

## **Preface**

**This report on *An Assessment of Impediments to Foreign Direct Investment in APEC Member Economies* was prepared by the Japan National Committee for Pacific Economic Cooperation Council (JANCPEC) and sponsored by the APEC Business Advisory Council (ABAC) to assess and analyze impediments to Foreign Direct Investment (FDI) in the countries of the Pacific Rim.**

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## I. Introduction

World foreign direct investment (FDI) increased substantially in the 1990s before experiencing a decline in 2001. Rapid increase in FDI is attributable to several factors. Technological progress and deregulation in communication services reduced the cost of international communication, facilitating multinational enterprises (MNEs) to conduct international business through FDI. Liberalization in FDI policies by many countries also contributed to the expansion of FDI. Similar to the pattern observed for world FDI, FDI inflows in the APEC economies experienced an increase in the 1990s and a decline in 2001, although the rate of change is smaller when compared to that experienced by non-APEC economies, mainly consisting of western European countries. The decline in the annual flow of world FDI in 2001 was largely attributable to slow down in economic growth in major developed economies including the US and the EU.

Although the world and the APEC region witnessed a decline in FDI inflows in 2001, FDI contributed to rapid economic growth of APEC economies in the 1980s and 1990s by enabling them to utilize resources effectively, which are necessary for economic growth. It should be emphasized that FDI has promoted economic growth of not only FDI recipients but also FDI suppliers.

Several factors have been identified to play important roles in determining FDI inflows. In their study of the locational determinants of Japanese firms, Urata and Kawai (2000) found that low economic risks in terms of small variations in exchange rate and inflation are important "pull" factors for Japanese FDI. In addition to the low economic risks, they also found that low wages, well-developed infrastructure, agglomeration, and good governance are important factors for attracting Japanese FDI. Fukao and Yue (1997) identified FDI policies in the host countries as an important determinant in their study of FDI by Japanese electronics producers. Specifically, they found the imposition of the requirements for undertaking FDI in the host countries discouraged FDI. Guisinger and McNulty (1996) reported the results of a survey of US firms on their attitudes toward FDI, which indicated the importance of investment policies for their decision on FDI.

In light of the findings on the importance of FDI policies in the host countries for the determinants of FDI inflows, this study examines and evaluates FDI regimes for selected APEC economies. It is hoped that our evaluation of FDI regimes would contribute to deeper understanding of the FDI regimes of APEC economies and to help formulate FDI liberalization policy as a step toward achieving a free investment environment under the Bogor Declaration.

The structure of the report is the followings. Section II briefly examines the issue regarding the importance of FDI in economic growth of the FDI host economies. Section III examines FDI trends for APEC economies in recent years. Section IV briefly reviews international rules on FDI with focus on trade-related investment measures under the WTO and APEC's Non-Binding Investment Principles (NBIP), while Section V evaluates FDI regimes for APEC economies by using two sources of information. One is a set of individual action plans (IAPs), which are submitted to APEC by the members. In IAPs APEC member economies report their FDI regimes. The other source of information is opinions and views of foreign companies on investment regimes in the countries of their operation. IAPs will give us the contents of formal FDI policies, while the opinions and views from foreign companies would reveal how these policies are actually applied.

## II. Foreign Direct Investment and Economic Growth

In recent years FDI has become an important factor for the promotion of economic growth of the FDI recipient (or host) countries. The contributions of FDI to economic growth of its recipient have been realized in various forms. FDI has brought not only financial resources for fixed investment but also technologies and managerial know-how, which play crucial roles in promoting economic growth of the recipient economies. Furthermore, FDI enabled the recipient economies to utilize various networks such as sales, procurement, and information networks of foreign firms, to improve efficiency in production and marketing.

Several studies have confirmed the positive contribution of FDI on economic growth. Examining economic growth of 69 developing countries for 1970-89, Borensztein, de Gregorio, and Lee (1998) find in their regression analysis that FDI has marginally positive impact on economic growth, but it has significantly positive impact when FDI is interacted with educational levels of host countries. Their finding may be interpreted to mean that education becomes more effective when it is associated with foreign knowledge. United Nations (1999) obtained similar findings by examining economic growth of 60-plus countries for 1971-1995 period. Kawai and Urata (2001) found that FDI inflows had significantly positive impacts on economic growth by analyzing the data for 133 countries for 1970-1997. Among the countries in different stages of economic development, they found that FDI inflows had particularly strong

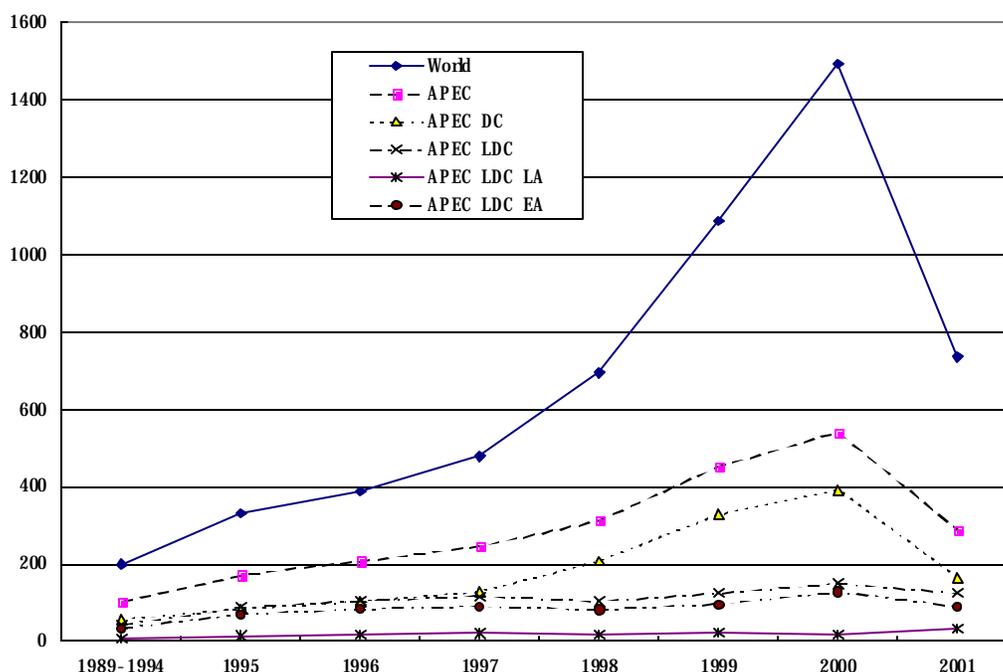
positive impacts on economic growth for low-income countries. Their finding appears to indicate that low-income countries without much resource can benefit significantly by attracting financial, technical and other types of resources needed for economic development through FDI inflows.

### III. Recent FDI Trends in APEC Economies

Foreign direct investment in the APEC region increased rapidly in the 1990s before experiencing a decline in 2001 (Table 1, Figure 1). The rate of increase was particularly substantial in the latter half of the 1990s, during which FDI inflows in the APEC region increased more than three-fold in five years from \$170 billion in 1995 to \$540 billion in 2000. Despite the increase in FDI inflows in APEC economies, the share of APEC economies in world FDI inflows declined from 51.6 percent in 1995 to 36.2 percent in 2000 before rising slightly again to 39.2 percent in 2001, reflecting rapid increase in FDI inflows in non-APEC economies in the second half of the 1990s.

**Table 1 FDI Inflows to APEC Economies (\$ million)**

	1989-1994	1995	1996	1997	1998	1999	2000	2001
World	200,145	331,068	386,140	478,082	694,457	1,088,263	1,491,934	735,146
Developed countries	137,124	203,462	219,908	267,947	484,239	837,761	1,227,476	503,144
Developing countries	59,578	113,338	152,685	191,022	187,611	225,140	237,894	204,801
Australia	5,790	11,970	6,110	7,657	6,112	5,686	11,957	4,090
Brunei	6	13	654	702	573	596	600	244
Canada	5,692	9,257	9,634	11,527	22,809	24,435	66,617	27,465
Chile	1,220	2,956	4,633	5,219	4,638	9,221	3,674	5,508
China	13,951	35,849	40,180	44,237	43,751	40,319	40,772	46,846
Hong Kong	4,164	6,213	10,460	11,368	14,770	24,596	61,938	22,834
Indonesia	1,524	4,346	6,194	4,677	-356	-2,745	-4,550	-3,277
Japan	969	39	228	3,224	3,193	12,741	8,322	6,202
Korea	869	1,776	2,325	2,844	5,412	9,333	9,283	3,198
Malaysia	3,964	5,816	7,296	6,324	2,714	3,895	3,788	554
Mexico	6,571	9,526	9,938	14,044	11,933	12,534	14,706	24,731
New Zealand	1,940	3,659	2,231	2,624	1,191	1,412	3,209	1,699
PNG	116	455	654	88	110	296	130	179
Peru	673	2,048	3,242	1,697	1,842	2,263	681	1,100
Philippines	879	1,459	1,520	1,249	1,752	578	1,241	1,792
Russia	850	2,016	2,579	4,865	2,761	3,309	2,714	2,540
Singapore	4,798	8,788	8,608	10,746	6,389	11,803	5,407	8,609
Taipei	1,229	1,559	1,864	2,248	222	2,926	4,928	4,109
Thailand	1,927	2,004	2,271	3,626	5,143	3,561	2,813	3,759
USA	42,535	58,772	84,455	103,398	174,434	283,376	300,912	124,435
Vietnam	651	2,336	1,803	2,587	1,700	1,484	1,289	1,300
APEC	100,318	170,857	206,879	244,951	311,093	451,619	540,431	287,917
APEC developed	56,926	83,697	102,658	128,430	207,739	327,650	391,017	163,891
APEC developing	43,392	87,160	104,221	116,521	103,354	123,969	149,414	124,026
APEC developing Latin	8,464	14,530	17,813	20,960	18,413	24,018	19,061	31,339
APEC developing East	33,962	70,159	83,175	90,608	82,070	96,346	127,509	89,968

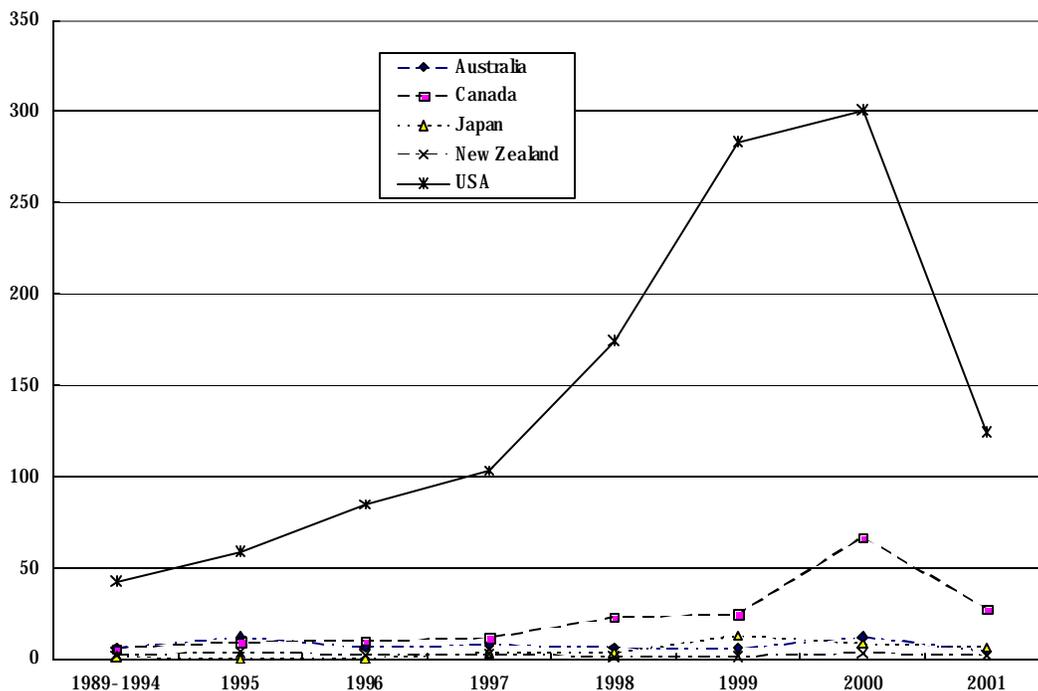


Among APEC economies, developed APEC economies recorded a large increase in FDI inflows in the latter half of the 1990s (Figure 2). Indeed, the share of FDI inflows to developed economies in FDI inflows to total APEC economies increased from 49 percent in 1995 to 72 percent in 2000. Among developed APEC economies the US has been by far the largest recipient of FDI inflows. Indeed, the cumulative FDI inflows to the US amounted to as large as 80 percent of FDI inflows to developed APEC economies for the 1995-2001 period. Although the amount of FDI inflows has been much smaller than the amount recorded by the US, Canada has been the second largest recipient of FDI inflows among developed APEC economies. The remaining developed members, namely Australia, Japan, and New Zealand, were able to attract only a limited amount of FDI, when compared to the US or Canada. One of the factors that contributed a large increase in FDI inflows to developed APEC economies, particularly to the US, was active mergers and acquisitions (M&As), which was promoted by worldwide restructuring of various industries such as automobiles and telecommunications<sup>1</sup>. Worldwide restructuring was in turn promoted by intensified competition, or mega-competition, in the world markets, resulting from drastic liberalization and deregulation.

<sup>1</sup> See United Nations (2000) for detailed information on M&As.

\$ billion

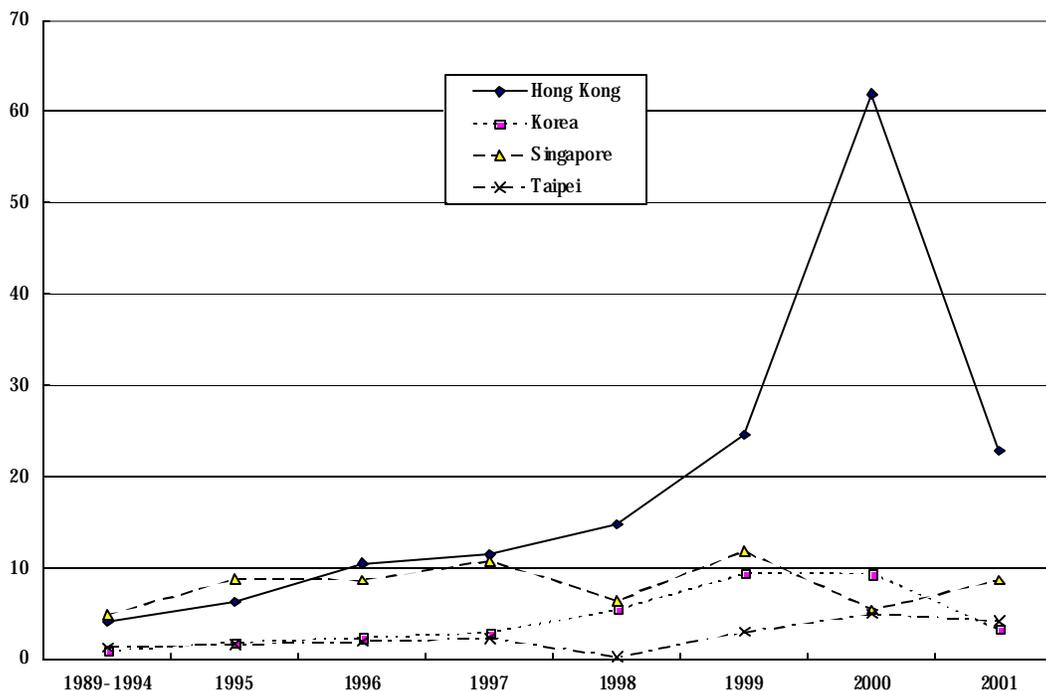
Figure 2 FDI Inflows in Developed APEC Economies



Among the Asian NIEs, Hong Kong exhibited substantial growth in FDI inflows in 1999 and 2000 (Figure 3). Although FDI inflows to Hong Kong declined sharply in 2001, the level of FDI inflows to Hong Kong was still substantially larger than the levels achieved by any other NIEs. Having noted large FDI inflows to Hong Kong, it is important to recognize the possibility of overestimation of FDI inflows to Hong Kong. This is because a substantial portion of FDI inflows to Hong Kong has been reinvested in China. Among other Asian NIEs, Singapore has attracted sizeable amount of FDI constantly during the period under study, while Korea recorded a substantial increase after the financial crisis in 1998. This increase was largely due to drastic liberalization of FDI policies, which the Korean government adopted to deal with the negative impacts of the crisis.

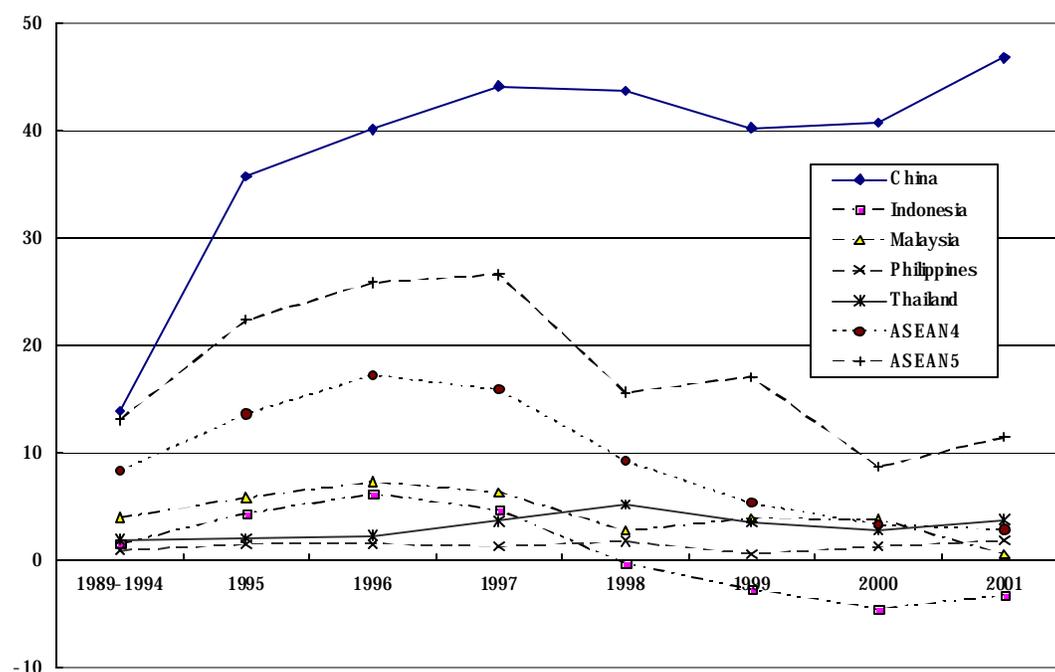
\$ billion

Figure 3 FDI Inflows in Asian NIEs



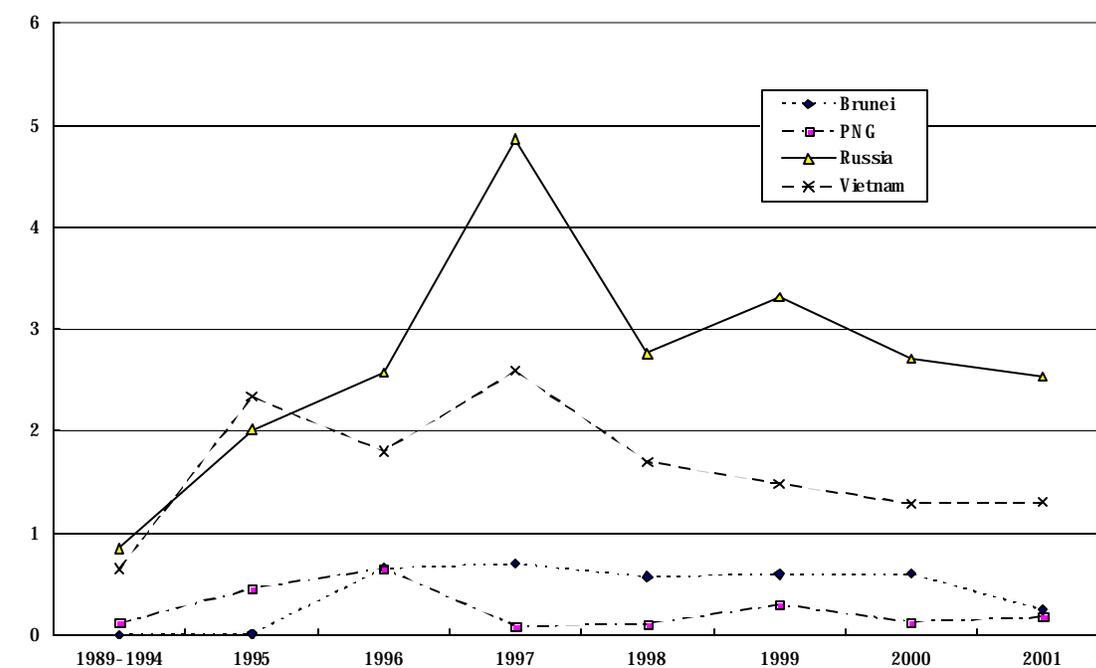
Among East Asian economies, China has attracted FDI successfully since the early 1990s (Figure 4). Indeed, China has been the largest recipient of FDI among developing economies since the early 1990s. Some of the factors that make China attractive host to FDI include the presence of large market and availability of low-wage workers. ASEAN4 countries (Indonesia, Malaysia, the Philippines, and Thailand) experienced continuous increase in FDI inflows until the financial crisis in 1997. Among ASEAN4 countries, Malaysia and Indonesia were successful in attracting FDI in the pre-crisis period. The steady increase in FDI inflows during the period for ASEAN4 countries was largely attributable to rapid economic growth and liberalization in FDI policies. The crisis changed the situation dramatically, as FDI inflows to Malaysia and Indonesia dropped significantly after the crisis. FDI inflows to Indonesia turned negative, that is disinvestment, in 1998 and disinvestment has continued through 2001. Political instability and a lack of transparency in FDI policies appear to be two important factors behind the decline in FDI for Indonesia. In contrast to the case for Indonesia, FDI inflows to Thailand increased after the crisis and remained at relatively high levels through 2001. To deal with the crisis, Thai government promoted FDI inflows by liberalizing FDI policies, resulting in large FDI inflows.

Figure 4 FDI Inflows to ASEAN and China

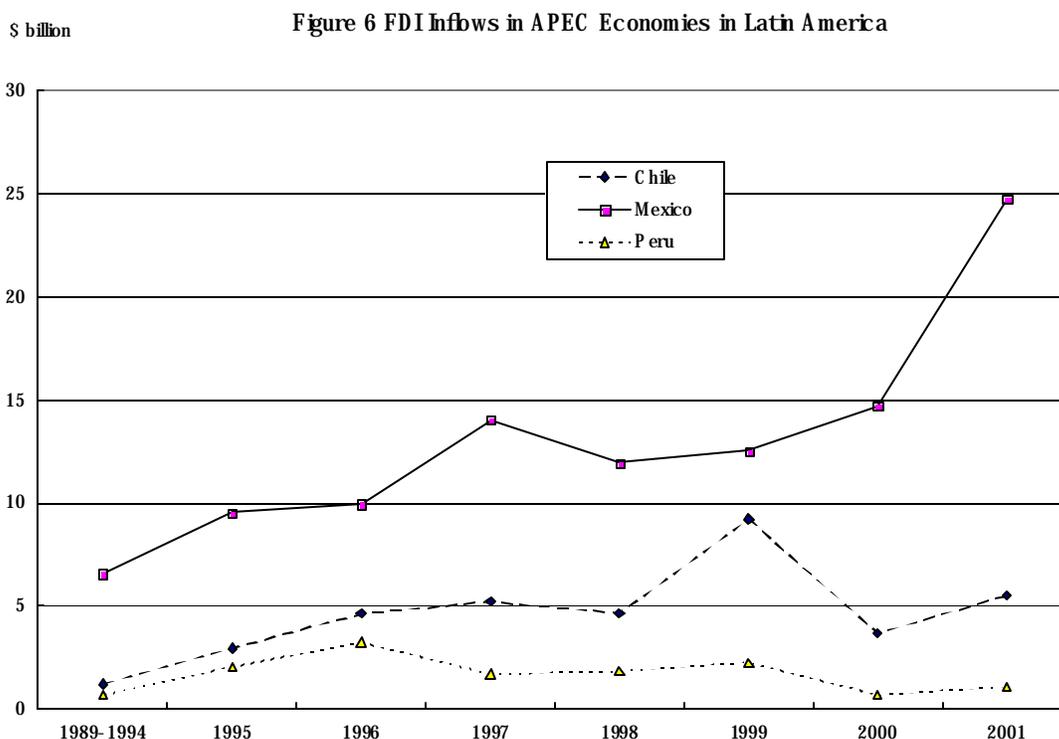


Among other APEC members in Pacific Asia, Russia and Vietnam attracted relatively large amount of FDI in the latter half of the 1990s, largely resulting from pro-FDI policies adopted by these governments (Figure 5). FDI inflows in Brunei and Papua New Guinea remained low, largely reflecting small markets.

Figure 5 FDI Inflows in Other ASEAN, Russia and PNG



Among Latin American (Figure 6) APEC members, Mexico saw a continuous increase in FDI inflows since the early 1990s. One factor that played an important role for Mexico in attracting FDI was the formation of the NAFTA in 1994. Many foreign companies set up production base in Mexico, where production cost is low, to serve the NAFTA market. Chile has also experienced steady increase in FDI inflows with some fluctuations since the early 1990s, as Chile adopted FDI liberalization policies.



One notable development concerning FDI in Asia in recent years is rapid increase in cross-border M&As (mergers and acquisitions), a similar development observed for developed economies. The share of M&As in FDI inflows for South, East and South-East Asia increased rapidly from around 3 percent in 1995 to 16 percent in 1998.<sup>2</sup> Among Asian countries Korea and Thailand that were hit hard by the Asian crisis experienced a rapid increase in M&As. One important implication of the increase in M&As is the increased importance of host economies' capability in assimilating technology and management know-how, in order to reap benefits from FDI inflows. This is because M&A does not expand physical capacity and therefore an improvement in technological capability through successful technology transfer is a major source of benefits.

<sup>2</sup> United Nations (1999).

Rapid expansion of FDI inflows for APEC economies has resulted in the increased importance of FDI in economic activities for APEC economies. Such development can be confirmed by the increase in the share of inward FDI stock in GDP (inward FDI stock-GDP ratio) for all APEC economies except for Hong Kong (Table 2). It should be noted that Hong Kong recorded a very high inward FDI stock-GDP ratio of 263.8 percent, although the ratio declined from 1980 to 2000. Some of the notable economies experiencing very substantial increase in the ratio include Australia, Brunei, Chile, China, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Singapore, Thailand, the US, and Vietnam. By contrast, Indonesia, Japan, and Taipei saw only slow increase in the ratio during the 1980-2000 period.

**Table 2 Inward FDI Stock as a percentage of GDP  
(percent)**

	1980	1985	1990	1995	2000
World	6.1	7.8	8.9	10.0	20.0
Developed countries	4.8	6.2	8.1	8.9	17.1
Developing countries	10.2	13.9	13.0	15.3	30.9
Australia	7.9	14.5	23.7	27.9	29.2
Brunei	0.4	0.8	0.7	12.1	74.4
Canada	20.4	18.4	19.6	21.1	28.8
Chile	3.2	14.1	33.2	23.8	60.9
China	3.1	3.4	7.0	19.6	32.3
Hong Kong	436.2	372.1	198.1	125.0	263.8
Indonesia	0.6	0.5	0.5	1.6	4.1
Japan	0.3	0.3	0.3	0.6	1.1
Korea	2.1	2.3	2.3	2.0	13.7
Malaysia	20.7	23.3	23.4	32.3	58.8
Mexico	3.6	10.2	8.5	14.4	16.9
New Zealand	10.3	8.9	18.2	43.1	49.4
Papua New Guinea	29.4	28.2	49.1	36.1	53.5
Peru	4.3	6.1	5.0	10.3	18.5
Philippines	3.9	8.5	7.4	8.2	16.6
Russia	...	...	...	1.6	7.7
Singapore	52.9	73.6	77.9	71.5	103.8
Taipei	5.8	4.7	6.1	5.9	9.0
Thailand	3.0	5.1	9.6	10.4	20.0
USA	3.0	4.4	6.9	7.3	12.4
Vietnam	0.2	1.1	4.0	28.5	46.7

Source: United Nations, World Investment Report 2001 and 2002

The differences in the patterns of FDI inflows and those in the importance of FDI inflows in economic activities among APEC members are attributable to various factors including, economic conditions, policy environment, future economic outlook. In light of these observations, we examine the FDI policy environment for APEC economies in section V. Before the examination of FDI policy regimes in APEC, we

review the international rules on FDI in the next section.

#### IV. International Rules on FDI<sup>3</sup>

Recognizing the importance of FDI inflow in promoting economic growth and responding to requests or pressure from multinational enterprises (MNEs) for a freer FDI environment, countries have established various institutional frameworks regarding FDI, including bilateral, regional and multilateral approaches. At the end of 2001 as many as 2099 bilateral investment treaties have been concluded<sup>4</sup> These treaties certainly have contributed to the expansion of FDI. However, bilateral treaties cannot be fully effective or efficient means for providing an environment conducive to FDI, since it would take thousands of treaties to negotiate each set of investment relationships the world over, thus sharply increasing transaction costs. Based on this observation one can argue the advantage of having regional and multilateral frameworks for negotiating policies regarding FDI. It has also been suggested that trade and FDI regimes can be liberalized with less difficulty when liberalization is carried out regionally or multilaterally, because the negative effect of trade and FDI liberalization on some groups in the economy is likely to be offset by favorable effects in other areas.

Various regional agreements regarding FDI have been established because the benefits of such agreements are shared more equally among economies having mutual interests. In addition, it is easier to reach an agreement when working with a small number of member economies.

We discuss two major international rules (one multilateral and one regional rules) concerning FDI, which involve some or all of the APEC members: the agreement on trade related investment measures (TRIMs) under the GATT/WTO and the non-binding investment principles (NBIP) under APEC. Besides these two international rules, several frameworks involving some APEC economies do exist. But we do not discuss them in detail because of their limited impacts on APEC economies, partly because of their limited coverage and their short history. One is ASEAN Investment Area (AIA), which was established in 1998. AIA provides for coordinated ASEAN investment co-operation and facilitation programs, market access, and national treatment of all industries with target dates for original ASEAN-6 members and Myanmar to be 2003 and for Vietnam and Laos to be 2010. Another framework is free trade agreement (FTA). FTA is traditionally a framework for free trade among member

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<sup>3</sup> This section draws on Urata (1998)

<sup>4</sup> United Nations (2002).

countries. However, recent FTAs go beyond free trade, and some have arrangements for free FDI. One such FTA is Japan-Singapore FTA, which was signed in January 2002. Under Japan-Singapore FTA various components toward achieving free FDI were included. Some of them are national treatment of foreign companies, protection of investors, abolition of performance requirement such as technology transfer requirement and R&D requirement.

#### IV.1. GATT/WTO Trade Related Investment Measures (TRIMs)

The Uruguay Round of the GATT reached an agreement on investment rules, which was the first time in the history of GATT multilateral negotiations that members took up the issue of FDI. One of the contentious issues was the coverage of the rule. After a series of intense talks, an agreement was reached to prohibit trade related investment measures (TRIMs) that violate the GATT rules. The agreement was a compromise between developed and developing countries, as neither side was entirely happy with the outcome. The United States argued strongly to prohibit export requirements, fearing that they might lead to the expansion of exports bound for the U.S. market. However, this provision was not included in the agreement. Developing countries argued for a clause to restrict the monopolistic behavior of MNEs, but that was not included either.

In the end, it was agreed to prohibit TRIMs that violate the two following GATT rules: national treatment applied to imported products (Article III) and general elimination of quantitative restrictions on imports (Article XI). The specific TRIMs that violate the national treatment rule include the local-content requirement and trade balancing requirements. Trade balancing requires that imports of foreign firms do not exceed their exports. TRIMs that violate the general elimination of quantitative restrictions are trade balancing requirements, restrictions on foreign exchange transactions, and local sales requirements. Local sales requirements force foreign firms to limit their exports.

Only TRIMs practiced by governments violate WTO rules, and thus TRIMs practiced voluntarily by the private sector do not violate these rules. Trade-restricting measures that are sanctioned under the GATT for security reasons, among others, are also recognized in the agreement on TRIMs. Furthermore, special provisions accorded to developing countries under Article XVIII, section B, permits developing countries to

restrict their imports in order to deal with balance of payments difficulties. Article XVIII, section C, permits developing countries to apply the same restrictions to promote a particular industry.

The contracting parties of the WTO must abolish TRIMs that are reported to the Council for Trade in Goods within the agreed period-within two years for developed countries, within five years for developing countries, and within seven years for the least developed countries. To increase transparency of TRIMs, WTO member countries are required to report all TRIMs that they apply. They are also required to furnish information on TRIMs to any member country that requests it.

Although the rules regarding FDI that were established in the Uruguay Round are limited to issues of foreign trade and TRIMs, it is worth noting that the Uruguay Round was the first trade negotiations under which measures related to FDI were taken up. However, no agreements were reached on other restrictive measures related to FDI, such as restrictions on the extent of equity participation, technology transfer, and exports. Because of this, there are still many government interventions to be removed before a true free FDI environment will be established. Despite these interventions, an agreement was reached that ensures services trade the right of establishment, a significant step toward assuring the right of establishment for firms involved in FDI.

At the first ministerial meeting of the WTO, held in Singapore in December 1996, it was agreed that a working group should be established to examine the relationship between trade and FDI. This was a compromise between developed countries, which were interested in setting up comprehensive rules on FDI, and developing countries like Malaysia and India, which were against such rules. At the third ministerial meeting of the WTO in Doha in November 2001, an agreement was reached to initiate a new and the first round of trade negotiations under the WTO and the negotiation started in January 2002 with a target of finishing the negotiation in three years. A working group on investment has been set up and it has been discussing the issues related to possible investment rules.

#### IV.2. APEC's Non-Binding Investment Principle (NBIP)

Achieving free trade and investment in the APEC region has been one of APEC's central objectives. The APEC members have liberalized their trade and FDI policies unilaterally in recent years, but many areas remain to be liberalized in a number

of APEC member economies. Recognition of these issues led to the agreement on Non-Binding Investment Principles (NBIP) in November 1994. It should be noted that an increasing number of developing APEC members that have been recipients of FDI are now becoming active investors, contributing to the establishment of the NBIP

The expansion of FDI has been recognized as an important element for the promotion of economic growth in the Asia-Pacific region by APEC members since the inception of APEC in 1989. Since 1989, the framework for the liberalization of FDI has been shaped gradually. At the Canberra meeting in 1989, participating ministers selected investment and technology transfer as an area of focus for an APEC work program at APEC. At the Singapore meeting in 1990, this became one of seven work projects carried out by APEC. Specifically, members sought the establishment of information networks concerning FDI and technology and the creation of technology parks where technology-intensive foreign firms could operate.

In the 1991 Seoul Declaration, one key objective of APEC members was the promotion of FDI. APEC stated that obstacles to the promotion of FDI among members would be reduced in accordance with GATT principles. At the Bangkok meeting in 1992, ministers proposed that senior officials prepare a guidebook containing a detailed description of the APEC members' rules and procedures regarding FDI, which led to the APEC Guidebook on investment regimes.

At the Seattle meeting in 1993, reaffirming the importance of trade and FDI liberalization for economic growth in the APEC region, the ministers set up the Committee on Trade and Investment (CTI). CTI reports to the ministers through meetings of senior officials. CTI's objectives are twofold: to formulate opinions on trade and FDI issues in APEC, and to devise ways to reduce or remove obstacles to the free flow of trade and FDI. The newly formed CTI was given the task of developing a set of nonbinding investment principles.

In Indonesia in 1994, APEC leaders issued the Bogor Declaration, declaring their intention to achieve free and open trade and investment in the APEC region. The declaration established a target date for reaching that goal: no later than 2010 for the industrialized members and no later than 2020 for the developing members. Prior to the Bogor Declaration at the APEC meeting in Jakarta, the ministers endorsed the Non-Binding Investment Principles (NBIP). These were prepared by CTI in response to a request presented at an unofficial APEC leaders' meeting in Seattle. The PECC (Pacific Economic Cooperation Council) contributed to the preparation of the NBIP by developing a model voluntary code on FDI in its Trade Policy Forum.

The NBIP supports the need to liberalize FDI policies in order to promote

economic growth in the region. It consists of four sections: principles that govern international relations, codes of conduct for government, codes of conduct for investors, and a system for dispute settlement. The three general principles of international relations are transparency, national treatment, and nondiscrimination. The codes of conduct for government stipulate the use of specific policies related to FDI: investment incentives, performance requirements, expropriation and compensation, transfer of funds, settlement of investment disputes, entry and stay of expatriates, tax measures, and capital movements. These codes of conduct are meant to discourage the use of investment-distorting policies, but the diversity of APEC members has made it difficult to implement these codes uniformly.

The Eminent Persons Group assessed ten specific principles of the NBIP and decided that five are equal to (or even above) other international standards. These five are transparency, nondiscrimination, expropriation, settlement of investment disputes, and tax measures. However, the other five fall short of those standards: the transfer of funds, capital movements, national treatment, performance requirements, and investment incentives.

The NBIP on performance requirement, for example, falls short of WTO obligations. The NBIP states the member economies will minimize the use of performance requirements that distort or limit the expansion of trade or investment, whereas the WTO bans TRIMs such as local content and trade balancing requirements. The Eminent Persons Group recommended strengthening the principles and then converting the arrangement into a voluntary code that will ultimately lead to an agreement that is binding for all members.

Despite the presence of divergent views, codes of conduct for investors were included in the NBIP as they were considered to balance the set of principles. These codes of conduct state that foreign investors should abide by the host country's laws, regulations, administrative guidelines, and policies, just as domestic investors do. A dispute settlement provision is included in the NBIP but lacks a detailed mechanism or procedure. It suggests only that disputes will be settled promptly through consultations and negotiations between parties through arbitration procedures acceptable to all. Finally, it is stated that the NBIP must not violate existing bilateral or multilateral treaties, including the agreement on TRIMs under the WTO.

At the Osaka meeting in 1995, the APEC economic leaders adopted the Osaka Action Agenda, carrying through the commitment they made at Bogor. At Osaka, economic ministers reaffirmed that liberalization in trade and investment, facilitation of trade and investment, and economic and technical cooperation are three pillars that

APEC needs to achieve sustained economic growth. APEC members agreed on the creation of fundamental principles designed to lead to liberalization and facilitation, comprehensiveness, WTO consistency, comparability, nondiscrimination, transparency, standstill, simultaneous start, continuous process, differentiated time tables, flexibility, and cooperation. These principles reflect the diverse levels of economic development among APEC member economies. Substantive action plans were agreed on at the 1996 Ministerial Meeting in the Philippines. Overall implementation of action plans began in January 1997 and the plans are to be reviewed annually.

Regarding FDI, the Osaka Action Agenda put forth the objective of achieving free and open investment in the Asia-Pacific region by liberalizing restrictive investment regimes in the overall investment environment. Specific plans include providing for proper MFN and national treatment, ensuring transparency, and facilitating investment activities through technical assistance and cooperation. To achieve these objectives, the Osaka Action Agenda emphasized guidelines that progressively reduce or eliminate exceptions and restrictions; it draws on the WTO agreement, the APEC Non-Binding Investment Principles, other relevant international agreements, and commonly agreed-upon guidelines developed by APEC.

At the Manila APEC ministerial meeting in November 1996, ministers from member economies reaffirmed their commitment to full and effective implementation of the Osaka Action Agenda by 2010 and 2020. Yet even though ministers reaffirmed the importance of moving forward with progressive action plans, little progress was made regarding investment liberalization. The individual action plans (IAPs) submitted by member economies contained virtually no new commitments to promote FDI liberalization substantially. One significant achievement at the Manila meeting was recognition of the importance of continuing consultation and annual review of progress made concerning investment and trade liberalization. Review is meant to sustain the process of voluntary improvements as listed in the IAPs.

Another notable development that took place at the Manila meeting was greater participation by the business sector. This was due to recognition by APEC members, especially by President Fidel V. Ramos of the Philippines, that the business sector plays an increasingly important role in economic growth and trade and FDI liberalization. In response to the greater participation by the business sector, ABAC (APEC Business Advisory Council) submitted to the APEC ministerial meeting a set of recommendations for achieving prosperity in the APEC community. Specifically, recommendations include measures for trade and FDI liberalization, building infrastructure, support for small and medium-sized enterprises, investment in human resource development, and

pursuing economic and technical cooperation. Recognizing the need to reduce and eventually eliminate border restrictions that prevent APEC's firms from remaining globally competitive, ABAC's recommendations on FDI include those calling for the reinforcement of the NBIP through further clarification, and for a commitment to the immediate implementation or a timetable for implementation of the NBIP. None of these recommendations was adopted in the APEC economic leaders' declaration in Manila because of opposition from developing countries headed by Malaysia.

After the Manila meeting, APEC meetings took up important issues at the time of the meeting including the Asian economic crisis in 1998, contribution to a WTO new round in 1999, regional economic integration in 2000. In every meeting the importance of FDI liberalization was reaffirmed by the Leaders, although practically no new schemes regarding the promotion of FDI liberalization has been proposed. However, it is important to note that the Leaders agreed on the need to strengthen the peer review mechanism of trade and FDI liberalization<sup>5</sup>. For the peer review NBIPs should be used as a criterion for the evaluation of FDI regimes.

## V. Foreign Direct Investment Regimes in APEC Economies

Inward FDI policies started to be liberalized in the mid-1980s, as many countries became to realize that FDI would promote economic growth via various channels as discussed above. Although quantification of the restrictiveness of the FDI regime is difficult, it is clear from the documentation of the FDI regimes that many developing East Asian economies have liberalized their FDI policies since the mid-1980s. Restrictions on FDI take various forms, including those on market access, most-favored-nation (MFN) treatment, and national treatment. Many developing East Asian economies reduced restrictions on market access by reducing the number of sectors and industries, for which FDI is prohibited, and by relaxing the limits on foreign equity ownership.<sup>6</sup> Among the developing East Asian Economies, in particular, the

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<sup>5</sup> Yamazawa and Urata (2000) emphasize the need for a mechanism for evaluating the performance of the APEC members in their pursuit of trade and FDI liberalization and they present the result of their assessment.

<sup>6</sup> See PECC(1995) and United Nations' *World Investment Report*, various issues.

five economies most seriously affected by the crisis in 1997, Indonesia, Korea, Malaysia, Philippines, and Thailand adopted substantial FDI liberalization measures, to deal with the crisis by attracting FDI.<sup>7</sup> Furthermore, recognizing the important contribution that FDI may make toward economic growth, a number of economies have introduced various incentives such as tax breaks to attract FDI. Indeed, there has been stiff competition among East Asian economies to attract FDI by reducing barriers and by providing incentives.

FDI liberalization has been carried out under the APEC framework as well. Following the Bogor declaration in 1994 calling for full FDI liberalization by 2010 for developed members and by 2020 for developing members, APEC member economies agreed to pursue FDI liberalization by preparing and implementing individual action plans specifying near- and medium-term actions in 1995. "Peer pressures" are expected to play a crucial role for the implementation of liberalization measures. Although it is not clear how effective the APEC process has been for promoting FDI liberalization, all the APEC members have made significant progress toward freer FDI regimes.

The Uruguay Round of multilateral trade negotiations under the GATT started in 1986 and ended in 1994. Although it took eight years to finish the negotiations, the Uruguay Round made substantive achievements toward FDI liberalization. A framework agreement on trade-related investment measures (TRIMs) was established. Although limited in scope, the establishment of the TRIMs agreement is a significant step toward the creation of international investment rules.

## V. 1 Assessment of Individual Action Plans

Many APEC economies liberalized their policies on foreign direct investment in recent years. This observation is supported by our assessment of investment regimes based on the information given in the IAPs. The summary of the assessment is shown in Table 3, and Figures 7 and 8. Our assessment is conducted by evaluating the description on the rules on FDI for the selected APEC economies in the following fashion. Eleven categories concerning FDI regimes were selected to evaluate the investment regimes of selected APEC economies, for which the necessary information is available from the IAPs. Eleven categories are right of establishment (market access), examination

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<sup>7</sup> *World Investment Report* (1998) provides a list of liberalization measures adopted by the five economies.

procedure, MFN (most-favored-nations treatment), profit repatriation, work permit, taxation, performance requirement, protection of investors, dispute settlement, investment incentives, and capital exports. These categories are used in the IAPs to describe FDI regimes.

**Table 3 Assessment of Investment Regimes**

	Market Access			Examination Procedure			MFN Treatment			Profit Repatriation			Work Permit			Taxation			Performance Requirement			Protection of Investors			Dispute Settlement			Investment Incentives			Capital Exports			FDI Liberalization (TOTAL)					
(weights)	(10)			(1)			(1)			(1)			(1)			(1)			(1)			(1)			(1)			(1)											
	a	b	c	a	b	c	a	b	c	a	b	c	a	b	c	a	b	c	a	b	c	a	b	c	a	b	c	a	b	c	a	b	c	a	b	c	a	b	c
Australia	7	8	9	8	8	8	10	10	10	10	10	10	8	8	9	10	10	10	10	10	10	0	10	10	10	10	10	10	10	10	10	8	8	78	87	93			
Brunei	4	4	4	6	6	6	0	0	0	10	10	10	8	8	8	10	10	10	10	10	10	0	0	0	0	0	0	0	0	0	10	10	10	47	47	47			
Canada	8	8	8	8	8	8	0	10	10	10	10	10	10	8	8	10	10	10	0	0	0	8	10	10	10	10	10	9	9	9	10	10	10	78	83	83			
Chile	4	6	6	6	6	6	10	10	10	6	6	6	8	8	8	8	10	10	8	8	8	8	8	8	10	10	10	9	9	9	10	10	10	62	73	73			

Figure 7 Assessment of FDI Regimes (Investment Guidebook 1996 and 1999, and IAP 2000)

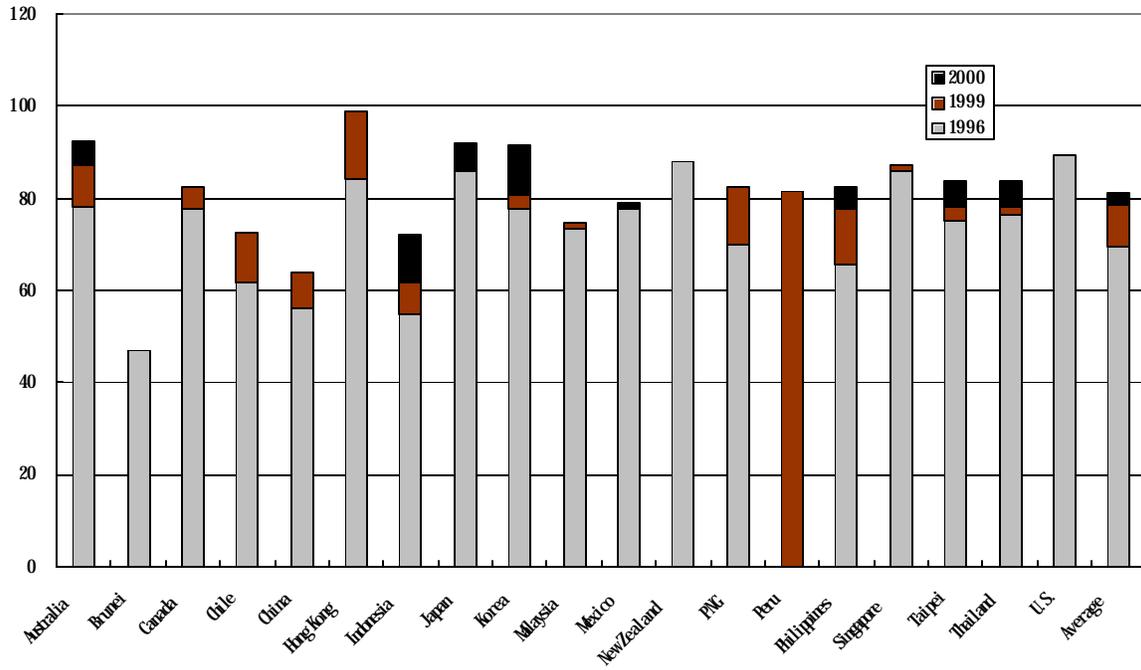
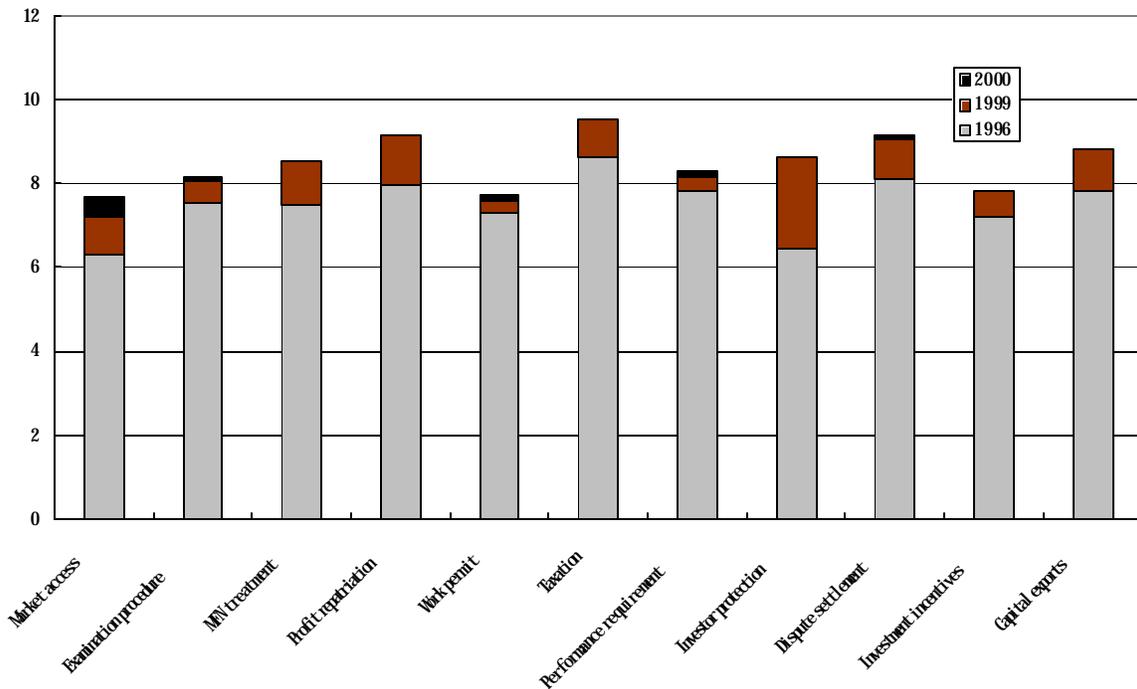


Figure 8 Assessment of Investment Regime by Categories for All Economies (Investment Guidebook 1996, 99 and IAP 2000)



A few words on the meanings of these items from their restrictive impacts on FDI are in order. Problems on market access, work permit, taxation, performance requirement, protection of investors, and dispute settlement all have negative impacts on FDI inflows. Unlike those items just listed above, investment incentives do promote FDI inflows, and therefore may be regarded as having favorable impacts. However, investment incentives are generally evaluated as having negative impacts on resource allocation, because they do distort investment flows. Restriction on capital exports do have discouraging impacts on FDI outflows, economies with such restriction are regarded to have restrictive FDI regimes.

For each category scoring is conducted on 1-10 scale, with a score of 10 reflecting no restrictions. Score of zero is given when no information is available. To obtain the score for all the categories, the right of establishment (market access) is given a weight of 10 while for other categories weight of 1 is given. This treatment reflects the fact that the right of establishment is the most important regulation on inward FDI.

The average scores for the eleven categories and for overall categories for the three years, 1996, 1999, and 2000, are shown in Table 2 and Figures 7 and 8. An examination of the scores for overall categories reveal that the APEC economies under study liberalized their FDI regimes during the 1996-2000 period, as the average overall scores increased from 70 in 1996 to 81 in 2000. A substantial liberalization took place from 1996 to 1999, when the average overall score rose substantially from 70 to 79. Among the APEC economies under study Hong Kong is given the highest score at 99 for 2000. The economies with high scores include Australia, Japan, and the US, as each of these economies is given the scores above 90. In contrast, Brunei, China, and Chile are given low scores. It should be noted, however, China and Chile improved their scores over the 1996-2000 period. As one would expect, developed economies exhibit high scores, reflecting open FDI regimes, while developing economies show relatively low scores, indicating restrictive FDI regimes.

An examination of the scores for individual categories shows that taxation registers the highest score at 9.5 in 2000, indicating that APEC economies generally do not impose discriminatory tax treatment against foreign firms vis-à-vis domestic firms. Indeed, for 14 economies out of 19 economies, foreign firms are treated the same as domestic firms in taxation. Profit repatriation and dispute settlement register next highest scores as each has 9.2 points in 2000, indicating few restrictions on profit repatriation and well developed dispute settlement system for many APEC economies. It should be noted that Chile and China each has relatively low scores on profit repatriation, indicating the scope for further liberalization in this category. For dispute

settlement most APEC economies have set up a system to deal with the disputes.

Market access, work permit, and investment incentives received relatively low scores, when compared to other categories. Specifically, the scores for market access, work permit, and investment incentives for 2000 were 7.7, 7.7, and 7.8, respectively. It should be noted that substantial improvement in the scores was recorded for market access, while the scores for work permit and investment incentives remain low despite some improvement.

One interesting characteristic of the scores for market access and investment incentives is wide variations in the scores among APEC economies under study. As for market access, Brunei, China, and Chile register very low scores at 4, 5, and 6, respectively, reflecting the entry by foreign firms to relatively large portion of their respective markets is restricted. By contrast, Hong Kong, Australia, Japan, Korea, Peru, and the US have very high scores of either 10 or 9, indicating that their markets are very open to foreign firms. As to investment incentives, both Korea and Malaysia register low scores of 6, while the score of ten was given to Australia, Hong Kong, and New Zealand. There is an argument that investment incentives should not be regarded as having negative impacts on FDI, because they promote investments. However, investment incentives are regarded as having negative impacts because they distort resource allocation. This is indeed the position that is taken in this analysis as well as in many evaluation studies of investments. Furthermore, it should be emphasized that investment incentives result in the beggar-thy-neighbor policy as all the economies offering investment incentives would end up wasting resources by trying to attract investments without success.

Unlike the scores for market access and investment incentives, the scores for work permit do not vary much among the economies under study. This observation reflects the difficulties associated with opening up the labor market, because of the sensitive issue of possible negative impacts of increased foreign personnel on unemployment.

By comparing the scores for the three years, one finds that market access, profit repatriation, and protection of investors achieved substantial improvement, as each of these categories registered an increase in the scores by more than one point. As to the improvement in the scores for the economies, one observes, Australia, Chile, Hong Kong, Indonesia, Korea, PNG, and the Philippines showed remarkable development because their respective scores increased more than 10 points.

It may be interesting to evaluate the attitude of APEC economies toward investment liberalization on the basis of the contents of IAPs. In Table 4, three criteria

are shown. One is submission of the IAPs, another is either using the format, which is requested by APEC, and the last criterion is the level of description of the IAPs. The evaluation of submission and format is mechanical with the economies satisfying the criteria given circle, while the evaluation of the description criteria is somewhat subjective with circle given to the economies with detailed description. According to the evaluation, Australia and Taipei performed very well, while Canada, Indonesia, Japan, Mexico, New Zealand, and the Philippines relatively well. In contrast, Brunei, Hong Kong, and PNG have a lot of room for improvement fore the preparation of IAPs.

**Table 4 Assessment of IAPs**

	2000 IAP		
	Submission	Format	Description
Australia	?	?	?
Brunei	×	×	×
Canada	?	?	×
Chile	?	×	×
China	?	×	×
Hong Kong	×	×	×
Indonesia	?	×	?
Japan	?	?	×
Korea	?	×	?
Malaysia	?	×	×
Mexico	?	?	×
New Zealand	?	?	×
PNG	×	×	×
Peru	?	×	×
Philippines	?	?	×
Singapore	×	×	×
Taipei	?	?	?
Thailand	?	×	×
U.S.	?	×	×

Notes: 1) IAP2000 is assessed for the following items: submission, format, and detailed description. '?' is given for submission, adoption of format, and detailed description, while '×' is given otherwise.

## V. 2 Assessment of FDI Impediments by Foreign Companies

The previous section examined FDI regimes of APEC economies based on the information given in IAPs. IAPs describe the regulations concerning FDI and thus they provide very useful information for the assessment of the FDI regimes. However, IAPs do not capture the complete picture of the FDI regimes, partly because regulations on

FDI are not always practiced in the ways that are documented. To fill this gap and to obtain the more accurate picture of formal impediments on FDI, we use the information on FDI impediments that are reported by companies.

Two sources of information are used for the analysis. One is the questionnaire survey conducted by the Japan Business Council for Trade and Investment Facilitation, and the other is questionnaire survey conducted by several national PECC secretariats. Japan Business Council for Trade and Investment Facilitation collects the information on impediments on trade and investment from its member companies. We used the information on FDI impediments that are reported for 2000. One problem of this survey is the absence of information on FDI impediments in Japan, because the reporting companies, which are Japanese, give information on the impediments in the countries other than Japan. To deal with this problem, we conducted a survey on non-Japanese companies to obtain the information on impediments on Japanese market with the help of several PECC secretariats.

The results of the surveys are shown in Table 5 and Figures 9-21. To begin with the total number of incidence concerning FDI impediments that are reported by the respondents, one finds that China received the highest number at 65. Behind China are Malaysia (38), Thailand (24), and Indonesia (21). Countries with a few incidence include Brunei (0), Canada (0), Chile (0), Singapore (0), Hong Kong (1), New Zealand (1), PNG (2), and Australia (3). These findings are biased in such a way that countries with a large number of FDI cases tend to receive a large number of reporting of the presence of FDI impediments. To deal with this bias, we computed the rate of incidence by dividing the number of reporting of FDI impediments by the number of FDI cases. For the economies other than Japan, the number of FDI cases by Japanese firms is used, while for Japan the number of FDI cases in Japan by foreign firms is used. The results of this adjustment show that Russia and Vietnam register very large number of FDI impediments per FDI cases at 66 and 55, respectively. Following Russia are Mexico (31), Malaysia (17), China (14), and the Philippines (13).

**Table 5 The Number of FDI Impediments Indicated by Foreign Companies**

	Market Access	Real Estate Acquisition	Equity Restriction	Examination Procedure	MFN	Profit Repatriation	Work Permit	Taxation	Performance Requirement					Investor Protection	FDI Regime	Total # Incidence	Number of FDI cases	Rate of Incidence
									Total	Export	Local Content	Tech Transfer	Other					
Australia	1	1					1								3	3695	0.81	
Brunei															0	33	0.00	
Canada															0	1720	0.00	
Chile															0	135	0.00	
China	13		2	5		5	2	7	18	6	3	1	8	5	8	66	4512	14.41
Chinese Taipei	1	1		1			5	1	5	2	2		1			14	2826	4.95
Hong Kong	1															1	4820	0.21
Indonesia	4	1	3	1			4	3	4	1			3		1	21	2991	7.02
Japan			1					2							4	7	56803	0.12
Korea	4					3			1	1						8	2204	3.63
Malaysia	2	1	7			3	4	1	11		1		10	2	7	38	2183	17.41
Mexico	1							2	2		1		1		7	12	389	30.85
New Zealand								1								1	489	2.04
Papua New Guinea	1						1									2	232	8.62
Philippines	1	2	5	1		1	3	1	5	1	3		1			19	1383	13.74
Russia	1			1		2	1	1						1	2	9	136	66.18
Singapore																0	3327	0.00
Thailand	1	1	6	6	1		1	1	5	2	3		2			24	3747	6.41
USA							2	1	3		2		1		1	7	5265	1.33
Vietnam	1	1	1	1		3	1	1	6	2	2		2			15	274	54.74
Total	32	8	25	16	1	17	25	22	60	15	17	1	29	8	30	246	97164	2.53
Developing members	31	7	24	16	1	17	22	18	57	15	15	1	28	8	25	228	29192	7.81
Developed members	1	1	1	0	0	0	3	4	3	0	2	0	1	0	5	18	67972	0.26

Notes: FDI regime means changeable, inefficient, non-transparent regime

Notes: the number of cases for the countries except for Japan are the cumulative number of reported FDI cases by Japanese firms from 1951-99.

The number for Japan is the cumulative number of reported inward FDI cases (equity participation) from 1951-1999.

The rate of incidence is measured in terms of 1,000 FDI cases.

Figure 9 Total Number of Reported Impediments on Inward FDI

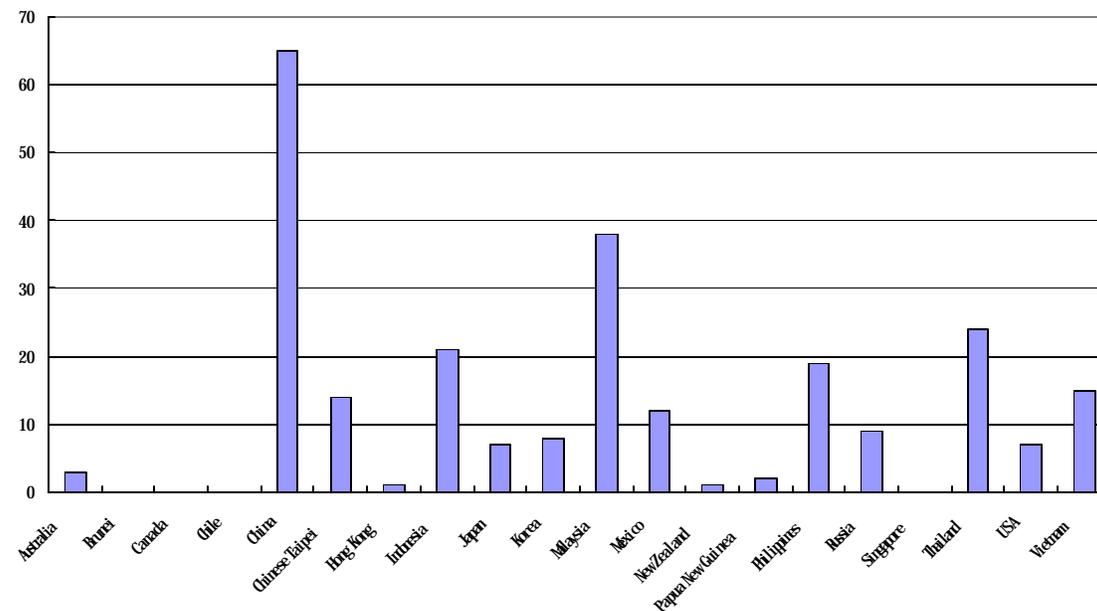
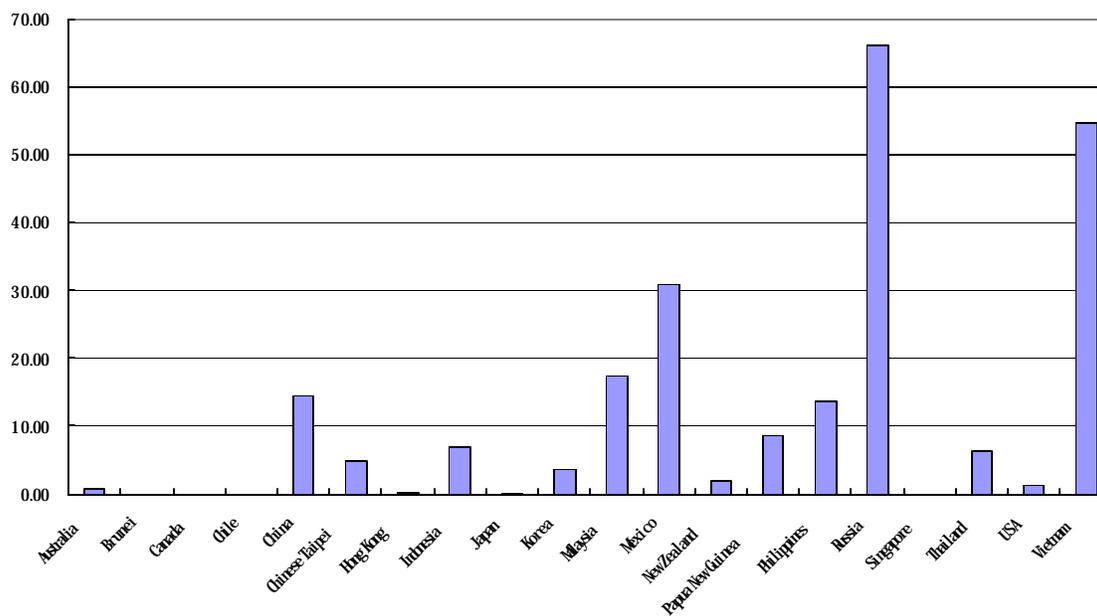
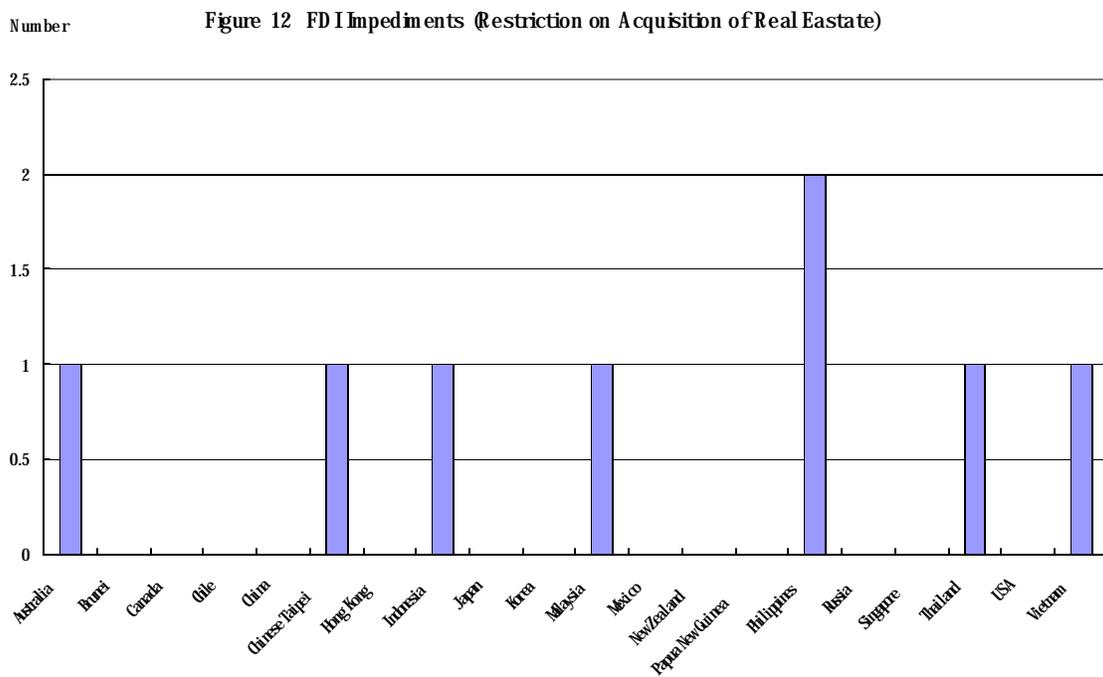
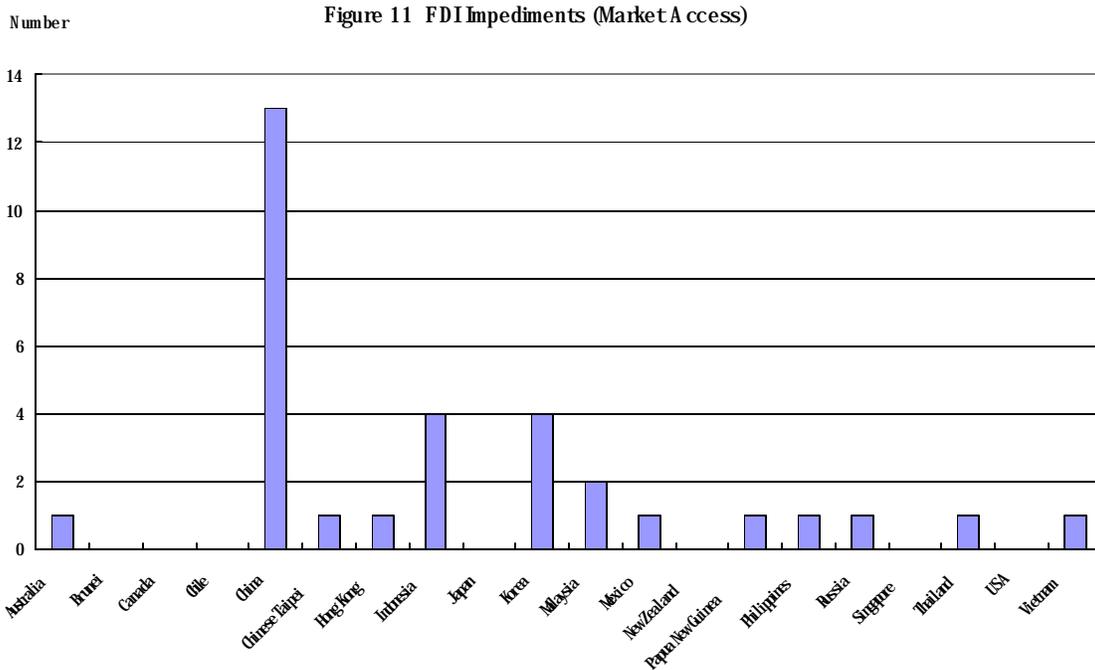


Figure 10 Incidence of Reported FDI Impediments (per 1,000 FDI cases)





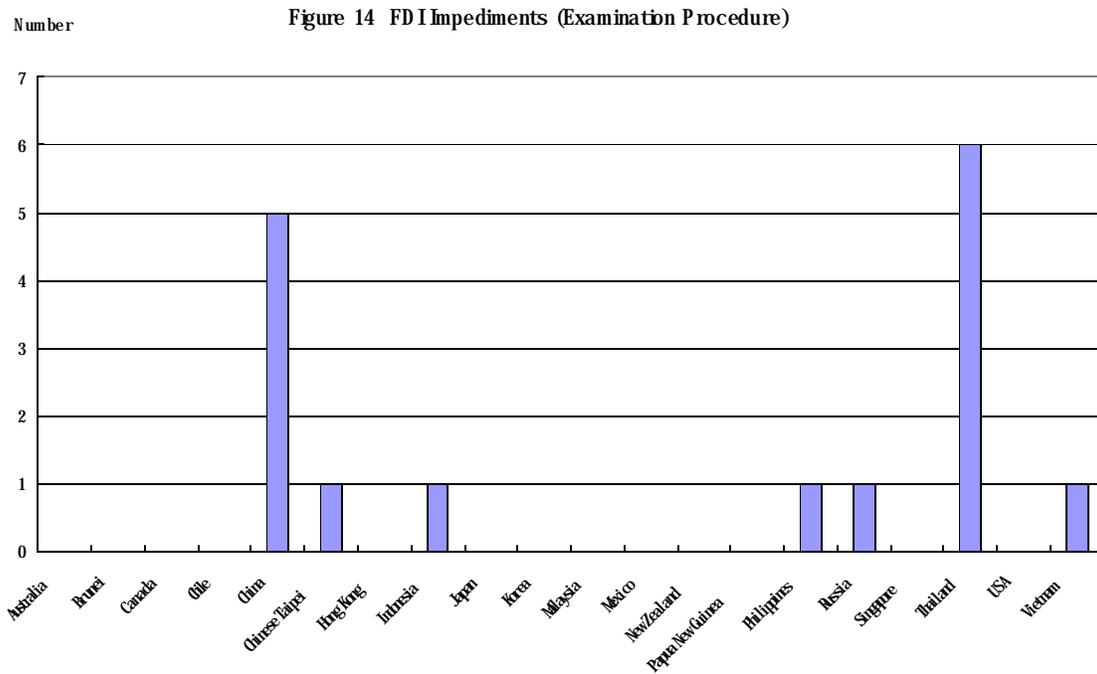
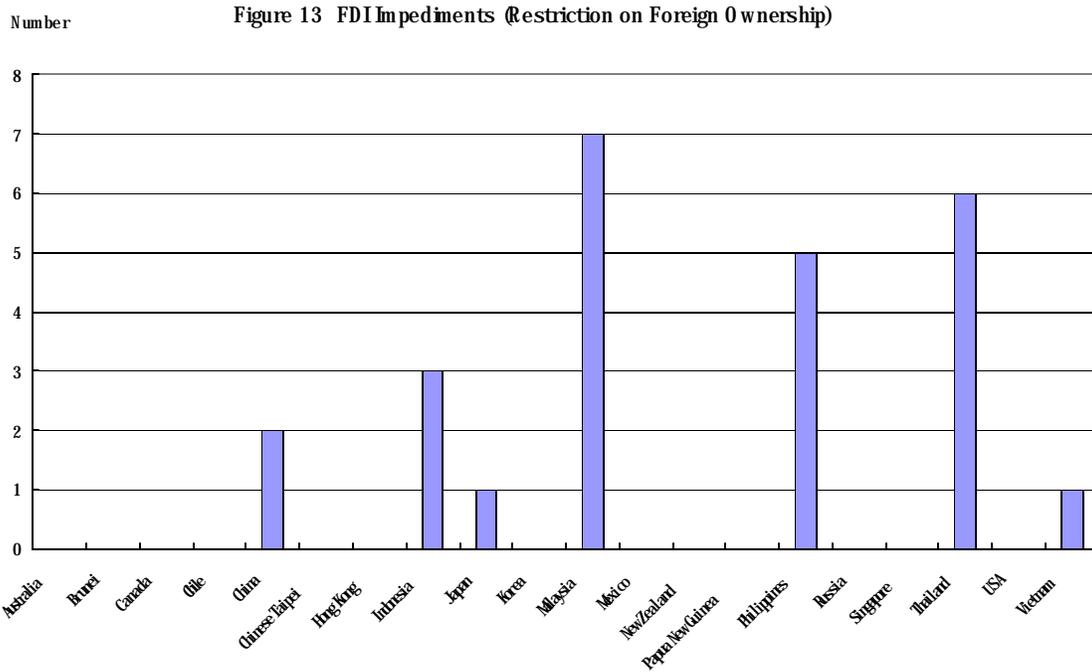


Figure 15 FDI Impediments (Profit Repatriation)

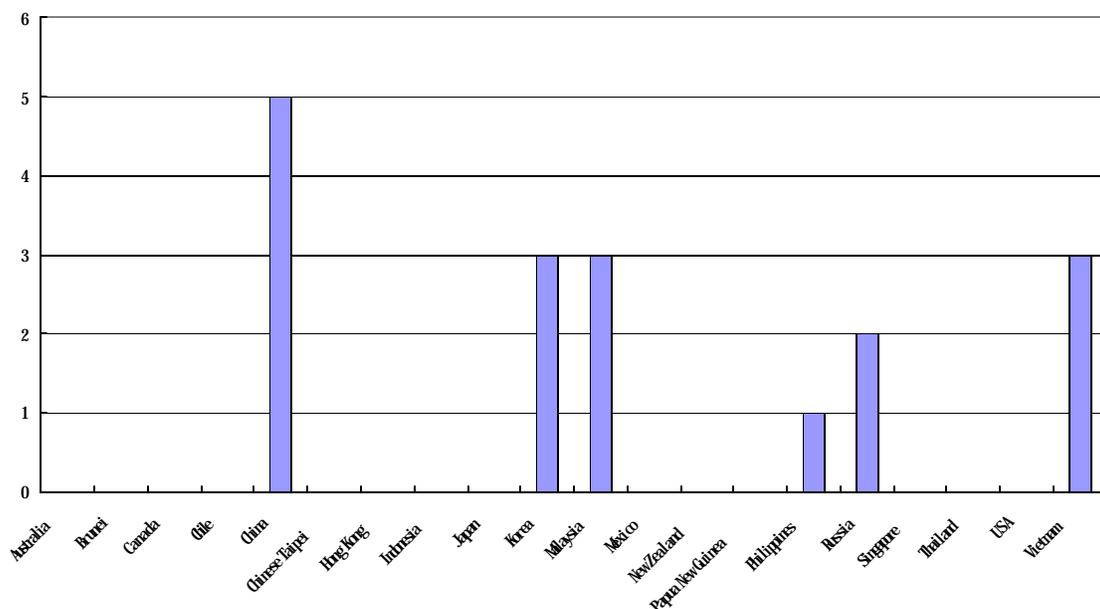
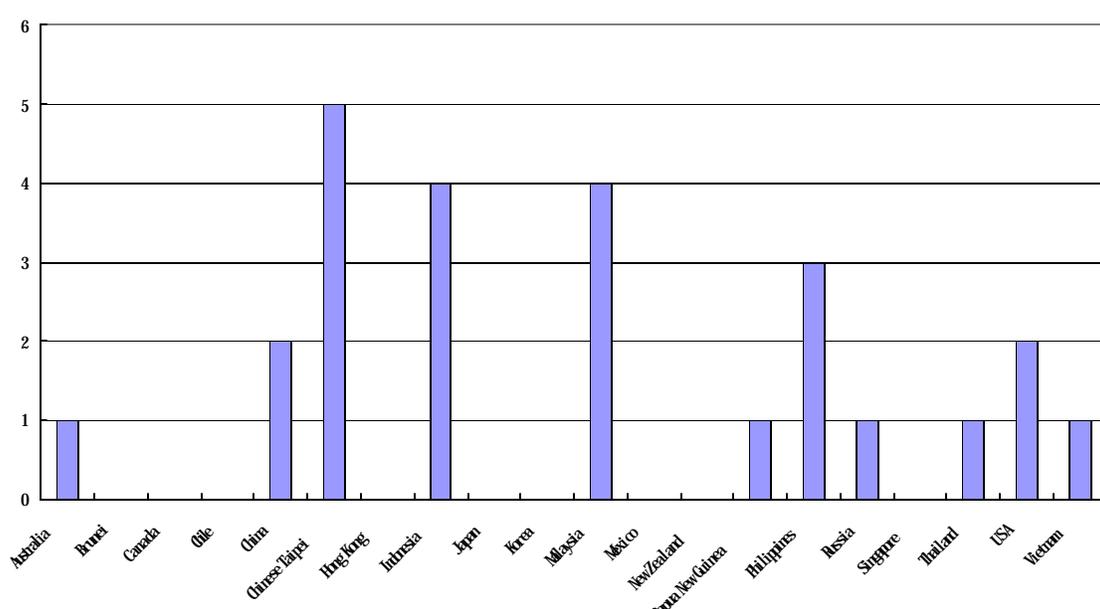
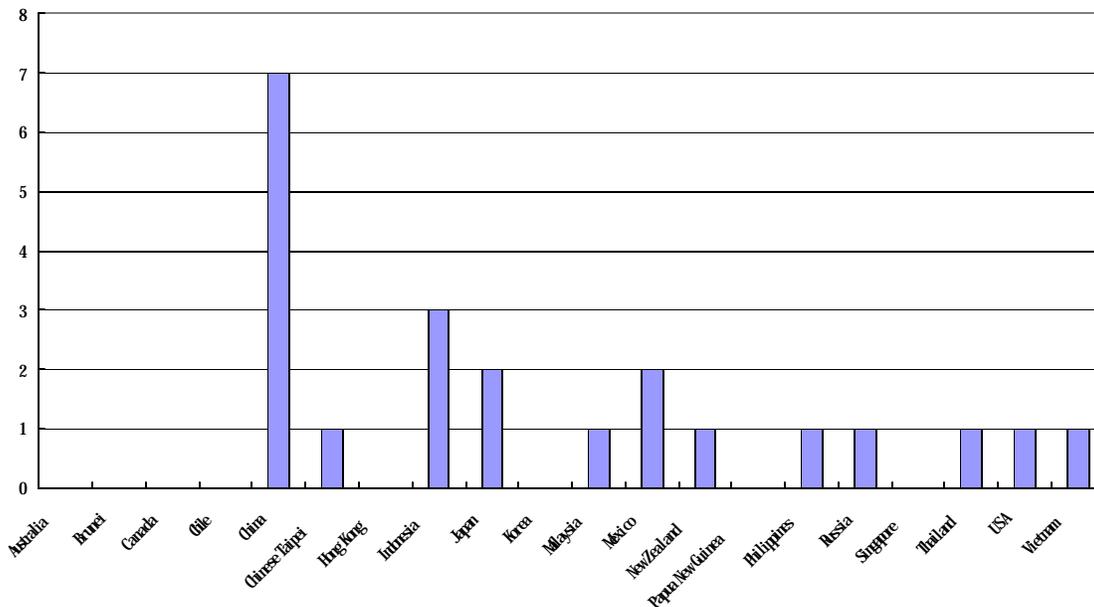


Figure 16 FDI Impediments (Work Permit)



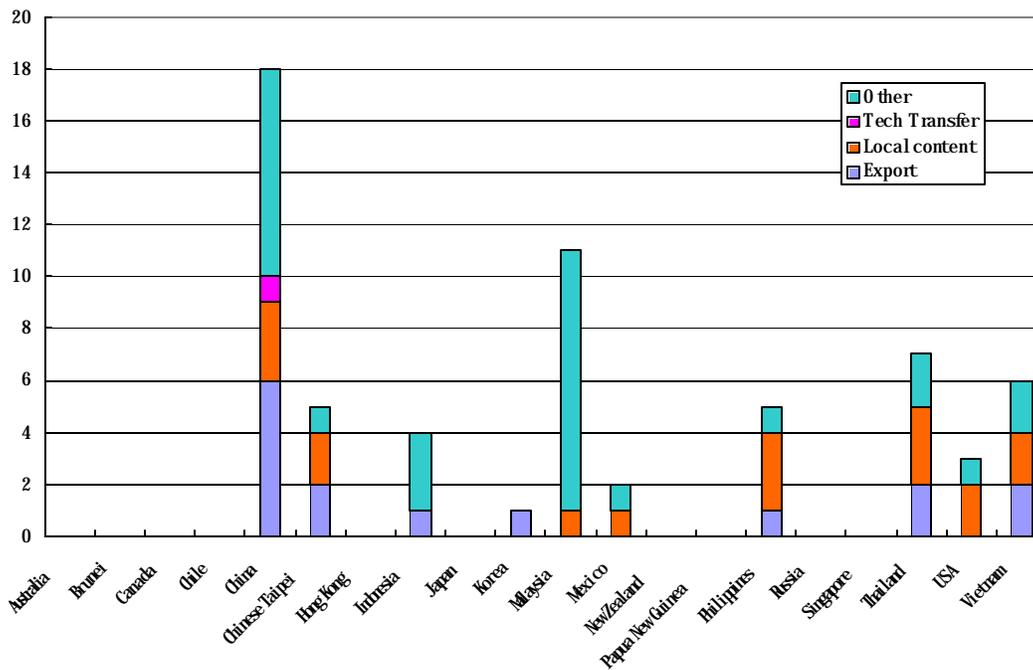
Number

Figure 17 FDI Impediments (Taxation)



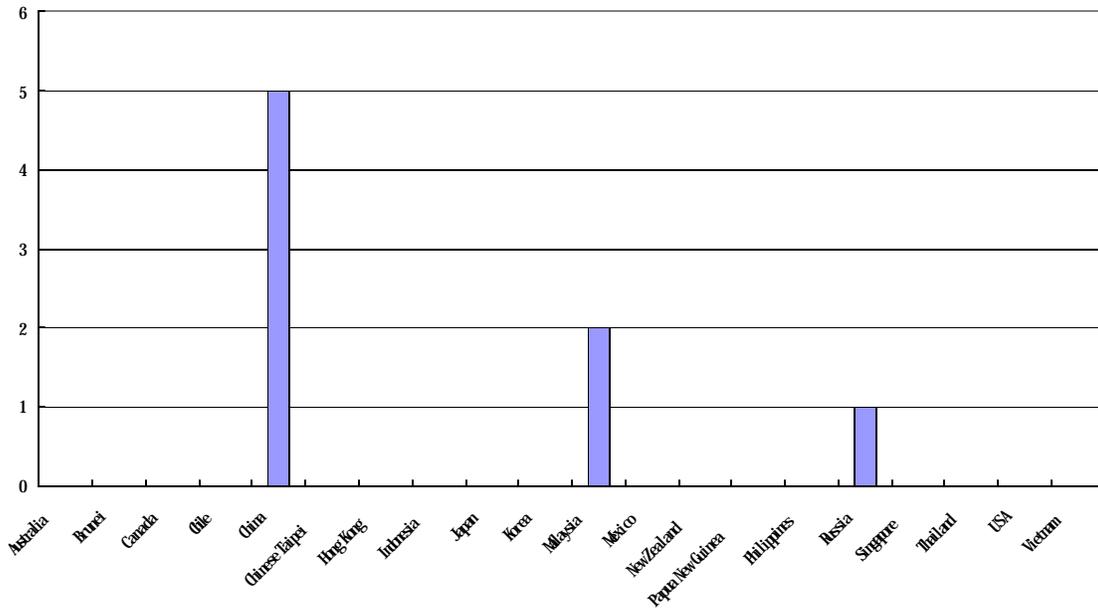
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Figure 18 FDI Impediments (Performance Requirement)



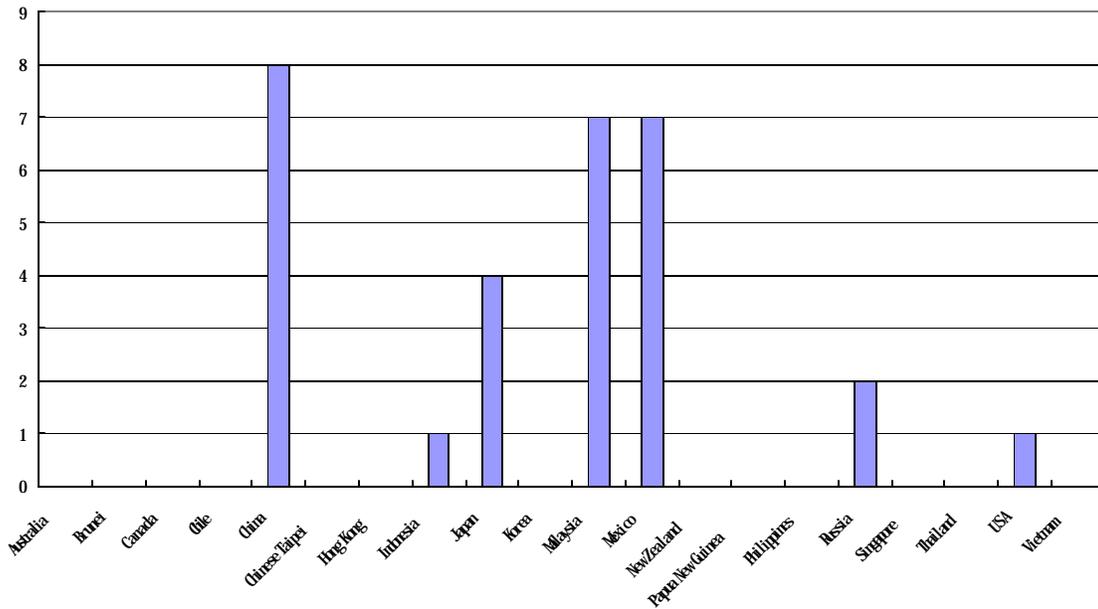
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Figure 19 FDI Impediments (Investor Protection)

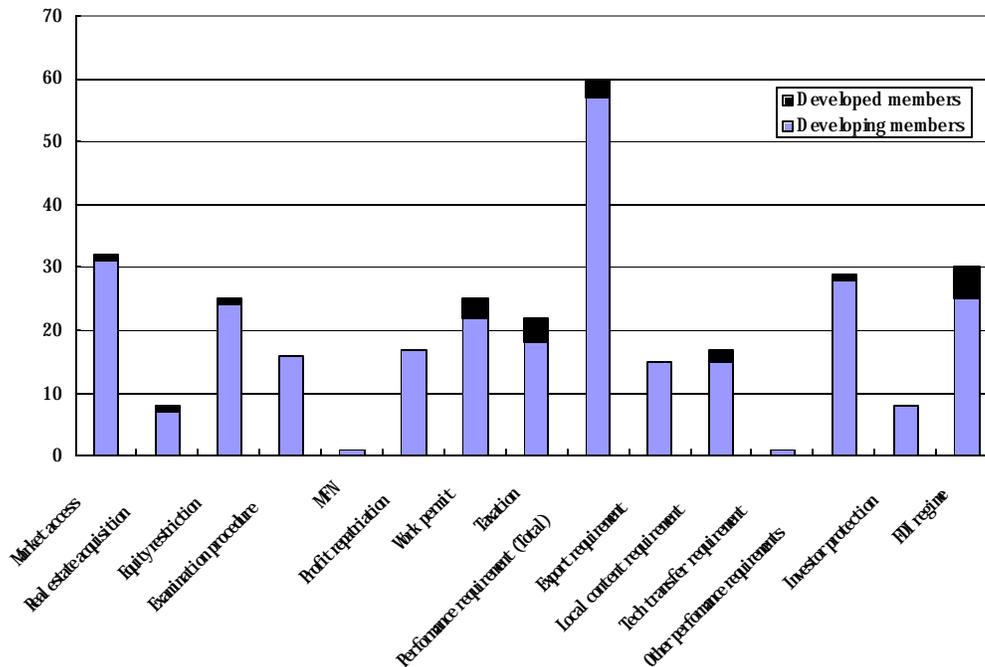


Number

Figure 20 FDI Impediments (FDI Regime)



Number **Figure 21 FDI Impediments by Category in Developed and Developing APEC Members**



An examination of the number of impediments by different categories reveals the presence of large number of impediments concerning performance requirements. In total 60 such cases were reported for the APEC economies as a whole. Out of 60 cases, 57 cases are found for developing economies, while only 3 cases are reported for developed economies. Among the sample economies the incidence of performance requirements is high for China and Malaysia.

Among different types of performance requirements, local content requirement and export requirement are two most popular types of performance requirements, as 17 and 15 cases are reported for these types of performance requirement, respectively. Only one case of technology transfer requirement, which is allegedly used by the host economy government frequently to absorb technology, is reported. As to local content requirement, China, the Philippines, Thailand each received 3 cases, and Chinese Taipei, the US, and Vietnam each received 2 cases. It is to be noted that the US is the only developed economy that was reported to have local content requirement. Turning to the export requirement, China is reported to have many incidence, while other economies with a few reported cases include Chinese Taipei, Thailand, and Vietnam.

The next most frequently reported FDI impediments include market access, lack of transparency in FDI regime, restriction on the level of equity participation, work permit and taxation. As to market access, China received the largest number of reported cases at 13, and China is followed by Indonesia and Korea, each registering 4 cases. All the economies that are reported to have impediments concerning market access are developing economies with the exception of Australia, for which one case is reported. Lack of transparency regarding FDI rules is reported to be a problem in China, Malaysia, Mexico, and Japan. It should be noted that lack of transparency in FDI rules is one of the serious impediments in Japan, as four cases out of seven reported impediments are related to lack of transparency in FDI rules.

Restriction on equity participation is reported to be prevalent FDI impediment in Malaysia, Thailand, and the Philippines. Difficulty in obtaining work permit is found to be an FDI impediment in many APEC economies, both developing and developed economies. The economies that are reported to have high incidence of such impediment include Chinese Taipei, Indonesia, Malaysia, and the Philippines. It is interesting to note that Indonesia and the Philippines were found to have restrictive policies toward issuing work permit in our earlier analysis of IAPs, while Chinese Taipei and Malaysia were assessed to have relatively open policy on work permit. These inconsistencies in our findings from the analysis of IAPs and those from the reported impediments appear to result from the actual practice, which may differ from the documented FDI policies. Taxation is reported to be an impediment in many developed and developing APEC economies. The economy that is reported to have the largest number of such claims is China, for which 7 cases are reported. Indonesia has three reported cases, and Japan and Mexico each have two reported cases.

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## **Appendix Table**

### **Specific Examples of FDI Impediments Reported by Foreign Companies**

#### List of Categories used in Appendix Table

1. Foreign investment entry-and sales-related regulations
2. Regulations concerning domestic production ratios and local procurement ratios
3. Export obligation
4. Withdrawal regulations
5. Restrictions in parts industry policies
6. Reduction and elimination of preferential policies for foreign capital
7. Procedures for the operation of the Foreign Affiliate Law
8. Investment recipient organization
9. Export and import restrictions; tariffs; customs clearance
10. Regulations on activities in free trade areas and special economic zones
11. Collection of technical fees; demands for technological transfer
12. Exchange controls
13. Finance
14. Taxation
15. Price controls
16. Employment
17. Infringement of Intellectual property rights
18. Demands for technology transfer
19. Industrial specifications and safety standards
20. Monopoly
21. Land-holding restrictions
22. Environmental pollution and waste disposal
23. Systems, practices and inefficient administrative procedures
24. Underdeveloped legal systems, sudden changes
25. Government Procurement
26. Others

## AUSTRALIA

Category	Issue	Issue details	Reference	Present status and desired actions
1. Foreign investment entry-related regulations	Vessels registered abroad cannot transport in domestic waters (market access).	<ul style="list-style-type: none"> <li>- Foreign-registered vessels generally not permitted to operate in domestic waters.</li> <li>- Domestic vessels charge high prices.</li> </ul>		- Allow greater use of foreign-registered vessels in domestic waters.
16. Employment	Visa application procedure (work permit)	<ul style="list-style-type: none"> <li>- Complicated visa application.</li> <li>- New 457 visa class has not speeded up processing. Instead, personnel cuts have caused longer waits in some cases.</li> </ul>		- Simplify procedures.
21. Real estate holding restrictions	Real estate acquisition approval (market access)	- Strict application of Town House Rules by the Foreign Investment Review Board (FIRB) inhibits foreign investment in real estate, even for purposes of replacing antiquated existing corporate housing facilities. The IAP indicates that this area is being liberalized.		

## PEOPLE'S REPUBLIC OF CHINA

Category	Issue	Issue details	Reference	Present status and desired actions
1. Foreign investment entry- and sales-related regulations	Areas prohibited and restricted under Foreign Investment Guidelines  (Market Access)	<p>- China classifies foreign investment as either encouraged, permitted, restricted, or prohibited. 13 areas (and 30 items) prohibited for security, environmental and state planning reasons. In restricted areas investment permitted on conditional basis or in stages to protect domestic industry. Restricted areas include luxury goods, projects requiring large import of products and raw material or large amount of domestic capital. Class A restricted: radio cassette players, watches and other goods that China can produce adequately itself. Class B restricted: passenger cars, TVs, tertiary sector, valuable raw material processing and other industries governed by state integrated planning.</p> <p>-In textiles, dyeing and high-tech encouraged, sewing permitted, spinning and small-scale synthetics restricted, and autonomously financed polyester companies prohibited.</p> <p>- Printing and publishing strictly controlled and on List of Industries under Foreign Investment Control. Printing required to have Chinese equity and managerial control. Regulations not made public and causing problems in approval.</p> <p>-Standards unclear for designating high technology projects in "Incentive Category".</p>	<p>- Interim Provisions on Guiding Foreign Investment Direction</p> <p>- Catalogue for the Guidance of Foreign Investment Industries</p> <p>- Implementation regulations in regard to the Foreign Companies Law.</p> <p>- Ordinance on the implementation of the law on foreign-Chinese joint ventures.</p>	<p>- Relax restrictions.</p> <p>- End policies which undermine competitiveness of overseas affiliates versus local companies.</p> <p>- Deregulate printing business</p> <p>- Develop guidelines for each industry under foreign investment control (action taken)</p> <p>- With WTO membership, industries including telecommunications, banking, insurance, distribution (wholesale/retail), specialized professions to be liberalized in phases.</p>
	Regulations on entry by certain types of business; product items for which investment is restricted (market access)	<p>- Difficult to engage in CTV, radio cassette player, and certain other industries outside government-designated factories.</p> <p>- Photo-sensitive materials and cameras are restricted investment areas, but investors from certain countries are exempted, which is unfair.</p>	- Administrative guidance	<p>- Some protection justified, but over long term, remove entry barriers to promote international competitiveness.</p> <p>- Regulations in these areas not clearly defined in investment guidelines, clarify rules in interest of and fair treatment.</p>

Category	Issue	Issue details	Reference	Present status and desired actions
	Control on entry in construction industry (Market access)	<ul style="list-style-type: none"> <li>- Wholly-owned foreign subsidiary not permitted.</li> <li>- Foreign business cannot open sales office for marketing.</li> <li>- Construction projects permitting foreign participation is limited.</li> </ul>	<ul style="list-style-type: none"> <li>- Ordinance on establishment of construction corporation by foreign capital</li> </ul>	<ul style="list-style-type: none"> <li>- 100% foreign investment to be permitted with WTO membership, but foreign firms restricted to 4 categories.</li> </ul>
	<p>Restriction on the establishment of 100% foreign capital domestic sales companies Restrictions on foreign traders</p> <p>Control on entry in service industry (market access)</p>	<ul style="list-style-type: none"> <li>- Wholly foreign-owned firms not permitted to engage in domestic retailing or business dedicated exclusively to sales and service (but sometimes special permission granted). But foreign JVs with Chinese equity may be permitted to engage in some of these activities.</li> <li>- Greater foreign investment, possibly even wholly-owned operations in these areas expected after China joins WTO, but details still obscure.</li> <li>- Only certain designated government-related organizations allowed to import after-sales service parts making it difficult for foreign firms to build efficient distribution and after-sales service networks.</li> <li>- Foreign investment not permitted in wholesaling.</li> <li>- 1996 law permitted trading companies to engage in only limited non-trading activities, on an experimental basis, in Shanghai, Putung, and Shinsen, where Chinese ownership is at least 51%.</li> </ul>	<ul style="list-style-type: none"> <li>- Administrative guidance</li> <li>- Provisional rules concerning investment-type companies established on the basis of foreign investment (Foreign Trade and Economy Division, No. 4, 1995)</li> <li>- Law on foreign-Chinese joint ventures</li> <li>- Law on Foreign Affiliates</li> <li>- Ordinance on the implementation of the law on foreign-Chinese joint ventures</li> <li>- Interim law on establishment of joint venture foreign business</li> </ul>	<ul style="list-style-type: none"> <li>- Permit foreign-majority investment in distribution, domestic retailing, after-sales service industries and expansion of scope of foreign activities in these industries.</li> <li>- Abolish foreign business entry regulations. (Improvement)</li> <li>- Chinese government has increased number of regions where foreign companies can establish joint venture trading companies.</li> <li>- Liberalize wholesale and retail distribution services, transport, and warehouse industries within 3 years of WTO membership. Abolish restrictions on foreign equity ratios, by geography, and volumes. Authorize foreign participation in distribution of all industrial products, excluding cigarettes and salt.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Unclear definition concerning sales  (transparency)	<ul style="list-style-type: none"> <li>- Article 61 concepts "pressing urgency" and "items which must be imported" are unclear.</li> <li>- Article 64 concepts "commodities under planned allocation" in Clause 1 and "commodities handled by the commodities and commerce sector" in Clause 2 are unclear.</li> <li>- Article 64, Clause 3 states that "joint ventures will engage in independent sales", but does not make clear whether there are any restrictions on the form of sales.</li> </ul>	- Ordinance on the implementation of the law on foreign-Chinese joint ventures (Chapter 8, Articles 61 and 64)	<ul style="list-style-type: none"> <li>- Make concepts clear.</li> <li>- Where Article 64, Clause 3 restricts sales are restricted, this needs to be specified. Even where there are no restrictions, a suitable reference has to be made for a unified interpretation.</li> </ul>
	Limits of capital which can be invested in automobile joint ventures (market access)	<ul style="list-style-type: none"> <li>- Foreign equity in car-assembly restricted to 50% or less.</li> <li>- For 5 years after establishment, investment in different business not permitted.</li> <li>- State -owned enterprises (many lacking financial resources) granted managerial control in cases of large-scale projects or basic industries, Foreign control restricted to less than 50 percent.</li> </ul>		<ul style="list-style-type: none"> <li>- Abolition or relaxation of this restriction.</li> <li>- Financial support to state-owned corporations by banks</li> </ul>
	Restrictions on branch establishment (market access)	- Restrictions on where subsidiaries of trading houses and bank branches can be located.		- Abolish or relax this restriction.

Category	Issue	Issue details	Reference	Present status and desired actions
	<p>Domestic sales ratios; regulations on domestic sales and imports</p> <p>(MFN, performance requirement)</p>	<ul style="list-style-type: none"> <li>- Governmentdetermined domestic sales ratios differ depending on national origin of foreign investor and specific manufacturer.</li> <li>- JV manufacturers allowed to sell only products they manufacture.</li> <li>- Domestic sales volumes may be limited by foreign capital ratio. May be obliged to match production volume to sales. Sales may be limited to number of special regions.</li> <li>- Permissions granted at time of establishment may change after operations begin, become conditional on further government approvals, which may or may not be forthcoming.</li> <li>- Recently, initial requirements for domestic sales ratio have been flexibly applied and the foreign currency balance, now about 30%, which acts as an import restriction.</li> </ul>	<p>- Related to Article 4 of regulations on the implementation of applications for import and export licenses for foreign-investment companies.</p>	<ul style="list-style-type: none"> <li>- Abolish domestic sales ratios</li> <li>- Simplify licensing procedures for sales rights.</li> </ul>
	<p>Regulation on direct sales by own sales company</p> <p>(Performance requirement)</p>	<ul style="list-style-type: none"> <li>- Products manufactured in China cannot be marketed directly by one's own sales company.</li> </ul>		<ul style="list-style-type: none"> <li>- Permit such activities after WTO membership.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Regulations on investment-type affiliates (market access)	<ul style="list-style-type: none"> <li>- Establishment of investment-type affiliates require investment of \$30 million or more. Strict control over supply of business from parent company (the source of investment) to Chinese affiliate. No services to be provided to general companies.</li> <li>- Rigorous regulation of investment activities of trading companies includes: (1) prohibition of transfer of equity holdings of parent company to Chinese affiliates; (2) ban on domestic sales by investment businesses where equity share is less than 10%; and (3) ban on imports from other countries. Also, sales companies to be permitted within 3 years of WTO membership will still suffer by being "unbound" regarding branch office opening.</li> </ul>	<ul style="list-style-type: none"> <li>- Interim provisions on investment-type affiliates, introduced in April 1995</li> <li>- Foreign capital control law</li> <li>- Interim regulations and supplementary regulations on establishment and management of investment-type company</li> </ul>	<ul style="list-style-type: none"> <li>- Ease regulations or approve sales rights for investment-type affiliates</li> <li>- Ease restrictions on (1) through (3) and permit establishment of branch offices even prior to liberalization following WTO membership.</li> </ul>
		<ul style="list-style-type: none"> <li>- Holding company with investment of US\$30 million must be established to form sales organization in China</li> </ul>	<ul style="list-style-type: none"> <li>- Interim regulation on holding companies</li> </ul>	<ul style="list-style-type: none"> <li>- Abolish US\$30 million investment requirement</li> <li>- Foreign firms can enter wholesale business within 3 years of WTO membership (per China-Japan agreement) if sales in preceding year greater than \$2 billion, asset value greater than \$200 million, registered capital tax at least 40 million yuan)</li> <li>- Establishment of umbrella companies in distribution will be allowed 3 years after WTO membership.</li> <li>- August 1999 decided investment-type companies to have export and domestic sales rights, but must have equity investment greater than 10%.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Regulations on registration and sales by special load vehicle companies (market access)	<ul style="list-style-type: none"> <li>- "Special load vehicles" must be registered as new production companies on a government Register. Only such companies are permitted to issue product certificates and acquire vehicle numberplates.</li> <li>- New investments to produce various types of special load vehicles is regulated.</li> </ul>	<ul style="list-style-type: none"> <li>- Ministry of Machine-Building Industry, Ministry of Public Security notices: "Machinery, 1977, No. 146" "Vehicles 1977, No. 071"</li> </ul>	<ul style="list-style-type: none"> <li>- Allow company registration and production and sales activities for foreign companies.</li> </ul>
2. Regulations concerning domestic production ratios and local procurement ratios	Requests in regard to domestic production ratios and local procurement ratios. (performance requirement)	<ul style="list-style-type: none"> <li>- Domestic production ratios and local parts procurement ratios sometimes conditions to establish local base. Often contract states that priority must be given to parts produced in China.</li> <li>- Domestic production ratios and import tariff rates on parts sometimes linked, but only foreign firms must comply, which contravenes Article 3 of the GATT on national treatment and Article 2 of TRIMs.</li> <li>- Difficult to secure high quality metal molds and components so increasing domestic content difficult.</li> <li>- State-owned insurance companies must be used for construction project insurance, third-party compensation insurance.</li> <li>- Textile processing companies must use domestic-made cotton.</li> <li>- Local content rate inspection required for approval of I/L application for parts imports from Japan.</li> <li>- Must use local machinery and materials for approval.</li> </ul>	<ul style="list-style-type: none"> <li>- Guidance when joint venture contracts are being drawn up and when permission is being sought for joint venture contracts from the relevant Chinese authorities.</li> <li>- Article 57 of the ordinance on the implementation of the law on foreign-Chinese joint ventures</li> <li>- GB Standard</li> <li>- Insurance-related laws and regulations of various nations</li> </ul>	<ul style="list-style-type: none"> <li>- Domestic production ratios should not condition for permission at point of entry. Companies should not be forced to use locally-manufactured parts. However, Article 3 of GATT, allows for flexibility within scope of country's law. Issue cannot be resolved bilaterally. Instead negotiate through APEC or OECD.</li> <li>- Don't link domestic production ratios and tariffs.</li> <li>- Abolish own-nation insurance policy</li> <li>- Abolish local content requirement, export requirement, technology outflow restriction, and foreign capital balance restriction immediately after WTO membership.</li> </ul>
	Linking local production ratios and tariff ratios (performance requirement)	<ul style="list-style-type: none"> <li>- For computer part imports, tariff rates for finished products apply where the domestic production ratio/domestic assembly is 40% or less. Must receive safety clearance as finished products.</li> </ul>	<ul style="list-style-type: none"> <li>- Insurance-related laws and regulations of various nations</li> </ul>	<ul style="list-style-type: none"> <li>- Abolished own-nation insurance policy</li> <li>- Local content requirement, export requirement, technology outflow restriction, and foreign capital balance restriction to be abolished immediately after WTO membership.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Utilization of domestic raw cotton (performance requirement)	- In processed trade, new firms must use domestic raw cotton.		- Eliminate this obligation.
	Detailed plans drawn up in China (performance requirement)	- Detailed plans for the construction of chemical plants in China must be drawn up by the Chinese State Planning Commission, originally to speed transfer of technology from foreign engineering companies. Dealing with Commission impeding market entry by foreign engineering companies. - Design by foreign business not authorized; design must be by design firm designated by authorities	- The Shanghai Municipal Planning Committee published a notice on 13 February 1996, but detailed planning is conducted by the State Planning Commission.	- Abolish principle of planning by State Planning Commission Coordination. Should be left to discretion of foreign and Chinese engineering companies.
	Guidance on utilization of domestic parts (performance requirement)	- Set manufacturers producing in China are pressured by the Chinese Government (the Ministry of Electronics Industry and the Ministry of Radio, Cinema and Television) to use domestic parts rather than imported parts.	- Chinese government practices, whereby matters are dealt with on a case by case basis and with individual companies.	- Eliminate guidance on utilization of domestic parts.
3. Export obligation	Foreign currency balance regulation (performance requirement)	- Both JVs and 100% foreign firms must attain a foreign currency balance from combination of foreign parts procurement and exports. Government will not permit establishment of a company unless stated clearly in contract that establishes the company that achievement of foreign currency balance is its own responsibility. For investment projects that target primarily Chinese domestic market, it is extremely difficult to achieve such balance on its own, obstructing investment. (Special problems for 100% foreign firms. Co-financing legally possible, but extremely difficult. Issue needs investigation under Article 2 of TRIMs Agreement regarding exchange regulations.)	- Law on foreign-Chinese joint ventures - State Council regulations concerning the foreign exchange balance issue in regard to foreign-Chinese joint ventures (1986) Articles 3, 9 and 14, and administrative guidance.	- Abolish foreign currency balance obligation. Clarify State Council regulations concerning multiple-party financing.
	Export obligation (performance requirement)	- All products or most exports of 100% foreign firms are used as criteria for establishment permission.	- Foreign Companies Law, implementation regulations in regard to the Foreign Companies Law	- Increase domestic sales ratio.

Category	Issue	Issue details	Reference	Present status and desired actions
	Demands concerning product exports (performance requirement)	- Export level must correspond with foreign parts procurement ratio (but specific relationship between the two not specified, nor can it be since under TRIMS this is not to be regulated), so no penalty; Rather, exports needed to achieve foreign currency balance.	- Ordinance on the implementation of the Law on foreign and Chinese joint ventures, Article 60 (making efforts to export) and Article 75 (self-accountability for the foreign currency balance); and administrative guidance.	- Matter has been beyond scope of TRIMs regulations, but foreign currency balance issue needs to be resolved or product export ratios lowered.
	Product export responsibility (performance requirement)	- When JV contract concluded, name of company responsible for foreign currency balance must be specified. Usually resolved by specifying that the JV itself is responsible, under condition that "product quality, price and delivery schedule are internationally competitive." - Export ratios are recorded on trade licenses.	- Administrative guidance	- Problem of who holds the export trade rights – foreign investor or JV? Function of particular strategy. Affects foreign currency balance. - Abolish local content requirement, export requirement, technology outflow restriction, and foreign currency balance restriction immediately after WTO membership.
	Export request and risk of remittance limit for foreign currency (performance requirement)	Strict requirements to export; remittance procedures for foreign currency are severe without export.	Foreign currency control regulation	- Deregulation of foreign currency control - Abolish local content requirement, export requirement, technology outflow restriction, and foreign currency balance restriction immediately after WTO membership.
	- Loss of business opportunities due to regulation (performance requirement)	- Early 1990s many Japanese firms entered China to establish export platforms. Many such firms still required to comply with export obligations, and find it difficult to get approval to supply rapidly expanding Chinese domestic market. Need central government approval for domestic sales on item-by-item basis. Only about 5-10% requests granted, resulting in loss of many business opportunities.	- Joint venture law, Foreign capital law	- Deregulate export obligations and domestic sale restrictions - Regional, number of companies, and foreign capital ratio restrictions to be abolished within 3 years of WTO membership.

Category	Issue	Issue details	Reference	Present status and desired actions
4. Withdrawal regulations	Remove guarantee reserve (performance requirement) Regulations on withdrawal on the basis of a unanimous vote (protection of investors, dispute settlement, capital exports)	<ul style="list-style-type: none"> <li>- For trade outside a province, assembler outside province must deposit guarantee to parts supplier for export of finished goods, until export is confirmed, which depletes working capital .</li> <li>- Under law on foreign-Chinese joint ventures, once decision to withdraw reached by all members of board of directors, permission also needed from government authorities, effectively impeding free withdrawal.</li> </ul>	- Law on foreign-Chinese joint ventures	<ul style="list-style-type: none"> <li>- Abolish requirement for guarantee reserve with submittal of relevant documents.</li> <li>- Accept majority decision, in accordance with China's Corporate Law, with notification given to government authorities.</li> </ul>
	Prohibition of capital reduction (protection of investors, dispute settlement, capital exports)	Not possible to reduce capital.		<ul style="list-style-type: none"> <li>- Allow reduction of capital.</li> <li>- Clarify standards on capital reduction.</li> </ul>
	Liquidation responsibility (protection of investors, dispute settlement, capital exports)	- JV contracts stipulate where responsibilities lie in cases of liquidation. But even when agreement reached between principals, may not be ratified by government or amended through administrative guidance. Such unilateral intervention is unfair.		<ul style="list-style-type: none"> <li>- Need spirit of reciprocity and equality.</li> <li>- Guarantee free withdrawal from business operations.</li> </ul>
	Procedures for dissolving joint ventures (protection of investors, dispute settlement, capital exports)	- Procedures and documents for submission when dissolving JVs (withdrawal of foreign capital) are complex and drawn-out, taking around a year.		

Category	Issue	Issue details	Reference	Present status and desired actions
	Merger period (protection of investors, dispute settlement, capital exports)	- The merger period is stipulated at ten years or more.		
6. Reduction and eliminate preferential policies for foreign capital	Reviews of preferential policies for foreign capital (unstable FDI regime)	<ul style="list-style-type: none"> <li>- Reviews and changes in preferential policies for foreign capital occur frequently.</li> <li>- Phased repeal of preferential tax systems in special economic technology and development zones: 1) Dalian, Tianjin, and 14 special economic technology and development zones reduced or eliminated tax rebates and increased consumption taxes, 2) 10 special economic technology and development zones, including Wuhan, Zhongqing, and Suzhou industrial areas repealed policy of holding over fiscal revenue, 3) 14 border joint economic districts including Heihe and Suifenhe repealed policy to allow fixed tax rebates and increased consumption taxes, 4) Shanghai Pudong new district allows 50% tax rebate for one year after the last year of implementation period (check), 5) 10 special economic technology and development zones including Beijing and Urumchi allow declining tax rebates of 75-50-25% of the amount rebated one year after last year of implementation period, 6) Suzhou industrial area allows declining tax rebates of 80-60-40-20% of the amount rebated one year after last year of implementation period.</li> <li>- Preferential policy for foreign businesses (5-year tax exemption for fixed assets) suspended after 4 years. Initial preferential policies in economic development zones gradually being removed.</li> </ul>	- Applicable laws (contradiction between national and local policies)	

Category	Issue	Issue details	Reference	Present status and desired actions
	Repeal of incentive measures (expand the target of increased value tax) (ustainable FDI regime)	In past, transactions involving sales to corporations in bonded areas JVs treated as export transactions, and VAT exempt. Since last year, such transactions viewed as domestic transactions and should be subject to VAT. Negotiations with tax authorities underway, but still no resolution.		
	Eliminate tax exemption measures for imported capital goods (ustainable FDI regime)	<ul style="list-style-type: none"> <li>- 1996 Government eliminated tax exemptions for foreign affiliates on machinery and equipment imports.</li> <li>- In 1998 tax exemptions restored.</li> <li>- Import tariff exemptions restored on plant and equipment, however with little prior notice.</li> </ul>		<ul style="list-style-type: none"> <li>- Transparent operation.</li> <li>- Keep tax exemptions.</li> <li>- Import of technology, machine parts, and components that cannot be manufactured in China by "Five Corporations" are exempt from import tariffs (Customs Bureau ordinance November 22, 1999)</li> </ul>
	Disclosure of preferential policies (transparency)	- Lack of Chengdu development project information on preferential policies for foreign businesses (for each region and city, by industry)		<ul style="list-style-type: none"> <li>- Need detailed information.</li> <li>- Customs authorities implemented preferential policies, such as 15% income tax rate for 3 years for foreign investment businesses in 19 provinces in central and western China on January 1, 2000.</li> </ul>
7. Procedures for the operation of the Foreign Affiliate Law	Problems with preferential policies for foreign capital in increasing capitalization (market access)	- When local JVs increase capitalization to expand business, foreign company receives tax exemptions, but Chinese company does not. Unequal treatment perceived as unfair and impedes increased capitalization.	- Law on foreign-Chinese joint ventures	- Provide exemptions to both.

Category	Issue	Issue details	Reference	Present status and desired actions
9. Export-import regulations; tariffs; customs clearance	Foreign trading rights (market access)	<ul style="list-style-type: none"> <li>- Even some Chinese firms not permitted foreign trading rights, which sometimes inhibits trading and exporting.</li> <li>- Trade rights for foreign manufacturing companies limited to manufacturing, and import sales of products even from parent companies restricted.</li> <li>- Companies with export trade rights restricted in number, needing contract with two companies (actual agent and nominal agent with trade right) when concluding agency contract.</li> </ul>		<ul style="list-style-type: none"> <li>- Need clear disclosure of regulations for company establishment and agency contracts (action taken)</li> <li>- Grant trade rights to all Chinese companies within 3 years of WTO membership (now is process of liberalization). Need more open registration system and pledge for gradual lowering of standards and eventual eliminate existing authorization system.</li> </ul>
10. Regulations on activities in free trade areas and special economic zones	Lack of approval of offices in bonded areas. (market access)	<ul style="list-style-type: none"> <li>- Foreign capitalized corporations established in bonded areas are not permitted to establish representative offices or local offices with staff in China.</li> </ul>		<ul style="list-style-type: none"> <li>- When a corporation is established in China, it will definitely need an office.</li> </ul>
	Legal grounds for autonomous investment subsidiary in bonded area (transparency)	<ul style="list-style-type: none"> <li>- Wholly foreign owned subsidiaries located in bonded areas in Tientsin and Pudong for internal sales. However, no clear legal substantiation for this. What changes will come with WTO membership and with change in China's policies on internal sales system not clear.</li> </ul>		<ul style="list-style-type: none"> <li>- Need information based on concrete examples required.</li> <li>- Policy change announcements should be made in advance and broadly.</li> </ul>
	Reinforced control of registered companies in bonded areas (investor behavior) Problem in overseas remittance for contract (profit repatriation)	<ul style="list-style-type: none"> <li>- Foreign businesses engaged in trade activities in bonded areas must engage in business activities registered after their establishment for stronger control</li> <li>- Payment to foreign firms for domestic construction work must be deposited in bank account inside China.</li> <li>- Overseas remittance approval difficult because of lack of foreign exchange balance.</li> <li>- Foreign Investment Works Committee will not issue approval because reduction in value entered on sales licensing certificate may lead to lower tax revenues for government.</li> </ul>	<ul style="list-style-type: none"> <li>- Foreign business administration (96) No. 102 and (99) No. 15 of Shanghai bonded area management commission and bonded area bureau</li> <li>- Ordinance of State Administration of Foreign Exchange, Shanghai Division, (1998), No. 12078 (Aug. 7, 1998)</li> </ul>	<ul style="list-style-type: none"> <li>- Develop laws and procedures for overseas remittance.</li> <li>- Rationalize procedures.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
11. Collection of technical fees; demands for technological transfer	Difficulty of currency conversion (profit repatriation)	<ul style="list-style-type: none"> <li>- China now has IMF level 8 status, but still without currency free convertibility.</li> <li>- Government takes 3 days to process approvals to convert foreign currency into yuan. Must wait another 3 days to actually receive funds.</li> <li>- Also difficult to convert foreign currency loans into yuan.</li> <li>- Since yuan can be converted into dollars, there no longer seems to be need to earn foreign currency by exporting. For raw material exports, foreign currency balance needs to be maintained.</li> <li>- August 1998 declaration in principle prohibits trading companies in ??Shanghai Gaogiao bonded area?? from converting yuan into foreign currency.</li> <li>- Overseas remittance procedures complicated even for company's own funds, and virtually impossible for foreign nationals.</li> <li>- Banks in remote areas cannot convert Chinese yuan to dollars for remittance to settle L/Cs (for import) denominated in foreign currency.</li> <li>- Due to difficulties in foreign currency conversion, transactions requiring Chinese yuan to dollar conversion sometimes replaced by settlement through trading companies.</li> <li>- Overseas remittances for non-tradeables regulated since March 2000, made more complex by introducing tax payment certificates and other complicated procedures</li> <li>- Use and remittance of construction work revenues received in Chinese yuan restricted.</li> </ul>	- Actual base	<ul style="list-style-type: none"> <li>- Transfer from Foreign Currency Coordination Centers to foreign exchange banks not proceeding as fast as expected. Exchange liberalization needs to be accelerated.</li> <li>- China is commended for the free conversion in IAP.</li> <li>- Clarify State Council provisions in regard to conversion among multiple points.</li> <li>- Eliminate regulation.</li> <li>- Procedure to be rationalized.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Integration of foreign exchange bank accounts, restrictions on possession of foreign currency. (profit repatriation)	<ul style="list-style-type: none"> <li>- Since April 1996, Government has allowed conversion of foreign currency and yuan at designated foreign exchange banks for foreign companies in Shanghai, Shenzhen, Dalian and Jiansu Province, with some restrictions.</li> <li>- Single-account integration and currency holding restrictions stipulated as incidental conditions.</li> <li>- Account balances limited to company's capital and export amounts (foreign currency over that amount must be converted to yuan).</li> <li>- Changes, which have been in effect nationwide since July 1996, have made foreign currency exchange easier, but foreign currency accounts limited to either foreign banks or Chinese foreign currency banks. Purpose of regulations seems to be greater control over perceived abundant foreign currency holdings of foreign firms. However, large foreign firms actually appear to be facing foreign currency shortages.</li> <li>- Government stipulates foreign currency ceilings for settlement accounts. Export revenues that exceed ceiling automatically converted into yuan within 10 days.</li> <li>- Complicated bank account system. Now need separate foreign currency capital and current accounts.</li> <li>- Thorough inspection of import payment documents.</li> </ul>		<ul style="list-style-type: none"> <li>- To facilitate business, companies should be able to open accounts in a number of different banks.</li> <li>- Early implementation of IAP commitments in regard to banking.</li> <li>- Eliminate or raise foreign capital ceiling.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
12. Exchange controls	Cumbersome remittance procedures (profit repatriation)	<ul style="list-style-type: none"> <li>- When remitting funds abroad, invoices and customs clearance documents have to match, even though when clearing customs these are not necessarily matched.</li> <li>- Applications for remittance need to be made first to State Administration of Foreign Exchange and then to People's Bank of China, entailing strict and time-consuming inspection of remittance title, contract with party to whom funds are being remitted, signatures, etc.</li> <li>- People's Bank of China becoming stricter for foreign currency remittance, and procedures complex for remitting through Japanese banks.</li> <li>- Remittances of foreign currency severely controlled. Difficult to effect any transfers other than those for purchase contracts. In effect, under the current system it not possible to change yuan held within the company into foreign currency. So, even if payment received in yuan, cannot be converted into foreign currency.</li> <li>- August 1998, for foreign currency import remittances greater than US\$100,000 customs documents must again be presented to remitting bank, then bank mails them to customs authorities to obtain the necessary reconfirmation. Since customs confirmation takes time, not possible to confirm date of actual remittance.</li> <li>- Transfer foreign currencies to settle import payments prohibited via bank located outside region where company located. So, Chinese regional bank must be used to effect foreign currency remittances. But some regional banks unfamiliar with such transactions and processing will not be smooth.</li> </ul>	<ul style="list-style-type: none"> <li>- Operating regulations</li> <li>- Foreign currency control restriction</li> </ul>	<ul style="list-style-type: none"> <li>- Go back to former method.</li> <li>- Simplify remittance procedures.</li> <li>- Deregulate foreign currency controls.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	(market access)	<ul style="list-style-type: none"> <li>- Restriction of activities by foreign financial institutions</li> <li>- Interest must be paid for payment delays (during 1995-97 due to delays in capital payments). However, current delays due to non-approval of remittances to Japan.</li> </ul>	<ul style="list-style-type: none"> <li>- Foreign currency control restriction</li> </ul>	<ul style="list-style-type: none"> <li>- Deregulate foreign currency control</li> <li>- Simplify procedures</li> <li>- Eliminate controls on dividend payments, capital increases, etc.</li> <li>- Foreign Exchange policies not clear, causing confusion. Need clearer explanation of remittance guidelines. (improvement)</li> <li>- Moving to partial deregulation of foreign banks.</li> </ul>
	Number of days needed for remittance (profit repatriation)	<ul style="list-style-type: none"> <li>- Takes nearly one week to remit local salaries, and another 3 days to transfer these funds from main office to branch offices.</li> </ul>		

Category	Issue	Issue details	Reference	Present status and desired actions
14. Taxation	Decreased value-added tax refund rate or no refund (taxation: unstable and non-transparent system)	<ul style="list-style-type: none"> <li>- Value-added tax (VAT) was introduced in 1994 as part of the reform of the tax system. As a rule, when companies procure parts and raw materials within China, they have to pay 17% VAT.</li> <li>- For domestic-made products that are exported, VAT was effectively zero since VAT was refunded in full at time of export. In July 1995, the refund rate declined to 14%. In January 1996 it declined again to 9%.</li> <li>- VAT refunds do not apply when exports effected through a trading company (this is considered domestic trade and not exempt from VAT or consumption tax)</li> <li>- There appears to be some confusion as to the extent that VAT exemption applies to export of manufactured products using locally-supplied parts and materials. Original ruling was that these too would be VAT exempt, but a later ruling is that the exemption applies only to firms established after December 1993. (This discriminates against some foreign companies and therefore contravenes both Article 3 of the GATT, which guarantees national treatment, and the Japan -China Investment Protection Agreement. It also contradicts domestic regulations and blocks export incentive policies.</li> </ul>	<ul style="list-style-type: none"> <li>- PRC Provisional regulations on value-added tax (Ministry of State; effective as of 1 January 1994)</li> <li>- Notice concerning Taxation Issues of Cargo Exports ( State Administration of Taxation; announced 25 August 1994, no date for implementation)</li> <li>- Views of the State Administration of Taxation on value-added tax refund issues; (19 November 994)</li> <li>- Notice concerning publication of some regulation papers on cargo export refund issues; (No. 92, 23 November 1995)</li> <li>- Notice concerning some taxation issues of cargo export by Foreign-funded Companies (No. 123, 996)</li> <li>- Notice on the Control Law implementing tax exemptions, tax cuts and refunds on goods exported by production companies themselves (or commissioned export) where those companies have been granted import and export trade rights by the State General Administration of Taxation of Ministry of Finance (State Bureau of Taxation, No. 97.50, 21 May 1997)</li> </ul>	<ul style="list-style-type: none"> <li>- Increase VAT refund rate; return unrefunded taxes.</li> <li>- Adopt purchase cost as the basis for calculation.</li> <li>- Thorough implementation of exemption, reduction and refund methods.</li> <li>- Allow exemptions regardless of type of processing.</li> <li>- Abolish above because it leads to reduced export competitiveness.</li> <li>- Suzhou tax authorities currently being petitioned by Association of Japanese Companies (Nikkei Kigyokai) in Suzhou.</li> <li>- Eliminate value-added tax on indirect exports.</li> <li>- Briefing on VAT refunds held August 1997 in Shanghai.</li> <li>- Document states that above law does not apply in Tianjin special economic zone.</li> <li>- As July 1998, the VAT rate increased from 9% to 11% for twelve items, including telecommunications devices, generators and electric transmission equipment, luxury household appliances, and automatic data processing devices, agricultural machines, processing machines, airplanes, automobiles and watches.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
		<p>- July 1996, government announced that (1) export values would be used as the basis for calculation of the amount which would not be refunded; (2) the refund method to be adopted would be taxation followed by refunding; and (3) processing trade (raw material processing and import processing) would also be subject to VAT. The announcement caused great uproar, and in 1997 the government reversed its decision and announced that offset and refund methods would once again be used.</p> <p>- In Jiangsu and Shanghai, taxes for 1997 were apparently levied based on VAT calculation method. Some other tax jurisdictions seem to be using different methods.</p>	<p>Manufacturers that have export and import operating rights from the Fiscal Department and the National General Tax Bureau, which operate on their own (commissioned-basis) and export property, are exempted from withholding tax or the tax is rebated, provided for by the Control Law Notification of 21 May, 1997, as published in the 97.50 issue of the Nichizaizeiji.</p>	<p>- January 1999, VAT rates were reduced on approximately 1000 items: 1) 17% for machinery and equipment, electronic devices, transportation machinery, and measuring devices; 2) 13% for agricultural machinery, textile materials and products, watches, shoes, ceramic ware, steel and steel products, and cement; 3) 11% for chemical materials, paint, dyes, rubber products, tools, sports products, plastic products and shoes; 4) 9% for products whose previous rate of rebate was 6%; and 5) 5% for agricultural products.</p> <p>- Eliminate regional disparities.</p> <p>- VAT refund increases, retroactive to July 1999. (1) Apparel 17% (from 13%); (2) Textile production materials other than apparel and similar products, machinery, electrical and electronic products, electrical machinery other than measuring instruments, shoes, cement, steel products currently 13% and chemical product ingredients currently 11 to 15%; (3) Industrial products made with agricultural goods: 13% (from 9%); (4) Agricultural products 5% (no change)</p>

Category	Issue	Issue details	Reference	Present status and desired actions
	Reduction in value-added tax refund rates, or the lack of refunds (unstable tax system)	<ul style="list-style-type: none"> <li>- From June 1998, it was permitted to exclude the VAT refund from the firm's taxable income, but that is no longer the case.</li> <li>- From January 1999, the refund rate of the import VAT in the electronics sector was changed to 17%. However, the Shanghai Tax Bureau has still not implemented the change.</li> <li>- Differences exist in tax rules for old and new corporations, and the system for new companies is extremely vague and unfair.</li> </ul>		
	Categorization of value-added tax and business tax; scope of taxation (unstable and complicated tax system)	<ul style="list-style-type: none"> <li>- VAT and business tax categories are unclear.</li> <li>- Provisional regulations state that firms engaged in processing (manufacture under consignment), assembly, or repair are subject to VAT.</li> <li>- But only business tax is levied on the supply of installation services. In such case the tax burden falls on the firm actually performing the installation rather than the commissioning party, although this does not appear to be clearly stipulated in tax rules.</li> <li>- Tax rules are overly complicated and there is a tendency for individual interpretation of government tax ordinances</li> <li>- Tax conditions tend to vary widely across provinces.</li> </ul>		<ul style="list-style-type: none"> <li>- Need integration of VAT and business tax.</li> <li>- Need public liaison offices charged with clarifying and provide guidance on tax laws.</li> </ul>
	Value-added tax refund procedures (complicated tax system)	<ul style="list-style-type: none"> <li>- Complex documentation and procedures are required for VAT refunds on product exports.</li> </ul>		

Category	Issue	Issue details	Reference	Present status and desired actions
	Collection of business tax from permanent representative offices (unstable tax system)	<ul style="list-style-type: none"> <li>- Formerly only permanent representative offices of trading companies were taxed, but now local tax authorities are investigating ways of further taxation.</li> <li>- Tax suddenly to be implemented on the basis of 1985 tax law.</li> <li>- Tax officials assume that a permanent representative office with multiple JV affiliates provides JVs with various services, and will tax such revenues from such services.</li> <li>- In Beijing and Shanghai, taxes are apparently levied according to the type of business a company is engaged in.</li> <li>- It is not appropriate to levy business and income taxes on offices that are not authorized to conduct business.</li> <li>- In some parts of China taxes are levied retroactively, while in others they are not. Lack of tax uniformity.</li> </ul>	<ul style="list-style-type: none"> <li>- Provisional regulations on Consolidated Industrial and Commercial Tax and Enterprise Income Tax on Foreign Companies' Permanent Representative Offices (April 1 1985)</li> <li>- Notice on enhancement of taxation control over foreign companies' permanent representative offices (September 1996)</li> </ul>	<ul style="list-style-type: none"> <li>- Return to the former system of non-taxation.</li> <li>- Abandon assumption that multiple JVs receive taxable services from a representative office.</li> </ul>
	Undeveloped tax regimes; disparity in interpretations of taxation (unstable tax system)	<ul style="list-style-type: none"> <li>- Because centralized tax system is still undeveloped, tax rules differ by region and sometimes don't exist at all. Tax rates are sometimes may be negotiated.</li> <li>- The interpretation of unitary tax rules differs by region.</li> <li>- There are many types of tax, the legal basis in some cases is unclear.</li> <li>- Some regional governments levy donation-type taxes. Some taxes not approved by the central government.</li> <li>- In some cases, tax authorities try to withdraw tax payments directly from corporate accounts without company permission.</li> <li>- Central and local governments, and state and local taxation bureaus differ in their interpretations of tax rules.</li> <li>- There are abrupt changes to rules concerning local tax refunds and to the tax system overall.</li> </ul>		<ul style="list-style-type: none"> <li>- Need further development of tax laws and regulations</li> <li>- Clarify legal basis for taxation.</li> <li>- Cease attempts of direct withdrawal.</li> <li>- Need better training programs for tax officials, better information disclosure, and better communication</li> <li>- Government should centralize tax control</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Fair taxation (unfair and unstable tax system)	<ul style="list-style-type: none"> <li>- Tax collectors are not even in their treatment of state enterprises and foreign affiliates. Some afforded better treatment than others.</li> <li>- In many cases, it is almost impossible to predict what will be taxed and how it will be taxed, making it difficult to forecast business profit.</li> </ul>		- Need fairer treatment in taxation.
16. Employment	Demand for employment of Chinese workers (performance requirement)	- Often one of the conditions of JVs is that it take on employees of the Chinese partner. (This is a national employment policy and is difficult to bring under GATT.).	- Administrative guidance	- Abolish forced employment of Chinese workers and restrictions on the employment of foreigners. (Remove such requirements from conditions for permission for investment.)
	Restrictions on temporary workers and registration (performance requirement).	<ul style="list-style-type: none"> <li>- In the industrial district of Shenzhen, restrictions on employment of temporary workers makes it difficult to increase employment.</li> <li>- Government annual quotas for designation as Registered Chinese getting smaller, making it increasingly difficult to employ such workers. (aim of quotas is probably to restrict population growth in special economic zones. As this concerns local employment policy, it is difficult to bring it under GATT.)</li> </ul>	- Administration contracts made with the city authorities.	- While this is a policy for special economic zones, companies moving into China request further liberalization of labor market.
	Local employment and labor control (performance requirement)	<ul style="list-style-type: none"> <li>- Difficult for workers to move from one part of China to another. Major differences and sudden amendments in the local regulations, application procedures, and tax rules inhibit recruiting and maintenance of a stable labor force.</li> <li>- From May 1997, foreign affiliates forced to adopt a 40-hour work week. Need permission for overtime from labor control authorities, which is seldom forthcoming.</li> <li>- Workers at permanent representative offices are considered under the "Labor Service Company" as personnel dispatches, resulting in the payment of personnel expenses plus alpha.</li> <li>- Contracts of one to two years required for laborers, which limits management flexibility in responding to production needs.</li> <li>- Recruitment is based on human connections.</li> </ul>		<ul style="list-style-type: none"> <li>- Overtime is vital for competitiveness, early approval should be given.</li> <li>- Permit direct employment.</li> </ul>
	Geographical restrictions on local recruitment	- In Suzhou employment outside the region is restricted to less than 10% of total employment, which poses problems in recruiting talent and cheap labor.		- Regulation should be removed.

Category	Issue	Issue details	Reference	Present status and desired actions
	Visa acquisition and other procedures (work permit)	<ul style="list-style-type: none"> <li>- Even when Japanese side agrees to cover cost for dispatch of engineers in context of technical cooperation, visas can take more than a month to process.</li> <li>- Procedures complicated for visa extension, resident certificate and work certification registration, and passport issue for Chinese employees.</li> </ul>		<ul style="list-style-type: none"> <li>- Simplify procedures</li> </ul>
18. Demands for technology transfer	Requests for technology transfer (performance requirement)	<ul style="list-style-type: none"> <li>- Regardless of the capacity of the Chinese partner to absorb the technology, foreign companies are expected to guarantee that technology objectives stipulated in JV contracts are met.</li> <li>- Validity period on royalties is limited to 10 years or less except where special permission is granted.</li> <li>- Company providing technology prohibited from making limiting demands (i.e., once contract has expired, foreign company is unable to prohibit continued use of technology by local partner).</li> <li>- When a contract has been signed, it is not legally binding until approved relevant authorities. Authorities sometimes demand changes to contracts. (Not a problem under international law, but is an issue if demands are too strong.)</li> <li>- International tenders for railway cars often require 60% local content. Significant technological transfer is necessary to satisfy this requirement, making it impossible to procure lower-priced components from other countries.</li> </ul>	- Regulations for the enforcement of Administrative Rules governing Contracts on the Introduction of Foreign Technology (Article 11, etc.)	<ul style="list-style-type: none"> <li>- Value of technology and international business practices must be understood.</li> <li>- Period covered by contracts for introduction of technology should be decided on the basis of agreement between the contract parties.</li> <li>- Improve technology guarantees.</li> </ul>
21. Land-holding restrictions	Land renewal procedures (transparency)	<ul style="list-style-type: none"> <li>- Rules that stipulate renewal procedures for expiration of land utilization periods are unclear.</li> </ul>	- Ordinance on onerous disposal	<ul style="list-style-type: none"> <li>- Clarify renewal approval procedures.</li> </ul>
	Permission to build on general land (examination procedure)	<ul style="list-style-type: none"> <li>- Can take more than a year for foreign firms to obtain permission from Land Bureau to construct new building and facilities in areas outside the special economic zones. Leads to investment losses. Cost of license is twice that within the special economic zones.</li> </ul>		<ul style="list-style-type: none"> <li>- Faster granting of approval.</li> </ul>
23. Systems, practices, and inefficient administrative procedures	Lack of valuation standards (transparency)	<ul style="list-style-type: none"> <li>- When JVs invest in land, appraisal conducted by State-appointed CPA, often with valuations unreasonably high.</li> <li>- Asset valuation for manpower, property, and real estate of state-owned corporations.</li> </ul>		<ul style="list-style-type: none"> <li>- The validity of valuations should be substantiated, one means of which would be to use an accountant from a third country.</li> <li>- Need development of legal system.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Delays in administrative inspections (examination procedure)	<ul style="list-style-type: none"> <li>- Delays by municipal authorities in issuance of construction permits for development projects, even though permission for joint production and development has already been attained.</li> <li>- National interests take priority, with political decisions made to add items in approval process that is decided unnecessary in terms of corporate interests.</li> </ul>		- Accelerate inspection process.
	Duplication of organizations granting licenses (examination procedure)	- Government organizations granting business licenses overlap and legal jurisdictions are unclear. Different interpretations by national and provincial officials create chaos in business operations.		- Clarify division of authority between the various government bodies.
	Inefficient administrative procedure (examination procedure)	- Can take more than one year for approval to establish foreign capital JV. Delay is forcing reexamination into business plan.		- Simplify and speed up JV approval procedures
	Excess in approvals (examination procedure)	- Too many approvals needed for construction work		
26. Other	Mobility of business-related persons (work permit)	<ul style="list-style-type: none"> <li>- Foreigners charged 30% higher prices for air travel.</li> <li>- Foreigners forced to purchase air travel insurance.</li> <li>- Tolls levied on public roads in some regions.</li> <li>- Dual price system for accommodation and tourism in inland areas.</li> <li>- Sudden business travel is difficult due to necessity for entry visas.</li> </ul>		<ul style="list-style-type: none"> <li>- Abolish discriminatory pricing.</li> <li>- Abolish need for entry and exit visas for Japanese.</li> </ul>

## HONG KONG

Category	Issue	Issue details	Reference	Present status and desired actions
Other	Preferential treatment of local businesses (market access)	- Close links between Hong Kong businesses and local and Chinese government can obstruct approvals for foreign business investment.		

## INDONESIA

Category	Issue	Issue details	Reference	Present status and desired actions
1. Restrictions on entry and foreign ownership	Entry restrictions in the distribution sector (market access)	<ul style="list-style-type: none"> <li>- Foreign companies and their local subsidiaries are prohibited from capital participation in the retail industry. PMAs (foreign joint venture companies) are also prohibited from investing in retail businesses and retail industry. The agreement reached between the Indonesian government and the IMF, announced 16 January 1998, included elimination of restrictions on investment in wholesaling and retailing to foreign affiliates, but concrete details have not yet been revealed.</li> <li>- Although the 1996 deregulation package allows PMA companies to sell their own products domestically up to the level of wholesaler, due to restrictions including a limit equal to the value of exports, companies with a domestic sales orientation are still subject to entry regulations for distribution. (Improvements do not seem to have been made to the various conditions (export financing, etc.) attached to direct wholesaling by PMAs (joint venture companies) which deregulation has made possible.)</li> <li>- According to the 2 July 1998 Presidential Decree no.96 on industry types for foreign ownership regulations (negative list), regulations target the retail sector, the distribution and wholesale sectors and part of the service sector.</li> <li>- In the distribution sector, foreign ownership is set at 49%, and the remainder can be apportioned to investors in Indonesian business (companies deemed by Indonesian law, 100% foreign ownership also applicable). However, the retail sector is confined to the state and urban level and above, and similar companies are prohibited from combining retail and wholesale sectors.</li> <li>- Specialist foreign export trade companies are also now able to enter into the previously prohibited retail and wholesale sectors.</li> </ul>	<p>Presidential Decree No. 54 1993 IV (FIELD OF BUSINESS) Article 24 (RETAIL TRADE)</p> <p>Mendag No. 376/KP/XI/1988 PP No. 36/1977 PP No. 19/1988</p> <p>Ministerial Decree No. 134/MPP/KEP/6/1996 (Ministry of Industry &amp; Trade)</p> <p>Presidential Decree No.96/1998 (7/2/1998)</p> <p>- Government Regulation 15/1998 Decree of MITI No.23/MPP/KEP/1/1998 PD 99/98</p>	<ul style="list-style-type: none"> <li>- Indonesia has taken positive steps toward deregulation, but efforts should be made to completely liberalize foreign capital participation in the retail sector and direct entry of foreign companies in the wholesale sector.</li> <li>- Eliminate requirements for PMA's.</li> <li>- Early abolition of conditions such as limits on export value.</li> <li>- Lifting of the prohibition on handling other companies' products and imports.</li> <li>- Advance the establishment of national legislation, which guarantees deregulation.</li> <li>- Clarification of the specific content for abolishing foreign ownership regulations.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
		<ul style="list-style-type: none"> <li>- A series of legal revisions were made coming into 1998, and although entry by foreign companies into the distribution sector was permitted, parts of the legislation were withdrawn later on and the present situation is unclear. Particularly unclear is the handling of other companies' products.</li> <li>- There are problems with existing entry regulations for 100% foreign ownership in the distribution sector (retail/wholesale).</li> <li>- The Agency Act prohibits selling directly to end-users.</li> <li>- Although restriction on direct entry of foreign businesses or their subsidiaries in retail industry is reported to have been relaxed, it is not clear whether direct entry of wholly-owned foreign company into retail/wholesale business has been fully liberalized.</li> <li>- Although establishment of new wholly-owned companies has been allowed with foreign capital deregulation of June 1994, 100% foreign capital is not authorized for existing companies. Also, foreign capital is required to be partially transferred to local businesses after 15 years.</li> </ul>		<ul style="list-style-type: none"> <li>- Full liberalization of direct foreign capital entry into retail business</li> <li>- 100% foreign ownership of existing companies to be approved.</li> <li>- Elimination of regulation to transfer partially 100% foreign-owned business in 15 years.</li> <li>- Presidential decree No. 99/1998 approves 100% foreign capital in the form of cooperation with small industries in merger.</li> </ul>
	Sectors with investment restrictions (market access)	<ul style="list-style-type: none"> <li>- Investment is regulated in many sectors, including sectors where foreign investment is prohibited, prohibited in principle but subject to exceptions, and limited to protect small-scale industries.</li> </ul>	Negative list (DNI)	<ul style="list-style-type: none"> <li>- Ease investment restrictions. (Improvement)</li> <li>- Foreign business entry in 26 industries including wholesale and retail businesses has been approved since July 1998. However, joint venture with small local enterprises requires 20% stock ownership by local capital.</li> <li>- Since October 1999, foreign investors have been able to apply for investment permit from BKPM (investment coordination committee of the Investment Ministry), BKPM (regional investment coordination committee), or Indonesian government representative offices in several countries.</li> <li>- Restrictions on the foreign ownership of banks have been abolished.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Divestiture requirement (equity participation)	- The elimination of the 20-year rule (divestiture of shares to local capital = majority local ownership) has broadened the legal basis for foreign capital participation; in addition, the establishment of 100% foreign ownership has become a possibility. However, dissatisfaction remains, since part of the shares must be divested to Indonesian interests either directly or through the stock market within 15 years of initial operation.	- Presidential Decree No. 20/1994 (June 2, 1994)	To confirm that sources indicate that the partial divestment requirement of 100% foreign-owned companies to Indonesian interests has already been eliminated.  (Improvement) - Although the regulation has not been revised, stock value of the Indonesian partner can be decided wholly by the parties involved without government intervention.
	Stock ownership restrictions (equity participation)	- Foreigners are limited to 49% ownership of listed stocks. - In practice, 100% initial foreign ownership requires a company to either have a high export ratio or locate in special zones.	- Securities Act	- Ease stock acquisition restriction on foreign capital. Liberalize establishment of 100% foreign-owned subsidiaries.
	Branch office restrictions (market access)	- Only representative offices can be established. Branch offices cannot be established except in some industries (banking, etc.).		-Liberalize establishment of branch offices (Improvement) -With the principle liberalization of establishing foreign trading subsidiaries, import/export operations, domestic wholesale and retail operations have been made possible.
	Regulations on minimum stock ownership (equity participation)	- When local subsidiaries are listed on the stock exchange, as a practice, existing foreign shareholders must hold at least 45% of the general stocks. This means that the foreign capital investment rate cannot be decreased.		(Improvement) - The establishment of foreign trading subsidiaries has been liberalized.
2. Regulations regarding local content ratio and local procurement ratio	Demand to hire local enterprises (performance requirement)	- Hiring a certain percentage of local and designated enterprises as subcontractors or material suppliers is strongly demanded at plant construction contract negotiations.		- Remove local content demand

Category	Issue	Issue details	Reference	Present status and desired actions
8. Investment recipient organization	Joint venture with state-owned enterprises (examination procedure)	<ul style="list-style-type: none"> <li>- To advance a project through a joint venture with a state-owned enterprise, government policy restrictions apply (obligation to make social contributions, prohibition on own financing, lack of transparency regarding company operations, government approval, etc.).</li> <li>- Assuming that all the necessary documents have been provided, it still takes an average of six to seven months from submission of an investment application to being able to go ahead with investment. This process takes even longer in areas outside factory belts.</li> </ul>		<ul style="list-style-type: none"> <li>- Easing of these restrictions</li> <li>- Local government procedures should be accelerated and made more transparent. High tariffs and the various related taxes increase the number of smuggled goods (Improvement)</li> <li>- If an application form is submitted accurately, average time for review of claim takes 2 to 4 weeks.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
10. Restrictions on free trade zone activities	Export regulations for components, single articles	<ul style="list-style-type: none"> <li>- If processing does not take place in the factories which are the bonded areas, exports cannot be made.</li> <li>- There is the possibility of a future increase in Kit exports.               <ol style="list-style-type: none"> <li>1) Since there is one metal mold, only the components are sent to overseas factories from Indonesia.</li> <li>2) Components are sent to overseas production plants as CKD. Both 1) and 2) are not legally approved at present.</li> </ol> </li> </ul>		<ul style="list-style-type: none"> <li>- Exports of components and single articles are directly linked to profits of both component manufacturers and the central government, and as such legislation should be relaxed.</li> </ul>
	Restrictions on domestic sales from bonded areas	<ul style="list-style-type: none"> <li>- When importing parts at an EPZ or EPTE and assembling finished products for domestic sales, 30% of the tariff rate of finished products is applied to the prices of imported parts. (Malaysia levies a tariff on parts.)</li> <li>- For an EPZ or EPTE, only up to 25% of exports (value basis) are permitted for domestic sales. (From May 1995, transactions between EPTE's can also be counted in exports.)</li> </ul>		
	<p data-bbox="302 686 501 1174">Improvement of EPTE system</p> <p data-bbox="302 1174 501 1370">EPZ qualification</p>	<ul style="list-style-type: none"> <li>- Since sales of parts by domestic parts suppliers to EPTEs are regarded as exports, exports from an EPTE are not eligible for import tariff refunds (EPZs do receive refunds. Also, they can apply for refunds of paid import tariffs and exemptions.)</li> <li>- While bank guarantees are no longer required for movement of equipment between EPZs, the equipment must be returned within approximately one year. This is unsuitable for equipment such as metal molds, which are used for several years.</li> <li>- Procedures for paying tariffs are complicated for EPZ companies that sell their own products domestically.</li> <li>- Strict regulations and complicated procedures apply to the disposal of waste and defective products generated in an EPZ. (EPTE companies are exempted from import tax on imported parts, but companies are required to dispose of defective or unused parts by burying or burning these.)</li> <li>- To qualify as an EPZ, a fence must physically enclose the entire factory. Also, remote locations must of their own accord provide customs officials with a station, meal expenses, and transportation.</li> </ul>		<ul style="list-style-type: none"> <li>- We urge that parts suppliers selling parts to EPTEs receive import tariff exemption.</li> <li>- Simplification of procedures.</li> <li>- Where defective or unused parts contain reusable elements such as metal or paper, companies should be permitted to break down parts and sell these elements separately. These elements should either be exempt from import tax or import tax payment should be based on the price of the elements to be sold. Companies should be able to pass on products, which are not recyclable to breakdown companies.</li> <li>- Request reduced burden on the private sector.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Abolition of preferential taxation	- Preferential taxation has been abolished as of April 1.		- Return of preferential taxation desired.
12. Exchange control	Exchange rate	- Because of wild fluctuations in the exchange rate (with the rupiah plunging), negotiations with Indonesia on textile machinery have come to a stop. Foreign exchange risks exist at all times because of wild fluctuations in currency value.		- Exchange rate stability.
13. Finance	Bank accounts	- Restrictions have been placed on dollar withdrawals from bank accounts. LC opening has become impossible since the currency crisis.		- Abolition of these restrictions.  Early normalization of LC opening at local banks sought.
	Fiscal instability	- Fiscal instability has led to falling confidence in Indonesian banks.		
	Worsening bank functionality	- Due to worsening bank functionality, L/C establishment is difficult even for export-oriented companies.		- Strengthening banks.
	Report obligation	All fund transfers (of \$10,000 or more) from a (foreign currency) domestic account must be reported via banks to the central bank starting March. This requires very cumbersome paperwork.		Eliminate stronger control on fund transfer
14. Tax system	Method of calculating income tax (income taxation)	- Income tax on foreigners is not based on their actual salaries but on a salary table drawn up by country and by qualification.		- Income tax should be calculated on the basis of actual salary.

Category	Issue	Issue details	Reference	Present status and desired actions
	Ambiguity in rules and regulations, frequent revisions (unstable tax system)	<ul style="list-style-type: none"> <li>- In fiscal year 1995, the maximum tax rate was reduced from 35% to 30%. However, due to ambiguities in national tax rules and the income tax law, as well as frequent revisions, laws are not fairly implemented. Thus a substantial portion of taxes are collected at the discretion of tax authorities.</li> <li>- Amendments to the taxation system, etc., are not announced in a predictable and consistent form, and there is no official gazette, which means public announcements are often delayed.</li> <li>- Tax is always calculated on the basis of the previous fiscal year plus alpha, so if a company has a particularly profitable year, that will become the base year in terms of calculating tax. Thereafter, even if a company's performance is poor, various reasons will be given for continuing to tax that company at the higher level, making it difficult for a company to realize a profit and repay loans.</li> <li>- 2% final tax of construction project value is steep, even considering rationalization and exhaustive implementation of tax levy.</li> </ul>	- Taxation law	<ul style="list-style-type: none"> <li>- Improve transparency of tax laws and make interpretations of tax officials consistent.</li> <li>- Publication of an official gazette.</li> <li>- Tax payments in line with profits.</li> </ul> <ul style="list-style-type: none"> <li>- Tax law must be revised</li> </ul> Development and clarification of taxation system
	Departure Tax (taxation)	<ul style="list-style-type: none"> <li>- For foreign nationals holding work permit, the individual must pay 100,000 rupiahs to leave the country. Departure tax on business trips is returned, but administrative procedures are slow.</li> </ul>		- Abolition
16. Employment	Difficulty obtaining work permits (work permit)	<ul style="list-style-type: none"> <li>- It is difficult to obtain work permits through block visas, and substantially fewer workers are approved than the number applied for.</li> <li>- Although restrictions are being eased on foreign workers, in technical and other positions, the employment period of foreign workers tends to be reduced from the viewpoint of providing job opportunities to Indonesians and improving domestic levels of technical competence. In addition, to retain foreign workers beyond a certain period, contributions must be paid for job training.</li> </ul>		- Ease requirements for obtaining work permits.
	Specialist work (work permit)	<ul style="list-style-type: none"> <li>- Bringing over specialists from the company's country of origin to instruct employees in factory work involves a myriad of procedures.</li> </ul>	- 10 January 1997 Minister for Labor Ordinance	- Simplification of application procedures for work permits.

Category	Issue	Issue details	Reference	Present status and desired actions
	<p>Visa acquisition standards (work permit)</p> <p>Prior acquisition of reentry visa (work permit)</p>	<p>- Technical guidance by foreigners of less than one-half year in duration is not regarded locally as employment, and correct visa application procedures are unclear due to ambiguity in standards. The granting of visas depends on the discretion of officials.</p> <p>- When foreign residents (such as Japanese residents) leave the country, they must obtain their reentry visa before leaving, and also pay a 25,000 rupiah departure tax in addition to the airport tax. (This was increased to 1 million rupiah in February 1998.) Indonesian citizens are also subject to this process, but foreigners enter and leave the country more frequently.</p> <p>- Although the departure tax used to be deductible in the individual income tax (only the worker's departure tax, not the entire family's), this provision was abolished in 1996.</p>		<p>- We urge that standards be clarified and that officials have no discretionary power.</p> <p>- Eliminate the requirement for prior reentry visa acquisition and the departure tax.</p> <p>(Action)</p> <p>- Under Governmental Decree No. 78/1999, exemption is granted to the following:</p> <ul style="list-style-type: none"> <li>- Foreign nationals with temporary work permit;</li> <li>- Foreign national workers in Batam, Bintan, and Karimun or foreign national workers under short-term contract (less than 183 days during 12-month period), provided that income tax has been paid by relevant business companies.</li> <li>- Foreign national workers at sales representative offices in Indonesia certified by the finance minister.</li> </ul>
	<p>Payment to skills development fund (national treatment)</p>	<p>- All foreigners working in Indonesia must pay US\$100 per month toward expenses for improving the skills of Indonesian workers. (From January 1997, foreign workers staying less than one month must pay one month's payment, and those staying less than one year must pay for the months remaining in the work permit.) When permission for a temporary stay is granted, a lump sum of US\$1,200 must be paid for the year, which is not returned even if the person leaves Indonesia during that year.</p>	<p>- Ministerial Decree 01/MEN/1997 (Ministry of Labor)</p> <p>- MENTRI TENAGA KERJA REPUBLIK INDONESIA NO; PER. 01/MEN/1997</p>	<p>- This payment imposes a large burden on companies and should be eliminated.</p>

Category	Issue	Issue details	Reference	Present status and desired actions
	Nationality disparity in the employment of officials (performance requirement)	- When 100% foreign ownership has occurred by obtaining stocks in a joint enterprise, the Minister of State for Investment Promotion Chairman of Investment Coordinating Board (BKPM) requires that within a year of obtaining the stocks, at least one Indonesian must be made a Director.	- Administrative guidance	- Early abolition.
17. Infringement of intellectual property rights	Establishment of protection system	- Due to the lack of protection intellectual property rights. Imitation products are widespread (e.g., home electrical appliances). - There are infringements of: trademark rights on Malaysian children's clothing; design rights on Indonesian children's underwear; trademark and design rights on Indonesian gas cooker wicks; and trademark and design rights on Chinese Taipei gut and ribbon.  - Although the import and sale of imitation products has become a daily occurrence, little effort is being made to crackdown on this.		- Address legal deficiencies and increase awareness regarding intellectual property protection - Ensuring enforcement of the WTO TRIPS Agreement and procedural transparency and feasibility.  - Enacting law . - Improving public morals. - Integration with global legislative procedure.  (Improvement) - In order to deal with intellectual property rights problems, Indonesia issued Decree No. 6/1989 on patents revised in 1997, Decree No. 6/1982 on copyrights revised in 1997, and Decree No. 19 on trademarks revised in 1997.
	Patent system	- Patent search in Indonesia is problematic. - Examinations are time consuming. - Despite the existence of a patent law, the patent system is underdeveloped. - Because of the ambiguity of trademark rights, logo marks are misappropriated and JIS marks are recorded without permission.		- Regular postings of official gazette notifications on patent information. - Immediate accession to the PCT (Patent Cooperation Treaty) - Prompt examination.  (Improvement) - Indonesia has joined the Patent Cooperation Treaty (PCT) in 1997.
21. Land-holding restrictions	Restrictions on land holding (equity participation)	- Restrictions on land holding by foreign companies.		- Relaxation and elimination of restrictions.

## JAPAN

Category	Issue	Issue details	Reference	Present status and desired actions
1. Foreign investment entry & sales related regulations	Restrictive means to acquire shareholdings	-In-kind contributions subject to court review, multiple classes of common stock not permitted, Board Meeting process too rigid, non-voting preferred stock not permitted, increase to capital not easily done.		-Further deregulation and encouragement for the entry of foreign capital.
14. Taxation	Discriminatory tax rule for stock options	-The Japanese tax system has implemented a discriminatory distinction between stock options from domestic or foreign companies. Income from stock options of Japanese listed companies are taxed as capital gains at rate of 26% while the same income stock options of a foreign company are subject to both income and residential taxes, which could amount to nearly 50%.		-Amend tax rule
	Consolidated tax system	-The tax consolidation among member companies of a same group is still not applicable. To some extent, it is a hurdle to foreign direct investment in Japan.		
23. Systems, practices and inefficient administrative procedure	Purchase system, practices with automotive sector continue to favor "Keiretsu Companies".	-There continue to be artificial decisions made based on capital affiliation, same practice taking small Japanese suppliers global, full disclosure on market data needed, no local/ regional / national incentives available, no renewal of trade agreement		-Encourage purchasing decisions to be made on equal global conditions, transparency of market data, encourage use of North American components in Japanese vehicles built in USA, monitor Yen movement carefully-apply pressure not to be used as an export tool.
	Complicated administrative procedure for setting up business in Japan	-Numerous documents are to be submitted (business plans , records, registrations, guarantees, etc.), and all of them must be translated in Japanese.		

Category	Issue	Issue details	Reference	Present status and desired actions
	Large contract tender system	-Most of Japanese tenders are not, in reality , open to foreign bidders. Many systems are applied to prevent large foreign companies to enter public works. Such public works, ordered by local authorities, are heavily politicized, influenced by bid rigging and local lobbying. Specifications for these works are set, or changed in the course of the bidding, in a way to preclude foreign company bids to be received.		-Change public tender system
	Medical administrative service	<p>-Medical in vitro diagnostic products are used to diagnose diseases without any direct contact with the human body, thus their usage as well as a potential risk for patients are totally different from those of pharmaceuticals. But medical in vitro diagnostics are now treated the same as pharmaceuticals in the Japanese Pharmaceutical Affairs Laws, thus requiring the same level of requirements in many aspects.</p> <p>-Ministry of Health Labor and welfare (MHLW) by themselves decided to set up six months as the standard processing period for new product approvals in its 1985 notification. But, only 12% of all applied in vitro reagents were approved within the six months standard processing period.</p>	<p>The Japanese Pharmaceutical Affairs Law</p> <p>Notification on the Handling of medical diagnostics No.662 issued June 29, 1985</p>	<p>-In order to achieve the objective that Japanese patients should be able to enjoy benefits of new in vitro diagnostic products without major time lag (compared to patients in other countries) created by Japanese Governmental regulations, de-regulations should be implemented as soon as possible in the followings.</p> <ul style="list-style-type: none"> <li>· Unless there are reasonable clinical justifications, eliminate information requirements for new product registration /approval uniquely requested only by Japanese MHLW.</li> <li>· Create a new processing procedures which are classified by a level of potential risks to patients. For lower risk category, the approval process should be minimized .</li> <li>· Increase quality and quantity of staff responsible for approval process.</li> </ul>
26. Other	High transportation cost	-Transportation costs in Japan are probably the most expensive in the world. From the exporter point of view, the represents a cost barrier for penetrating the Japanese market. Such high transportation costs often force companies to have multiple points of entry, hence generating multiple distribution offices.		

Category	Issue	Issue details	Reference	Present status and desired actions
	<p data-bbox="304 256 478 310">Strict firewall regulation</p> <p data-bbox="304 375 478 483">Strict monetary requirement for the remittance business</p>	<p data-bbox="499 256 1199 342">-Strict firewall regulations separating banks, securities and the asset management business cause difficulties in applying foreign "universal banking" models.</p> <p data-bbox="499 375 1199 483">-The Monetary Authorities only allow licensed foreign banks to engage in the remittance business. However, the monetary requirements to get a full bank license are so strict and difficult to meet specially with regards the capital requirement.</p>		<p data-bbox="1558 256 1976 310">-Review the need for segregation, looking at international best practice.</p> <p data-bbox="1558 375 1976 623">-Liberalize monetary laws which are very restrictive when it comes to foreign remittance. With the required capital needed, only banks from developed countries will be able to secure a license. The only other way to make it possible is through a reciprocity agreement between countries.</p>

## THE REPUBLIC OF KOREA

Category	Issue	Issue details	Reference	Present status and desired actions
1. Foreign investment entry-related regulations	Foreign capital entry regulations (market access)	<ul style="list-style-type: none"> <li>- Government may reject FDI: (1) in areas related to national security; (2) to protect public order, health or morals; (3) to promote international peace or safety; (4) to avoid foreign domination of domestic market; or (5) if violates Monopoly Prevention Fair Trade Law.</li> <li>- 13 prohibited areas.</li> <li>- 18 partially prohibited areas.</li> </ul>	<ul style="list-style-type: none"> <li>- Foreign Capital Inducement Act</li> <li>- Foreign Investment Promotion Act</li> </ul>	<ul style="list-style-type: none"> <li>- Permit foreign investment in prohibited areas</li> </ul> <p>(Improvements)</p> <p>FDI tentatively liberalized in all areas except those which impact on (1) national security; (2) public order; (3) public hygiene; (4) environmental safety and/or social morals.</p>
	Foreign capital regulations and financing regulations on projects utilizing private capital (market access)	<ul style="list-style-type: none"> <li>- FDI in infrastructure projects being promoted. Foreign ownership limited to under 50%, but depends on project (telecommunications 33%).</li> <li>- For restricted industries, general rule is FDI not accepted, but allowed where certain conditions are met. New plan will open 32 'restricted industries' and 48 'restricted industries with conditions' to FDI. However, separate restrictions may apply in accordance with Mining Law, Fisheries Law, Petroleum Law or small-medium-sized business adjustment laws.</li> </ul>	<ul style="list-style-type: none"> <li>- Foreign Capital Inducement Act, Private Sector Capital Attraction and Promotion Law, and other various business laws</li> <li>- Rules on Foreign Investment (1991)</li> <li>- Foreign Investment Liberalization 5-Year Plan (1993-1997) (June 1993)</li> <li>- Foreign Investment Improvement Policy (June 1994)</li> <li>- New Foreign Investment Liberalization 5-Year Plan (1996-2000) (November 1995)</li> </ul>	<ul style="list-style-type: none"> <li>- Increase foreign capital ratio restriction levels and relax foreign financing restrictions.</li> </ul> <p>(Improvements)</p> <ul style="list-style-type: none"> <li>- Simplification of investment-related procedures for foreigners proceeding, and trend of expanding investment liberalization and deregulation.</li> </ul>
	Entry regulations in communications area (market access)	<ul style="list-style-type: none"> <li>- Waiting for WTO ruling regarding foreign capital entry regulations in following two telecommunication areas: wire-based and wireless telegraph and telephone service.</li> </ul>		<ul style="list-style-type: none"> <li>- Eliminate regulations.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Increased investment is subject to an authorization system (market access)	- Increasing investment in Korean-based subsidiaries is subject to an authorization system. Government plans to partially liberalize by year 2000.	- Foreign Capital Inducement Act	- Total liberalization of system.
3.Export requirements	Export requirements (performance requirement)	- In some cases, condition for FDI is obligation to export products. A Japanese fastener manufacturer was obligated to export 100% of Korean production (including processed exports). To protect SMEs, government can make approvals for production expansions by large companies conditional on an agreement that all production will be exported	- Administrative guidance - ROK Small- and Medium-sized Company Business Adjustment Law	- Eliminate export obligations.
11. Recovery of profits	Money transfer regulations (profit repatriation)	- When Japanese greater than 51%, ROK subsidiary is considered same as Japanese parent company so royalty transfers not allowed.	- Administrative guidance by the Ministry of Finance and Economy's Financial Division	- Abolish regulations.
	Dividend transfer restrictions (profit repatriation)	- Restrictions on dividends to parent company. Partial deregulation by year 2000.	- Foreign Capital Inducement Act	Complete liberalization.
12. Exchange controls	Control of foreign currency conversion (profit repatriation, capital export)	- Restrictions on conversion of foreign currency to and from ROK won.		Abolish regulations. (Improvements) - July 1998 position limits on foreign currency transactions by foreign exchange banks relaxed, spot exchange and general position unified. - April 1999, foreign exchange transactions completely liberalized.
	Trade financing not allowed (investor behavior)	- Foreigners cannot receive export financing for export business. With the revisions of the External Trade Law and the Foreign Capital Inducement Act in December 1996, since March 1997, local subsidiaries and branch offices can both perform export transactions. However, concern remains as to whether such regulations will be applied to imports as well.	- External Trade Law	- Eliminate restrictive provisions of External Trade Law.

## MALAYSIA

Category	Issue	Issue details	Reference	Present status and desired actions
1. Foreign capital entry restrictions	(equity restriction, market access, and performance requirement)	<ul style="list-style-type: none"> <li>- Foreign ownership of sales companies limited to 30%.</li> <li>- Trading house branch offices authorized to trade only with Japan, not permitted to set up wholly-owned subsidiaries and must pay corresponding profit even when local partner is not actively engaged in business.</li> <li>- Foreign capital ratio in real estate business restricted to 30%. Application every 2 years to for approval and extension when JV partner has 51% ownership.</li> <li>- Cannot establish 100% foreign-owned sales companies.</li> <li>- Under International Procurement Center (IPC) internal regulations, export ratio of sales company must be 80% or more.</li> <li>- Foreign capital ratio for manufacturing industry is 30%, but ratio to be liberalized, except i n following 7 industries.</li> <li>- Paper packing; plastic packing; plastic injection molding components; material stamping, fabrication and electro-plating; wiring harness; printing ; steel service center</li> </ul>	<ul style="list-style-type: none"> <li>- Investment promotion law</li> <li>- Industrial coordination law</li> </ul>	<ul style="list-style-type: none"> <li>- Should allow foreign wholly-owned trading house subsidiaries.</li> <li>- Length of foreign capital committee approvals should be extended (to around 5 years)</li> <li>- Relax IPC internal regulations (80% or more export ratio)</li> <li>- Application on all areas requested.</li> <li>- Foreign capital ratio for distribution industry has been relaxed from 30 to 51%.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Linkage of foreign ownership ratio to exports (performance requirement)	<ul style="list-style-type: none"> <li>- For export ratios of at least 80%, foreign ownership authorized up to 100%. Remainder must be allocated to Bumiputera (ethnic Malays) ownership. However, foreign ownership of up to 100% is allowed provided that: (1) 50% of production is exported, or the ethnic composition of Malay workers is fulfilled, and at least 350 people are employed, and (2) products do not compete with domestic products.</li> <li>- If 20 -50% production exported, 30% foreign ownership allowed.</li> <li>- If less than 20% exported, 30% foreign ownership allowed. But for advanced technologies and promoted industries, max 51% foreign ownership authorized.</li> <li>- For FZ and LMW, export requirement of at least 80%. Remaining 20% of products directed at domestic market subject to standard import taxes, which increases prices and causes loss of competitiveness.</li> <li>- Since October 1994, no import tariff on construction equipment. In practice, equipment exported, then re-imported, which increases costs.</li> <li>- Rule used to be that extent of foreign ownership depended on export ratios, which made it difficult to invest in industries that supported your main industry. But from July 1998, except for certain sectors, rules changed to allow 100% foreign ownership approval without consideration of export ratio. The policy gives preferential treatment to new investors over older ones.</li> <li>- For foreign companies focused on domestic market, legal provisions restrict foreign capital ratios to 30% and prevents them from gaining majority ownership. This (1) discourages foreign investment and (2) disadvantages domestic companies since it prevents them from gaining foreign know-how.</li> </ul>	<ul style="list-style-type: none"> <li>- As of the end of December 1991, MIDA administrative guidance (Malaysian Industrial Development Authority)</li> <li>- Manufacturing sector investment guidelines</li> <li>- Foreign Investment Law</li> </ul>	<ul style="list-style-type: none"> <li>- Domestic sales activities initiated before July 1998 should be unrestricted without regard to foreign ownership.</li> <li>- Have been improvements, but sudden policy changes should be avoided.</li> <li>- Export ratio that applies to 100% foreign ownership should be reduced to 20-30%.</li> <li>- Abolish foreign ownership restrictions and export obligations as other ASEAN countries have done since the Asian economic crisis.</li> </ul> <p>(Improvements)</p> <ul style="list-style-type: none"> <li>- Following the Asian economic crisis, obligatory link between export and foreign ownership ratios abolished December 2000 to promote expansion of new projects in the manufacturing sector, excluding the 7 sector types below and extensions of existing projects. Paper wrapping; plastic wrapping; plastic injection molding; metallic pressing, metal molding, electroplating; wiring harness; printing; and steel service centers.</li> <li>- Capital participation ratios should be raised to 51% for companies targeting the domestic market.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Foreign ownership restriction (equity restriction, market access, and performance requirement)	<ul style="list-style-type: none"> <li>- Foreign investment rate limited to 30%.</li> <li>- In the IPO sector, although there are factories in Malaysia, there are many cases in which purchases must be made from Singapore (where the sales companies are located).</li> </ul>	- Foreign Investment Law	<ul style="list-style-type: none"> <li>- Relax foreign ownership ratios to 50%.</li> </ul> (Improvements) <ul style="list-style-type: none"> <li>- Foreign ownership increased from 30% to 51% in distribution sector.</li> <li>- Foreign ownership of comprehensive domestic telecommunications businesses raised February 1998 from 30% to 49%, April 1998 from 49% to 61%. But will be lowered to 49% within five years, and foreign companies will make capital procurement from overseas.</li> </ul>
	Linkage of stock listing requirements to foreign ownership (equity restriction, market access)	<ul style="list-style-type: none"> <li>- To apply for a listing on the first section of the KL stock exchange, Malays must own at least 30% of the stock.</li> </ul>	Administrative guidance	<ul style="list-style-type: none"> <li>- Eliminate Malay ownership requirement.</li> </ul>
	Foreign ownership restriction (equity restriction, market access)	<ul style="list-style-type: none"> <li>- Plan to establish instalment finance company not possible without at least 30% Bumiputra stockholding.</li> </ul>	Administrative guidance	<ul style="list-style-type: none"> <li>- Eliminate Malay ownership requirement.</li> </ul>
	Requirement to increase local ownership, and linkage of foreign ownership to incentive measures (equity restriction, market access)	<ul style="list-style-type: none"> <li>- Motorcycles manufactures will be required to reduce foreign ownership to below 30% in future. Failure to comply with administrative guidance on stockholding ratios results in retraction of import tariff exemptions.</li> <li>- Local managers must be hired, depending on capital ratio.</li> </ul>	Foreign Ownership Guideline	

Category	Issue	Issue details	Reference	Present status and desired actions
	Ban on establishment of 100% foreign-owned sales company (equity restriction, market access)	- Establishment of sales companies with 100% foreign ownership not permitted. Even if 100% foreign ownership is allowed for a limited duration, local ownership inevitably becomes necessary to renew work visas and meet other requirements. Unlike Thailand, local ownership requirements cannot be met through foreign capital investment companies, causing uncertainty over safety and reliability of investments.	Administrative guidance from the FIC (Foreign Investment Committee)	- Allow establishment of 100% foreign-owned sales companies.
	Linkage of foreign ownership ratio to exports (performance requirement)	- For companies whose business is focused on domestic market, foreign capital ratio restricted to 30% or less. This discourages FDI and prevents foreign technology from flowing to indigenous companies.		
	Foreign ownership restrictions (equity restriction, market access)  Compulsory transfer of management right (equity restriction)	- In the non-manufacturing sector, foreign ownership is limited to 30% in principle (in the manufacturing sector, only export and high-tech industries are allowed 100% foreign ownership, while other industries are limited to 30%). - Supporting factories that supply exporting manufacturers with intermediate products are also subject to foreign ownership restrictions. - In past non-manufacturing companies could be 100% foreign-owned, but the recent trend is toward Bumiputera 30%, non-Bumiputera 40%, foreign 30%. - Construction companies with 70% or less local ownership are treated as "foreign contractors." Each project must receive government approvals, including new work permits. This inhibits development of the semiconductor industry by obstructing entry of specialized firms that design and build super clean rooms for semiconductor production. - Companies with little Bumiputera ownership are sometimes disadvantaged in receiving government licensing or approvals. - Participation in government projects contingent on transfer of management rights to Bumiputera under the "PKK" system ("contractor service center").	Foreign Ownership Guideline	- Ease foreign ownership restriction, or authorize indirect export commodities as exports. - Foreign capital should have management rights. - Government appears to considering changes to preferential Bumiputera policies in light of current crisis. - Non-manufacturing firms that contribute to exports should be provided the same incentives as manufacturing firms.  - Foreign affiliates should be exempted from Bumiputera regulations. - Preferential Bumiputera policies are under review.

Category	Issue	Issue details	Reference	Present status and desired actions												
	Requests for the introduction of local capital (equity restriction) Complexity of procedure for increasing foreign ownership ratio (performance requirement)	<ul style="list-style-type: none"> <li>- Strong demands and guidance to give preferential treatment to Malays call for utilization of local capital, even for 100% foreign owned companies..</li> <li>- Under existing Promotion of Investment Act, 100% foreign capital permitted where export ratio is 80% or more. However, stricter foreign capital regulations apply to companies established before the 1986.</li> <li>- Capital ratio of JVs can be changed only through independent capital increases. Not known if ratio change through transfer of stock ownership is possible.</li> </ul>	- MIDA Guidelines	<ul style="list-style-type: none"> <li>- Simplify procedure for increasing foreign ownership ratio for companies established before Promotion of Investment Act of 1986.</li> <li>- Abolish foreign ownership ratio restriction.</li> <li>- Permit capital ratio changes through transfer of stocks to local shareholders.</li> </ul>												
	Investment restrictions in labor-intensive industries (performance requirement)	- Government defines labor-intensive industries as those where investment per employee ratio is 55,000 ringgit or less. In principle, operating licenses for labor-intensive industries will not be approved in the future, except where: (1) value added at least 30%, (2) located on eastern coast of Malay peninsula, Sabah, or Sarawak, (3) management, technology, and oversight indexes are at least 15%, and (4) product or business is included in the high-tech industry or product list.	- Minister of International Trade and Industry statement on November 9, 1995.	<ul style="list-style-type: none"> <li>- Abolish investment restrictions in labor-intensive industries.</li> <li>- Government reviewing policies.</li> </ul>												
2. Local content requirement, local procurement ratio, and incentives	Local procurement requirement for automobiles (performance requirement)	<ul style="list-style-type: none"> <li>- 1992 regulations classified automobile industry by 3 categories: <ul style="list-style-type: none"> <li>A: passenger cars under 1850cc</li> <li>B: passenger cars 1850 - 2849cc, and commercial vehicles below 2,500 kg GVW</li> <li>C: passenger cars over 2850cc, commercial vehicles over 2,500 kg GVW, and off-road vehicles.</li> </ul> </li> <li>Applicable local content ratios are: <table border="1"> <thead> <tr> <th>Deadline</th> <th>Category A</th> <th>Category B</th> <th>Category C</th> </tr> </thead> <tbody> <tr> <td>Pre 12/31/96</td> <td>60%</td> <td>45%</td> <td>Designated parts</td> </tr> <tr> <td>Post 12/31/96</td> <td colspan="3">-----TBA as of 2/97-----</td> </tr> </tbody> </table> </li> </ul>	Deadline	Category A	Category B	Category C	Pre 12/31/96	60%	45%	Designated parts	Post 12/31/96	-----TBA as of 2/97-----				- Relax or eliminate local procurement requirement.
Deadline	Category A	Category B	Category C													
Pre 12/31/96	60%	45%	Designated parts													
Post 12/31/96	-----TBA as of 2/97-----															
	Compulsory use of domestic insurance policies (performance requirement)	- Insurance subscription with state-owned insurance company is necessary to cover project insurance and third-party liability insurance.	- Various laws related to national insurance	- Eliminate local insurance requirement												

Category	Issue	Issue details	Reference	Present status and desired actions
10. Restrictions on activities of free trade zones and special economic zones	Restrictions on transactions of companies located in FTZ and LMW (performance requirement)	<ul style="list-style-type: none"> <li>- Transactions between bonded factories not authorized. So not possible to subcontract to other bonded factories (transactions of parts is possible).</li> <li>- Factories in FTZ and LMW restricted from trading company-type activities such as ordering products from overseas for import and sale, or importing and selling products to complete a product lineup.</li> <li>- LMWs licensed as manufacturers cannot import and sell products or sell metal scrap and other waste products with added value.</li> </ul>	<ul style="list-style-type: none"> <li>- Stipulations for manufacturing licenses</li> <li>- Stipulations of Customs Act and Free Zones Act (improved in the IPC (International Procurement Center) introduced in the 1997 budget bill)</li> </ul>	<ul style="list-style-type: none"> <li>- Need arises for transactions between bonded factories and overseas orders, import and sale, so some degree of trading company activity should be allowed.</li> <li>- Permit sales of waste products, with revenue recognized as non-operating revenue.</li> <li>(Improvement)</li> <li>- Sale of disposed products from LMW and FTZ is authorized. However, additional licensing may become necessary .</li> </ul>
11. Recovery of profit	Royalty limitations (profit repatriation)	<ul style="list-style-type: none"> <li>- Government approval needed to pay royalties, stringently suppressed to low levels. Administrative guidance for 20% reduction at contract renewal.</li> <li>- Government approval needed for technical assistance contracts with Malaysian companies. Problems for foreign parties include: (1) Royalty limit for ordinary technology is about 2% of net sales, too low in view of fast pace of model changes and innovation, particularly in electronic products, and (2) contracts must conform to Malaysian law, which is inconsistent with the principle of autonomy for concerned parties under international law that governing law should be left to the judgment of the concerned parties.</li> <li>- Except in some high -tech industries, royalty rates are being reduced, making it increasingly difficult to cover costs.</li> </ul>	<ul style="list-style-type: none"> <li>- Administrative guidance (MIDA)</li> <li>- MIDA Guidelines</li> </ul>	<ul style="list-style-type: none"> <li>- Government should recognize need for more appropriate pricing for technology transfers, not only in high-tech but also peripheral and parts industries. Failure to do so will impede sustained technological innovation.</li> <li>- Abolish the “approximately 2%” limit.</li> <li>- The choice of governing law should be left to parties concerned.</li> <li>(Improvement)</li> <li>- Royalty restrictions (2%) and compatibility guidelines may be abolished, but the company is responsible for claiming justification.</li> </ul>
13. Finance	Dividend regulations (profit repatriation) Obligation to borrow from local banks (performance requirement)	<ul style="list-style-type: none"> <li>- Regulations do not permit payment of dividends from accumulated profits carried over from previous term.</li> <li>- Under the 60:40 regulation, foreign affiliates have to borrow 60% or more from local banks despite high interest rates.</li> </ul>		Abolish regulation, or lower the ratio.

Category	Issue	Issue details	Reference	Present status and desired actions
	Restrictions on borrowing from domestic banks (performance requirement)	- Borrowing from Malaysian banks is restricted to up to three times net worth.		- Ease restrictions.
14. Taxation	Withholding tax on permanent equipment and branch office transactions (national treatment)	<ul style="list-style-type: none"> <li>- Plant construction projects involving non-residents are taxed as: (1) permanent equipment (PE), (2) branch office, or (3) local subsidiary. (1) and (2) are subject to 20% withholding tax (15% corporate income tax and 5% individual income tax).</li> <li>- Adjustments when tax return filed (for corporate tax) or when dispatched technician individual income tax payment settled (for individual income tax).</li> <li>- Effect is income tax prepayment, and temporary fund shortages.</li> <li>- Adjustment methods not clearly stipulated. No assurance that tax withheld will actually be adjusted.</li> <li>- To avoid irrational aspects of the tax rules, foreign companies are forced to elect tax treatment as a local subsidiary rather than as ordinary PE.</li> <li>- Deviates from the spirit of bilateral tax treaties.</li> </ul>		- Eliminate prepayment of income tax (withholding tax).
16. Employment	Preferential policy toward Malays (ordinary positions) (national treatment)	- Bumiputara policies require that Malays must be given priority in employment.	- Bumiputera policy Stipulation of manufacturing license	- Employment restrictions based on ethnic composition should be eased.

Category	Issue	Issue details	Reference	Present status and desired actions
	<p>Preferential policy toward Malays (management positions) (national treatment)</p>	<ul style="list-style-type: none"> <li>- Malays given priority in employment at all levels of management, so recruitment not necessarily based on hiring best person for the job.</li> <li>- Local subsidiaries must have at least two directors that are Malay (or permanent local residents).</li> <li>- Excluding key positions, work permission for foreign managers limited to 10 years. Technicians and specialists 5 years. Contract renewal extremely difficult. Inhibits smooth transfer of management know-how and technology.</li> <li>- Strong demands and guidance for preferential treatment for Malays, which call for utilization of local capital even for 100% foreign owned company.</li> <li>- Recommendation letter from Foreign Investment Committee submitted to Ministry of Domestic Trade and Consumer Affairs to required to employ foreigners (either dispatched from Japan or local Japanese hires). Even with letter, approval is difficult.</li> </ul>	<ul style="list-style-type: none"> <li>- Bumiputera policy Stipulation of manufacturing license</li> <li>- Manufacturing sector investment guidelines</li> <li>- Bumiputera policies (preferential policies for Malays), Immigration Control Law</li> </ul>	<ul style="list-style-type: none"> <li>- Relax employment priority given to Malays.</li> <li>- Change minimum number of Malays (or permanent local resident) directors to one.</li> <li>- Preferential Bumiputera policies under review.</li> <li>- Although Malaysians wish to occupy more managerial positions, this is sometimes not consistent with technological demands of the competitive marketplace. Restrictions on employment of foreigners should be relaxed.</li> <li>- Current policies effectively restrict inflow of low-paid immigrant workers, but ineffective in cultivating Malaysians who have the ability to work in the international community. To promote domestic employment opportunities and a competitive export industry, need greater entry of foreign companies that challenge employees and provide training. (Improvement)</li> <li>- High-tech companies are able to hire non-residents.</li> </ul>
	<p>Preferential policies toward Malays for state enterprise projects (national treatment)</p>	<ul style="list-style-type: none"> <li>- Bumiputera policies are particularly strict for state enterprise projects. Bumiputera ratios of management staff and regular personnel regularly surveyed (by means of tax disclosure information, EPF, and other lists). Ethnic restrictions inhibit retention of high-quality staff.</li> </ul>		<ul style="list-style-type: none"> <li>- Make system less restrictive.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Limit on immigrant workers (work permit)	<ul style="list-style-type: none"> <li>- Applications to bring in workers from eastern Malaysia and nearby countries seldom granted, or if granted are scaled down, which creates labor shortages.</li> <li>- Work visas for non-managerial positions have short duration and are subject to long delays.</li> <li>- Short-term work visa necessary, even for one day visits by foreign support personnel to install production system in new plant, Visa application process lengthy and administrative process very cumbersome.</li> </ul>	- Immigration Law	<ul style="list-style-type: none"> <li>- In view of extreme labor shortage, immigration restrictions on foreign managers, technical staff, and skilled workers should be eased. (From November 1994, new work permits were being issued again; in 1995, approximately 150,000 work permits were expected to be granted.)</li> <li>- Visa issue for manufacturing businesses remain strictly controlled. Need visa-free entry for short-term assignments.</li> </ul>
	Limits on the employment of East Malaysians (work permit)	<ul style="list-style-type: none"> <li>- Limits placed on employees from East Malaysia (Sabah and Sarawak).</li> </ul>		
	Limit on Japanese employees (work permit)	<ul style="list-style-type: none"> <li>- Technology transfer is critical factor for success of overseas manufacturing operations . Local staff need training for transfer of technology to succeed. Training requires large number of Japanese technical experts during transitional period. Limits on work permits for Japanese staff inhibits transfer of technology.</li> <li>- Technology transfer in product design area especially difficult.</li> <li>- Restrictions on Japanese employment ratios and visa issuance too strict. Difficult to exchange engineers posted locally. Visas for rotation of key staff took five months (1994).</li> <li>- Frequent job-hopping and shortage of skilled workers slow progress of technology transfer. Therefore, need for Japanese staff to remain in Malaysia longer than planned, but difficult to obtain work permits.</li> <li>- With the exception of management staff, it is extremely difficult to get permission to Japanese as a manager.</li> </ul>	<ul style="list-style-type: none"> <li>- Administrative guidance</li> <li>- MID A Expatriate Approval</li> </ul>	<ul style="list-style-type: none"> <li>- To shift from labor-intensive to technology-intensive industries, government should relax restriction on Japanese staff needed to effect technology transfers by establishing a grace period and specifying occupational categories.</li> <li>- Need more transparent and faster immigration control procedures.</li> <li>- Dispatch of Japanese staff should not be regarded as taking jobs from Malaysians, but rather as promoting technology transfer and strengthening Malaysian companies.</li> <li>- Ease license quotas on administrative expatriate posts.</li> </ul>
	Employment limitations on foreigners in the service sector (work permit)	<ul style="list-style-type: none"> <li>- Visas difficult to obtain for foreign workers in service sector (eg. sales, physical distribution).</li> <li>- Number of work permits granted to foreign workers particularly limited in service sector.</li> <li>- Necessary visas sometimes not approved.</li> </ul>	<ul style="list-style-type: none"> <li>- Administrative guidance</li> <li>-Regulations for foreign workers</li> </ul>	<ul style="list-style-type: none"> <li>- Visa issuance should be more flexible for key staff in service and non-manufacturing sectors.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
17. Infringement of intellectual property rights	Infringement of intellectual property rights	<ul style="list-style-type: none"> <li>- Poor protection of intellectual property rights (eg. copyrights on computer software).</li> <li>- Third parties not informed until patents granted. Need greater transparency in application process.</li> <li>- Patent protected for 15 years from the date granted (no limit from date of filing).</li> <li>- Patent search done locally are of dubious reliability.</li> <li>- Trademark rights infringements in Malaysian children's clothing.</li> </ul>		<ul style="list-style-type: none"> <li>- Need stronger enforcement of related laws and regulations.</li> <li>- Should introduce system of public disclosure of patent applications.</li> <li>- Patent rights should conform to international standard of 20 years from date of filing.</li> <li>- Create English language data base.</li> <li>- Enforce WTO TRIPS Agreement and procedural transparency and feasibility.</li> </ul>
	Flood of counterfeit and imitation products	<ul style="list-style-type: none"> <li>- Plugs (probably from China) have flooded the Malaysian market. Poor-quality goods cause inconvenience to users and damage to brands. Steps to confiscate plugs proving not to be successful.</li> </ul>	- Trademark Act	<ul style="list-style-type: none"> <li>- Strengthen border control by enforcing stricter customs checks. Problem not just plugs, but for all car parts.</li> </ul>
	Difficulty in patent research due to non-membership in Strasbourg Agreement	<ul style="list-style-type: none"> <li>- Timely and accurate patent research is not possible since Malaysia is not party to the Strasbourg Agreement on International Patent Classification (IPC).</li> </ul>	- Strasbourg Agreement	<ul style="list-style-type: none"> <li>- Become party to the Strasbourg Agreement.</li> </ul>
21. Land ownership restriction	Land ownership restriction in state-developed industrial parks (market access)	<ul style="list-style-type: none"> <li>- Land ownership not allowed in state-developed industrial parks. Uncertain whether leases can be renewed so plants can continue operation.</li> <li>- Foreign companies are permitted to own private land.</li> <li>- Selangor industrial park has 99-year leaseholds.</li> </ul>		<ul style="list-style-type: none"> <li>- For relatively short 30-year leaseholds, companies should be informed beforehand whether renewal is possible.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
23. Systems, business practices and ineffective administrative procedures	Inefficient administrative procedures (unstable and untransparent FDI regime)	<ul style="list-style-type: none"> <li>- Applications registered with Malaysian Industrial Development Agency (MIDA) for technical assistance related to production and sale of products using new industrial techniques are not handled promptly. MIDA officials frequently reshuffled.</li> <li>- Difficult to acquire information on content of public works plans for road and monorail construction projects.</li> <li>- Negotiations over environmental regulations, construction regulations, project startup approvals, etc. often subject to the discretion and disposition of local government officials due to absence in writing of guidelines for approval.</li> </ul>	- Regulations on environment and construction	<ul style="list-style-type: none"> <li>- Applications should be promptly processed. If corrections or amendments required, need to know this at early stage.</li> <li>- Improve administrative services.</li> <li>- Clarify government contact points.</li> <li>- Develop legal infrastructure.</li> </ul>
	Difficulty in capital reduction procedure (protection of investors)	<ul style="list-style-type: none"> <li>- Capital reductions practically impossible</li> </ul>		<ul style="list-style-type: none"> <li>- Environment enabling capital reduction needed.</li> </ul>
24. Sudden changes of policy legislation	Sudden changes of policy legislation (unstable FDI regime)	<ul style="list-style-type: none"> <li>- Many sudden changes to laws for political reasons (for example current foreign capital regulations).</li> </ul>		
25. Systems, business practices and ineffective administrative procedures	Disqualification from bidding (national treatment)	<ul style="list-style-type: none"> <li>- Non-Bumiputera companies have no chance of winning bids for large -scale purchases by government-affiliated enterprises.</li> <li>- Only Bumiputera companies granted bidding "licenses" for oil exploration projects. Foreign companies shut out.</li> </ul>		<ul style="list-style-type: none"> <li>- Eliminate requirement of being a Bumiputera company.</li> <li>- Relax restrictions.</li> </ul>
26. Government procurement	Increasingly strict bidding qualifications (national treatment)	<ul style="list-style-type: none"> <li>- Qualifications for bidding become more stringent each year.</li> <li>- Suppliers, bidders and traders in government procurement contracts need to be licensed by Department of Finance. Priority given to Bumiputera companies.</li> <li>- Foreign companies seeking to supply government and related agencies have to go through designated local agent.</li> </ul>		

Category	Issue	Issue details	Reference	Present status and desired actions
	Designation of shipping company and airline (national treatment)	<ul style="list-style-type: none"> <li>- Shipping companies and airlines selected only by designated forwarders.</li> <li>- High rates paid for container ships chartered by Malaysian Shipping Agency.</li> <li>- Penalty imposed by designated forwarder to accommodate delivery deadlines.</li> </ul>	- Bid form sample	- When delivery conditions do not require buyer to designate shipping company, compulsory use should be dropped.
	Requirement to subcontract to Bumiputera companies, local content requirements (national treatment)	<ul style="list-style-type: none"> <li>- Doing business with former state-owned enterprises (such as TNB), requires that work be subcontracted to Bumiputera companies and that local content requirements be satisfied.</li> <li>- Immediately before receiving an order, companies are often required to subcontract to designated Bumiputera companies.</li> </ul>	- Guideline or approval of subcontract application	- Drop requirement to sub contract to Bumiputera companies and to meet local content requirements.
26. Other	Excessive government intervention in private contracts (investor behavior)	- Government intervenes excessively in trademark contracts with local JVs, making conclusion difficult.	- MIDA guidelines	- Policy respecting will of contracting parties should be upheld.

## MEXICO

Category	Issue	Issue details	Reference	Present status and desired actions
1. Foreign investment entry regulations	Foreign capital investment restriction. Prohibition of foreign investment entry (market access)	<ul style="list-style-type: none"> <li>- In some industries foreign capital majority is prohibited (eg. warehousing)</li> <li>- Foreign capital in oil and electricity sectors prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>- Law to regulate foreign investment</li> </ul>	<ul style="list-style-type: none"> <li>- Abolish regulations.</li> <li>- Allow foreign capital participation in oil and electricity sectors.</li> </ul>
2. Domestic production ratios and local procurement ratios	Local content requirement (performance requirement)	<ul style="list-style-type: none"> <li>- Auto Decree benefits existing domestic producers.</li> <li>- Domestic value-added ratio and methods of calculating ratio discriminates against new entrants.</li> </ul>	<ul style="list-style-type: none"> <li>- Auto Decree</li> <li>- NAFTA Agreement</li> </ul>	<ul style="list-style-type: none"> <li>- Eliminate domestic value-added ratio and domestic value-added requirements placed on new foreign participants. (Action)</li> <li>- Based on NAFTA and bilateral FTA, Mexico negotiating right to maintain automobile local procurement requirements until January 2004.</li> <li>- Eventual removal of such requirements (2004 or later) was confirmed at high working-level economic talks between Japan and Mexico</li> </ul>
3. Trade balance obligation	Trade balance obligation (automotive) (performance requirement)	<ul style="list-style-type: none"> <li>- Surplus trade balance obligation on finished vehicle manufacturers gradually being relaxed, and gone by 2003.</li> <li>- Rule makes it impossible to import finished vehicles without actually producing finished vehicles domestically.</li> <li>- Auto manufacturers producing within Mexico sometimes demand that export credit is secured.</li> </ul>	<ul style="list-style-type: none"> <li>- Auto Decree</li> <li>- NAFTA Agreement</li> </ul>	<ul style="list-style-type: none"> <li>- Promptly eliminate surplus trade balance obligation. (Action)</li> <li>- Same as above (Based on NAFTA and bilateral FTA, Mexico negotiating ...)</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
10. Regulations concerning activities in free-trade zones and special economic zones	New Maquiladora System (non-transparency)	<ul style="list-style-type: none"> <li>- New Maquiladora Guidelines unclear.</li> <li>- Tariffs on components and materials from outside NAFTA.</li> <li>- Exact tariff on automobile components not fixed.</li> <li>- For period beyond 2001: (1) electric and electronic industrial components to be taxed at preferential rates in accordance with industry-specific manufacturing promotion program; (2) tax burden to increase as result of changes to Maquiladora rules.</li> </ul>	- New Maquiladora System Government Gazette of 14 November 1998	<ul style="list-style-type: none"> <li>- Reduce or eliminate tariffs on components (currently 5% tariff).</li> <li>- Prompt clarification of tax rules for Maquiladora corporations.</li> <li>- Reassess rules that have resulted in tax increases.</li> </ul>
14. Taxation systems	Lack of transparency in permanent establishment (non-transparency)	<ul style="list-style-type: none"> <li>- New 2002 tax rules for permanent establishment (PE) for Maquiladora operations not transparent.</li> <li>- Not known whether duplicate taxation can be avoided.</li> </ul>	<ul style="list-style-type: none"> <li>- Paragraph 5-b, Article 5, Mexico-Japan tax treaty</li> <li>- US-Mexico agreement of October 27, 1999</li> <li>- Mexico administrative bulletin, regulation 3.32.3, 3.33.3, 3.33.4 (December 28, 1999)</li> </ul>	<ul style="list-style-type: none"> <li>- Clarify new rules on PE acquisition.</li> <li>- Maintain transfer pricing rules.</li> <li>- Concern over possible duplicate taxation should be discussed at high working-level economic talks between Japan-Mexico. Need guarantees for 2002 and later.</li> <li>- October 1999 US-Mexican tax authorities agreed not to apply PE to Maquiladora companies so long as new "safe harbor" scheme is complied with for transfer pricing in 2000-2002.</li> <li>- If safe harbor option not selected, APA rule to apply for 3 years.</li> </ul>
	Unclear tax structure after the year 2001 (non-transparency)	- Not clear what new tax rules will be for Maquiladora companies after changes to Maquiladora system after 2001.		- Maquiladora companies pay income tax, contribute to social security, and provide low-cost housing loans for employees. These factors should be considered when designing new Maquiladora rules so as not to harm the competitiveness of Maquiladora companies.
	Change in calculation standards for transfer price tax (non-transparency)	<ul style="list-style-type: none"> <li>- 2000-2002 provisional rules for calculating transfer price tax result in tax increases.</li> <li>- Tax base for transfer prices has doubled.</li> </ul>	- Mexico government bulletin	- Need to keep down to 1999 level.

Category	Issue	Issue details	Reference	Present status and desired actions
23. Various systems and practices	<p>Operation of transfer price tax system (non-transparency)</p> <p>A lack of transparency of agreement and delay in notification (non-transparency)</p>	<ul style="list-style-type: none"> <li>- Transfer price tax rules lacks transparency.</li> <li>- Documentation required to conform to various agreements among Latin American countries, including Mexico, not well defined and interpretation varies according to the person in charge.</li> </ul>		<ul style="list-style-type: none"> <li>- Disseminate clear information related to agreements among Latin American countries.</li> </ul>
24. Insufficient legislative system subject to sudden changes	<p>Lack of clarity and uniformity of application of laws (non-transparency)</p>	<ul style="list-style-type: none"> <li>- When new laws introduced , often unclear how they will actually be applied.</li> <li>- Local authorities either do not understand themselves or interpretation varies depending on person or section.</li> <li>- Creates difficulties at the working level.</li> </ul>		<ul style="list-style-type: none"> <li>- When laws are promulgated, actions should be undertaken to ensure smooth implementation at the working level .</li> <li>(Actions)</li> <li>- Reform bill making advance government announcement compulsory approved by national assembly March 2000 for legal system transparency.</li> <li>(1) New regulations cannot be enforced without soliciting public comments in advance.</li> <li>(2) All new regulations require alignment measures on effect and impact.</li> </ul>
	<p>Frequent changes in, and the procedural complexity of tax and insurance systems (unstable tax system)</p>	<ul style="list-style-type: none"> <li>- Frequent changes to tax and insurance systems.</li> <li>- Declaration procedures complex in terms of administrative work.</li> </ul>		

## NEW ZEALAND

Category	Issue	Issue details	Reference	Present status and desired actions
14. Taxation systems	Agreement to prevent double taxation (complicated tax treatment)	<ul style="list-style-type: none"><li>• Reporting requirements concerning Japan-NZ double-taxation treaty overly complex.</li></ul>		Simplify reporting requirements

## PAPUA NEW GUINEA

Category	Issue	Issue details	Reference	Present status and desired actions
21. Land-owning restrictions	Difficulty in land negotiations (market access)	<ul style="list-style-type: none"> <li>- Because there is no land registrar, negotiations over price and other conditions between investors and ordinary land owners is difficult.</li> <li>- Often investors' interests damaged by actions of ordinary landowners (eg. roads closed, destruction of equipment and facilities).</li> <li>- Sometimes ordinary landowners form groups to increase their bargain power over distribution of profit and other matters against best interests of investors.</li> </ul>		- Enforce land registration.

## PHILIPPINES

Category	Issue	Issue details	Reference	Present status and desired actions												
1. Entry restrictions	Entry restrictions (market access)	<ul style="list-style-type: none"> <li>- Entry of foreign capital in retail sector prohibited, which prevents direct contact with markets. JV in both production and sales not permitted.</li> <li>- Other areas where foreign capital not permitted: <ul style="list-style-type: none"> <li>- Mining resource development</li> <li>- BOT operations</li> <li>- Exporting companies</li> <li>- Other restricted industries planned to be included in List C.</li> </ul> </li> <li>- March 200 retail trade law makes foreign capital entry into retail sector "basically free" rather than "basically controlled." However, ambiguities remain regarding definition of "retail business," obligation for stock offering at more than a designated rate, and local procurement requirements.</li> <li>- Must employ local officers to become Philippines company.</li> </ul>	<p>Republic Act (R.A.) No. 1180 (Retail Industry Nationalization Bill) 1954</p> <ul style="list-style-type: none"> <li>- Retail Trade Nationalization Law R.A. No.1180</li> <li>- An Act Liberalization the Retail Trade Business(R.A. 8762 )</li> </ul>	<ul style="list-style-type: none"> <li>- Need greater transparency</li> <li>- Should immediately allow foreign capital to enter the retail sector, especially for companies engaged in exports.</li> <li>- Reduce the number of industries contained on Negative List, and ease restrictions.</li> <li>- Manufacturing companies should be allowed to engage in retail sales in local market.</li> </ul>												
	Linkage between export ratio and foreign ownership ratio (performance requirement)	<ul style="list-style-type: none"> <li>- Maximum foreign ownership of JV depends on export ratio.</li> <li>- Investment Promotion Plan (IPP) calls for different maximum equity ratios in pioneer sector (P), non-pioneer sector (NP), and pioneer / non-pioneer sector (P/NP). Basically, registered companies must be at least 60% local-owned. However, 100% foreign ownership allowed for: (1) pioneer company, or (2) non-pioneer company with high export ratio.</li> </ul> <table border="0"> <tr> <td></td> <td>(export ratio)</td> <td>(Maximum foreign ownership)</td> </tr> <tr> <td>Pioneer</td> <td>Unconditional</td> <td>100%</td> </tr> <tr> <td>Non-pioneer</td> <td>At least 70%</td> <td>100%</td> </tr> <tr> <td></td> <td>Under 70%</td> <td>40%</td> </tr> </table>		(export ratio)	(Maximum foreign ownership)	Pioneer	Unconditional	100%	Non-pioneer	At least 70%	100%		Under 70%	40%		<ul style="list-style-type: none"> <li>- Relax linkage between export and foreign ownership ratios.</li> </ul>
		(export ratio)	(Maximum foreign ownership)													
Pioneer	Unconditional	100%														
Non-pioneer	At least 70%	100%														
	Under 70%	40%														
Foreign ownership restrictions (performance requirement)	<ul style="list-style-type: none"> <li>- Except cases where export ratio 100%, government aims to reduce foreign ownership to below 40% within 30 years.</li> <li>- Companies classified as foreign if foreign equity higher than 40%, and domestic company otherwise.</li> <li>- Foreign companies are subject to a number of restrictions.</li> <li>- Inbound foreign investment will be approved so long as it is not banned, and not on the Foreign Investment Negative List (FINL).</li> </ul>	<p>New Foreign Investment Law, guidelines of those ministries with license-granting authority, the Anti-Dummy Act.</p>	<ul style="list-style-type: none"> <li>- Apply deregulatory measures.</li> <li>- Distinguish between foreign and domestic companies based on majority ownership. *</li> </ul>													

Category	Issue	Issue details	Reference	Present status and desired actions
	Investment restriction on construction companies (equity participation)	- Foreign ownership was limited to below 40% in construction companies.		- Allow majority foreign ownership (Improvement) - Negative list revised October 1998, allowing 100% foreign investment in construction sector.
	Investment restrictions (equity participation)	- Restrictions on investment from local banks to establish real estate companies - Foreign ownership of companies under reorganization, ownership of consortia, and the management of deep-sea fishing boats have been added to list where 40% is maximum foreign investment. <u>- Maximum foreign ownership of investment companies increased from 40% to 60%.</u>	- Administrative guidance	
2. Local content, local procurement ratios and incentives	Local procurement restrictions (performance requirement)	- Automobile industry is subject to local content requirements. - 40% for passenger cars (engine displacements of 1200-2800cc). - 45% for commercial vehicles. - 54.95% for motorcycles. - Add another 25% for assembled vehicles.	CDP (Car Development Program) announced in 1987 CVDP (Commercial Vehicle Development Program) announced in 1987 Memorandum Order No. 346 (CDP, CVDP, MDP) announced in 1996 and revised in 1998 with Memorandum Order No. 473	- Review local content requirements in interest of developing the parts industry. - Based on WTO talks, April 2000 government signed WTO agreements concerning local content and development of passenger and commercial vehicle and motorcycle industries.
	Linkage between local procurement ratios and incentives (performance requirement)	- Local procurement ratio of at least 50% exempts company from import tariffs on parts.		- Review linkage between local procurement ratios and incentives (national policy issue, which should be discussed in an international forum).

Category	Issue	Issue details	Reference	Present status and desired actions
	Linkage between local procurement ratio and tariff rates (performance requirement)	- Tariff rates vary depending on local procurement ratio. - For washing machines, import tariffs on parts vary depending on whether the washing machine tank is processed locally.	* Passenger Vehicle Program: Chap. 1, Sec. 7, Sec. 10.7, 10.8, 31 of Memorandum Order No. 346 * Commercial Vehicle Development Program: Chap. II, Sec. 16, 19.3, 19.4, 31 of Memorandum Order No. 346 * Motor-bicycle Development Program: Chap. III, Sec. 24, 26.3, 26.4, 31 of Memorandum Order No. 346.	
3. Export requirements	Export requirements (performance requirement)	- Company exports must be a certain fixed percentage higher than its imports, which negatively impacts development of knockdown industries. - 7.5% (1998), 15% (1999), 15% (2000).		- Deregulate
	Foreign currency earnings requirement (performance requirement)	(Exports/imports) 1997 1998 1999 2000 Passenger cars 45% 50% 50% 55% Commercial vehicles 10% 7.5% 15% 15%	CDP (Car Development Program) announced in 1987 : Partially revised in the New Car Policy Memorandum Order No. 346 (CDP, CVDP, MDP) announced in 1996 and revised in 1998 with Memorandum Order No. 473	- Eliminate or relax restrictions. - Based on WTO talks, April 2000 government signed WTO agreements concerning local content and development of passenger and commercial vehicle and motorcycle industries.
	Linkage between export ratio and incentives (performance requirement)	- If 70% of production value exported, spare parts and necessary items exempt from import tariffs. - Various incentives available to IPP (Investment Promotion Plan) designated sectors, and other companies in these categories: (1) Export ratio > 50%, foreign equity ratio < 40%. (2) Export ratio > 70%, foreign equity ratio > 40% .		- Ease export ratio requirements.

Category	Issue	Issue details	Reference	Present status and desired actions
8. Problems for institution receiving investments	Approval and authorizations items (examination procedure)	- Direct investment application and approval process very time-consuming.		
12. Foreign exchange controls	Restrictions on foreign currency utilization (profit repatriation)	<ul style="list-style-type: none"> <li>- Foreign currency usage restricted, making purchasing of parts and raw materials difficult.</li> <li>- Restrictions on foreign currency remittance, borrowing and stock purchase and sale.</li> <li>- Itemized statement of payment is required for remittance in Japanese yen.</li> </ul>	Foreign exchange control law	- Relax restrictions
14. Taxation	Transfer price taxation system (unjustified tax treatment)	- Company was judged to be violating transfer pricing rules since its profits were lower than that of its competitors, despite the existence of other factors that could explain the lower profitability (most of its business involved commissioned production from its parent company, which kept product purchase prices to a minimum, producing unavoidably low profit).		

Category	Issue	Issue details	Reference	Present status and desired actions
16. Employment	Visa acquisition* (work permit)	<ul style="list-style-type: none"> <li>- Process for visa issue is slow.</li> <li>- Acquisition of work visas is difficult and time-consuming.</li> <li>- Have been waiting for more than one year for work visas for Singapore nationals who will be assigned to train local workers.*</li> </ul>	<ul style="list-style-type: none"> <li>- DOLE Memorandum Circular No.3 series of 1998.</li> <li>- Bureau of Immigration Office Memorandum Order No. RBR-98-0918</li> </ul>	<ul style="list-style-type: none"> <li>- APEC business visas are a good idea,</li> <li>- Need for long-term visas.</li> <li>- Simplify procedures, reduce waiting time.</li> </ul> <p>(Improvement)</p> <ul style="list-style-type: none"> <li>- JCCI submitted requests to Philippines government, with following results:</li> <li>- (1) Swifter action on foreign national employment permits (AEP).</li> <li>- Positions exempted from labor market test and/or substitute training program: 5 working days at most from date full documentation submitted.</li> <li>- Positions covered by labor market test and/or substitute training program: 7 working days at most from date full documentation submitted.</li> <li>- (2) Pre-arranged employment visa or 9(g) work visa.</li> <li>- Immigration bureau approved fast-track processing of prearranged employment visa</li> <li>- Processing time for 9(g) visa reduced to maximum 7 working days from application.</li> </ul>
	Visa renewal (work permit)	<ul style="list-style-type: none"> <li>- Visa renewal gradually becoming more severe for Japanese who are not key persons in area of general manufacturing.</li> <li>- Government promises to promote the renewal of visas for persons dispatched in connection with technology transfer.</li> </ul>		<ul style="list-style-type: none"> <li>- Facilitate visa renewals.</li> </ul> <p>(Improvement)</p> <ul style="list-style-type: none"> <li>- Rules for AEP and 9(g) visa extensions:</li> <li>- Limited to exclusive job assignments.</li> <li>- Limited to same period as appointment.</li> <li>- 3-year limit for advisors and supervisors.</li> <li>- 2-year limit for technical specialists.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
17. Infringement of Intellectual property rights	Examination system (complicated system)	<ul style="list-style-type: none"> <li>- Application procedure requires validation of transfer certificate and is complicated. Not accompanied by substantive examination.</li> <li>- September 1996, requirement for consular validation of letters of attorney was dropped, but transfer certificates for patents still require consular validation.</li> </ul>		- Early accession to the PCT (Patent Cooperation Treaty).
	Difficulty in patent research due to non-membership in Strasbourg Agreement (slow examination process)	<ul style="list-style-type: none"> <li>- Timely and accurate patent research not possible due to non-membership in Strasbourg Agreement on International Patent Classification (IPC).</li> </ul>	Strasbourg Agreement	Membership in Strasbourg Agreement
21. Land ownership restrictions	Land ownership restrictions (market access)	<ul style="list-style-type: none"> <li>- Land ownership not allowed for companies with foreign equity ratio exceeding 40%.</li> <li>- Initial foreign capital beyond 40% may be approved to enable later expansion of plant, but transfer of ownership to local companies so foreign ownership restored to 40% level is imminent.</li> <li>- Since 100% land ownership is not recognized even when establishing an industrial base, there is the risk of increased loan periods and amounts.</li> <li>- Foreign ownership of land and mining rights is limited to 40%, so it is necessary to establish separate companies for ownership of business operations and ownership of land.</li> <li>- Possible to establish separate company with 60% local equity so that land could be leased from it.</li> <li>- Land lease law allows foreign-owned companies leaseholds for up to 75 years.</li> <li>- Possible that condominium law will be revised to permit foreign companies that invest in industrial parks to own land.</li> </ul>	<p>Constitution, Article 12, Section 7</p> <p>The Foreign Investments Act 4, 1991</p>	<ul style="list-style-type: none"> <li>- Relax or permit flexibility in application of laws and regulations.</li> <li>- Permit certain foreign companies 100% ownership of land (eg. those that have contributed to the country for more than 10 years).</li> <li>- Approve bills to amend the Condominium Law.</li> </ul> <p>(Action)</p> <ul style="list-style-type: none"> <li>- Legislation to revise a partment housing law shelved at committees of both houses.</li> <li>- It would provide foreign investors: <ul style="list-style-type: none"> <li>- Larger guarantees on land ownership.</li> <li>- Ownership of up to 40% of apartment housing that can be expanded horizontally</li> <li>- Ownership of up to 40% of industrial property.</li> </ul> </li> <li>- Improvements 75-year land lease law.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
23. Institutions, practices, and inefficient administrative procedures	Inefficient procedures (work permit)	<ul style="list-style-type: none"> <li>- Many inefficiencies in administration of government offices, especially in area of processing documentation.</li> <li>1) Visa applications take 2-3 months.</li> <li>2) Processing of import applications extremely slow due to frequent personnel changes.</li> <li>- Although SGS pre-shipment inspection on import of goods and materials abolished, customs clearance is very time-consuming.</li> <li>- Many non-tariff barriers, which cause further delay.</li> </ul>		<ul style="list-style-type: none"> <li>- Eliminate inefficiencies in government operations.</li> <li>(Improvements)</li> <li>- The Automatic Customs Operating System, a system for transferring data electronically established, connecting Customs, Reentry Bureau, Regional Policy Bureau, Securities Transaction Committee, Immigration Bureau, central bank, banks, shipping companies and airlines.</li> <li>- System facilitates trade procedures by providing electronic tariff processing.</li> <li>- Helps prevent smuggling by making it difficult to falsify declarations.</li> <li>- AEP and 9(g) visa issuance now possible in 23-25 days.</li> <li>- Rules for visa extensions are:</li> <li>- Limited to exclusive job assignments.</li> <li>- Limited to same period as appointment.</li> <li>- 3-year limit for advisors and supervisors.</li> <li>- 2-year limit for technical specialists.</li> </ul>

## RUSSIA

Category	Issue	Issue details	Reference	Present status and desired actions
1. Foreign investment entry - and sales-related regulations	Demands for joint ventures (market access)	<ul style="list-style-type: none"> <li>- Foreign companies often disqualified from construction projects unless it forms JV with local partner.</li> <li>- Poor information about local contractors, so difficult to assess credibility of prospective partners.</li> </ul>		<ul style="list-style-type: none"> <li>- Rather than JV, foreign company should be permitted to employ sub-contractors</li> </ul>
8. Problems of agencies in recipient country	<p>Complex, long term and high costs procedures for company establishment (examination procedure)</p> <p>Arbitrary interpretation and application of the Foreign Investment Law (non-transparency)</p>	<ul style="list-style-type: none"> <li>- Massive amount of paperwork required to establish a company.</li> <li>- Must be submitted to Antitrust Committee. Lengthy inspections.</li> <li>- Wholly foreign-owned companies established in Moscow, must register with both municipal and national authorities.</li> <li>- All documents require Russian translation, certified by Russian Embassy at cost of hundreds of thousands of yen.</li> <li>- Legal fees for registration well over 10 times this amount.</li> <li>- Administrative procedures take 4 months.</li> <li>- 50% of capital must be paid into Russian investment account before registration application. Procedures very complex.</li> <li>- One administrator errantly applied old law on minimum capital, requiring substantial money and time to correct mistake.</li> <li>- 1996 Joint Stock Corporation Law (JSCL) requires minimum capital for open corporations of 1,000 times the minimum wage (100 times for closed corporations). Administrator errantly applied 1994 law that makes no distinction between open and close corporations, so minimum capital set at 1,000 times the minimum wage.</li> <li>- Article 9.b of JSCL stipulates that foreign investment companies must obey the Russian Federation Foreign Investment Law, which contains no provisions for minimum capital.</li> </ul>	<ul style="list-style-type: none"> <li>- Russian Federation Joint Stock Corporation Law, Article 26 (1 January 996).</li> <li>- Russian Federation Foreign Investment Law.</li> <li>- "Federal Presidential Decree on Companies, Company Owners and Floating Procedures" (8 July 1994)</li> </ul>	<ul style="list-style-type: none"> <li>- Simplify and accelerate administrative procedures.</li> <li>- Abolish this system.</li> <li>- Clarify application of Russian corporate law in regard to foreign corporations.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
12. Exchange control	- Foreign currency remittance control (profit repatriation)	<ul style="list-style-type: none"> <li>- Overseas remittances too strictly controlled.</li> <li>- Wages for Japanese assigned to Russian subsidiary cannot be remitted to Japanese parent company in currencies other than the ruble.</li> <li>- Import payments, investment repayments, and dividends can be remitted from Russia, but regulations are strict.</li> <li>- Getting a remittance license from the Central Bank for investment repayments can take nearly six months.</li> </ul>	- Foreign currency regulations	<ul style="list-style-type: none"> <li>- Deregulate to allow overseas remittances in hard currencies as compensation for services.</li> <li>- Simplify and accelerate procedures for remittances abroad.</li> </ul>
14. Taxation	<p>Delays in the remittance and receipt of foreign currency (profit repatriation)</p> <p>Lack of transparency and uniformity of taxation (inefficient tax system)</p>	<ul style="list-style-type: none"> <li>- Delays for foreign currency remittances and receipts for both JVs and local companies, for no apparent reason.</li> <li>- Legal and tax systems inherited from former Soviet Union</li> <li>- Laws, tax and accounting rules not systematically documented.</li> <li>- Accounting rules not consistent with industrialized countries.</li> <li>- Sometimes decisions based on judgment of official in charge.</li> <li>- Significant disparities in views of different tax collectors.</li> <li>- Laws and tax rates vary greatly, companies dependent on expensive legal advice.</li> <li>- Tax rules for marine transport are not consistent.</li> <li>- Tax costs are unclear and unpredictable, causing confusion even among local companies. Impedes progress of business negotiations.</li> <li>- Taxes are collected with great frequency (corporate tax is collected every month), big burden for companies.</li> <li>- Criteria for tax exemption unclear.</li> <li>- VAT system is complex and difficult to understand.</li> </ul>		<ul style="list-style-type: none"> <li>- Foreign business persons working in or visiting Russia should be allowed to bring in, withdraw, and to take foreign currency out of the country.</li> <li>- Unify and systematize tax laws.</li> <li>- Shift should be made to tax system based on Western system.</li> <li>- Ensure transparency and continuity in the PE system.</li> <li>- Guidelines should be issued as to which cases are tax exempt.</li> </ul>
16. Employment	Visa acquisition (work permit)	<ul style="list-style-type: none"> <li>- No multiple-entry visas for one year or longer are granted.</li> <li>- New three-month multiple-entry visas have to be processed at official diplomatic establishments outside Russia.</li> <li>- Eurocards cannot be used, so rates for foreigners are applied.</li> <li>* Acquiring entry visa is extremely time-consuming.</li> </ul>		<p>Easing of immigration controls.</p> <p>- Rationalize administration.</p>

Category	Issue	Issue details	Reference	Present status and desired actions
17. Infringement of intellectual property rights	Unauthorized copies of instruction manuals	- Unauthorized copies of instruction manuals proliferate the market.		- Authorities should crackdown on intellectual property rights infringements.
	Non-Recognition of royalties	- Provision of manufacturing technology knowhow is not officially recognized in Russia, and in some cases royalty payments are not permitted. Royalty payments are taxed as profit.		
	Laws on intellectual property rights inadequate	- Laws to protect and enforce intellectual property rights are inadequate.		- Among TRIPs-related laws, revisions under way to develop patent laws, trademark laws, computer program-related laws, and IC-related laws.
24. Lack of legal systems, sudden changes	Under-development of foreign capital law, corporate law, tax systems, etc.; frequent changes in these; interpretation difficulties (non-transparency)	<ul style="list-style-type: none"> <li>- Legal and tax systems are generally undeveloped and are subject to frequent change.</li> <li>- Many interpretations of foreign capital laws, corporate laws and taxation system.</li> <li>- Outdated laws continue to be enforced, causing confusion.</li> <li>- Difficult to obtain English versions of related laws.</li> </ul>		- Cooperation toward development of an internationally acceptable legal system.

Category	Issue	Issue details	Reference	Present status and desired actions
	Excessive authority granted to major stockholders (protection of investors)	<ul style="list-style-type: none"> <li>- Major stockholders in Russia have much greater power than in the West or Japan. Therefore, foreigners should take great care before entering an arrangement where the Russian partner is the major stockholder.</li> <li>- Major stockholders hold at least 75%, minor shareholders less than 25%.</li> <li>- Although companies can take various legal forms in the Civil Code, in reality the Stockholding Company Law takes precedent.</li> <li>- The lack of a law for limited companies, considered to be an attractive legal form for foreign companies, is not available..</li> </ul>	- Civil Code, Stockholding Company Law	<ul style="list-style-type: none"> <li>- Need for comprehensive foreign investment and foreign exchange laws.</li> <li>- Recognition of the latest legal systems (legal regimes).</li> </ul>

## CHINESE TAIPEI

Category	Issue	Issue details	Reference	Present status and desired actions
1. Foreign investment entry-related regulations	Foreign investment entry-related regulations (market access)	<ul style="list-style-type: none"> <li>- Foreign investment restricted in some industries, prohibited in others.</li> <li>- Of 446 industries that Chinese Taipei differentiates, 54 prohibited to foreigners, including agriculture, manufacturing, transport, broadcasting, communications, electricity, gas and water.</li> <li>- 55 business types, including mining, manufacturing, finance and medical care.</li> </ul>	Statute for Investment by Foreign Nationals	<ul style="list-style-type: none"> <li>- Deregulate. (Improvement)</li> <li>- October 1997, service sectors such as finance, securities, insurance and real estate, opened to a significant degree. - Full liberalization of telecommunications by 2004.</li> <li>- Negative list revised March 2000.</li> <li>- Removed from list: car rentals, truck freight, highway container shipping, shipping line agencies, maritime shipping, container yard business, cadmium stearate industry, publishing, securities and futures.</li> <li>- Foreign ownership limited to less than 20%: cable TV and satellite broadcasting.</li> </ul>
2. Local content ratios, local procurement ratios and incentives	Regulations on local procurement ratios for automobiles (performance requirement)	<ul style="list-style-type: none"> <li>- Passenger vehicles and small trucks must have local procurement ratios of 50% or more.</li> <li>- Large trucks 31-37% or more.</li> <li>- Motorcycles 90%, must be sold under local brands and R&amp;D conducted locally.</li> <li>- Local partners in JVs with Japanese must submit to government a price list for all automobile parts to be manufactured over the coming year, and price list for parts imported from Japan. Must then declare their local procurement ratios to receive approval.</li> </ul>	Bill for the Development of the Train Industry	<ul style="list-style-type: none"> <li>- As Chinese Taipei is seeking to accede to the WTO, over the mid- to long-term it should review local procurement requirements.</li> <li>- Simplify procedures such as obligation to submit price lists.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Local content (performance requirement)	<ul style="list-style-type: none"> <li>- Local content requirements for Taipei city subway railcar (36 cars), and for Industrial Cooperation Program land bulk construction project are:</li> <li>1) Six-side panels used to assemble railcars should be set up and assembled locally.</li> <li>2) Thirty of the 36 railcars should be locally assembled.</li> <li>3) Greater than half of 72 trucks to be locally manufactured.</li> <li>4) Cables and wiring locally manufactured.</li> <li>5) Lighting devices, A/C devices, seats locally manufactured.</li> <li>6) Technology transfer to allow for local production of primary motor.</li> <li>7) All contracts to be drafted in Chinese language.</li> </ul>	- Industrial Cooperation Program	<ul style="list-style-type: none"> <li>- There is a need for the repeal or relaxation of regulations.</li> <li>- Regulations believed to violate TRIM have been removed at WTO membership, and alignment with TRIM agreement pledged through transition measures, etc.</li> </ul>
3. Product export requirements	Requirement that Japanese-affiliated car manufacturers export products to Japan (performance requirement)	<ul style="list-style-type: none"> <li>- Japanese-affiliated car manufacturers subject to administrative guidance to promote exports to Japan.</li> <li>- 1996 ratio of "exports to Japan + (finished car exports - imported CKDs)" against "prices of CKD parts from Japan for assembly of finished cars sold locally" had to be at least 11%. 1997 ratio at least 12%.</li> <li>- No particular penalties other than government pressure, but results made public.</li> <li>- Background is massive trade deficit with Japan.</li> </ul>	- Administrative guidance from the Industrial Bureau within the Ministry of Economic Affairs, "Points in regard to increasing exports to Japan and increasing the international competitiveness of the train manufacturing plants."	<ul style="list-style-type: none"> <li>- Improve product quality and cost-competitiveness of local parts.</li> <li>- Abolish administrative guidance.</li> </ul>
	Link between investment ratio and export obligation (performance requirement)	- If a local manufacturing operation is 100% foreign-owned, export is compulsory.		Abolish compulsory exports.

Category	Issue	Issue details	Reference	Present status and desired actions
	Linkage between requirements for product exports to Japan and temporary residence visas (performance requirement)	<ul style="list-style-type: none"> <li>- Number and duration of long-term visas for Japanese staff depends on export ratio.</li> <li>- In case of no exports to Japan, visa duration may be shortened, or long-term visas not granted at all.</li> </ul>		<ul style="list-style-type: none"> <li>- Eliminate export condition for visas.</li> <li>- Abolish link between export performance and visa quota.</li> </ul>
8. Issues related to investment recipient institutions	Procedures are cumbersome (examination procedure)	<ul style="list-style-type: none"> <li>- FDI application procedures cumbersome.</li> </ul>		
14. Taxation systems	Interpretation of permanent equipment (unclear tax rules)	<ul style="list-style-type: none"> <li>- <u>Wide range of products taxed as permanent equipment (PE).</u></li> <li>- Tax liability must be declared for each project for items where source of income is local market (construction, local procurement, dispatched technical experts).</li> <li>- Tax rules for PE not clear.</li> <li>- Lack Japan-Chinese Taipei tax treaty causes various tax problems.</li> <li>- Definition of taxable income not clear.</li> <li>- Tax rules not clear about differing treatment for foreign branches and local subsidiaries.</li> </ul>		Clarification of the definition of permanent equipment.
16. Employment	Acquisition of visas by Japanese engineers (work permit)	<ul style="list-style-type: none"> <li>- Strict limits on visas issued to Japanese engineers for sales and maintenance companies.</li> </ul>		- Clear expansion of the ceiling.
	Restrictions on Japanese personnel (work permit)	<ul style="list-style-type: none"> <li>- Visas for Japanese staff at Japanese companies are limited.</li> <li>- Obtaining and extending visas takes a lot of time and trouble.</li> <li>- Long-term visa quota is determined by export record.</li> </ul>		<ul style="list-style-type: none"> <li>- Abolish visa issuance conditions (restrictions); simplify procedures.</li> <li>- Quotas should be described in writing, and expanded for Japanese engineers</li> <li>- Eliminate link between long-term visa quota and export record.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Procedures for employing foreign workers (work permit)	- In principle, foreign employees cannot be hired without an increase of staff limit. Special exception granted where employee is critical to the investment. Getting an exception is difficult.		- Simplify and accelerate procedures. - Reduce to a single liaison point.
	Short visa stay for personnel (work permit)	- Authorized stay for expats is one year, requiring reentry visa and driving license extension with each visa issue. - Overseas business travel (including trip to Japan) not permitted during one month while permit is being processed.		- Longer visa stay needed.
	Employment restrictions on temporary workers (work permit)	- Advance permit necessary before hiring foreign nationals. Number permitted is decided by export record, which is likely to become a management problem in future.	- Law on foreign engineering personnel at public and private enterprises and foreign business authorization - Law on review of applications by foreign nationals hired by public and private enterprises	- Ease restrictions on number of foreign employees.

Category	Issue	Issue details	Reference	Present status and desired actions
17. Infringement of intellectual property rights	Infringement of intellectual property rights	<ul style="list-style-type: none"> <li>- Many imitation Japanese products. Some even included in catalogues.</li> <li>- Crackdowns tend to be lenient.</li> <li>- Trademark rights in areas of sports shirts, brandname shirts, ordinary shirts, underwear and pants, emblems, as well as Indonesian brand apparel.</li> <li>- <u>Patents sometimes granted Chinese Taipeiese when already held by Japanese company.</u></li> <li>- Copyright violations are rampant.</li> </ul>		<ul style="list-style-type: none"> <li>- Protect intellectual property rights.</li> <li>- Enforce immediately WTO TRIPS Agreement and ensure procedural transparency and feasibility.</li> <li>- Patent law, trademark law, tariff law, trade law, and attorney law passed in 1997.</li> <li>- Revised copyright law and copyright agency law passed in 1999.</li> <li>- (Improvements).</li> <li>- April 1998, government issued Comprehensive Action Plan on Intellectual Property Rights to enhance: 1) coordination among responsible government agencies toward promulgation of IPR law, 2) educational aspects of IPR protection, and 3) participation in international efforts to protect intellectual property rights.</li> <li>- 1999 fair trade law introduced stricter penalties, such as suspension of business, training of judges and others in jurisprudence, task force action by relevant government organizations, and action plan on implementation of rights.</li> </ul>
	Patent system	<ul style="list-style-type: none"> <li>- Chinese Taipei does not have a disclosure patent system, so claims are made by other companies even after registration of sole rights.</li> <li>- Because sole rights have no authority, much time and money is consumed in court.</li> </ul>		<ul style="list-style-type: none"> <li>- Internationalize sole right trademark provisions.</li> </ul>
	Recognition of design rights	<ul style="list-style-type: none"> <li>- Design rights for cartridges (components) not recognized.</li> <li>- Despite the fact that there are no legal provisions to deny this, there is a rejection in the operation of inspections.</li> </ul>	Design Rights Law	<ul style="list-style-type: none"> <li>- Revise inspections and operations to allow for pursuit of design rights.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Poor-quality patent inspections in regard to IPR infringements	<ul style="list-style-type: none"> <li>- Many copies of Japanese products.</li> <li>- Patent inspections are of extremely poor quality:               <ol style="list-style-type: none"> <li>(1) Rejected on the grounds that product is not new, or does not represent progress, with no examples given.</li> <li>(2) Rejected with no reason given for the rejection.</li> <li>(3) Completely different reasons given for rejection in initial and preliminary inspections.</li> <li>(4) Wide disparity in inspection levels (possibly depending on the inspector).</li> <li>(5) Sub-frames not considered.</li> <li>(6) Even in re-inspections, often application rejected with official seeming to favor an overall reduction in the enforcement of the patent without any reference to prior documents.</li> </ol> </li> <li>- Inspections conducted as though the initial inspection had never taken place.</li> </ul>		<ul style="list-style-type: none"> <li>- Need better protection of intellectual property rights.</li> <li>(1) Explain grounds for refusal, and provide examples.</li> <li>(2) Quick implementation of rejection inspections.</li> <li>(3) All grounds for rejection should be indicated in the first inspection should not be done.</li> <li>(4) Inspection levels should be made uniform.</li> <li>(5) Chinese Taipei views on sub-frames should be made clear.</li> <li>- (Improvements)</li> <li>- Speedier patent examinations.</li> </ul>
	Naming regulations	<ul style="list-style-type: none"> <li>- Regulations prohibit the naming of a company that suggests more than one business area.</li> <li>- Example of a special gas company that was not permitted to use the parent company's name: Requested: Electricity Special Gas (two types of business) Approved: Special Gas (one type of business)</li> </ul>		
	Difficulty in patent survey due to non-membership in the Strasbourg Agreement	<ul style="list-style-type: none"> <li>- Chinese Taipei does not subscribe to the Strasbourg Agreement on international patent classification (IPC).</li> <li>- This makes timely and accurate patent surveys difficult.</li> </ul>	- Strasbourg Agreement	<ul style="list-style-type: none"> <li>- Should subscribe to Strasbourg Agreement.</li> <li>- Accept test results from Japanese laboratories.</li> </ul>
21. Land-owning restrictions	Land-owning restrictions (market access)	<ul style="list-style-type: none"> <li>- Foreigners cannot own land.</li> </ul>		
23. Systems, business practices and ineffective administration procedures	- Troublesome procedure for modification of company by-laws (inventor behavior)	<ul style="list-style-type: none"> <li>- When new additions made to company's product line, company must modify its by-laws, requiring an inordinate amount of documentation and 6 months to process.</li> <li>- Often documents must be resubmitted to Ministry of Environmental Protection.</li> </ul>		<ul style="list-style-type: none"> <li>- Need speedier administrative processing.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
24. Sudden changes in legal systems	Sudden changes in legal systems (unstable legal system)	<ul style="list-style-type: none"> <li>- Frequent, sudden changes of government directives.</li> <li>- For example, in 1997 government suddenly announced that stock dividends would not longer be tax exempt: 15% tax on Chinese Taipei nationals and 20% on foreigners.</li> </ul>		<ul style="list-style-type: none"> <li>- Establish standard notification period.</li> <li>- Bilateral WTO Negotiation completed except for Hong Kong.</li> <li>- Procedures expected to be more transparent with WTO membership.</li> </ul>
	Immediate implementation of law (non-transparent)	<ul style="list-style-type: none"> <li>- Legal revisions take effect immediately, with no warning.</li> </ul>		<ul style="list-style-type: none"> <li>- Grace period of at least six months desirable.</li> </ul>

## THAILAND

Category	Issue	Issue details	Reference	Present status and desired actions
1. Entry restrictions	Domestic sales and other restrictions (equity participation)	<p>- For companies with foreign equity 50% or higher, entry restrictions are divided into categories A, B, and C. (1) company cannot act as agents in import, export or any other business, and (2) cannot sell in domestic market (exceptions are Category B companies with BOI (Board of Investment) license, or if company is located in Zone 3, in which case 100% foreign equity is permitted).</p> <p><u>- Although maximum foreign direct investment equity ratio may nominally be 49%, effective foreign control can be as high as 100% with Japanese nonlife insurance companies and banks as portfolio investors, but the portfolio investors demand that dividends be paid regardless of company performance.</u></p> <p><u>- If a business with 49% or less foreign ownership needs to increase capitalization, speedy decision difficult to obtain since majority local ownership holds decision-making power. In addition, conditions favorable to local interests are sometimes imposed.</u></p> <p>- The IAP does not mention commerce, nor contain specific indication of type of business.</p> <p>- Although BOI-licensed export-oriented companies can, on the basis of the license, sell a fixed proportion of their completed goods domestically, the customs procedures (tariff calculations) are complex.</p> <p>- Since sales of parts and half-completed goods are restricted, it is not possible to increase production efficiency by supplying other local production sites with parts manufactured by export-oriented companies.</p> <p>- Domestic sales restrictions are being eased on BOI-licensed companies located in Zones 2 and 3, but there are no stipulations for companies that have already entered markets or on parts sales.</p>	<p>- Revolutionary Proclamation No. 281 : 1972 Alien Business Law, Articles 3, 4, 9, 30</p> <p>- Notification of same (1973)</p> <p>- BOI Report of May 1998</p> <p>- BOI Report of 3 December 1997</p>	<p>- Relax restrictions on domestic sales activities of foreign-affiliated companies.</p> <p>- Organize and simplify domestic sales procedures for BOI-licensed companies.</p> <p>- Lift prohibition on sales of parts and half-completed products.</p> <p>- Eliminate restrictions on foreign ownership.</p> <p>(Improvements)</p> <p>- From 1997, government has approved increases of foreign ownership and buyouts up to 100% when partner(s) on Thai side agreed, without changing the existing business of the company.</p> <p>- From 1998, even companies that were not receiving BOI preferential treatment are eligible for such treatment if it is in one of the industries where investment being encouraged. In some cases up to 100% foreign ownership permitted.</p>

Category	Issue	Issue details	Reference	Present status and desired actions
	Linkage between foreign equity ratio and export ratio (performance requirement)	<ul style="list-style-type: none"> <li>- Foreign ownership ratio and export ratio (domestic sales ratio) are linked.</li> <li>- If the export ratio is 50% or higher, foreign ownership can exceed 50%.</li> <li>- If foreign ownership is 100%, domestic sales restricted to 20%.</li> </ul>	Investment Promotion Act (promulgated in 1977)	<ul style="list-style-type: none"> <li>- Gradually ease linkage between foreign ownership ratio and export ratio.</li> </ul> <p>(Improvement)</p> <ul style="list-style-type: none"> <li>- From 1998-99, majority acquisition by foreigners temporarily permitted regardless of export ratio for new investment in Zones 1 and 2.</li> <li>- BOI applies export requirements only to projects located in Zone 1 with no linkage between foreign capital and export ratios.</li> </ul>
	Investment restriction on second company (equity participation)	<ul style="list-style-type: none"> <li>- If foreign company holds majority interest in one company, it cannot hold more than one-third interest in another company.</li> <li>- <u>Company had 35% share in local subsidiary, but also had liaison office, so had to reduce ownership to 33%. After company merged with another company in Japan that owns 99% of a Thai subsidiary, may have to relinquish its majority</u> ownership under the Alien Business Law;</li> <li>- Exceptions to the one-third rule must be approved by Ministry of Trade, and submit BOI application.</li> </ul>	- Alien Business Law, Article 9	<ul style="list-style-type: none"> <li>- <u>Article 9 of the Alien Business Law should be eliminated.</u></li> <li>- Eliminate “one-third rule.”</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Regulations on foreign capital ratios prevent increased capitalization in response to the currency plunge (equity participation)	<ul style="list-style-type: none"> <li>- Many local companies need capital. But capital shortages <u>among local partners and ownership limits prohibit foreign partners from increasing their equity investment.</u></li> <li>- One company tried to increase capitalization as a means to redress deteriorating macro financial conditions, but local Thai partner was against increased capitalization (company located in Zone 2, Japanese ownership 58%, Thai ownership 42%).</li> <li>- For BOHlicensed companies to receive preferential tax treatment, foreign majority ownership was not permitted if export ratio 50% or less. Rule changed in October 1997 to rescue companies unable to obtain financing due to Asian crisis.</li> <li>- BOI now permits foreign capital majority through increased capitalization even when export ratio is 50% or less, provided that: (1) company has BOI permission to establish itself in Thailand, and (2) local partner is in agreement.</li> <li>- Japan Economic Journal February 1998 reports that applications for changes in capital ratios have been received from 140 Japanese-affiliated joint ventures.</li> </ul>	<p>Under foreign capital regulations (Alien Business Law), at least 51% of the registered capital of companies whose major business is domestic sales must be held by a Thai national (with the exception of Zone 3). (Even outside Zone 3, establishment of a company with a foreign capital majority is allowed if there is agreement on the Thai side.)</p> <p>Alien Business Control Law (revised Oct. 30, 1999) BOI New Investment Incentive (approved May 31, 2000; enforced Aug. 1, 2000)</p>	<ul style="list-style-type: none"> <li>- Foreign capital regulations should be eliminated even for companies outside Zone 3.</li> <li>- Alien Business Law should be amended to allow foreign ownership to independently increase capitalization.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Foreign capital ratio regulations outside the manufacturing industry (equity participation)	<ul style="list-style-type: none"> <li>- Foreign capital ratios in construction and transport industries limited to less than 50%, which impedes development of local infrastructure.</li> <li>- In principle, a Thai national must hold 51% of registered capital for investment projects in agriculture, livestock, marine products, mining and service industries.</li> <li>- In other industries, where 50% or more of total sales exported, foreign partner may be majority shareholder.</li> <li>- Where 80% or more of total sales is exported 100% foreign ownership is permitted.</li> <li>- For direct investment of more than 1 billion baht, majority foreign ownership is possible at startup, but Thai citizen must acquire 51% of stocks within 5 years.</li> </ul>	Foreign capital regulations	<ul style="list-style-type: none"> <li>- Relax foreign capital regulations.</li> <li>(Improvements)</li> <li>- Conditional elimination of restrictions on foreign capital in retailing industry: <ul style="list-style-type: none"> <li>(1) applies only to businesses in existence prior to 1999;</li> <li>(2) all capital is foreign capital;</li> <li>(3) no restrictions on foreign capital;</li> <li>(4) store expansions in Zone 1 only;</li> <li>(5) area per store is 1,000m<sup>2</sup> or greater.</li> </ul> </li> <li>- Number of industries where foreign capital is restricted reduced from 63 to 43 industries.</li> <li>- Foreign investment now permitted in following service industries: <ul style="list-style-type: none"> <li>- retailing (minimum capital of 100 million baht or 20 million baht per branch);</li> <li>- wholesaling (minimum capital of 100 million baht);</li> <li>- finished products export; agent &amp; proxy for business transactions within group;</li> <li>- international commerce brokerage (foreign capital more than 100 million baht);</li> <li>- port cargo and international maritime shipping business,</li> <li>- construction (foreign capital of more than 500 million baht, demanding special technology and machinery).</li> <li>- Provision that have majority holding in one company preventing greater than 1/3 equity in other companies eliminated.</li> </ul> </li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Entry regulations (equity participation)	-100% foreign capital in after-sales service operations not permitted.		- Relax or eliminate regulations.
	Foreign investment ratio regulations (equity participation and market access)	- Foreign ownership limited to 49%, with 51% local capital. - Among other things, prevents foreign side from taking initiative to establish parts purchasing companies. - Foreign-majority controlled companies cannot enter any service industry under the Alien Business Control Law (but government permits some exceptions).	- Foreign capital investment law. - Alien Business Control Law	- Eliminate foreign capital regulations. - Allow foreign capital majority ownership in service sector, especially information services.
2. Local content ratio, local procurement ratio	Local content requirement on motorcycles (performance requirement)	- Motorcycle bodies must have 70% local content. - Local content requirements for engines was to have risen to 80% but for some time has been frozen at 60%. - Foreign manufacturers complain that local content requirements prevent further expansion of motorcycle production capacity in Thailand. - Government is planning to use emission requirements to promote 4 - cycle engines over 2-cycle engines. If implemented, billions of yen must be invested in new facilities. Not only is the financial burden too big for both Japanese and local subsidiaries, but meeting local procurement requirements will become even more difficult. - Preferential treatment for engine imports ended in 1993 as part of government program to increase local content, increasing burden on local subsidiaries. Since engine imports require an import license, engines are being disassembled and imported in parts. But high import tariffs are applied on parts that can be produced locally. This may violate TRIMs Agreement.	Ministry of Industry regulations "Notification of Ministry of Industry Re: Policy on the Manufacture or Assembly of Engine for Motorcycles (13 January 1987).	- Freeze local content share on engines at 60% for the time being (do not raise it further). - For manufacturers introducing new 4-cycle models, reduce the local content requirements, and reduce tariffs or provide exemption on import of engine parts. - Local content requirements for automobiles are being met without difficulty, and the government is presently working on revising local procurement ratios.

Category	Issue	Issue details	Reference	Present status and desired actions
	Local content requirement for auto parts (performance requirement)	<ul style="list-style-type: none"> <li>- Local content requirements for passenger cars 54% (since 1987), commercial vehicles 62-65% (since 1988).</li> <li>- Commercial vehicles subject to local procurement requirements on designated items (tires, batteries, springs, seats, radiators, clutches, glass, electrical equipment, harness, road wheels, coils, front panels, and transmissions).</li> <li>- Commercial vehicle engines with less than 2,500 cc displacement must be manufactured locally.</li> </ul>		<ul style="list-style-type: none"> <li>- Ease local content requirement on auto parts. (Improvement)</li> <li>- Regulation requiring domestic automobile production has been eliminated as scheduled in January 2000 in compliance with WTO TRIMs agreement.</li> </ul>
	Local procurement ratio request (Regulation on investment ratio) (performance requirement)	<ul style="list-style-type: none"> <li>- The engineering industry is one, which can contribute economically to the host country through the construction of overseas plants. However, local procurement ratio regulations apply in some cases.</li> </ul>	Regulations on foreign investment.	Eliminate restrictions.
3. Export obligation	Export requirement related to manufacture of engines (performance requirement)	<ul style="list-style-type: none"> <li>- BOI licensing for manufacture of diesel engines conditional on foreign currency earnings of 400 million baht (approximately 2 billion) between July 1989 and July 1996 (regardless of the type of products exported).</li> <li>- From 1996, an annual foreign currency earnings requirement of 80 million baht has been charged. But if export performance requirements are met, 5% of total tariff refunded.</li> </ul>		<ul style="list-style-type: none"> <li>- Ease or eliminate exports performance requirements related to manufacture of engines.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
7. Requirements Procedures and application of the Foreign Capital Law	Complexity of procedure for gaining approval (examination procedure)	- If foreign equity ratio exceeds 33.3%, need approval from chief of the Commercial Registration Bureau for each instance of capitalization increase or acquisition of new stock.		- Revise the investment law.
	Preferential treatment given to U.S.(MFN)	- Under Thai-US commerce treaty, when Thai subsidiary of US company acquires stock in Thai company, they are treated as Thai nationals and not subject to restrictions on stock acquisition. - Foreign equity ratio restrictions are less strict for Americans.		- Stop unequal treatment between Americans and Japanese.
	Ambiguity and delay in new law interpretation (examination procedure)	- Problems in decision-making whether or not to start up business due to lack of a definitive reply from government regarding restrictions under the new Alien Business Control Law of March 2000.		- Improve communication among government administrators. - Senior law officers should be better trained. - Enforced in March 2000.

Category	Issue	Issue details	Reference	Present status and desired actions
8. Problem of recipient organization for investment	Ambiguity in change of preferential investment policy content (examination procedure)	<ul style="list-style-type: none"> <li>- BOI modified Thai preferential investment rules in 2000.</li> <li>- But changes are ambiguous, and date of implementation unknown.</li> <li>- BOI does not respond constructively to inquiries.</li> <li>- Changes in other policies are announced in writing as they arise, but translation into English takes time.</li> </ul>		<ul style="list-style-type: none"> <li>- Need swifter decisions on BOI investment-related issues</li> <li>- Announcements should be in English.</li> </ul>
	Lack of consistency among investment-related offices (examination procedure)	<ul style="list-style-type: none"> <li>- When negotiating with local officials over environmental regulations, construction regulations, project startup approval, decisions often seem to depend on local official discretion.</li> <li>- Seems to be a lack of written guidelines for local officials to follow for granting approvals, or unwillingness to follow guidelines.</li> </ul>	Regulations on environment and construction	<ul style="list-style-type: none"> <li>- Further develop legal infrastructure.</li> <li>- Need better communication among local officials.</li> </ul>
	Delay in receiving BOI approval, and complexity of tariff exemption procedures (examination procedure)	<ul style="list-style-type: none"> <li>- BOI approvals take too long.</li> <li>- Procedures to qualify for various government economic incentives (eg. export performance reports) are tedious, require large amount of administrative work, compared to other ASEAN countries.</li> <li>- Process is fraught with excessive delays (delays of a half-year are not unusual).</li> <li>- For these reasons, tax incentives intended to promote investment are not effective.</li> </ul>	Investment Promotion Law	<ul style="list-style-type: none"> <li>- Further eliminate delays in application procedures.</li> <li>- Need greater BOI flexibility in approving business start-ups.</li> <li>- Simplify procedures for tariff exemptions for certain imports.</li> <li>- If ratio of exports to total sales exceeds 80%, all sales should be regarded as exports, and part imports be tax exempt.</li> </ul>
	Complexity of documents required after BOI licensing (examination procedure)	<ul style="list-style-type: none"> <li>- After receiving BOI approval, large amount of unnecessary paperwork is required by government.</li> <li>- In particular, when factory is expanded, it must for accounting purposes be treated separately from factory prior to expansion.</li> </ul>	Investment Promotion Law	<ul style="list-style-type: none"> <li>- Reduce documentation burden.</li> </ul>
14. Taxation	Foreign capital ratio control on tax privileges (performance requirement)	<ul style="list-style-type: none"> <li>- In local JVs, foreign capital is limited to less than 70% to gain preferential treatment under tax law.</li> </ul>		<ul style="list-style-type: none"> <li>(Improvement)</li> <li>- Deregulate.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
16. Employment	Employment restrictions on foreign workers (Japanese technical staff and company employees) (work permit)	<ul style="list-style-type: none"> <li>- Foreigners must obtain a work permit.</li> <li>- Requirements for permit becoming increasingly complex even for BOI-licensed companies.</li> <li>- General rule for manufacturing industries is ratio of 100 Thai workers for every foreign worker.</li> <li>- Permit requirements are unclear.</li> <li>- Companies not licensed by the BOI must apply to the Ministry of Labor, where requirements are even more stringent.</li> <li>- Visas are short-term, and must be frequently renewed.</li> <li>- Foreigners without a work permit are subject to a maximum 3-month jail sentence and/or 5,000 baht fine.</li> <li>- Technological transfer is impeded since groups of technical experts cannot stay for long duration.</li> <li>- Stringent restrictions are imposed on foreign workers assigned to sales promotion. (Sales branches must hire many local workers for each foreign worker.)</li> <li>- When Japanese employees are increased due to economic development, additional local hiring becomes financially unfeasible.</li> <li>- Application procedures vary according to official in charge, and precedents are ignored.</li> <li>- Although not stipulated by law, seven local workers must be hired for every foreign worker.</li> <li>- Long delays are incurred while applications are "under consideration."</li> <li>- Government's 1997-2000 Action Plan commits to possible revision of Alien Business Law and Immigration Act of 1979, and to easing restrictions on length of stay and number of foreign workers permitted.</li> <li>- Fewer foreign work permits being issued as counter-unemployment measure.</li> <li>- Ministry of Labor and Social Welfare bases permit decisions on company's capital and number of local staff employed.</li> </ul>	<ul style="list-style-type: none"> <li>- The Alien Occupation Law</li> <li>- BOI internal rules</li> <li>- Investment Promotion Act</li> <li>- Immigration Act of 1979</li> </ul>	<ul style="list-style-type: none"> <li>- Work permits should not be a function of whether a company is BOI-licensed (ie, should not depend on capitalization or number of local workers).</li> <li>- Increase work permits for managers and technicians necessary to effect technology transfer.</li> <li>- Ease application requirements for companies with no past violations.</li> <li>- Japanese government should also relax its visa requirements for Thai nationals working in Japan.</li> <li>- Relax regulations on acquisition of business visas for sales personnel.</li> <li>- Extend duration of work permits.</li> </ul> <p>(Improvement)</p> <ul style="list-style-type: none"> <li>- 1999 new Foreign Business Control Law.</li> <li>- Local hiring requirement lowered to 4 local workers for each foreign worker.</li> </ul>
	Inadequate protection of patents and industrial property rights	<ul style="list-style-type: none"> <li>- Inadequate protection of patents and industrial property rights.</li> <li>- Proliferation of imitation products.</li> <li>- Lack of protection impedes development of new products tailored to the local market.</li> </ul>		<ul style="list-style-type: none"> <li>- Improve protection of intellectual property.</li> <li>- Need for stronger administrative leadership.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
17. Infringement of Intellectual property rights	- Inundation of counterfeit goods and imitation goods	- Excessive amounts of counterfeit cameras and pirate toner cartridges.		- Crackdown.
	Infringement of trademark right	- Chinese Taipei trademark rights and Thai brand apparel trademark and design rights are being infringed upon.		- Enforce WTO TRIPS Agreement and procedural transparency and feasibility.
	Procedures run counter to simplification	- Since November 1996, each application must be accompanied by a Declaration of Right to Apply for Registration. - Validation needed from the notary's office, which does not conform to general trend within APEC of "simplification and standardization of administrative procedures." - Nor does it conform to planned ASEAN Trademark Agency slated to begin operation in 1998, which would integrate applications for trademark registration within ASEAN.		- Simplify procedures.
	Lack of trained examiners	- When a request for examination is made, notification should be given on the examination status of the corresponding application. (1) There can be no submission when there is no information, and on this point, it is not clear whether the examiner is waiting for the corresponding application to proceed (concern of withdrawal deemed). (2) If only the reasons for refusal in other countries is submitted, the reasons for refusal is issued with the same contents, resulting in refusal because a response cannot be formulated (there is a 30-day time limit).		- Inspection officials should be better trained to conduct inspections.
	Tendency period  Unique system	- Granting a patent right can take 7 years after filing.  - Novelty is lost within one year of the earliest application. - Reference date for publishing unexamined application is not definite (while asked whether to make publication immediately after application, in practice notification is late).	- Patent Law	- Accelerate patent examination process.  - We urge accession to the Paris Treaty and revision of the unique system.

Category	Issue	Issue details	Reference	Present status and desired actions
	Additional claims not allowed	<ul style="list-style-type: none"> <li>- Government revised patent law in 1992 to grant patents on chemical materials and pharmaceuticals. Prior to the revision, only the manufacturing processes were granted.</li> <li>- For pending applications submitted prior to 1992, it has been announced that additional claims on materials and pharmaceuticals would be allowed. Although a pharmaceutical company later made additional claims in line with this policy, the Patent Office has not allowed this type of claim. This does not conform to GATT or Article 70(7) of TRIPs.</li> </ul>		<ul style="list-style-type: none"> <li>- We urge the patent application be granted with these additional materials and pharmaceutical claims.</li> </ul>
	Patent and trademark application	<ul style="list-style-type: none"> <li>- Long delay between application and registration of patents, trademarks, etc.</li> <li>- Patent and trademark searches methods are inadequate.</li> </ul>		<ul style="list-style-type: none"> <li>- Speed up clerical processing.</li> <li>- Announce search methods.</li> </ul>
	Patent research difficult due to non-membership in Strasbourg Agreement	<ul style="list-style-type: none"> <li>- Because Thailand is not a member to the Strasbourg Agreement on IPC, timely and accurate patent research is not possible.</li> </ul>	Strasbourg Agreement	<ul style="list-style-type: none"> <li>- Membership in Strasbourg Agreement needed.</li> </ul>
21. Land ownership restriction	Land ownership restriction (market access)	<ul style="list-style-type: none"> <li>- Foreign companies not licensed by the BOI cannot acquire land.</li> <li>- Under certain situations, foreign-controlled companies can own office buildings and housing facilities.</li> <li>- Foreign corporations are not allowed to own land.</li> </ul>	- Land Code	<ul style="list-style-type: none"> <li>- Ease restrictions according to type of company and amount of investment.</li> </ul>
23. Systems, practices and inefficient administrative procedures	Details of tax law revision unpublicized (non-transparency)	<ul style="list-style-type: none"> <li>- The government does not publicize details on items covered by tax law revisions.</li> <li>- Government offices unable to provide information regarding tax law changes.</li> </ul>		<ul style="list-style-type: none"> <li>- Need adequate publicity to relevant parties.</li> </ul>

## AMERICA

Category	Issue	Issue details	Reference	Present status and desired actions
1. Foreign investment entry regulations	National security regulations (market access)	<ul style="list-style-type: none"> <li>- Domestic passenger and freight shipping is restricted to US flag vessels built in US and manned with American crew.</li> <li>- Prohibition against distribution to domestic routes within US by non-American shipping companies.</li> </ul>	- Jones Act, 46 US C.A. 688	<p>(Action)</p> <ul style="list-style-type: none"> <li>- Should rescind Automobile Labeling Act. As transitional measure, Japan requested introduction of de minimis rule; abolition of obligation on suppliers to provide proof of parts; and adoption of calculation method such as calculation method used in CAFE regulation.</li> </ul>
2. Regulations concerning domestic production ratios and local procurement ratios	Automobile labeling (local content requirement)	<ul style="list-style-type: none"> <li>- There is a technical problem with procurement ratio calculation method for US and Canadian products in that local content of Japanese-affiliated US manufacturers is under-calculated, which means that consumers are being provided with inaccurate information.</li> <li>- Because suppliers are divided into affiliated suppliers (wholly-owned subsidiaries) and outside suppliers, and different calculation methods of local content ratio adopted for each (at full purchase price in case of affiliated suppliers and a roll-up/roll-down method at 70% of full purchase price for outside suppliers), this causes local content rate of foreign-affiliated car manufacturers, who have few 100% subsidiary suppliers based locally, to be reduced below real value.</li> <li>- Where same model is supplied as both a North American manufacture and a foreign import, which is frequently case with foreign-affiliated manufacturers, product is labeled with mean value.</li> </ul>	- American Automobile Labeling Act	- Total abolition of laws related to discriminatory calculation of local content rates in regard to automobile labeling.
	"Made in USA" labeling regulations (local content rule)	<ul style="list-style-type: none"> <li>- "Made in USA" definition for machine tools after VRA completion is not clear.</li> <li>- Based on FTC marking regulations, to label an item as "Made in USA," parts and labor content must be 100% American. This is impractical.</li> </ul>	<ul style="list-style-type: none"> <li>- FTC marking regulations (Federal Trade Commission ACT; Sec.5)</li> <li>- Proposed Guide for Use of US Origin Claims (FTC)</li> </ul>	<ul style="list-style-type: none"> <li>- Promptly revise FTC marking regulations. (Action)</li> <li>- US produced a revised marking regulation bill in May 1997 but met large opposition.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
10. Regulations concerning activities in free-trade zones and special economic zones	Imposition of tariffs on products manufactured in FTZ and exported to Canada and Mexico (non-transparency)	- Tariffs equivalent to those on finished products apply to exports from US free trade zones to Canada since 1996, and same will apply to exports to Mexico as of 2001.	- NAFTA, Article 303	- This effectively abolishes benefits of free trade zones for exports within NAFTA region, causing major damage to export companies based in free trade zones.

Category	Issue	Issue details	Reference	Present status and desired actions
14. Taxation systems	Transfer price taxation (taxation)	<ul style="list-style-type: none"> <li>- US and Japan use different criteria to calculate transfer price, which may result in double taxation.</li> <li>- Tax refund is a complicated process.</li> <li>- US transfer pricing tax regulations (IRC Section 482) and information reporting system (IRC Section 6038A) unfairly target Japanese corporations.</li> <li>- In order not to contravene US transfer price tax rules royalties on patents granted to US companies must be held to around 3%, even when the situation dictates a higher rate. Anything over 3% is regarded as profit transfer and can be taxed.</li> <li>- For royalty payments between parent and subsidiaries, payment must be equal to what would prevail at arms-length, but there is no clear guideline on how to determine what that is.</li> <li>- It is difficult to set royalties on the basis of what other companies are charging since information specific to those charges is not in the public domain.</li> <li>- There is a serious risk that the relative profit method (CPM) will be applied, forcing profit margins to be the same for all players in the industry.</li> </ul>	<ul style="list-style-type: none"> <li>- Transfer price system IRC Section 482</li> <li>- IRC Section 6038A</li> </ul>	<ul style="list-style-type: none"> <li>- Inter-agency coordination is required to prevent double transfer price taxes and to accelerate tax refunds.</li> <li>- Need clear justification of calculation methods for royalty rates in the interest of predictability and legal justifiability for taxpayers.</li> <li>- Royalty rates should be freely determined by principals.</li> <li>- Extend deadline for submitting documents.</li> <li>- Revise CPM methods to adapt to OECD transfer price guidelines</li> </ul>
		<ul style="list-style-type: none"> <li>- Profit ratios are decided on basis of trade with third parties, and where a company does not produce profit in line with this, it must compile and store data which to justify transfer price.</li> <li>- This is not only immensely time-consuming but also means that companies have to operate under constant risk. Even where profit ratio is calculated on basis of third-party trading and this is considered acceptable, it does not cover currency fluctuation risk and regulations on lump-sum payment of intangible asset value equivalent, with no allowance made for special circumstances under which profit is not realized even where operations were sound.</li> <li>- Documents must be submitted in English in short period of time.</li> <li>- Infringement penalties are severe.</li> </ul>		<ul style="list-style-type: none"> <li>- Regulations should be amended to allow for special circumstances whereby profit will not be realized even though a company's operations are sound.</li> <li>- More time should be allowed for submission of report documents.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
16. Employment and wages	Family medical leave system	<ul style="list-style-type: none"> <li>- Family Medical Leave Act (FMLA) has caused an increase in number of people taking unpaid leave.</li> <li>- Those who have worked for a company for at least one year may take 12 weeks unpaid medical leave).</li> <li>- This has led to increases in absentee rates and difficulties in maintaining productivity.</li> </ul>	- Family Medical Leave Act	<ul style="list-style-type: none"> <li>- Where a doctor's certificate is provided, family medical leave must be accepted unconditionally.</li> <li>- Some of these matters should be left to company discretion.</li> </ul>
	Issuance of working visas and temporary stay visas (work permit)	<ul style="list-style-type: none"> <li>- Recently has become more difficult to obtain working visas and temporary stay visas.</li> <li>- Approvals can take three or more months to process.</li> <li>- Entry into US by visa waiver has become more difficult.</li> <li>- An employee can lose his or her visa qualification on I-94 expiry.</li> <li>- US working visas are issued to foreign workers resident in US who are working in bonded process zones under Mexican Maguiladora system.</li> <li>- Unclear what the effect of the abolition of Maguiladora system will be on US working visas and temporary stay visas.</li> </ul>	- Immigration Law	<ul style="list-style-type: none"> <li>- Accelerate and simplify issuance procedures for working visas and temporary stay visas.</li> <li>- Maximum period should be established between visa application and issuance.</li> <li>- Working visas should continue to be issued as they have been. At very least, US residence should be permitted. (Action)</li> <li>- Request made for substantial expansion of H-1B visa quota and standardization of visa issue processing time.</li> </ul>
	Visa extension (work permit)	<ul style="list-style-type: none"> <li>- Extension of I-94 visa can take more than one year, causing some employees to become illegal during extension, experience restrictions on departure, or be unable to re-enter if visa expires after departing US.</li> <li>- Extensions for family members often requires more than double time for employee.</li> </ul>	- Immigration Act	<ul style="list-style-type: none"> <li>- Speed up I-94 extensions.</li> <li>- Request has been made for consistency in I-9, permitted stay, and visa expiration date situations.</li> <li>- Establish and publish extension procedures.</li> <li>- Unify standard processing times for all of US.</li> <li>- March 2000 Immigration Bureau announced that visa expiration under 222(g) of Immigration Act will not be applied if I-94 extension application is made prior to deadline. (Action)</li> <li>- Request made for shift to "first to file."</li> </ul>
17. Intellectual property rights	Priority on inventor	<ul style="list-style-type: none"> <li>- US recognizes "first to invent" rather than the international standard "first to file."</li> <li>- Potential for patent right holder to challenge facts.</li> <li>- Lacks foreseeability.</li> <li>- Tremendous time and cost to determine who is inventor.</li> </ul>		<ul style="list-style-type: none"> <li>- Request made for shift to "first to file."</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Early publication system for patent applications	<ul style="list-style-type: none"> <li>- US has no early publication system for patent applications, which makes it difficult to obtain information about design changes and new technology, and is one factor behind frequency of lawsuits.</li> <li>- Despite agreement between Japan-US on introduction in US of a publication system, still on hold. Japan already implementing.</li> <li>- Patent publication system scheduled for enforcement November 2000, but does not require full disclosure.</li> <li>- If a patent applicant applies for patent in US only and not in other countries and demands non-disclosure by specifying that PCT application will not be filed, patent will not be disclosed.</li> <li>- If scope of foreign patent application is narrower than that in US, it is possible to have such patent disclosed in US with items not included in foreign patent remaining undisclosed.</li> <li>- Non-disclosure of patent not filed in other countries provided for in recently introduced patent system erodes efficacy of patent disclosure system seriously.</li> <li>- If disclosure differs even when US patent disclosure is wider in scope than that of other countries, content can be made undisclosed with patent applicant appeal until patent is issued,</li> <li>- Withholding content from third parties is a problem especially in case of differences in grievance.</li> <li>- System is contrary to existing agreement with Japanese government, as well as TRIP principle of preference to local citizens.</li> <li>- There is possibility of inability to take action against violation because existence of patent cannot be known in inspection stage.</li> </ul>	<ul style="list-style-type: none"> <li>- Patent Act</li> <li>- Japan-US Intellectual Property Rights Agreement, Japan-US Framework Talks (1994)</li> <li>- Domestic Publication of Foreign Patent Application Act of 1999</li> </ul>	<ul style="list-style-type: none"> <li>- Should introduce early publication system for patent applications.</li> <li>- Need early introduction of an information provision system.</li> <li>- Requested change to full disclosure of content for all pending patent applications in US.</li> <li>- Requested introduction of early disclosure in dialogue under Enhanced Initiative.</li> <li>- Patent law amendment legislated November 1999 provided for adoption of patent disclosure system.</li> <li>- US patent applications other than design patent applications and provisional applications disclosed 18 months following date of earliest application (priority date).</li> <li>- Action is inadequate because of exemption provision that enables patent application in US only to be withheld with applicant appeal.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	problem of submarine patent	<ul style="list-style-type: none"> <li>- Because US alone among industrialized nations does not have an early disclosure system, problem of submarine patents exists</li> <li>- Although patent period has been revised to 20 years from patent issue, legislative action was not made retroactive to application prior to date of enforcement of Uruguay Round implementation law, leaving submarine patents unaddressed.</li> </ul>		<ul style="list-style-type: none"> <li>- Patent application disclosure system should be introduced.</li> <li>- Patent law amendment legislated November 1999 provided for adoption of patent disclosure system.</li> <li>- US patent applications other than design patent applications and provisional applications disclosed 18 months following date of earliest application (priority date).</li> <li>- Action is inadequate because of exemption provision that enables patent application in US only to be withheld with applicant appeal.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Patent re-examination system	<ul style="list-style-type: none"> <li>- US system only allows limited filing of third-party oppositions after patent rights have been granted.</li> <li>- Agreed under Japan-US Framework Talks that improvements would be made to this system, amplifying, for example, reasons for seeking re-examination, and expanding opportunities for third-party participation in procedures.</li> <li>- Japan is carrying out measures but US is not.</li> <li>- Under review procedure for interested parties, third-party participant is able to state opinion once only with each response from patent holder. It provides for 30 days to submit opinion, which is extremely difficult to comply for foreigners who suffer linguistic disadvantage.</li> <li>- Review of interested parties under amended law still poses serious disadvantage for third-party participants as in earlier audit-based review system.</li> <li>- Patent holder, when having received disadvantageous ruling, is not only able to appeal with US Patent and Trademark Office's arbitration division but also may file suit with CAFC. In arbitration review, third-party participants are excluded and cannot participate in proceedings. They also are not granted opportunity to seek court ruling on decision made by USPTO.</li> <li>- Let alone patent holder allowed to appeal to courts, application of estoppel (SEC 4604, Article 315(c)) even to third-party participants who are not granted adequate opportunity for argument is an extraordinary provision.</li> <li>- Invalidity arbitration system in Japan and Europe grants argument opportunities for third-party participants at all levels including court of law, with patent holder and third-party participant holding equal rights. Although US agreed to improve review system by giving broader access of third parties in review process and broader range of grounds to appeal for review, revision has been postponed in recent law amendment.</li> <li>- Newly introduced review system for interested parties appears to expand scope of third-party participation, but it grants estoppel application instead, increasing disadvantages in case of use. With such obstacle, system cannot be regarded as genuinely made open to third parties.</li> </ul>	<ul style="list-style-type: none"> <li>- Japan-US Intellectual Property Rights Agreement, Japan-US Framework Talks (1994)</li> </ul>	<ul style="list-style-type: none"> <li>- Early and complete execution of revisions to patent re-examination system.</li> <li>- Introduce system like those of Japan and Europe in regard to third-party filing of oppositions after patent rights have been granted.</li> <li>(Action)</li> <li>- Improve review system requested at dialogue under Enhanced Initiative.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	<p>Patent examination levels</p> <p>Extension of patent period</p>	<ul style="list-style-type: none"> <li>- Examination levels vary widely according to examiner .</li> <li>- Cases of authorization of inventions that cannot be patented.</li> <li>- Requests sometimes have to be made for re-examination , and companies have to devote considerable financial resources to responding to suits.</li> </ul> <ul style="list-style-type: none"> <li>- Under amended law, patent application period to be extended day by day if: (1) more than 14 months passed from actual date of US patent application to first action; (2) more than 4 months from applicant response to first office action; (3) more than 4 months from arbitration ruling or court ruling on patent viability, or (4) more than 4 months from payment of patent issue charge to patent issue.</li> <li>- Patent right period is added for applications held by USPTO for more than 3 years from actual date of US patent application. As a result, patent period that affects both interests of patent holder and of third parties will differ for each right, making US patent management difficult for both sides. Also, procedure between right holder and USPTO over extension of patent period and calculation will become cumbersome.</li> </ul>		<ul style="list-style-type: none"> <li>- Standardize levels of examination by patent examiners.</li> <li>- Introduce opposition system similar to that in Japan and Europe.</li> <li>- Introduce application publication and an information provision systems.</li> <li>- Application process should be easier.</li> <li>- Should make clear notifications to third parties of expiration of patents through patent bulletins.</li> <li>- Patents should be managed so that impediments are not caused by longstanding market domination by old technologies.</li> </ul>
	Practice of patent examinations	<ul style="list-style-type: none"> <li>- Due date for instructions on making selections and other inquiries which arise during patent application review process is very quick (within one to two days), so not possible to give sufficient consideration before responding.</li> </ul>	- Review of examination manual	<ul style="list-style-type: none"> <li>- Consideration should be given to fact that Japan is located far overseas, and at least one week should be allowed for responses.</li> </ul>
	Demand for division of patent applications	<ul style="list-style-type: none"> <li>- As scope of patent applications is limited, applicants are almost immediately asked to divide up their application</li> <li>- In contrast to relatively relaxed recognition of unity in Europe and Japan, US standards on unity are extremely narrow in range.</li> <li>- Decision-making standards are unclear, with restricted inquiry made even for existence of different classification items.</li> <li>- With related inventions split, patent application expenses increase for both patent applicant and patent right holders. When patented, each must pay separate patent issue and maintenance fees.</li> <li>- Unity standards that split related inventions increase patent management burden from both patent holders and third parties.</li> </ul>		<ul style="list-style-type: none"> <li>- Treatment of patent applications at least on a par with Patent Cooperation Treaty.</li> <li>- Improve system to allow, for example, entry of revisions without non-continuous applications.</li> <li>- Patent application for related inventions as a single patent application should be made possible in line with unity concept adopted in Europe and Japan (Action)</li> <li>- Should adopt unity standard on PCT applications for US applications based on 1998 trilateral memorandum.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Double protection of patentee	- Patentees in US receive protection under both civil actions and International Trade Council.	- Section 337 of Tariff Act of 1999	- Removal of patent infringement clause that falls under ITC inspection.
23. Schemes, practices, and inefficient administrative procedures	Problem in driver's license issue and extension	<ul style="list-style-type: none"> <li>- Motor vehicle driver's license not issued in California without proof of legal presence. I-94 is proof of legal presence, but not during extension period.</li> <li>- Inquiry into validity of I-94 sometimes requires more than one year for license to be actually received.</li> <li>- License effective until 4th birthday regardless of I-94 expiration since June 1999, but many DMV officers do not have accurate knowledge of amendment.</li> </ul>	Immigration Act	<ul style="list-style-type: none"> <li>- Issuance of vehicle driver licenses should be less restrictive.</li> <li>- DMV officials should be better informed of rules.</li> <li>- Driver's license effective until 4th birthday regardless of I-94 expiration has been granted after confirmation of legal presence since June 1999.</li> </ul>
	Export administration regulations	- Commerce Department is slow to respond to requests for information (regarding need of license for export of PCB used in fax machines).		- Should provide faster and more sincere response to inquiries

Category	Issue	Issue details	Reference	Present status and desired actions
25. Government Procurement	Local content rule (performance requirement)	<ul style="list-style-type: none"> <li>- Intent of Buy American Act, as stipulated in federal law and in state laws, was supposed to correct price differentials between domestic and foreign products.</li> <li>- Unilaterally determined local content rules make it difficult to procure components that meet standards for price and quality.</li> <li>- Buy American acts stipulated in state laws for procurement of automobiles are effectively domestic purchasing regulations.</li> <li>- State of California stipulates that all automobiles procured by state government must be of American manufacture, but concept is not clearly defined. According to Department of General Service, such vehicles must have at least 50% local content.</li> <li>- State of Iowa gives "American" cars 5% preferential treatment in terms of price. "American" cars are those either manufactured within the state or have at least 75% American or Canadian content, or is a product of a manufacturer that retails more than half of its total car output in US or Canada.</li> <li>- State of New Mexico requires all state organizations to purchase only automobiles assembled in North America.</li> <li>- State of Louisiana: It is possible to stipulate a prohibition against purchase of foreign automobiles.</li> <li>- Spending on mass transit railway, commuter trains, etc. using federal government funds requires that approximately 60% be US-content; where state funds are provided, consideration is given to State-content.</li> <li>- Buy American regulations sometimes sacrifice price and quality, particularly in the area of electronics, where there is a shortage of American suppliers.</li> </ul>		<p>(Action)</p> <ul style="list-style-type: none"> <li>- Request was made at dialogue under Enhanced Initiative to eliminate regulation requiring use of US-made products for mass transit and highway projects financed with federal subsidies.</li> <li>- Request also made to reduce requirements of more than 60% local content, and to permit final assembly costs, including labor costs, in US-content calculations.</li> </ul>

## VIETNAM

Category	Issue	Issue details	Reference	Present status and desired actions
1. Foreign investment entry-related regulations	Regulations on sales companies, regulations on distribution industry participation (market access, equity participation)	<ul style="list-style-type: none"> <li>- 100% foreign ownership is possible under certain conditions.</li> <li>- Foreign firms may not establish sales subsidiaries.</li> <li>- It is difficult to obtain small articles, secondary materials and cloth, etc. The Government does not permit sales companies handling these items.</li> <li>- Restrictions on companies which use routes in the distribution sector, prohibition on coastal shipping.</li> <li>- Government encourages high levels of local ownership in JVs.</li> </ul>	<ul style="list-style-type: none"> <li>- Foreign Investment Law</li> <li>- Legal recommendations toward increasing the capitalization of the Vietnamese partner in joint ventures.</li> <li>- Government Ordinance of 23 January 1998.</li> </ul>	<ul style="list-style-type: none"> <li>- Distribution sector should be open to foreign investment.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions														
2. Regulations concerning domestic production ratios and local procurement ratios	Linkage between local procurement rates and tariff rates (performance requirement)	<ul style="list-style-type: none"> <li>- Since May 1994, in cases where local is 10%, CKDs have been approved as IKDs, with the lower IKD tariff rate applied.</li> <li>- In case of household electronics, wholly foreign owned subsidiaries must have 20% local content in order to qualify for the IKD tariff rate.</li> <li>- Electronic parts imports are restricted to IKD parts, and local content must be 20%.</li> <li>- From January 2001 import tariffs were scheduled to be raised.</li> <li>- Full integration into AFTA by January 2006, Prior to that Vietnam will use local content and tariff policy to provide greater support to domestic manufacturers.</li> <li>- Products with high local content will be subject to lower tariffs.</li> <li>- New policy encourages domestic production of electronic, electric, and mechanical products and related components on which tariff rate is 30% or higher.</li> <li>- Local-content-based tariff rates are not applicable to automobile assembly and manufacturing.</li> </ul> <p>1. Motorcycles and repair parts for motorcycles and automobiles.</p> <p>a. Preferential tariff rate for finished motorcycles (60%).</p> <table border="0" style="margin-left: 20px;"> <thead> <tr> <th>Local Content (%)</th> <th>Tariff (%)</th> </tr> </thead> <tbody> <tr> <td>0-20</td> <td>60</td> </tr> <tr> <td>20-30</td> <td>50</td> </tr> <tr> <td>30-40</td> <td>30</td> </tr> <tr> <td>40-50</td> <td>15</td> </tr> <tr> <td>50-60</td> <td>10</td> </tr> <tr> <td>&gt;60</td> <td>5</td> </tr> </tbody> </table>	Local Content (%)	Tariff (%)	0-20	60	20-30	50	30-40	30	40-50	15	50-60	10	>60	5	Decision No.1944 Decision No. 1994/1998/QD/BTC of the Ministry of Finance providing regulations on preferential tariff rates based on local content rate for products and parts in the areas of electrical and electronic equipment and machinery (December 25, 1998)	<ul style="list-style-type: none"> <li>- Due to the lack of competitive local parts, higher local content requirements will obstruct growth of assembly industries.</li> <li>- Existing local content rules should be revised.</li> </ul>
Local Content (%)	Tariff (%)																	
0-20	60																	
20-30	50																	
30-40	30																	
40-50	15																	
50-60	10																	
>60	5																	

Category	Issue	Issue details	Reference	Present status and desired actions
	Demands for local procurement (performance requirement)	<ul style="list-style-type: none"> <li>- Assembly industries such as household electrics and autos are being ordered to raise their local content levels.</li> <li>- While this policy is intended to foster and protect domestic parts industries, supporting industries are not developing, and in many cases companies are forced to develop the necessary products in-house.</li> <li>- No particular benefits are granted even where procurement rates are reached.</li> <li>- At present there are regulations that require at least 20% local content.</li> <li>- An unrealistic local procurement rate taxation system is planned for 2001.</li> <li>- Few components can be procured locally.</li> <li>- CRT can be locally procured (ORION), but at monopolistic prices roughly 20% higher than international prices.</li> <li>- If procurement of components for video and audio products becomes too difficult on cost and technical levels, and excessive tariffs are levied, it will not be possible to continue business operations.</li> <li>- In addition to local content requirements, foreign manufacturers must also satisfy the following requirements to enjoy preferential tariff rates: (i) technology and assembly line must have been inspected and certified by the government; (ii) must have quality registration certificate issued by the government; and (iii) must have an government approved localization plan.</li> </ul>	Interministerial ordinance No. 176/1998/TTLT-BTC -BCN-T CHQ stipulating implementation of regulations on taxation system based on local content rate applied to products and parts in the areas of machinery and electronic and electrical equipment (December 25, 1998, Ministry of Finance, Ministry of Industry, and Customs Bureau); official letter No. 103/TCHQ-KTTT providing for tariff levy based on local content rate (January 7, 1999, Customs Bureau)	<ul style="list-style-type: none"> <li>- Eliminate meaningless local procurement hurdles.</li> <li>- Establish a benefit system.</li> <li>- Local procurement regulations should be more realistic.</li> <li>- Government should take steps to ensure that set makers are not forced to buy local parts.</li> <li>- Rather than simply setting figures, the Government should first formulate policies to cultivate component industries.</li> <li>- Tariff reductions should also be introduced in order to develop domestic industry.</li> </ul> <p>(In the same way, high tariff on 19 ??block parts?? Should also be significantly lowered.</p>
3. Export requirements	Obligation to balance foreign currency income and expenditure (performance requirement)	<ul style="list-style-type: none"> <li>- JVs are obliged to maintain a balance between foreign currency income and expenditures, with the foreign currency needed by the company procured by that company.</li> <li>- Obligation to maintain a foreign currency balance requires that products be exported, but regulations on local procurement rates make it difficult to create internationally competitive products.</li> </ul>	- Foreign Investment Law, Article 24, Enforcement Regulations Article 82	<ul style="list-style-type: none"> <li>- Relax or eliminate obligation to maintain a balance between foreign currency income and expenditures.</li> <li>- Government did relax restrictions somewhat in January 1998.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Export obligations (performance requirement)	<ul style="list-style-type: none"> <li>- For joint enterprises, approximately 20% of exports are levied. This is not due to the scale of Vietnamese industry or the purchase of components, but rather, since KIT purchase is compulsory, there is no export cost competitiveness and a great burden is placed on the management of companies in deficit.</li> </ul>		
7. Operation procedures for the Foreign Investment Law	Ambiguity of approval criteria in investment-related provisions and complexity of procedures (examination procedure)	<ul style="list-style-type: none"> <li>- Investment-related legal provisions are gradually being developed, but approval criteria and operation of systems are unclear.</li> <li>- Various governmental bodies are involved in FDI approvals, which slows down the process (so-called "one-stop shop issue"). Not being able to calculate how long the approval for a project will take is a major problem for companies.</li> <li>- FDI negotiations have to be conducted with and information provided a number of governmental bodies related to the area of participation, including Ministry of Commerce, Ministry of Finance, Central Bank, local people's committees, and other related ministries and agencies.</li> <li>- Approval rights are transferred to local people's committees for investment of \$10 million or less in Ho Chi Minh and \$5 million or less in Hanoi, Haiphong and the other five provinces.</li> <li>- While approval can be obtained without using a consultant, in certain cases consultants may be helpful but they charge high fees.</li> <li>- A Foreign Investment Law exists, but enforcement regulations and organizations for implementation have yet to be developed.</li> <li>- Even where investment is approved, there is still a complicated web of further approvals necessary, including construction permits and import licenses.</li> <li>- Many licenses and permits are left to the discretion of regional governments.</li> <li>- Unanimous consensus is required for important issues related to JVs, which blocks progress.</li> </ul>	Government Ordinance No. 191/CP (28 December 1994)	<ul style="list-style-type: none"> <li>- <u>Need written clarification of approval criteria.</u></li> <li>- <u>The "one-stop shop" issue in regard to foreign investment was addressed in Government Ordinance No. 191/CP</u></li> <li>- <u>It would also be useful to establish a counseling desk in regard to setting up a business in Vietnam.</u></li> <li>- Need majority vote rule.</li> <li>- Improvements are under way.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
12. Exchange controls	Allocation of foreign currency to projects (performance requirement)	<ul style="list-style-type: none"> <li>- Approvals required from relevant ministries and agencies to have foreign currency allocated to individual projects.</li> <li>- Government requires that foreign companies meet certain requirements related to minimum foreign capital spending, payment methods for imported goods, payment of redemption in installments, and distribution of profits. These restrictions apply even when foreign currency earnings are low.</li> <li>- Special foreign companies involved in either production of import-alternative products or infrastructure projects are exempted from such requirements.</li> </ul>	<p>Government Ordinance No. 10/1998/ND-CP, dated 23 January 1998</p> <ul style="list-style-type: none"> <li>- Vietnam foreign capital law (November 12, 1996, National Assembly) and Governmental Degree 12/CP on implementation of Vietnam foreign capital law (February 18, 1997), Article 72 of the same</li> </ul>	<ul style="list-style-type: none"> <li>- Eliminate or reduce restrictions on foreign currency allocation for project payments.</li> </ul>
	Foreign currency procurement (profit repatriation)	<ul style="list-style-type: none"> <li>- Currency conversion is a severe problem, with no guarantee that foreign currency for purchase of raw materials and parts from overseas will be approved as applied for.</li> <li>- Approval needed from Vietnam Central Bank for license to convert Vietnamese dong to US dollars, but no guarantee that request will be granted.</li> <li>- Approvals are slow, if at all.</li> <li>- Only "special foreign companies" can purchase foreign currency from commercial banks, but even for them supply from commercial banks is uncertain due to chronic shortage of foreign currency.</li> <li>- Due to small foreign currency reserves, Vietnam allows foreign companies to convert local currency (dong) to US dollars only.</li> <li>- Due to dollar shortages, exchange/remittance guarantees by the central bank or finance ministry is not possible.</li> </ul>	<p>Government Ordinance No. 10/1998/ND-CP, dated 23 January 1998</p> <ul style="list-style-type: none"> <li>- Government Decision dated 14 February 1998</li> <li>- Official letter 585/CV-NHNN7 on sale of foreign currency to foreign capital businesses (Vietnam National Bank, July 6, 1998)</li> </ul>	<ul style="list-style-type: none"> <li>- Guarantee stable currency conversion.</li> <li>- Government decision of 14 February 1998</li> <li>- Simplify system.</li> <li>- Foreign currency exchange and remittance guarantee is sought for foreign capital projects, especially those believed important for the nation.</li> </ul>
	Unclear provisions (profit repatriation)	<ul style="list-style-type: none"> <li>- Provisions for foreign currency conversion, overseas remittance, and opening accounts are unclear and complex.</li> <li>- Difficult to obtain approval for overseas repayments and interest remittance, with little flexibility displayed.</li> </ul>		<ul style="list-style-type: none"> <li>- Need clearer and simpler provisions.</li> </ul>

Category	Issue	Issue details	Reference	Present status and desired actions
	Interest remittance tax (profit repatriation)	<ul style="list-style-type: none"> <li>- Interest remittance tax is 10%.</li> <li>- Problems related to lack of flexibility in obtaining approval of overseas payments and profit remittance.</li> </ul>	<ul style="list-style-type: none"> <li>- Notice 169/1998/TT-BTC providing index on taxes applied to foreign organizations and individuals engaging in business enterprises in Vietnam that are not covered by foreign capital law</li> <li>- Directive No. 18/2000/QH10 on supplement and revision of various provisions in the foreign capital law (June 9, 2000)</li> </ul>	<ul style="list-style-type: none"> <li>- Eliminate interest remittance tax.</li> <li>- Remittance tax rate has been reduced from 5, 7, and 10% to 3, 5, and 7%.</li> </ul>
14. Taxation systems	Inconsistent taxation (non-transparency)	<ul style="list-style-type: none"> <li>- Different tax officials interpret tax laws differently.</li> <li>- One situation where company received approval to do business with the understanding that only a profit tax would be levied, but a sales tax has since been introduced as well.</li> </ul>		<ul style="list-style-type: none"> <li>- Need more consistent tax rules.</li> </ul>
16. Employment	Working permits (work permit)	<ul style="list-style-type: none"> <li>- Employment of foreigners is subject to government approval, and applications can be ignored.</li> <li>- Long-term working stay visas are too short.</li> </ul>		<ul style="list-style-type: none"> <li>- Abolish employment restrictions, expand foreign staff frameworks and extend period of stay.</li> </ul>
21. Land-holding restrictions	Land allowances (market access)	<ul style="list-style-type: none"> <li>- Difficult to obtain land allowances outside industrial parks.</li> </ul>		

Category	Issue	Issue details	Reference	Present status and desired actions
23. Systems and business practices, inefficient administrative procedures	Directors' meeting decisions	<ul style="list-style-type: none"> <li>- Regardless of investment ratios, major decisions at directors' meetings must be unanimous.</li> <li>- Also a restriction of two-thirds, a situation in which problems in terms of partner solidarity can easily arise.</li> </ul>	Law No. 18/2000/HQ10 on amendment and supplement of various provisions in the foreign investment law	<ul style="list-style-type: none"> <li>- Law on JVs should be revised to allow decisions based on investment ratios.</li> <li>- Provision requiring unanimous agreement to pass a resolution now only required for appointment and dismissal of director or first deputy director, amendment of by-laws of joint ventures).</li> </ul>
	Items for approval (investor behavior)	<ul style="list-style-type: none"> <li>- Too many items require (government) approval, and procedures are complex.</li> <li>- <u>Companies have to pay commissions beyond those specified in legal provisions.</u></li> <li>- Signature and seal of officer in charge required for export invoice and other documents.</li> <li>- Response to documentation submitted to government office is slow and impedes decision-making.</li> </ul>		<ul style="list-style-type: none"> <li>- Need harder crackdown on bribery and corruption.</li> <li>- Simplify and clarify procedures.</li> <li>- Approval should be granted with signature only.</li> <li>- Accelerate processing.</li> </ul>