improvement of regulatory and systemic environments in overseas markets that are competitively disadvantageous to domestic Japanese companies, and (4) improvement of the domestic business environment. Similar to sub-section (1) above, the rest of this sub-section clarifies specific measures included in each group and means to implement them as well as which among these measures can be implemented through regulatory/systemic reforms in Japan and in its trade partners.

(a) Trade liberalization and facilitation

Trade liberalization (reduction of customs duties) is a necessary measure to take for both Japan and its export destination countries. Reduction of customs duties in Japan will reduce the procurement cost for imported raw materials and capital goods for domestic Japanese companies. Reduction of customs duties in Japan's export destination countries will reduce the export price of the domestic Japanese companies. The combined effect of these reductions will be the improvement of the export competitiveness of domestic Japanese companies. Similarly, trade facilitation in both Japan and its trade partners (export destination and import source countries) is also expected to improve the export competitiveness of domestic Japanese companies.

Means for Japan to promote trade liberalization include reduction of customs duties through the WTO and EPAs. Reduction of customs duties promised by each member country under the

framework of the WTO is applied to all member countries⁴³ on a most-favored-nation basis, thereby contributing significantly to the improvement of the export competitiveness of the domestic companies of member countries. EPAs promise the liberalization of substantially all trades between the parties to the agreement (i.e., zero customs duties), thereby achieving more trade liberalization than the tariff rate promised under the WTO framework (bound tariff rate).

As discussed in sub-section (1)(b) above, with regard to trade facilitation, detailed rules are prescribed in the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures (effective February 3, 2006) adopted by the World Customs Organization (WCO). Furthermore, the parties to an EPA may agree on higher levels of trade facilitation than prescribed in the Revised Kyoto Convention in the trade facilitation chapter of the EPA.

(b) Regulatory and systemic improvements in export destination countries

In addition to reduction of customs duties and trade facilitation in the export destination countries, the export competitiveness of domestic Japanese companies can be improved through the improvement of regulations and systems in the export destination countries. The measures to achieve this objective include (1) stronger discipline on trade remedies for export destination countries (antidumping, countervailing duties, and safeguards), (2) harmonization and improved transparency of the standards/authentication system in export destination countries, (3) international standardization of Japanese technologies, and (4) increased protection of intellectual property rights in export destination countries.

The export destination countries of Japan may abuse trade remedies and unfairly restrict or preclude exports from Japan for the purpose of protecting their domestic industries. In particular, the U.S. has practically precluded exports of steel and other industrial products from Japan for the past 30 years by taking antidumping measures. Since such abuse of trade remedies is likely to violate the WTO disciplines such as the WTO Anti-dumping Agreement, it should be effective to make an appeal of the elimination of such measures through the dispute settlement procedure of the WTO. Japan has so far made 14 appeals through the dispute settlement procedure of the WTO, of which 6 appeals were related to U.S. antidumping laws and measures. Japan won most of these cases.⁴⁴

In order to avoid a situation in which the standards/authentication system of export destination countries serve as trade barriers to exports from exporting countries, detailed disciplines for international harmonization and increased transparency of the standards/authentication system are prescribed in the TBT Agreement and the SPS Agreement of the WTO. The application of these rules is ensured through the WTO dispute settlement procedure as in the case of the Anti-dumping Agreement. It is also effective to provide for additional disciplines in an EPA to supplement the TBT and SPS Agreements and to introduce mutual recognition of the authentication system under a mutual recognition agreement.

In the same way, in order to increase the protection of intellectual property rights in export destination countries, it is effective to take advantage of the TRIPS Agreement and to prescribe in the intellectual property rights chapter of an EPA levels of protection of intellectual property rights that exceed those in the TRIPS Agreement (TRIPS-plus).

For international standardization of Japanese technologies, measures that are different from those discussed above should be taken. That is, as discussed in subsection (1)(b) above, it is effective to make a positive approach through to the relevant global forums (such as the International Organization for Standardization (ISO) and the Codex Committee on Food Hygiene) so that the standards made in Japan will be adopted as international standards. If technology developed and held by a domestic Japanese company is adopted as the international standard, that company can enjoy economy of scale as it can sell products using the common technology in both domestic and overseas markets. It can also expect to generate additional revenue through licensing of said technology to foreign companies.

(c) Improvement of regulatory and systemic environments in overseas markets that are competitively disadvantageous to domestic Japanese companies

Domestic Japanese companies may suffer from competitive disadvantages in competing with foreign companies in overseas markets or in the Japanese market due to differences in the regulatory and systemic environment. If the environmental standards or the labor standards in a foreign country are less strict than those in Japan or the enforcement of environmental or labor laws in a foreign country is insufficient, the companies of that country will have a competitive advantage over Japanese companies as the former can enjoy lower costs for the compliance with the environmental or labor standards than Japan companies. In order to correct this situation, it is

necessary to have such a country raise the levels of its environmental and labor standards or the enforcement thereof, thereby equalizing the costs for the compliance with environmental and labor standards in both countries. FTAs concluded by the U.S. generally include environmental and labor chapters to prescribe disciplines to ensure equalization of the costs for the compliance with environmental and labor standards between the parties to the agreement (e.g., duties of the parties to the agreement to fully enforce the environmental laws of the respective countries and to comply with the labor standards that are internationally accepted). The EPAs concluded by Japan do not include such provisions, but they should be considered for inclusion in future EPAs.

(d) Improvement of the domestic business environment

In some cases, the regulatory and systemic environments in Japan cause competitive disadvantages to domestic Japanese companies, and any such competitive disadvantages of domestic Japanese companies should be eliminated by improving them. More specifically, they should be improved through (1) increased protection of intellectual property rights in Japan, (2) more strict antimonopoly regulations on public enterprises, (3) acceptance of foreign workers, (4) amendment to employment and labor laws, and (5) reduction of corporate income tax rate to international levels.

Increased protection of intellectual property rights in Japan is important for the protection of profits of companies that have advanced technologies and the content industry. Japan launched the Strategic Council on Intellectual Properties chaired by the Prime Minister in April 2002 and announced the Intellectual Property Policy Outline in July of the same year.⁴⁵ The Outline includes the list of systematic measures to enhance the international competitiveness of domestic industries such as promotion of the creation of intellectual property by universities and other institutions, promotion of the creation of intellectual property by for-profit companies and other bodies, speeding up of the patent examination and approval procedure, creation of an intellectual property high court, and protection of intellectual property in new areas (post-genome research results, technologies related to regenerative medicine and gene therapy, and increased protection of copyright on the Internet), which have been implemented successively. The Outline is developed and implemented independently by Japan. However, much of the content of it is actually implemented as part of the efforts toward international harmonization of the protection of intellectual property through such means as referencing or imitation of best practice in overseas

markets and the TRIPS Agreement or TRIPS-plus provided for in the intellectual property chapter of EPAs.

Efforts toward more strict antimonopoly regulations on public enterprises include the correction of the preferential treatment of the Japan Post Bank and Japan Post Insurance Co., Ltd. after their privatization (such as the preferential treatment in terms of the upper limit on deposit protection and the exclusive ability to sell financial instruments through the network of post offices). This is a matter that has been strongly requested by foreign financial institutions, particularly U.S. financial institutions. However, correction of such preferential treatment will also lead to the improvement of the competitive conditions for domestic Japanese financial institutions.

Promotion of the acceptance of foreign workers is an effective measure also for securing labor resources, which is one of the policy objectives covered by this study report. The measures set forth in the basic employment policy announced by the Ministry of Health, Labour and Welfare in February 2008 include, from the perspective of improving international competitiveness, (1) promotion of the employment of foreign workers in specialized/technical areas, (2) helping foreign students studying in Japan to find a job in Japan, and (3) improvement of the work environment for foreign workers.⁴⁶ As a measure to promote the employment of foreign workers in specialized/technical areas, Japan permits foreign nurses and nursing care workers to work in Japan under the EPAs with Thailand, Indonesia, the Philippines, and Vietnam. However, the number of such workers remains small due to practical barriers such as the Japanese national examination. Therefore, it is necessary to implement additional measures to promote such acceptance. The immigration laws of Japan do not permit unskilled foreign workers to enter into or stay in Japan. However, it is reported that, in some cases, foreign trainees/interns staying in Japan under the foreigner training/technical internship program are employed as low-wage workers.⁴⁷ It is necessary to ensure that the program is administered properly through the oversight of the competent government agencies and the guidance and enlightenment activities of the Japan International Training Cooperation Organization (JITCO), which is the body that administers the training/internship program.⁴⁸

Higher elderly employment and improvement of the employment of young people through amendment to employment/labor laws is a necessary measure for Japan, where the total population is declining, to secure the necessary labor force for domestic Japanese companies.

The corporate income tax rate is higher than major economies in the world, which makes the business cost for Japanese companies expensive. A reduction of the corporate income tax rate to the levels of major economies in the world is expected to eliminate some of the competitive disadvantages of domestic Japanese companies.⁴⁹

Table 5-2 summarizes the measures to maintain and enhance the locational competitiveness of domestic Japanese companies and the means to implement them as discussed above in this section.

Table 5-2: Measures to maintain and enhance the locational competitiveness of domestic Japanese companies and the means to implement them

Objective	Measure	Domestic measure	Bilateral agreement	Multilateral agreement
Trade liberalization and facilitation	Reduction of customs duties (Japan)	○	EPA bound tariff schedules	WTO bound tariff schedules
	Reduction of customs duties (export destination countries)	×	EPA bound tariff schedules	WTO bound tariff schedules
	<i>Trade facilitation (Japan)</i>	○	EPA trade facilitation chapter	WTO, WCO Revised Kyoto Convention
	Trade facilitation (trade partners)	×	EPA trade facilitation chapter	WTO, WCO Revised Kyoto Convention
Regulatory/systemic improvements	Stronger discipline on trade remedies for export destination countries	×	EPA trade remedies chapter	WTO dispute settlement
	<i>Harmonization and improved transparency of the standard/authentication system in export destination countries</i>	×	EPA, mutual recognition agreement	WTO (TBT/SPS)

	International standardization of Japanese technologies	*1	×	ISO, etc.
	Increased protection of intellectual property rights in export destination countries	×	EPA intellectual property chapter	WTO (TRIPS)
Regulatory/ systemic reforms	More strict environmental standards and their enforcement in overseas markets	×	EPA environment chapter	×
	More strict labor standards and their enforcement in overseas markets	×	EPA labor chapter	×
Improvement of the domestic business environment	<i>Increased protection of intellectual property rights in Japan</i>	*2	EPA intellectual property chapter	WTO (TRIPS)
	<i>More strict antimonopoly regulations on public enterprises</i>	*3	EPA competition chapter	×
	<i>Acceptance of foreign workers</i>	○	EPA service chapter	×
	<i>Amendment to employment/labor laws</i>	○	×	×
	<i>Reduction of corporate income tax rate to international levels</i>	○	×	×

*1 Strategic objectives on international standardization

*2 Outline of Intellectual Property Strategy

*3 Correction of the preferential treatment of the Japan Post Bank and Japan Post Insurance Co., Ltd.

(Source: Prepared by the author)

In Table 5-2 above, the items written in bold characters indicate those requiring regulatory/systemic reforms in the trade partners and the items written in italic characters indicate those requiring regulatory/systemic reforms in Japan. The item written in bold italic characters, i.e., international harmonization and increased transparency of the standards/authentication system of the export destination countries, requires regulatory/systemic reforms in both Japan and its export destination countries.

(3) Measures to promote investment in Japan by foreign companies

Facilitation of direct investment in Japan by foreign companies with excellent technical strength and know-how is an effective measure to maintain and expand the competitiveness of Japan, which will also contribute to higher employment. Since the launch of the Japan Investment Council chaired by the Prime Minister in July 1994, Japan has been developing and implementing a comprehensive national strategy for promoting investment in Japan by foreign companies. The “Program for Promoting Japan as an Asian Business Center and Direct Investment into Japan” compiled in December 2011 by the Conference on Promoting Japan as an Asian Industrial Center and Direct Investment into Japan, which was launched in November 2011 under the Noda administration, systematically indicates the priority measures to achieve this policy objective.⁵⁰ In this sub-section, measures to promote investment in Japan by foreign companies are classified into three groups: (1) securing investment access to the Japanese market by foreign companies, (2) improvement of the business environment in the Japanese market for foreign companies, and (3) resolution of taxation and pension issues associated with investment in Japan by foreign companies. The rest of this sub-section clarifies specific measures included in each group and means to implement them, as well as which among these measures can be implemented through regulatory/systemic reforms in Japan and in its trade partners.

(a) Securing investment access to the Japanese market by foreign companies

Measures to secure investment access to the Japanese market by foreign companies include (1) relaxation or elimination of investment restrictions in the Japanese market and (2) liberalization of the government procurement market.

Under the amendment to the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) in 1980 and the subsequent amendment in 1998, relaxation or elimination of investment restrictions in

the Japanese market has been progressed considerably. The current Foreign Exchange and Foreign Trade Act provides that Japan shall determine whether to accept or reject direct investment in Japan that is likely to cause any of the following situations by the examination of applications submitted in advance: (a) national security is impaired, the maintenance of public order is disturbed, or the protection of public safety is hindered and (b) it results in significant adverse effects to the smooth management of the Japanese economy (Article 27)⁵¹. It is not necessary to submit an application in advance for other investments. With the exception of investments that are subject to certain restrictions or conditions under individual laws governing certain industries,⁵² investment access to the Japanese market by foreign companies is guaranteed as a general rule.

The Japanese government procurement market is open widely to foreign companies. Under the tables attached to the WTO Government Procurement Agreement (revised in December 2011⁵³), Japan opens up the procurement in an amount of 100,000 SDR (15 million yen) or more to the companies of the parties to the agreement with regard to the procurement of goods and services by all central government agencies. The procurement by many of prefectural governments, government-designated cities, and independent administrative institutions is also open to these companies subject to a certain minimum procurement amount. In addition, Japan opens up the government procurement market for companies of countries other than the parties to the WTO Government Procurement Agreement under individual EPAs concluded with these countries. Furthermore, in the areas of procurement of various goods, supercomputers, computer products, non-R&D satellites, electric telecommunication equipment, medical equipment, construction services, etc., Japan has implemented a voluntary measure to open up the procurement market more than the extent required by its obligations under the WTO Government Procurement Agreement, in consideration also of the Japan-U.S. negotiations. Japan has also established a government procurement complaint review committee to respond to complaints made by foreign companies regarding government procurement.⁵⁴

(b) Improvement of the business environment in the Japanese market for foreign companies

Many of the measures to improve the business environment in the Japanese market for foreign companies are the same as the measures to maintain and enhance the locational competitiveness of domestic Japanese companies discussed in (2). This is because these measures aim at improving the business environment for companies located in Japan, regardless of whether they are Japanese

companies or foreign companies, to compete against foreign companies in the domestic and overseas markets. Therefore, many of the measures listed in Table 5-2 are also effective for the improvement of the business environment in the Japanese market for foreign companies. Additional measures include the use of special economic zones to provide exceptions to the provisions of otherwise applicable regulations or tax, budgetary, or financial support to foreign companies with excellent technical strength or know-how. The aforementioned "Program for Promoting Japan as an Asian Business Center and Direct Investment into Japan" announced in December 2011 includes the effective use of special economic zones as one of the measures to promote investment in Japan by foreign companies.⁵⁵

(c) Resolution of taxation and pension issues associated with investment in Japan by foreign companies

As in the case of a Japanese company operating in a foreign country, expansion into the Japanese market by foreign companies entails such issues as (1) international double taxation on income from an operation in Japan or international tax evasion using tax havens or transfer prices in intra-group transactions and (2) situations where foreign employees who are assigned to a post in Japan for a long term may be forced to participate in pension plans in both Japan and the foreign country at the same time or may not be qualified to receive pension benefits when they retire due to the lack of the number of years of participation to either the Japanese pension plan or the pension plan of the foreign country or both. The measures to address these issues are the same as those listed in subsection (1)(c) above.

Table 5-3 summarizes the measures to facilitate investment in Japan by foreign companies and the means to implement them as discussed above in this section.

Table 5-3 Measures to facilitate investment in Japan by foreign companies and means to implement them

Objective	Measure	Domestic measure	Bilateral agreement	Multilateral agreement
Securing investment access	<i>Relaxation/elimination of investment restrictions</i>	○	BIT, EPA investment chapter	WTO (GATS)
	<i>Liberalization of the government procurement market</i>	○	EPA government procurement chapter	WTO (GPA)
Improvement of investment environment	<i>Attracting foreign companies using special economic zones</i>	○*1	×	×
	<i>Prohibition of performance requirements</i>	○	BIT, EPA investment chapter	WTO (TRIMs)
	<i>Reduction of customs duties (Japan)</i>	○	EPA bound tariff schedules	WTO bound tariff schedules
	Reduction of customs duties (trade partners)	×	EPA bound tariff schedules	WTO bound tariff schedules
	<i>Trade facilitation (Japan)</i>	○	EPA trade facilitation chapter	WTO, WCO Revised Kyoto Convention
	Trade facilitation (trade partners)	×	EPA trade facilitation chapter	WTO, WCO Revised Kyoto Convention
	<i>Facilitation of the acquisition or renewal of a working visa by employees</i>	○	EPA investment chapter, trade in services chapter	×
	<i>Acceptance of foreign workers</i>	○	EPA service chapter	×
	<i>Amendment to employment/labor laws</i>	○	×	×

	<i>International harmonization and increased transparency of the standards/authentication system of Japan</i>	○	EPA, mutual recognition agreement	WTO (TBT/SPS)
	<i>Restriction on government intervention in technology transfer agreements</i>	○	EPA intellectual property chapter	WTO (TRIPS)
	<i>Increased protection of intellectual property rights (Japan)</i>	○	EPA intellectual property chapter	WTO (TRIPS)
	<i>More strict antimonopoly regulations on public enterprises</i>	○	EPA competition chapter	ICN
	<i>Appropriate settlement procedure for investment disputes</i>	○	BIT, EPA investment chapter	×
	<i>Reduction of corporate income tax rate to international levels</i>	○	×	×
	<i>Improvement of the business environment</i>	○*2	EPA business environment improvement chapter	×
Taxation / pension	<i>Prevention of international double taxation on income from a foreign operation and measures against international tax evasion</i>	○	Tax treaty	×
	<i>Resolution of the issues of double participation in pension plans and insufficient years of participation</i>	○	Social security agreement	×

*1 The use of special economic zones included in the “Program for Promoting Japan as an Asian Business Center and Direct Investment into Japan” (comprehensive special zones for international strategy, comprehensive special zones for regional revitalization, and special zones for reconstruction).

*2 Invest Japan Business Support Center, JETRO.⁵⁶

(Source: Prepared by the author)

In Table 5-3 above, the items written in italic characters indicate those requiring regulatory/systemic reforms in Japan and the items written in bold characters indicate those requiring regulatory/systemic reforms in the trade partners. The item written in bold italic characters, i.e., international harmonization and increased transparency of the standards/authentication system of Japan, requires regulatory/systemic reforms in both Japan and its trading partners.

(4) Regulatory/systemic reforms aimed at trade and investment liberalization and expansion: Summary

This section has classified the measures for trade liberalization and domestic investment expansion into three categories: (1) measures to support the expansion of Japanese companies into overseas markets, (2) measures to maintain and enhance the locational competitiveness of domestic Japanese companies and (3) measures to promote investment in Japan by foreign companies, and has discussed the content of the necessary regulatory/systemic reforms for each category. What has been clarified by this discussion is that the regulatory/systemic reforms to achieve these three groups of policy objectives have much in common and significant overlap ((1) \approx (2) \approx (3)).

However, this is, in a sense, natural. In the current times in which companies choose countries, the environment in which Japanese companies can comfortably operate their business (in Japan and overseas) coincides with the environment in which foreign companies can comfortably operate their business (in Japan). Therefore, this leads to the conclusion that it is desirable to improve the business environment both in and outside Japan equally through regulatory/systemic reforms. This is the reason why it is necessary to develop a multi-tiered strategy to simultaneously promote regulatory/systemic reforms in Japan and those in the investee countries and trade partners of Japan.

Lastly, regulatory/systemic reforms necessary for trade and investment liberalization and expansion by Japan are summarized below to recapitulate the analysis in this section.

Regulatory/systemic reforms are a broad concept and include regulatory/systemic reforms with different characteristics. They are classified into the following five groups based on their content and characteristics: (1) relaxation/elimination of regulations, (2) more strict regulations and their enforcement, (3) regulatory harmonization, (4) regulatory jurisdiction coordination, and (5)

increased transparency of regulations. Based on this classification, Table 5-4 summarizes regulatory/systemic reforms necessary for trade and investment liberalization and expansion by Japan.

Table 5-4 Regulatory/systemic reforms aimed at trade and investment liberalization and expansion

Type	Specific measure	Subject country		Policy objective
		Japan	Foreign	
Relaxation/ elimination of regulations	Relaxation/elimination of investment restrictions (foreign countries)	×	○	(1)(a)
	<i>Relaxation/elimination of investment restrictions (Japan)</i>	○	×	(3)(a)
	Liberalization of the government procurement market (foreign countries)	×	○	(1)(a)
	<i>Liberalization of the government procurement market (Japan)</i>	○	×	(3)(a)
	<i>Attracting foreign companies using special economic zones (Japan)</i>	○	×	(3)(a)
	Reduction of customs duties (foreign countries)	×	○	(1)(b), (2)(a),(3)(b)
	<i>Reduction of customs duties (Japan)</i>	○	×	(2)(a), (3)(b)
	Trade facilitation (foreign countries)	×	○	(1)(b), (2)(a),(3)(b)
	<i>Trade facilitation (Japan)</i>	○	×	(2)(a), (3)(b)
	Prohibition of performance requirements (foreign countries)	×	○	(1)(b)
	<i>Prohibition of performance requirements (Japan)</i>	○	×	(3)(b)
	Facilitation of the acquisition or renewal of a working visa by employees (foreign countries)	×	○	(1)(b)

	<i>Facilitation of the acquisition or renewal of a working visa by employees (Japan)</i>	○	×	(3)(b)
	Guarantee of free transfer of funds (foreign countries)	×	○	(1)(b)
	Restriction on government intervention in technology transfer agreements (foreign countries)	×	○	(1)(b)
	<i>Restriction on government intervention in technology transfer agreements (Japan)</i>	○	×	(3)(b)
	<i>Acceptance of foreign workers (Japan)</i>	○	×	(2)(d), (3)(b)
	<i>Amendment to employment/labor laws (Japan)</i>	○	×	(2)(d), (3)(b)
More strict regulations and their enforcement	Increased protection of intellectual property rights (foreign countries)	×	○	(1)(b), (2)(b)
	<i>Increased protection of intellectual property rights (Japan)</i>	○	×	(2)(d), (3)(b)
	More strict environmental standards and their enforcement (foreign countries)	×	○	(2)(c)
	More strict labor standards and their enforcement (foreign countries)	×	○	(2)(c)
	Application of the competition law to public enterprises (foreign countries)	×	○	(1)(b)
	<i>Application of the competition law to public enterprises (Japan)</i>	○	×	(2)(d), (3)(b)
	Stronger discipline on trade remedies (foreign countries)	×	○	(2)(a)
Regulatory harmonization	Trade facilitation (foreign countries)	×	○	(1)(b), (2)(a), (3)(b)
	<i>Trade facilitation (Japan)</i>	○	×	(2)(a), (3)(b)
	Standards/authentication system (foreign countries)	×	○	(1)(b), (2)(b)

	<i>Standards/authentication system (Japan)</i>	○	×	(1)(b), (2)(b),(3)(b)
	International standardization of Japanese technologies	○	○	(2)(b)
	Increased protection of intellectual property rights (foreign countries)	×	○	(1)(b), (2)(b)
	<i>Increased protection of intellectual property rights (Japan)</i>	○	×	(2)(d), (3)(b)
	Labor standards (foreign countries)	×	○	(2)(c)
	Application of the competition law to public enterprises (foreign countries)	×	○	(1)(b)
	<i>Application of the competition law to public enterprises (Japan)</i>	○	×	(2)(d), (3)(b)
	<i>Reduction of corporate income tax rate to international levels (Japan)</i>	○	×	(2)(d), (3)(b)
Regulatory jurisdiction coordination	Prevention of international double taxation and international tax evasion (foreign countries)	×	○	(1)(c), (3)(c)
	<i>Prevention of international double taxation and international tax evasion (Japan)</i>	○	×	(1)(c), (3)(c)
	Resolution of pension issues (foreign countries)	×	○	(1)(c), (3)(c)
	<i>Resolution of pension issues (Japan)</i>	○	×	(1)(c), (3)(c)
Increased transparency of regulations	Improvement of the business environment (foreign countries)	×	○	(1)(b)
	<i>Improvement of the business environment (Japan)</i>	○	×	(3)(b)
	Appropriate settlement procedure for investment disputes (foreign countries)	×	○	(1)(b)
	<i>Appropriate settlement procedure for investment disputes (Japan)</i>	○	×	(3)(b)

The items written in italic characters indicate those requiring regulatory/systemic reforms in Japan and the items written in bold characters indicate those requiring regulatory/systemic reforms in foreign countries. The item written in bold italic characters requires regulatory/systemic reforms in both Japan and foreign countries.

(Source: Prepared by the author)

3. TPP and regulatory/systemic reforms

(1) Strategic significance of regulatory/systemic reforms through EPAs

EPAs, aiming at not only trade liberalization, but also investment liberalization and investment protection, include disciplines on a wide range of regulatory/systemic reforms. They are important as a means for Japan to promote regulatory/systemic reforms in both Japan and its trade/investment partners simultaneously for the purpose of trade and investment liberalization and expansion. The WTO is an important multilateral forum, but its effectiveness as a forum for regulatory/systemic reforms seems to be waning as can be seen from the failure of the Doha talks. For some time going forward, an effective strategy will be to expand the network of regulatory/systemic reforms through bilateral or regional EPAs. However, there are limits in regulatory/systemic reforms through EPAs. For one thing, it takes significant time and effort as regulatory/systemic reforms are progressed through a series of individual agreements. In addition, there is a risk that disciplines created in one agreement may be inconsistent with those in another agreement, which may contradict the purpose of regulatory/systemic reforms and regulatory and systemic harmonization in particular (spaghetti bowl or noodle bowl). Furthermore, EPAs are useless for regulatory/systemic reforms in the areas not covered by them in the first place.

This section discusses regulatory/systemic reforms through the Trans-Pacific Strategic Economic Partnership Agreement (TPP), which at present has the biggest strategic importance for Japan as a means to promote regulatory/systemic reforms, and their limitations. The strategic importance of the TPP as a means to promote regulatory/systemic reforms lies above all in the fact that the TPP is a FTA that is oriented toward highly effective regulatory/systemic reforms covering a broad range of regulations and systems. The TPP covers most of the regulatory/systemic reforms aimed at trade and investment liberalization and expansion that are discussed in section 2. above. Moreover, the TPP is an open FTA aimed at covering the entire Asia-Pacific region in the future. We can also

expect that, through the expansion of the network of FTAs to be concluded by the parties to the TPP with the countries in regions outside the Asia-Pacific region, the content of the regulatory/systemic reforms included in the TPP will potentially be accepted widely as the de facto global standards (the possibility of the TPP replacing the WTO).

In the sense mentioned above, for the maintenance and enhancement of Japanese economic power and competitiveness, it is extremely important for Japan to participate in TPP negotiations, thereby participating in the development of disciplines for effective regulatory/systemic reforms covering a broad range of regulations and systems and ensuring that they include content that is advantageous to Japan. With regard to Japan's participation in TPP negotiations, there is a strong disagreement within Japan particularly among agricultural organizations and medical associations and controversy over trade liberalization of agricultural products and opening up of the service market. However, the significance of regulatory/systemic reforms that will likely be realized through the TPP is seldom discussed. The rest of this section discusses the merits and limitations of the TPP, highlighting its impact on regulatory/systemic reforms aimed at trade and investment liberalization and expansion. However, as separate articles⁵⁷ discuss in detail the topics covered by the ongoing TPP negotiations and their impact on regulatory/systemic reforms, the discussion here is intended to briefly describe the impact of the TPP on regulatory/systemic reforms in Japan and other parties to the partnership and the limitations of the TPP.

(2) Impact of the TPP on regulatory/systemic reforms

There are 24 working groups in TPP agreement negotiations. They include working groups not focusing on a specific area such as chief negotiator's meeting and multiple working groups that can be grouped into one area such as access to product markets and services. As rearranged based on the negotiation area, there are the following 18 TPP negotiation areas:⁵⁸ (1) Access to product markets (agricultural, textile/apparel, industrial), (2) rules of origin, (3) trade facilitation, (4) SPS, (5) TBT, (6) trade remedies, (7) government procurement, (8) intellectual property rights, (9) competition policy, (10) services (cross-border trade in services, temporary movement of business personnel, financial services, electric telecommunication services), (11) e-commerce, (12) investment, (13) environment, (14) labor, (15) systemic matters, (16) dispute settlement, (17) cooperation, and (18) matters related to multiple areas (regulatory coherence, facilitation of the use of the TPP by SMEs, improved competitiveness, agreement updates, development, etc.).

As compared with Tables 5-1 through 5-4 in section 2, it is clear that the TPP negotiation areas listed above cover most of the regulatory/systemic reforms aimed at trade and investment liberalization and expansion. However, these matters disciplined by the TPP include many items that are the same obligations as those already imposed on the parties to the partnership by the WTO or existing FTAs and BITs and/or items that have only an insignificant impact on regulations and systems. Therefore, they are classified into the following four groups: (a) items that are not covered by existing obligations of the parties to the TPP under the WTO or existing FTAs/EPAs and BITs and have a significant impact on the regulations and systems of the parties to the TPP, (b) items that are not covered by existing obligations of the parties to the TPP under the WTO or existing FTAs/EPAs and BITs, but have only an insignificant impact on the regulations and systems of the parties to the TPP, (c) items that are already covered by existing obligations of the parties to the TPP under the WTO or existing FTAs/EPAs and BITs, but have a significant impact on the regulations and systems of the parties to the TPP, and (d) items that are already covered by existing obligations of the parties to the TPP under the WTO or existing FTAs/EPAs and BITs and have only an insignificant impact on the regulations and systems of the parties to the TPP; and their impacts on the regulations and systems of Japan and other countries participating in the negotiations are discussed below.

- (a) Items that are not covered by existing obligations of the parties to the TPP under the WTO or existing FTAs/EPAs and BITs and have a significant impact on the regulations and systems of the parties to the TPP

Among the items in this group, (2) rules of origin, (11) e-commerce, (15) systemic matters, and (18) matters related to multiple areas have the most significant impact on the regulations and systems of Japan. The rules of origin are the rules to determine the origin of the products of the parties to the TPP to which TPP preferential tariffs apply and extensive rules are developed in accordance with the product tariff classification. In particular, the yarn-forward rule⁵⁹ meets with a strong objection from the textile/apparel industries in the parties to the TPP that are using yarn originating in countries outside the region as this rule is chiefly meant to protect the textile/apparel industries in the U.S. As for e-commerce, in addition to the ongoing deliberations at multilateral forums such as the WTO, OECD, United Nations Commission on International Trade Law (UNCITRAL), and APEC toward the establishment of international disciplines, FTAs concluded by the U.S. and Australia have started to include provisions to guarantee the liberalization of

e-commerce. However, the formation of international rules has not progressed much.⁶⁰ The provisions adopted by the U.S. and Australia in their past FTAs (duty-free treatment of e-commerce, most-favored-nation treatment and national treatment of digital products, validity of digital authentication and digital certification, on-line consumer protection, etc.) may also be included in the TPP. As for systemic matters, a mechanism is expected to be created in which representatives of government agencies concerned of the parties to the TPP meet regularly every year to ascertain the implementation status of the agreement and discuss any necessary revision of the agreement (free trade committee). The TPP is sometimes called a living agreement in the sense that it is revised flexibly for further evolution on an ongoing basis in response to the changes in the environment.⁶¹ With regard to matters related to multiple areas, in particular regulatory coherence, the U.S. aims at applying to all parties to the TPP the procedure that has been adopted by the U.S. since 1993 in which all proposed and existing regulations developed and enforced by the federal government are subject to the examination by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for their coherence and appropriateness.⁶² If this proposal is adopted, the impact on the Japanese regulations and systems will be massive.

The impact of the items within this group on the regulations and systems of other parties to the TPP are considered to be largely parallel with that on the Japanese regulations and systems. In particular, regulatory coherence, which is among the matters related to multiple areas, will have a massive impact on the regulations and systems of the parties to the TPP with the exception of certain countries such as Australia⁶³ that have already adopted a system similar to the U.S.

- (b) Items that are not covered by existing obligations of the parties to the TPP under the WTO or existing FTAs/EPAs and BITs, but have only an insignificant impact on the regulations and systems of the parties to the TPP

Among the items in this group, (9) competition policy, (13) environment, and (14) labor have only an insignificant impact on the regulations and systems of Japan. International harmonization in the area of (9) above has not progressed much. Accordingly, the chief aim of the competition chapter of the TPP is to prescribe cooperation among the regulatory authorities of the parties to the TPP concerning the regulations on anticompetitive business conduct outside the region that has potential impact on the competitive order in the parties to the TPP and their enforcement

(jurisdiction coordination and enforcement cooperation), on the premise that each party to the TPP enforces its own competition law and competition policy in good faith. However, as discussed in (2)(d) and (3)(b) of section 2, if a provision is introduced to require the parties to the TPP to restrict anticompetitive business conduct of public enterprises in their jurisdiction, Japan may be required to correct the preferential treatment of Japan Post Bank and Japan Post Insurance Co., Ltd. after their privatization. The aim of (13) and (14) above is to require the compliance and enforcement of the environmental and labor laws in the developing countries participating in the TPP. As such, their effect on Japanese environmental and labor laws will be insignificant, as they are highly advanced relative to the international standards.

On the other hand, (9), (13), and (14) above will have a significant impact on the developing countries participating in the TPP. In particular, there are many preferential treatments of state-run enterprises in a wide variety of areas in Vietnam whose economy is in transition to market economy, and Vietnam will be required to correct them.

- (c) Items that are already covered by existing obligations of the parties to the TPP under the WTO or existing FTAs/EPAs and BITs, but have a significant impact on the regulations and systems of the parties to the TPP

Among the items in this group, the regulations and systems of Japan will be significantly affected by reduction/elimination of customs duties on agricultural, forestry and marine products among the items classified as (1), items of (8) intellectual property rights for which Japan is required to implement more extensive/effective protection (TRIPS-plus or EPA-plus) than the WTO TRIPS Agreement or the intellectual property rights chapter of existing EPAs, and the items of (10) services for which Japan is required to promise liberalization that is more extensive than that promised in the GATS schedules of specific commitments or schedules of specific commitments of existing EPAs (GATS-plus or EPA-plus). In particular, the TPP, in principle, aims at the reduction/elimination of customs duties on all products. Therefore, Japan is likely to be required to implement the reduction/elimination of customs duties on rice and other agricultural products, which Japan has excluded from the reduction of customs duties under EPAs in the past. In service areas, Japan may be required to open up the market to foreign capital in such areas as medical services and financial services. However, improved access to these markets is not an obligation that is uniformly imposed on all parties to the TPP, but an obligation owed by individual

parties to the TPP through negotiations among them. For example, whether or not exemptions among rice and other agricultural products are permitted and how long the grace period will be before the elimination of custom duties depends on such negotiations. As for TRIPS-plus and EPA-plus provisions concerning intellectual property rights, it appears that extension of the protection period for intellectual property rights (from the current 50 years to 70 years after the death of the author) and more effective enforcement of the regulations on the infringement of copyrights and trademark rights, among others, are being discussed in TPP negotiations and if they are realized, Japan will need to amend the applicable laws.

The situation of other parties to the TPP is basically the same as that of Japan. In particular, tariff rates on agricultural, forestry and marine products in developing countries participating in the TPP are generally high and opening up of service markets has not progressed much in these countries. In addition, there are only a few cases in which these countries accepted TRIPS-plus or FTA-plus provisions concerning the protection of intellectual property rights. Therefore, the impact of these items on the regulations and systems of these developing countries participating in the TPP will be more significant than for Japan.

- (d) Items that are already covered by existing obligations of the parties to the TPP under the WTO or existing FTAs/EPAs and BITs and have only an insignificant impact on the regulations and systems of the parties to the TPP

Among the items in this group, reduction/elimination of customs duties on textile/apparel products and industrials among the items classified as (1), (3) trade facilitation, (4) SPS, (5) TBT, (6) trade remedies, (7) government procurement, items of (10) services for which Japan has already committed to liberalization in the GATS schedules of specific commitments or schedules of specific commitments of existing EPAs, and (12) investment have only an insignificant impact on the regulations and systems of Japan. Japan has already reduced significantly the tariff rates on most products other than agricultural products. Therefore, there are only a few such products for which Japan will be required to further reduce or eliminate customs duties under the TPP. This is also true for opening up of the government procurement market and trade in services. As for trade facilitation, Japan already has a trade facilitation obligation under EPAs, which is more extensive than that under the WCO Revised Kyoto Convention. Therefore, it is unlikely that the TPP will impose an even more extensive obligation on Japan. As for SPS and TBT, the TPP is expected to

merely reaffirm the obligations under the WTO SPS and TBT Agreements and will unlikely impose additional obligations. This is also true for trade remedies. As for investment, it is not probable that Japan will be required to implement investment protection or liberalization measures that are more extensive than those prescribed in BITs or the investment chapter of EPAs that were concluded by Japan in the past. There is controversy in Japan over the proposed introduction of an investor state dispute settlement method based on arbitration, but this method was already adopted by Japan in BITs and the investment chapter of EPAs that were concluded by Japan in the past.

On the other hand, developing countries participating in the TPP may be required to implement further reduction/elimination of customs duties on textile/apparel and industrial products. Similarly, since many of the countries participating in TPP negotiations are not parties to the WTO Agreement on Government Procurement (GPA), they will likely be required to open up the government procurement market through TPP government procurement agreement negotiations. This is also true for service areas. As for trade facilitation, many developing countries participating in the TPP will have a new trade facilitation obligation. On the other hand, the TPP is unlikely to introduce an obligation concerning SPS, TBT and trade remedies that is more extensive than the relevant agreements of the WTO. Therefore, the impact on other parties to the TPP is expected to be small. In addition, all parties to the TPP including those that are developing countries already have investment protection and liberalization obligations under BITs or FTAs. As such, they will unlikely to be subject to an additional obligation in this area by participating in the TPP.

The following table summarizes the above discussion on the impact of the TPP on the regulations and systems of Japan and other parties to the partnership.

Table 5-5 Impact of the TPP on the regulations and systems of Japan and other parties to the partnership

	TPP item	Significant impact		Insignificant impact	
		Japan	Other parties	Japan	Other parties
No WTO, BIT, and FTA provisions	Rules of origin	○	○		
	E-commerce	○	○		
	Systemic matters	○	○		
	Matters related to multiple areas	○	○		
	Competition policy	□*1	○		
	Environment		○	○	
	Labor		○	○	
Already provided for by WTO, BIT, and FTA	Access to product markets (agricultural, forestry and marine products)	○	○		
	Services	□*2	○		
	Intellectual property rights (TRIPS-plus, EPA-plus)		○	○	
	Access to product markets (textile, apparel, and industrials)		○	○	
	Trade facilitation		○	○	
	SPS			○	○
	TBT			○	○
	Trade remedies			○	○
	Government procurement		○	○	
	Investment			○	○

*1 Application of the competition law to public enterprises (Japan Post Bank and Japan Post Insurance Co., Ltd.).

*2 Opening up of the medical and financial services markets (subject to the results of the service market access negotiations).

(Source: Prepared by the author)

The conclusion drawn from Table 5-5 is that the impact of TPP participation on regulations and systems is generally small for Japan, but generally significant for other parties to the partnership. The items for which Japan already has certain obligations under the WTO or existing BITs and EPAs are unlikely to have a significant impact on the Japanese regulations and systems. With regard to the new items for which Japan has no relevant obligation under the WTO or existing BITs and EPAs, many of the items having a significant impact on the Japanese regulations and systems will affect Japan in the direction of further reduction of government intervention in the market and market revitalization (e-commerce, systemic matters, matters related to multiple areas, and competition policy). Among these items, there are those that may potentially cause a major reform in the Japanese regulations and systems such as regulatory coherence. However, the author expects that regulatory coherence requirements will have a positive effect on the maintenance and enhancement of Japanese competitiveness. Since it is difficult for Japan to consider introducing such a measure independently, the author would like to positively support the introduction of a major reform in the Japanese regulations and systems by taking advantage of participation in the TPP.

On the other hand, Japan should pay attention to the fact that the impact of TPP participation on regulations and systems is generally significant for other parties to the partnership, particularly the developing countries participating in the TPP. Japan's participation in the TPP should be seen as an important step to improve regulations and systems in the developing countries participating in the TPP and develop them into broad-based and highly effective international regulatory and systemic harmonization and international standardization, rather than regulatory/systemic reforms in Japan.

(3) Limitations of the TPP as a means of regulatory/systemic reforms

As discussed above, the author considers the TPP as an important and effective means to realize regulatory/systemic reforms not only in Japan, but also in all parties to the partnership. However, it should be noted that there are several limitations in the TPP as a means to realize regulatory/systemic reforms. First, the TPP is powerless for regulatory/systemic reforms in the areas not covered by the partnership. For example, the TPP does not cover social security systems including public medical insurance plans.⁶⁴ In addition, matters related to the immigration control policy of the parties to the TPP other than those related to the issuance and examination of business visas are not subject to TPP negotiations. Therefore, Japan must independently promote

regulatory/systemic reforms to secure sufficient employment in Japan (acceptance of foreign workers and amendment to employment/labor laws). In relation to the international harmonization of standards/authentication systems for industrial products and food, Japan also needs to develop and implement a strategy to gain acceptance of Japanese technologies as international standards through forums other than the TPP.

Second, in some areas, regulatory/systemic reforms through the TPP may contradict the movement toward international regulatory and systemic harmonization and international standardization. In particular, different rules of origin have been established under individual EPAs including the TPP. Under this situation, a company that intends to build a global supply chain using EPAs may not be able to do so due to high administrative costs (spaghetti bowl or noodle bowl).⁶⁵

Third, the provisions of the TPP concerning regulatory/systemic reforms apply only to the trade and investment among the parties to the TPP. Whether they will contribute to international regulatory and systemic harmonization and international standardization will depend on how much the number of countries participating in the TPP will increase in the future and whether the provisions included in the TPP will be referenced by other FTAs and accepted as global standards.

(4) Future of the TPP

Unlike most of the past FTAs, the TPP is an open FTA. The Trans-Pacific Strategic Economic Partnership Agreement among New Zealand, Singapore, Brunei, and Chile (called P4), which is the predecessor agreement of the TPP, declared that it was open to the participation of all APEC member countries as well as other countries.⁶⁶ The current TPP negotiations are based on this provision for open participation and, as currently planned, the same provision will be included in the TPP. Therefore, the number of the countries participating in the TPP may expand to include other APEC member countries and countries in other regions. Moreover, it is conceivable that countries participating in the TPP will reference the content of the TPP as a model in concluding FTAs in the future to reflect the TPP content in the FTAs, thereby disseminating the TPP content as the de facto standards. It is an important strategy for Japan to make a decision to participate in TPP negotiations at an early stage, to reflect Japan's interest in the negotiations to realize broad-based and highly effective regulatory/systemic reforms, and to reflect, in turn, the content of TPP in the EPA negotiations with the EU and the Japan-China-South Korea EPA negotiations scheduled to start before the end of 2012. Having done this, Japan should ultimately aim at promoting the

acceptance of the content of the TPP as the de facto global standards through the expansion of the number of countries participating in the TPP and the number of FTAs referencing the content of the TPP. Given that current state of the WTO has made it difficult to reach a compromise in negotiations due to the large number of member countries, the strategy outlined above is a practical and effective measure to realize regulatory/systemic reforms on a multinational and global basis for the medium- to long-term.

Conclusion

This chapter argued that domestic regulatory/systemic reforms are indispensable in order to maintain and enhance Japan's economic power and competitiveness and that for the steady promotion of regulatory/systemic reforms, Japan's independent efforts to improve its regulatory/systemic framework alone are insufficient and a multi-tiered strategy for regulatory/systemic reforms is required encompassing, among others, bilateral talks on regulatory/systemic reforms with major powers, regulatory/systemic reforms through bilateral and regional free trade agreements such as EPAs and the TPP, and the achievement of international regulatory/systemic harmonization and the acquisition of international standards through multilateral forums, particularly the WTO, in individual regulatory areas. More specifically, this chapter examined regulatory/systemic reforms that are necessary for trade and investment liberalization and expansion, which is one of the policy objectives for the maintenance and enhancement of Japanese competitiveness addressed by this study report, in detail and proposed a multi-tiered strategy to promote them. It also discussed regulatory/systemic reforms through the TPP, which at present has the biggest strategic importance for Japan as a means to promote regulatory/systemic reforms, and their limitations.

Based on the examination above, the rest of this section summarizes future challenges necessary to be addressed for Japan to develop and implement a multi-tiered strategy for regulatory/systemic reforms and present them as policy recommendations.

First, The TPP should constitute the core of a multi-tiered strategy for regulatory/systemic reform. With the WTO currently dysfunctional as a forum for regulatory/systemic reform, bilateral and regional EPAs are the most important means for promoting regulatory/systemic reform aimed at bringing about international harmonization and standardization. The TPP is essentially a broad-area FTA covering the entire Asia-Pacific region that is open to all countries within the

region as well as countries outside the region and, given its provisions aimed at highly effective international harmonization and standardization across a broad spectrum of regulatory/systemic areas, the TPP is considerably more important than other EPAs as a means of promoting regulatory/systemic reform. Given the potential for the regulatory/systemic reforms incorporated in the TPP to develop into global standards in future, it is important that Japan actively engage in negotiations so that regulatory/systemic reforms that will help reinvigorate Japan will be included.

Second, Japan must at the same time exercise leadership in endeavoring to achieve international regulatory/systemic harmonization and standardization via the WTO and other multilateral forums. In today's world of progressing globalization, many regulatory/systemic reforms are realized through the international harmonization and standardization of regulations. Modifying the Western-dominated approach to the international harmonization and standardization of regulations is a matter of life-or-death importance for realizing regulatory/systemic reform. To that end, the ability ("soft power") to actively disseminate proposals for regulatory/systemic reform that can be acknowledged and accepted as global standards is needed. Japan made a fresh start after its defeat in World War II, achieved rapid economic growth within a short timeframe and became an economic superpower, and its regulatory/systemic experiences in the course of this transformation can provide attractive models for many developing countries. This will require, however, that Japan's regulatory/systemic experiences as well as those of East Asian countries, which learned many lessons from Japan's experiences to achieve their own economic growth, be carefully considered, theorized and then presented as feasible regulatory/systemic models for other countries as well. Japan's social scientists will likely have a large role to play in this regard.

Third, alongside regulatory/systemic reforms through the TPP and other EPAs and international regulatory/systemic harmonization through multilateral forums such as the WTO, Japan must pursue regulatory/systemic reform on its own as well in parallel cooperation with the US, Europe, China and other key players in developing and implementing a strategy for multi-tiered regulatory/systemic reform. The areas covered by the various elements of this multi-tiered regulatory/systemic reform strategy will not completely overlap. Combining and synthesizing these will enable Japan to make the regulatory/systemic reforms needed to maintain and strengthen its competitiveness.

— Notes —

¹ The term “international standards” is sometimes used to mean industrial standards that are globally accepted. See, for example, International Organization for Standardization (ISO), About ISO. <<http://www.iso.org/iso/about.htm>>. However, in this chapter, the term is used more broadly to indicate a concept that represents the content of regulatory/systemic frameworks that harmonize or converge in international regulatory/systemic harmonization.

² Nakagawa, Junji [2008]: *International Harmonization of Economic Regulation*, Yuhikaku Publishing, pp. 374-375.

³ *Basic Policy on Comprehensive Economic Partnerships*, Cabinet decision on November 9, 2010: <<http://www.npu.go.jp/pdf/20101109/20101109.pdf>> (accessed on February 6, 2012).

⁴ *Strategy for Rebirth of Japan—Overcoming Crises and Embarking on New Frontiers*, Cabinet decision on December 24, 2011, p. 8: <<http://www.npu.go.jp/policy/pdf/20111226/20111224.pdf>> (accessed on February 6, 2012).

⁵ *Ibid*, p. 12.

⁶ The website of the Government Revitalization Unit's subcommittee on regulatory/systemic reforms: <<http://www.cao.go.jp/sasshin/kisei-seido/index.html>> (accessed on February 6, 2012).

⁷ For literature that overviews the history of regulatory/systemic reforms in Japan, see, for example, OECD ed. [1999]: *Regulatory Reform in Japan* (Paris: OECD) and Eto, Masaru [2003]: *Regulatory Reform and Japanese Economy*, Nihon Keizai Hyouronsha, Chapter 2.

⁸ For the privatization efforts made by *Daini Rincho*, see Iio, Jun [1993]: *The Political Process of Privatization: Results and Limitations of Rincho-style Reform*, University of Tokyo Press.

⁹ Deregulation Committee (since 1998), Regulatory Reform Committee (since 1999), Council for Regulatory Reform (since 2001), Council for the Promotion of Regulatory Reform (since 2004), and Regulatory Reform Council (since 2007).

¹⁰ Deregulation Promotion Program (Cabinet decision on July 31, 1995), Three-Year Program for the Promotion of Deregulation (Cabinet decision on March 31, 1998), Three-Year Program for Promoting Regulatory Reform (Cabinet decision on March 30, 2001), Three-Year Plan for the Promotion of Regulatory Reform and the Opening Up of Government-Driven Markets for Entry into the Private Sector (Cabinet decision on March 19, 2004), and Three-Year Plan for the Promotion of Regulatory Reform (Cabinet decision on June 22, 2007). The subcommittee on regulatory/systemic reforms within the Government Revitalization Unit submitted its first report outlining the implementation policies for regulatory reform relating to specified areas and individual matters on June 15, 2010, based on which "Implementation Policies for Regulatory/Systemic Reforms" was adopted pursuant to the Cabinet decision on June 22, 2010. However these implementation policies were revised and enhanced to reflect the effect of the Great East Japan Earthquake in March 2011 and were adopted as "Additional Policies for Regulatory/Systemic Reforms" pursuant to the Cabinet decision on July 22, 2011. The website of the Government Revitalization Unit's subcommittee on regulatory/systemic reforms (op. cit. in note 6).

¹¹ The Ministry of Defense and the National Public Safety Commission are the only government agencies for which none of the reform items listed in the "Implementation Policies for Regulatory/Systemic Reforms" falls within their jurisdiction.

¹² The comment of Hiroshi Kato, chairman of the Ad Hoc Council for the Promotion of Administrative Reform, which recommended the privatization of Nippon Telegraph and Telephone Public Corporation, as quoted by Vogel [1996] clearly indicates this: "Our biggest concern was whether it will become a global trend, and if it will, we thought that Japan should not be left behind." (Vogel, Steven K. [1996]: *The Transformation of the Japanese Economy—The Political Battle over Deregulation*, Ithaca: Cornell University Press, 1996, p. 23.)

¹³ Nakagawa, Junji [2006]: "Foreign Economic Policy: From the SII Talks to the East Asian Community" in Institute of Social Science, University of Tokyo (ed.) *Beyond the 'Lost Decade' Volume 2: The Koizumi Reforms*, University of Tokyo Press, pp. 313-340, pp. 317-319.

¹⁴ Ministry of Foreign Affairs, Japan-EU Regulatory Reform Dialogue.

<http://www.mofa.go.jp/mofaj/area/eu/index_c.html> (accessed on February 7, 2012).

¹⁵ Vogel [1996] (*op. cit.* in note 12), pp. 22-26.

¹⁶ For example, see Yashiro, Naohiro [2003]: *Law and Economics on Regulatory Reform* Yuhikaku Publishing, pp. 16-17.

¹⁷ For excellent theoretical observations on intensifying regulatory competition as a result of the advancement of globalization, see Murphy, Dale D. [2004]; *The Structure of Regulatory Competition: Corporations and Public Policies in a Global Economy*, Oxford: Oxford University Press; and Dresner, Daniel W. [2007]: *All Politics is Global: Explaining International Regulatory Regimes*, Princeton and Oxford: Princeton University Press.

¹⁸ OECD [1997]: *The OECD Report on Regulatory Reform*, Volume 1: Sectoral Studies, Volume 2: Thematic Studies, Paris: OECD.

¹⁹ For example, for a research report on regulatory reform in Japan and its follow-up research report, see OECD (ed.) [1999] (*op. cit.* in note 7) and OECD [2004]: *The OECD Reviews of Regulatory Reform—Regulatory Reform in Japan* (1999), Paris: OECD.

²⁰ For the international harmonization of regulations through the WTO, see Nakagawa [2008] (*op. cit.* in note 2), Chapters 2 through 5.

²¹ In the eight rounds of multilateral trade negotiations that were held during the GATT era, the decisions were normally made through informal meetings among a few major trading countries (which were called "green room" meetings after the color of the room used for these meetings), which were in

turn adopted by consensus in the general meeting. See Hoekman, Bernard M. & Kostecki, Michel M. [2009]: *The Political Economy of the World Trading System: The WTO and Beyond*, 3rd Ed., Oxford: Oxford University Press, pp. 67-68.

²² The First WTO Ministerial Conference held (in Singapore) in 1996 adopted a ministerial declaration to start discussion for adding such topics as investment, competition policy, transparency of government procurement, and trade facilitation to the agenda of the first Doha Development Round (Doha talks) to be held under the WTO framework. However, this declaration met with strong objection from developing countries and it was finally decided at the General Council meeting held in August 2004 that these topics, except for trade facilitation, would be excluded from the agenda of Doha talks.

²³ WTO, Regional Trade Agreements. <http://www.wto.org/english/tratop_e/region_e/region_e.htm> (accessed on February 7, 2012).

²⁴ Ministry of Foreign Affairs, Free Trade Agreement (FTA) and Economic Partnership Agreement (EPA). <<http://www.mofa.go.jp/mofaj/gaiko/fta/>> (accessed on February 8, 2012).

²⁵ For example, in order to achieve the policy objectives (1) securing labor resources and youth employment and (4) human resources development for Japan's international competitiveness, regulatory/systemic reforms such as the amendment/enhancement of employment laws, social security system, and immigration control laws are indispensable in addition to the amendment/enhancement of the recruiting and human resource management systems of the employer (company) and education programs and human resource development approaches of universities and other higher education institutions. The regulatory/systemic reforms necessary to achieve the policy objective (2) liberalizing trade and expanding domestic investment are covered in the text in detail.

²⁶ As of December 31, 2010, the total number of BITs that have been concluded in the world is 2,807. UNCTAD [2011], *World Investment Report*, Geneva: UNCTAD, p. 100.

²⁷ Investor-state arbitration is a procedure in which a dispute between the investee country and a foreign investor is settled through arbitration rather than through the domestic court proceedings of the investee

country. If a dispute is contested in the domestic court proceedings of the investee country, it may take a long time to complete the court proceedings or fairness in the proceedings may not be ensured depending on the jurisdiction. In the case of settlement through arbitration, the arbitrator and the governing law are chosen based on the agreement between the parties to the dispute. It takes less time to reach a settlement through arbitration than through domestic court proceedings as an arbitration award, as a general rule, is considered final. For this reason, the investment chapter of BITs and EPAs often adopts arbitration as the standard dispute settlement procedure.

²⁸ Regional Economic and Industrial Policy Group, Ministry of Economy, Trade and Industry (ed.) [2011]: *2011 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA, and BITs* -, Nikkei Printing Inc. pp. 588-592.

²⁹ Ministry of Foreign Affairs, Investment

<<http://www.mofa.go.jp/mofaj/gaiko/investment/index.html>> (accessed on February 8, 2012).

³⁰ Regional Economic and Industrial Policy Group, Ministry of Economy, Trade and Industry (ed.) [2011] (op. cit. in note 28), p. 593, Chart 5-4.

³¹ WTO, Government Procurement. <http://www.wto.org/english/tratop_e/grop_e/gproc_e.htm> (accessed on February 8, 2012). The WTO Agreement on Government Procurement was revised in December 2011 to expand the obligations of the parties to the agreement to open up the government procurement market (lowering of the procurement amount used as the standard for determining the markets subject to the opening up obligation) and to further increase the market transparency. WTO [2011]: "Historic deal reached on government procurement," WTO News, December 15, 2011. <http://www.wto.org/english/news_e/news11_e/gro_15dec11_e.htm> (accessed on February 8, 2012).

³² Regional Economic and Industrial Policy Group, Ministry of Economy, Trade and Industry (ed.) [2011] (op. cit. in note 28), pp. 657-659.

³³ New Growth Strategy, Cabinet decision on June 18, 2010, pp. 41-42.

<http://www.npu.go.jp/policy/policy04/pdf/04/06/2-1--917_shinseityousenryaku_honbun.pdf>

(accessed on February 8, 2012).

³⁴ Performance requirements is a general term for various requirements imposed by a investee country on the activities of foreign investors. For example, they include local content requirements, which require the ratio of the parts manufactured in the investee country to the total parts used by foreign investors to manufacture industrial products in the investee country to exceed a certain threshold; foreign equity requirements, which limit the foreign equity ratio within a certain limit; and imposition of export quota on the products manufactured by foreign investors.

³⁵ Regional Economic and Industrial Policy Group, Ministry of Economy, Trade and Industry (ed.) [2011] (op. cit. in note 28), pp. 727-738.

³⁶ The representative Japanese government department that is in charge of the improvement of legal systems in foreign countries is the International Cooperation Department, Research and Training Institute of the Ministry of Justice. Ministry of Justice, Technical Assistance in the Legal Field. <http://www.moj.go.jp/houseouken/houso_Ita_Ita.html> (accessed on February 8, 2012).

³⁷ Ministry of Economy, Trade and Industry, Mutual Recognition Index.

<<http://www.meti.go.jp/policy/economy/hyojun/kijyun/mrarenew/MRindex.htm>> (accessed on February 9, 2012).

³⁸ World Customs Organization, The Revised Kyoto Convention.

<http://www.wcoomd.org/home_pfoverviewboxes_tools_and_instruments_pfrevisedkyotoconv.htm> (accessed on February 8, 2012).

³⁹ International Competition Network, ICN Factsheet and Key Messages, April 2009. <<http://www.internationalcompetitionnetwork.org/uploads/library/doc608.pdf>> (accessed on February 9, 2012).

⁴⁰ Ministry of Economy, Trade and Industry, International Standardization Strategy Objectives, November 29, 2006.

<http://www.meti.go.jp/policy/standards_conformity/files/sennryakumokuhyo.pdf> (accessed on February 9, 2012).

⁴¹ Ministry of Finance, The Tax Treaty Network of Japan.

<http://www.mof.go.jp/tax_policy/summary/international/182.htm> (accessed on February 8, 2012).

⁴² Ministry of Health, Labour and Welfare, For Those Who Are Working Abroad (Social Security Agreements) <<http://www.mhlw.go.jp/topics/bukyoku/nenkin/nenkin/shakaihoshou.html>> (accessed on February 8, 2012).

⁴³ As of February 2012, the number of WTO member countries is 153. At the Eighth WTO Ministerial Conference held in December 2011, the applications for membership submitted by Russia, Samoa, Vanuatu, and Montenegro were approved. They will formally become WTO member countries 30 days after the membership is ratified in their domestic procedures and the ratification is notified to the WTO.

⁴⁴ The titles and the case numbers of the appeals made by Japan through the WTO dispute settlement procedure against U.S. antidumping laws/measures are as follows: United States — Anti-Dumping Act of 1916 (DS162), United States — Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan (DS184), United States — Continued Dumping and Subsidy Offset Act of 2000 (Byrd Amendment) (DS217), United States — Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan (DS244), United States — Measures Relating to Zeroing and Sunset Reviews (DS322), and United States — Measures Relating to Zeroing and Sunset Reviews (Request for the Establishment of a Panel) (DS322).

⁴⁵ Strategic Council on Intellectual Properties, “Intellectual Property Policy Outline,” July 3, 2002. <<http://www.kantei.go.jp/jp/singi/titeki/kettei/020703taikou.html>> (accessed on February 10, 2012).

⁴⁶ Ministry of Health, Labour and Welfare [2008] “Basic Employment Policy — Toward Realization of a Society in which Everybody can Show His/Her Ability, Work with a Sense of Safety and Security, and Lead a Stable Life,” Ministry of Health, Labour and Welfare Notification No. 40, February 29, 2008, 3(2)[3].

⁴⁷ For example, see Legal Research Office, Research Bureau of the House of Representatives [2008]: “Current Situation and Issues of the Foreigner Training/Skills Practice Program” (This is a report in an electronic media, posted in the website of the House of Representatives.), January 2008, pp. 266-267. <http://www.shugiin.go.jp/itdb_rchome.hsf/html/rchome/Shiryo/houmu_200801.pdf> (accessed on February 10, 2012).

⁴⁸ Japan International Training Cooperation Organization (JITCO), Stop Inappropriate Cases (Guide for Appropriate Program Administration). <<http://www.jitco.or.jp/stop/index.html>> (accessed on February 10, 2012).

⁴⁹ Nippon Keidanren proposed in a recommendation published in April 2010 (The Keidanren's Proposal: "Growth Strategy 2010") to reduce the effective corporate income tax rate in Japan to international levels (around 30%) by pointing out that countries all over the world are racing against each other to reduce the corporate income tax rate. See Nippon Keidanren [2010]: “The Keidanren's Proposal: "Growth Strategy 2010"” (This is a document in an electronic media, posted in the website of Nippon Keidanren), April 13, 2010, pp. 124-125.

<<http://www.keidanren.or.jp/japanese/policy/2010/028/honbun.pdf#page=101>> (accessed on February 10, 2012).

⁵⁰ Conference on Promoting Japan as an Asian Industrial Center and Direct Investment into Japan, “Program for Promoting Japan as an Asian Business Center and Direct Investment into Japan” <<http://www.invest-japan.go.jp/jp/fdip/files/asia-ij/siryou2-1.pdf>> (accessed on February 11, 2012).

⁵¹ The J-Power case is an example of cases in which investment in Japan by a foreign company was rejected by the examination of applications submitted in advance pursuant to Article 27 of the Foreign

Exchange and Foreign Trade Act. In January 2008, a British investment fund submitted an application for the additional acquisition of shares in Electric Power Development Co., Ltd. (J-Power) up to 20%. The Minister of Finance and the Minister of Economy, Trade and Industry, who has jurisdiction over the business, advised the fund to cancel the additional acquisition as they determined that “the investment is likely to disturb the maintenance of public order.” The investment fund refused to accept the advice and, as a result, the Government ordered the fund to cancel the investment. Kojo, Makoto [2008]: “Acquisition of Shares in J-Power by TCI Fund: Foreign Exchange and Foreign Trade Act and Restrictions on Foreign Capital,” *Hougaku-kyoushitsu*, Vol. 337, pp. 8-12.

⁵² Examples of such restrictions or conditions under individual laws governing certain industries include the Radio Act applicable to the telecommunications sector (foreign juridical persons shall not be granted a radio station license (Article 5, Paragraph (1))), the Broadcast Act (when a listed general broadcaster, etc. has received a request to enter the name and address in its register of shareholders from foreign nationals, etc. who have acquired its shares, the general broadcaster may refuse to do so if the ratio of voting rights of foreign nationals, etc. reaches or exceed one-fifth upon acceptance of the request (Article 52-8, Paragraph (1)) and such shareholders are not permitted to exercise their voting rights (Paragraph (3) of the same article)), the Act on Nippon Telegraph and Telephone Corporation, etc. (the ratio of voting rights of foreign nationals, etc. in NTT shall not exceed one-third (Article 6)), the Ship Act applicable to the coastal shipping sector (foreign companies shall be excluded from the coastal shipping industry (Article 3)), and the Mining Act (mining rights shall be held only by the people of Japan or juridical persons of Japan unless otherwise provided for in the treaty concerned (Article 17)).

⁵³ The revision takes effect 30 days after the approval of two-third of the parties to the agreement is obtained.

⁵⁴ Cabinet Office, CHANS: Office for Government Procurement Challenge System.

<http://www5.cao.go.jp/access/japan/chans_main_j.html> (accessed on February 11, 2012).

⁵⁵ Nippon Keidanren [2010] (op. cit. in note 49), p. 5.

⁵⁶ Invest Japan Business Support Center (IBSC), JETRO. <<http://www.jetro.go.jp/invest/ibsc>> (accessed on February 11, 2012).

⁵⁷ Nakagawa, Junji [2011]: "How Will the TPP Change Japan? (1)," *Boueki to Kanzei*, July 2011 and the subsequent series of articles that are currently being published every month on the same topic. The series is scheduled to include 12 articles.

⁵⁸ Rearranged by the author based on Cabinet Secretariat, et. al. [2011]: "Current Status of the TPP Negotiations by Negotiation Area," October 2011

(<http://www.npu.go.jp/policy/policy08/pdf/20111014/20111021_1.pdf> accessed on February 11, 2012).

⁵⁹ The yarn-forward rule is a rule that applies a preferential tariff only to textile/apparel products using yarn originating in parties to the agreement by deeming only such textile/apparel products as products originating in parties to the agreement. The textile/apparel industries in the U.S. are strongly requesting the adoption of this rule by the TPP. See "Apparel, Textile Organizations Urge Yarn-forward Rule in TPP," *Textile News*, September 13, 2011.

(<http://www.textileworld.com/Articles/2011/September/Apparel_Textile_Organizations_Urge_Yarn_Forward_Rule_In_Tpp.html> (accessed on February 12, 2012).

⁶⁰ Regional Economic and Industrial Policy Group, Ministry of Economy, Trade and Industry (ed.) [2011] (op. cit. in note 28), pp. 681-704.

⁶¹ For example, see Center for Strategic & International Studies (CSIS), "The Significance of the Trans-Pacific Partnership Negotiations," January 24, 2012.

(<<http://www.csis.org/publication/significance-trans-pacific-partnership-negotiations>> (accessed on February 12, 2012).

⁶² The U.S. submitted a proposal concerning regulatory coherence to the 6th round of TPP negotiations held in March-April 2011. This proposal was not publicly disclosed as the countries participating in TPP negotiations had agreed not to disclose any proposals and other documents submitted to the negotiations. However, in October 2011, the U.S. proposal concerning regulatory coherence was leaked to multiple media outlets and the content of the proposal became known as a result. See “Leaked TPP Proposals Show U.S. Positions on IPR, Regulatory Coherence, Medicinal Access,” *Inside U.S. Trade*, Issue of October 24, 2011.

⁶³ OECD [2010]: *OECD Reviews of Regulatory Reform—Australia: Towards a Seamless National Economy*, Paris: OECD, 2010.

⁶⁴ “Mixed Treatment Not Subject to TPP Negotiations, Say Informal Communications from the U.S. Government to Japan,” *47News*, Kyodo News, January 23, 2012.

<<http://www.47news.jp/CN/201201/CN2012012201001643.html>> (accessed on February 12, 2012).

⁶⁵ It is possible that if common rules of origin are adopted under the TPP, the inconvenience of having different rules of origin under individual FTAs will be avoided as the TPP is an FTA in which many countries participate and the common rules of origin are applied to the trade among the parties to the TPP. However, tariff schedules of FTAs concluded between the parties to the TPP in the past and the applicable rules of origin may survive. Therefore, whether to apply the TPP rules of origin or the rules of origin under past FTAs may become an issue in trade among the parties to the TPP even after the conclusion of the TPP Agreement, which may result the spaghetti bowl (or noodle bowl) effect pointed out in the text.

⁶⁶ P4, Article 20.6, paragraph (1). For the text of P4, see New Zealand Ministry of Foreign Affairs & Trade, Trans-Pacific Strategic Economic Partnership Agreement, Understanding the P4—The Original P4 Agreement, Text of the Agreement.

<<http://mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Trans-Pacific/4-P4-Text-of-Agreement.php>> (accessed on February 20, 2012).

