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The Fifth Liberalization of Capital Movements into Japan

Background

TO A *gaikokujin* (foreigner) intent on establishing an equity position in the economy of Japan, the Japanese must seem as some oriental Janus; one side proclaiming the desirability of and its amenability to increasing foreign equity participation in the Japanese economy, with the other side, perhaps more quietly, emphasizing the need to protect Japanese business interests from foreign competition and control. These divergent views seem to reflect the traditional guarded curiosity with which Japan has always confronted the outside world.

Allowing increased foreign investment is viewed as being advantageous to the Japanese economy because it will enhance the status of Japan in the international community, encourage competition, and lead to greater economic growth and a higher standard of living,¹ through the securing of free access to international markets and sources of raw materials.² On the other hand, there are three basic fears in Japanese economic and industrial circles of greater equity participation by foreigners. First, it is felt that increased outside investment will result in control of the Japanese economy by foreign capital because of more advanced foreign technical development and greater capital power. Second, is the fear that Japanese technical development will be stifled because of the tendency of foreign capital to concentrate on technical development in its home country. Third, there is the fear that economic and social disorder will result if the greater economic power of the outside investors spurs excessive competition in Japan.³ In addition to these intellectual objections, one must also realize the import of more emotional stimuli. The so-called "black-ship" syndrome, stemming from the visit of Commodore Perry and the unequal treaties of the Meiji period, has resulted in a quiet hostility toward foreign contacts which is carried over to foreign investment. While this feeling is inherently contradictory with Japanese desires for a free interna-

¹ Y. Kanazawa, *Accession of Japan to the Organization for Economic Co-Operation and Development (OECD) and the Liberalization of Capital Movements*, 11 JAPANESE ANNUAL OF INTERNATIONAL LAW 24, 35-36 (1967) (hereinafter, Kanazawa).

² D. F. HENDERSON, FOREIGN ENTERPRISE IN JAPAN 242 (1973) (hereinafter, HENDERSON).

³ Kanazawa, *supra* note 1, at 27.

tional economy, it is nevertheless a real factor influencing the development and conduct of Japanese policies toward the liberalization of foreign investment in Japan.⁴

The duality of the Japanese attitude is readily apparent in the cornerstone of Japanese foreign investment policy — the Law Concerning Foreign Investment of 1950.⁵

Article One of the Foreign Investment Law states that:

The purpose of this law is to create a sound basis for foreign investment in Japan, *by limiting the induction of foreign investment* to that which will contribute to the self-support and sound development of the Japanese economy and to the improvement of the international balance of payments, by securing remittances arising from foreign investment, and by providing for adequate protection for such investments. (Emphasis added.)

Contrast this with Article Two which states that:

Foreign investment in Japan shall be permitted to be *as free as possible*, and the system of validation pursuant to the provisions of this Law shall be relaxed and eliminated gradually as the necessity for such measures decreases.⁶ (Emphasis added.)

The protectionist aspect of the Foreign Investment Law clearly governed Japanese attitudes and practices from its inception well into the 1960's.⁷ Japanese and foreigners, however, recognized such a policy as "both meaningful and necessary if Japan was to rebuild its shattered economy."⁸ They attribute to that policy Japan's success "in overcoming the imbalance between the lack of resources, capital and technology and an excessive population by fostering industries and promoting exports, and thereby realizing unprecedented economic development in the 25 years following the war."⁹

With this revitalization of the Japanese economy, however, foreign criticism of the restrictive Japanese investment policy increased,¹⁰ particularly from the United States.¹¹ Another significant

⁴ HENDERSON, *supra* note 2, at 242.

⁵ *Gaisi ni kansuru hōrisu kankeishōrei* (Law Concerning Foreign Investment) (Law No. 163, 1950) (hereinafter, Foreign Investment Law) in 5 EIBUN-HOREI-SHA LAW BULLETIN SERIES DA (hereinafter, EHS).

⁶ *Id.*, Arts. 1 & 2, in 5 EHS DA 1.

⁷ ARTHUR ANDERSON & CO., TAX AND TRADE GUIDE — JAPAN 54 (1972).

⁸ Hartman, *Japanese Foreign Investment Regulation: Semantics and Reality*, 18 N.Y. Law Forum 355,359 (1972) (hereinafter, Hartman).

⁹ Y. Ojimi, *Status of Japanese Liberalization and Future Trends*, in CURRENT LEGAL ASPECTS OF DOING BUSINESS IN THE FAR EAST 29 (R. Allison, ed. 1972).

¹⁰ ARTHUR ANDERSON & CO., TAX AND TRADE GUIDE — JAPAN 54 (1972).

¹¹ See Hartman, *supra* note 8, at 362, n. 34, ascribing two reasons for this pressure by the U.S., first, the penetration of Japanese companies into American markets, and

influence tempering the protectionist attitude was Japan's accession to the Organization for Economic Co-operation and Development (OECD) in 1964.¹²

Article Two of the Convention on the Organisation for Economic Co-operation and Development requires members to:

pursue . . . efforts to reduce or abolish obstacles to the exchange of goods and services and current payments and maintain and extend the liberalisation of capital movements. . . .¹³

A Code of Liberalization of Capital Movements (hereinafter, Code) was established pursuant to the Convention.¹⁴ The government of Japan, in July 1963, while negotiating with the OECD for membership, issued a Memorandum of Understanding Between the Organization for Economic Co-operation and Development and the Government of Japan Concerning the Assumption by the Government of Japan of the Obligations of Membership of the Organization (hereinafter, Memorandum of Understanding). In this memorandum, the Japanese government expressed its

intention . . . that upon its accession of the Convention . . . Japan will adhere to the . . . Code of Liberalization of Capital Movements. [The memorandum further stated that the] Government of Japan endorses the objectives of the [Code], has given careful consideration to [its] provisions and is prepared to accept any obligations and commitments arising therefrom.¹⁵

Several months after Japan's formal accession to the OECD (about a year after release of the Memorandum of Understanding), this Code of Liberalization of Capital Movements was amended. Japan voiced numerous reservations to this amended Code.¹⁶ In fact, only two of the sixteen other OECD members raised more reservations than Japan.¹⁷

Notwithstanding these reservations, Japan's voluntary accession to the OECD should be (and is) considered as constituting an en-

second, the 1953 Treaty of Friendship, Commerce and Navigation, 4 U.S.T. 2063, T.I.A.S. No. 2863, which called for free investment between the two countries.

¹² See Kanazawa, *supra* note 1. Both "organization" and "liberalization" will be spelled in accordance with normal American usage except where official documents or direct quotations conflict.

¹³ Convention on the Organisation for Economic Co-operation and Development, 12 U.S.T. 1728, 1733, T.I.A.S. No. 4891 (1961).

¹⁴ Hartman, *supra* note 8, at 370.

¹⁵ Kanazawa, *supra* note 1, at 25-26.

¹⁶ *Id.*

¹⁷ Hartman, *supra* note 8, at 370.

dorsement of the concept of capital movement liberalization as a desired economic goal.¹⁸

1967-1973

In response to pressure by the OECD countries, particularly the U.S., the Japanese government, in 1967, embarked upon a program of liberalization.¹⁹ Under this program five rounds of liberalization have taken place.²⁰ While a survey of the scope and impact of the first four liberalization measures is outside the intended purview of this note, a brief examination of some of the highlights of liberalization from 1967 to 1973 is in order.²¹

The entire history of liberalization during this period consists of administrative (vice legislative) actions. No amendment of the Foreign Investment Law has been considered necessary to implement liberalization.²² This stems from the vast discretion which the Foreign Investment Law, for its implementation, vests in the Cabinet, the various concerned government ministries, and the Foreign Investment Council²³ (an advisory body to the Ministry of Finance). That liberalization has been implemented in an administrative arena, ostensibly as a matter of discretion, is significant because of the resulting imprecision, possibility of change without notice, and lack of formal appeal mechanisms.²⁴

The system for controlling foreign direct investment in Japan evolved from the mandate of Article 11 of the Foreign Investment Law which provided that:

A foreign investor desirous of acquiring stock or proprietary interest in a juridical person established under the Japanese laws and orders shall obtain validation of the acquisition concerned from the competent Minister in accordance with the Ordinance of the competent Ministry.²⁵

¹⁸ Kanazawa, *supra* note 1, at 27.

¹⁹ Pearl, *Liberalization of Capital in Japan — Part II*, 13 Harv. L. Rev. 245, 247-248 (1972) (hereinafter Pearl II); *see also* HENDERSON, *supra* note 2, at 237.

²⁰ HENDERSON, *supra* note 2, at 237; *see also* Yojimi, *supra* note 9, at 31; Hartman, *supra* note 8 at 363; and Pearl, *Liberalization of Capital in Japan — Part I*, 13 Harv. L. Rev. 59, 60 (1972) (hereinafter, Pearl I).

²¹ For detailed examinations of these first four liberalizations see generally Pearl I, *supra* note 20; Pearl II, *supra* note 19; Hartman, *supra* note 8; and HENDERSON, *supra* note 2, chapter VII.

²² Hartman, *supra* note 8, at 361, 367; Pearl I, *supra* note 20, at 64.

²³ *See, e.g.*, Foreign Investment Law, art. 8, Standards of validation, designation, etc., *supra* note 5, in 5 EHS DA 5.

²⁴ Hartman, *supra* note 8, at 367-368.

²⁵ Foreign Investment Law, art. 11, Validation of acquisition of stock or proprietary interest, *supra* note 5, in 5 EHS DA 10.

Note the discretion of the competent minister to prescribe requirements for validation. Formulation of these requirements is limited only by the very broad standards set forth in Article 8 of the Foreign Investment Law, to ascertain whether the proposed investment is:

- (1) Directly or indirectly contributing to the improvement of the international balance of payments, or
- (2) Directly or indirectly contributing to the development of essential industries or public enterprises, or
- (3) Necessary for continuation of existing technological assistance contracts concerning essential industries or public enterprises or for the alteration of the articles of the contracts concerned such as renewal.²⁶

The meaning ascribed to these standards, and how they shall be implemented is left up to the competent minister.

Article 8 also contains several standards which do provide somewhat more specific guidance to the competent minister in his formulation of validation requirements. These, however, are completely negative in thrust; *e.g.*, the "competent Minister *shall not* validate contracts . . . which fall under any one of the following paragraphs. . . ." ²⁷ (Emphasis added.) Nebulous as to what is permitted, the Foreign Investment Law is a little (but only a little) more specific as to what is forbidden.

The liberalization program, then, can really be viewed as a discretionary administrative relaxation²⁸ of discretionary administrative standards, subject, of course, to discretionary administrative interpretation.

The essence of liberalization, as that term is understood in Japan, is automatic approval, that is, validation of the proposed foreign investment by the competent minister without screening and approval by the Foreign Investment Council.²⁹ Generally speaking, the first four liberalization measures provided for automatic validation of foreign acquisitions of up to 50% of the capital³⁰ of a *new* enter-

²⁶ *Id.*, art. 8, in 5 EHS DA 5.

²⁷ *Id.*

²⁸ *Id.*, art. 2, calls for this gradual relaxation; in 5 EHS DA 1.

²⁹ The Fifth Capital Investment Liberalization Program, FUJI BANK BULLETIN, Sept., 1973, at 178 (hereinafter, Bank Bulletin). See also HENDERSON, *supra* note 2, at 243.

³⁰ United States-Japan Trade Council, Report No. 27, May 2, 1973, at 1; Embassy of Japan, Press Release: Japanese Government Announces Major Breakthrough in its Efforts to Encourage Foreign Investment in Japan, April 27, 1973, at 2 (hereinafter, Embassy Press Release).

prise.³¹ Capital acquisitions of 100% were permitted in a few areas, but as exceptions to the normal 50% rule.³² Each subsequent liberalization measure for the most part "consisted merely of adding business lines to the hundred per cent and fifty per cent categories."³³ The Fourth Liberalization seemingly departed from this by abolishing the 50% list, but this change was only cosmetic.³⁴ The 100% list was retained and expanded somewhat³⁵ and a "negative list" of those areas in which individual screening would be retained was created.³⁶ Any industry not specifically included on either the 100% list or the negative list was considered open to 50% foreign capital investment without screening.³⁷ (Appendix II, Table 3 graphically demonstrates the scope of each phase of liberalization.)

Liberalization, at least through 1971, can be characterized as having been limited largely to fields considered unattractive or inaccessible to foreigners,³⁸ because of the presence of an already-existing strong domestic oligopoly, or even to fields of no interest to Japanese firms. Thus manufacture of *sake* was liberalized at 100%, Japanese-style silk-spinning at 50%, and oatmeal and cornflakes production at 100%.³⁹ In sharp contrast to Japanese government pronouncements accompanying each previous phase of liberalization, it is interesting to note the real extent of automatic validation (the focal point of liberalization in Japan). During the first four years of liberalization (1967-1971) only twenty-eight foreign businesses were accorded automatic approval. In 1971 this figure was thirty-five, and in 1972 seventy-five.⁴⁰ It should further be remembered that these foreign acquisitions were usually limited to 50% interests.

As mentioned above, the first four liberalization programs were limited to foreign investment in new enterprises. Foreign participation in existing businesses was not included within the scope of liberalization. Automatic approval of foreign acquisition of stock, where the foreigner desired to participate in management was lim-

³¹ Pearl I, *supra* note 20, at 77; Hartman, *supra* note 8, at 364.

³² Bank Bulletin, *supra* note 29, at 178.

³³ Hartman, *supra* note 8, at 365.

³⁴ Pearl I, *supra* note 20, at 65.

³⁵ Hartman, *supra* note 8, at 365.

³⁶ Pearl I, *supra* note 20, at 65.

³⁷ Hartman, *supra* note 8, at 365.

³⁸ HENDERSON, *supra* note 2, at 233.

³⁹ Pearl I, *supra* note 20, at 72. The author points out that consumption of these latter two products in Japan is negligible.

⁴⁰ HENDERSON, *supra* note 2, at 233.

ited to the same extent as portfolio investment (*i.e.*, acquisition only for investment purposes with no desire to participate in management); that is, total foreign participation was limited to less than 25% of the shares issued by any one Japanese company (15% in certain restricted industries), with the further proviso that any single foreign investor was limited to an acquisition of less than 10%.⁴¹

Finally, along with liberalization, the Japanese government took what can be described as "counterliberalization" measures (again because of the inherent Japanese ambivalence toward foreign investment). A loophole in the Foreign Investment Law which excepted certain stock acquisitions by foreigners from the screening requirements⁴² was partially plugged when the so-called "yen-based" company was abolished in 1963.⁴³ These were Japanese corporations established by foreigners with domestic yen in which profits were not permitted to be repatriated. This same loophole was further closed in 1967 when purchases made with yen not acquired with foreign currency were brought within the scope of the screening requirements.⁴⁴

Counterliberalization also has encompassed advocacy of the use of the Antimonopoly Law⁴⁵ to enhance domestic market concentration of Japanese firms. Strict enforcement against foreigners of the provisions concerning unfair trade practices of the Antimonopoly Law has been espoused.⁴⁶ There have also been suggestions that the Japanese patent laws be used "to compel nonexclusive licensing of a foreigner's Japanese patents," that the Commercial Code be amended to forbid cumulative voting, and that corporate articles restrict transfers to foreigners and forbid foreign directors.⁴⁷

⁴¹ Bank Bulletin, *supra* note 29, at 178,181; see also Pearl I, *supra* note 20, at 85-87.

⁴² Cabinet Order Concerning Exceptions, Etc., to Standards of Validation Based on the Law Concerning Foreign Investment (Cabinet Order No. 221, 1952) in 5 EHS DM.

⁴³ Pearl I, *supra* note 20, at 66.

⁴⁴ HENDERSON, *supra* note 2, at 255,272.

⁴⁵ Law Concerning the Prohibition of Private Monopoly and the Maintenance of Fair Trade (Law No. 54, 1947) in 2 EHS KA.

⁴⁶ HENDERSON, *supra* note 2, at 256-259. For detailed examinations of the Antimonopoly Law as it relates to foreign investment see Ariga, *International Trade of Japan and the Antimonopoly Act*, 8 J. INT'L. LAW & ECON. 185 (1973); Hildebrand & Matsushita, *Antimonopoly Law of Japan — Potential Consequences of International Contract Violations Under Article 6*, 6 N.Y.U. J. INT'L. LAW & POL. 215 (1973); and, Matsushita & Hildebrand, *Antimonopoly Law of Japan — Relating to International Business Transactions*, 4 CASE W. RES. J. INT'L. L. 124 (1972).

⁴⁷ HENDERSON, *supra* note 2, at 259-266.

It appears then, that liberalization as practiced until May 1973 was by-and-large a system for restricting foreign direct investment, especially from control of domestic enterprise. Needless to say, it did not appease Japan's trading partners who were desirous of greater equity participation in the Japanese economy.

The Fifth Liberalization

On October 20, 1972 the Government of Japan announced "that it would adopt a new, more open foreign economic policy and that, as one of its main features, liberalization of capital movements (into Japan) would be vigorously pursued."⁴⁸ In January of 1973 the government requested that the Foreign Investment Council formulate "steps to be taken for the liberalization of inward direct investment. . . ."⁴⁹ On April 25, 1973, the Foreign Investment Council responded to the government inquiry and submitted its recommendations (Appendix I, *infra*) as to the course to be pursued toward liberalization.⁵⁰ These recommendations were embodied in a Cabinet Decision of April 27, 1973 which announced the Fifth Liberalization. Effective May 1, 1973,⁵¹ the program reflected the strengthened Japanese domestic economy and international economic position, as well as foreign pressure for greater compliance with the OECD Code of Liberalization.⁵² The program appears to have committed Japan to allow 100% foreign equity participation in Japanese enterprise. Unlike the previous liberalizations, this fifth measure is not limited to new ventures. It opens up existing enterprises to foreign investment subject to the same conditions for automatic validation as are imposed for newly established enterprises.⁵³

Detailed examination of the Fifth Liberalization shows that in the case of foreign investment in new ventures nearly 900 industrial sectors were opened up for 100% foreign participation. Twenty-two sectors, while not immediately liberalized, were dealt with as follows:

⁴⁸ Embassy Press Release, *supra* note 30, at 1.

⁴⁹ Recommendation of the Foreign Investment Council on Liberalization of Foreign Investment in Japan, April 25, 1973, at 1, in Embassy Press Release, *supra* note 30, at Attachment (hereinafter, Foreign Investment Council Recommendation). See Appendix 1, *infra*, for text.

⁵⁰ Embassy Press Release, *supra* note 30, at 1; Bank Bulletin, *supra* note 29, at 178

⁵¹ HENDERSON, *supra* note 2, at 259-266.

⁵² Foreign Investment Council Recommendation, *supra* note 49, at 1; Bank Bulletin, *supra* note 29, at 178.

⁵³ Embassy Press Release, *supra* note 30, at 2.

— 17 categories, whose immediate liberalization was deemed difficult, will be liberalized on a deferred basis (Appendix II, Table 2).

— Five categories were completely exempted from liberalization⁵⁴ because of their sensitive nature and the grave and adverse impact that the government felt would result from their liberalization⁵⁵ (Appendix II, Table 1).

With respect to foreign investment in existing Japanese enterprises, a course of automatic validation of 100% investments was instated. While previous policy generally limited investment for participation in management to the same extent as portfolio investment, the Fifth Liberalization provides that foreign investors may acquire the stock of an existing firm only upon adoption of an affirmative resolution to that effect by the board of directors of that firm.⁵⁶ Making consent of the corporation to be acquired a pre-condition to the applicability of the new liberalization rule was deemed necessary to prevent forcible take-overs of Japanese firms by foreign investors.⁵⁷

The government's announcement also provides for the progressive simplification of the confirmation procedures currently used in the automatic validation process both as to new and existing enterprises.⁵⁸

Conclusion

As was noted earlier, the 1967-1971 liberalization program did not result in true compliance with the OECD Code of Liberalization by Japan. Whether the Fifth Liberalization in actuality results in this compliance remains to be seen. The Fifth Liberalization does mark a fundamental change in the heretofore existing government policy concerning liberalization, by extending automatic approval to situations of 100% stock acquisitions by foreigners and by including within the scope of automatic approval the acquisition of existing enterprises. However, it should be pointed out that those categories which remain restricted include fields in which foreign investors are

⁵⁴ United States-Japan Trade Council, Report No. 27, May 2, 1973, at 1.

⁵⁵ Embassy Press Release, *supra* note 30, at 3, which also announced that the possibility of future liberalization in these restricted five industries would continue to be explored.

⁵⁶ Bank Bulletin, *supra* note 29, at 181.

⁵⁷ Embassy Press Release, *supra* note 30, at 2. In the event that the needed consent is not forthcoming, past regulations will be continued.

⁵⁸ Foreign Investment Council Recommendation, *supra* note 49, at 4.

extremely interested, such as the oil industry and retail trade operations.⁵⁹ Moreover, even the Japanese method of cataloguing these restricted areas (Appendix II, Table 1) doesn't quite tell the whole story. Category 1 (Primary Industry), for example, actually contains 46 "industries" and category 2 (Mining) contains 67, according to the standard Japanese method of industrial classification.⁶⁰

Finally, it should be mentioned that no other advanced industrial nation maintains a distinction between the acquisition of stock in new as opposed to existing businesses. Therefore it would appear that the requirement that an existing enterprise consent to the acquisition of its shares by an outsider violates the rules established by the OECD pursuant to the Code of Liberalization.⁶¹

In the main, though, the Fifth Liberalization does appear to be a genuine departure from past Japanese practices. The future progression of industries on the deferred list (Appendix II, Table 2) to a fully-liberalized status, whether in fact steps are taken to liberalize industries on the non-liberalized list (Appendix II, Table 1), plus the streamlining of automatic validation procedures will provide the key to any future judgment of the sincerity of the Fifth Liberalization.⁶²

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⁵⁹ Bank Bulletin, *supra* note 29, at 181.

⁶⁰ HENDERSON, *supra* note 2, at 401.

⁶¹ Bank Bulletin, *supra* note 29, at 181.

⁶² Mr. Katsuhiko Fujiwara, an economic consultant to the United States-Japan Trade Council, indicated in a conversation with the writer that liberalization in the field of integrated circuits, scheduled for Dec. 1, 1974, should occur as planned.

APPENDIX I*

Recommendation of the Foreign Investment Council on Liberalization of Foreign Investment in Japan

April 25, 1973

The Council, which received an inquiry from the Government on 18th January, 1973, concerning the steps to be taken for the liberalization of inward direct investment, has since then been engaged in studying the matter and, having reached the conclusions set forth below, hereby submits its report. It is recommended that the Government give due consideration to the present report and promptly put into effect the necessary liberalization measures.

1. Basic View

It is already nine years since Japan undertook the obligations embodied in "the code of liberalization of capital movements" of the organization for economic cooperation and development (hereinafter referred to as the OECD code) the principal objective of which is the complete liberalization of international capital movements, and, although the four consecutive rounds of liberalization measures have been introduced in the intervening period in connection with inward direct investment many reservations to liberalizations in this area are still in force.

On the other hand, in line with the marked improvement of Japan's economic position in recent years, the role the Japanese economy plays in the international economy has grown and the business activities abroad of Japanese enterprises have been increasing.

In view of this situation, it is deemed necessary for Japan to demonstrate to the world its determination and posture aiming at promoting in a most positive manner the internationalization of its economy, on the belief that this type of action will help avoid possible surge[s] of protectionism in the world economy, and thus [prove] instrumental to the maintenance of world peace and prosperity which depends on the spirit of international cooperation.

In pursuance of this purpose it is of urgent necessity that the Government should now resolutely liberalize inward direct investment to the maximum extent Japan's present economic situation permits, and adopt the 100% liberalization principle stipulated in the OECD code, departing from the existing framework based primarily upon the so-called 50% principle. Also by virtue of this action, the further development of the Japanese economy is to be expected through freer international exchanges of capital and technology.

As to those restrictive measures which are deemed appropriate to be maintained in the context of the present liberalization, it is necessary to subject them to continuous reappraisal with a view to exploring [the] possibility of liberalization taking into account progress to be made in creating an improved structure and system, including legislative measures, and to promote a further liberalization in this area. Flexible application of these restrictive measures is, in the meantime, warranted.

Even after implementing the liberalization measures contained herein, it

* Source: Embassy of Japan Press Release, April 27, 1973.

is, of course, possible for the Government to take necessary restrictive measures, should serious damages be incurred upon related industries, inter alia, upon medium and small scale enterprises or agriculture, due to the establishment of new companies or participation in the management of existing companies by foreign capital. It also goes without saying that unfair business practices on the part of foreign capital in Japan are not to be permitted.

However, all Japanese enterprises should reaffirm their determination to achieve sound development by their own efforts under free and fair international competition.

2. Content of Liberalization Measures

Liberalization measures connected with inward direct investment and inward portfolio investment to be implemented are as follows:

(1) Approval of share acquisition by foreign investors provided in Article 11 of the [L]aw [C]oncerning [F]oreign [I]nvestment will be given automatically by the competent minister in accordance with the OECD code, except in cases where

(a) It is not clear whether there is the consent of an existing enterprise as to the acquisition of its shares by foreign investors — such cases [to] be dealt with as hitherto, or

(b) the acquisition of shares of an enterprise, either existing or [newly created], which belongs to any of the industries listed in Annex 1 [Appendix II, Table 1, herein], would remain to be treated as hitherto and the acquisition of shares of an enterprise, whether existing or [newly created], which belong to any of the industries listed in Annex 2 [Appendix II, Table 2, herein] would remain to be dealt with as hitherto up to the date mentioned in the Annex.

(2) In giving the automatic approval mentioned in (1) above, the confirmation and examination procedures currently in use will be progressively simplified.

APPENDIX II

Table 1. Non-Liberalized Industries*

Industry	Foreign Investment
(1) Agriculture, forestry and fishery	Subject to specific approval
(2) Mining	Automatic approval of foreign participation up to 50% of capital
(3) Petroleum	Subject to specific approval
(4) Leather and leather products	Subject to specific approval
(5) Retail trade	Subject to specific approval; automatic approval of foreign participation up to 50% in retail chains with not more than 11 stores

* Source: Fuji Bank Bulletin, September 1973

Table 2. Industries Whose Liberalization Has Been Deferred*

Industry	Present conditions for foreign investment	Target date for liberalization
(1) Integrated circuits	automatic approval up to 50% of capital	Dec. 1, 1974; automatic approval up to 100% of capital
(2) Meat products	"	May 1, 1975; automatic approval up to 100% of capital
(3) Processed tomato products	"	"
(4) Feeds	"	"
(5) Precooked foods for distribution to restaurants and other eating-houses	"	"
(6) Manufacturing and wholesale of clothing	"	"
(7) Pharmaceuticals and agricultural chemicals	"	"
(8) Ferroalloys	"	"
(9) Hydraulic equipment	"	"
(10) Packaging and wrapping machines	"	"
(11) Electronic precision instruments	"	"
(12) Records	"	"
(13) Real estate	specific approval	"
(14) Manufacturing, sale and lease of electronic computers	"	Aug. 4, 1974; automatic approval up to 50% of capital Dec. 1, 1975; automatic approval up to 100% of capital
(15) Data processing	"	Dec. 1, 1974; automatic approval up to 50% of capital April 1, 1976; automatic approval up to 100% of capital
(16) Fruit juices and fruit juice beverages	automatic approval up to 50% of capital	May 1, 1976; automatic approval up to 100% of capital
(17) Photographic film	"	"

Note: The manufacture of processed cheese has been liberalized on condition that at least one-third of the raw material used consists of domestic natural cheese.

* Source: Fuji Bank Bulletin, Sept. 1973

Table 3. Liberalization of Inward Capital Investment*

	Newly established enterprises			Acquisition of stock in existing enterprises (% of issued shares of one company)		
	Number of industries for which specific approval required	Cumulative number of industries for which automatic approval of foreign participation is given		Single foreign investor	Total foreign investment	
		up to 50% of capital	up to 100% of capital		restricted industries (Note 1)	unrestricted industries
Prior to First Program	All industries	—	—	below 5%	below 10%	below 15%
First Program (July 1967)	All others (Note 2)	33	17	below 7%	below 15%	below 20%
Second Program (March 1969)	"	160	44	"	"	"
Third Program (Sept. 1970)	"	447	77	"	"	below 25%
Liberalization of automobile manufacturing and related industries (April 1971)	"	453	77	"	"	"
Fourth Program (August 1971)	7	generally all industries	228	below 10%	"	"
Fifth Program (May 1973)	5 (Note 3)	generally all industries	generally all industries	up to 100% with the consent of the enterprise concerned	"	"

Notes: 1. Restricted industries comprise banks (incl. mutual banks), electric power, gas, waterworks, railroads, tramways, marine transportation, road transportation, air transportation, forwarding, fisheries, mining and broadcasting.

2. I.e., those industries for which automatic approval for foreign participation is not given.

3. Deferred liberalization of 17 categories.

* Source: Fuji Bank Bulletin, Sept. 1973