

# Japan's Policies and Strategies on Bilateral Investment Treaties

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# **I. Japan and BITs (including Investment Chapters of EPAs)**

## **1. Rationales for signing BITs**

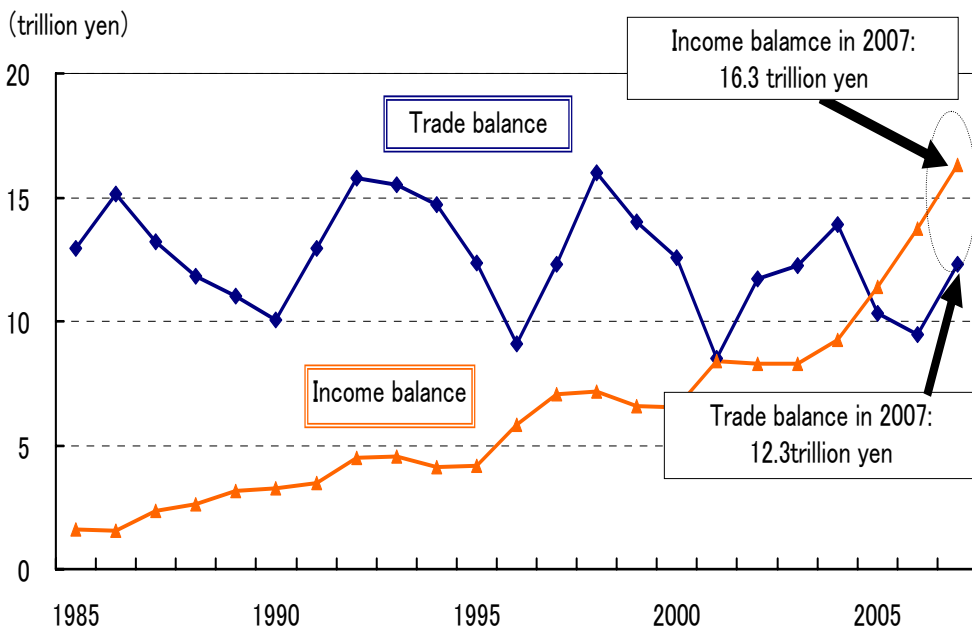
## **2. BITs (and EPAs) concluded by Japan**

## **3. Japan's strategy for BITs**

# 1. Rationales for signing BITs

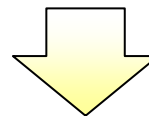
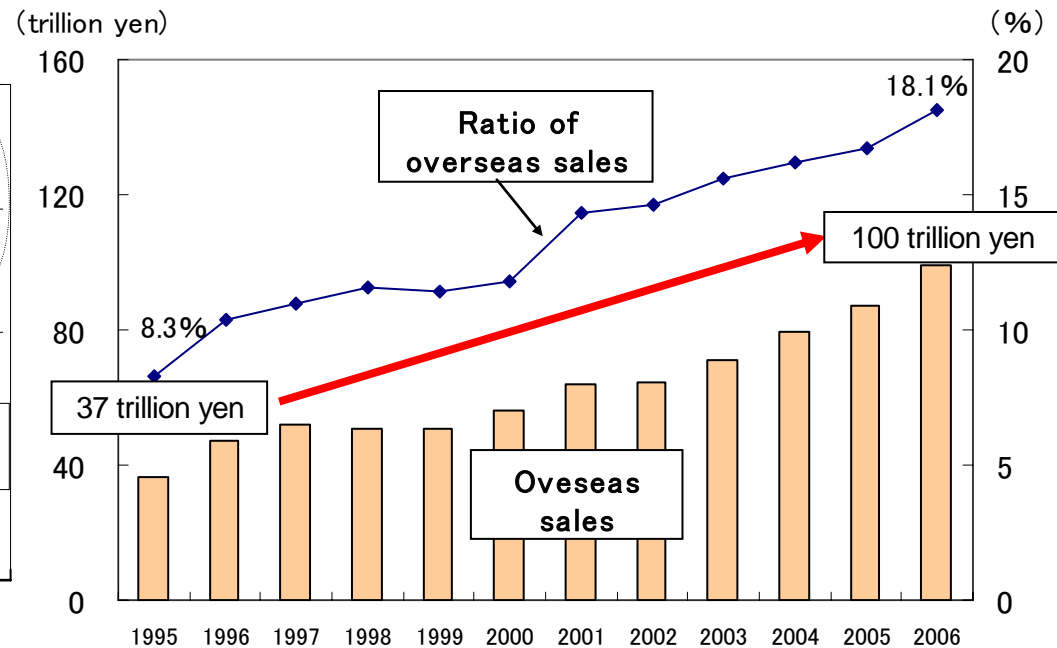
- Net income surplus has exceeded net trade surplus for three consecutive years since 2005.
- Sales by Japanese-owned companies abroad in the manufacturing sector reach approximately 80 trillion yen ( $\approx$  \$80 billion).

Trend of income balance and trade balance of Japan (net)



(source) BOJ/MOF 'Balance of payments'

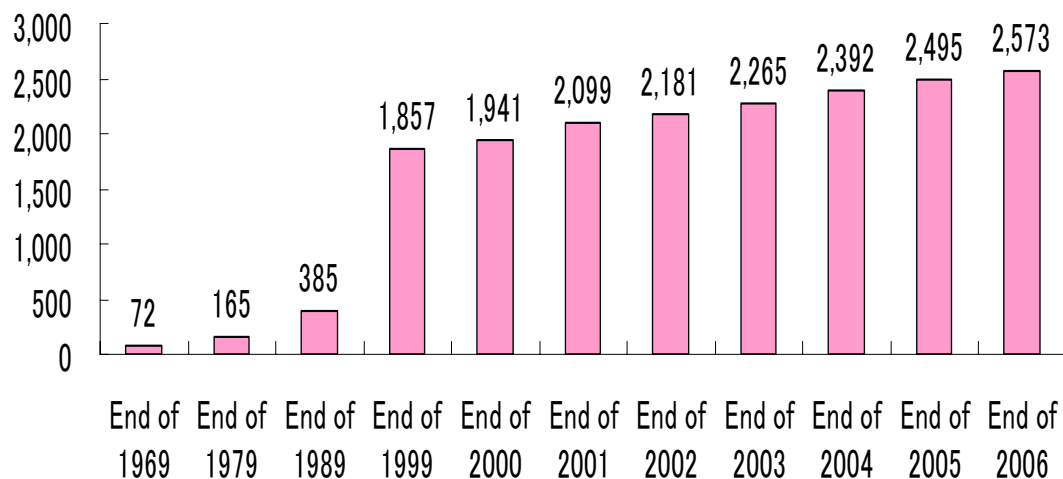
Sales figure of Japanese-owned companies abroad (manufacturing sector)



Japan makes money from investments as well as exports.

- Increase in the number of BITs worldwide:  
**385** (Dec.1989) → **2,573** (Dec.2006)
- Japan has been involved in only **21** investment agreements (13 BITs,8 EPAs)  
 Germany, UK, France and China each have over 100 BITs.

### Trend of the number of BITs in the world



### Ratified BITs of Major countries

(as of June 2007)

	The number of signed BITs
Germany	135
China	119
Switzerland	114
UK	103
Italy, Egypt	100
France	98
USA	46
<b>Japan</b>	<b>21 (including EPAs)</b>

Source : UNCTAD “Recent developments in international investment agreements (2006-Jun.2007)”

UNCTAD “database on BITs”

## 2. BITs (and EPAs) concluded by Japan

### (1) Traditional BITs (protection only)

		date of signature	date of effect
1	Egypt	January 1977	January 1978
2	Sri Lanka	March 1982	August 1982
3	China	August 1988	May 1989
4	Turkey	February 1992	March 1993
5	Hong Kong	May 1997	June 1997
6	Pakistan	March 1998	May 2002
7	Bangladesh	November 1998	August 1999
8	Russia	November 1998	May 2000
9	Mongolia	February 2001	March 2002

### (2) Recent BITs (liberalization and protection)

10	Korea	March 2002	January 2003
11	Vietnam	November 2003	December 2004
12	Cambodia	June 2007	July 2008
13	Laos	January 2008	August 2008

### (3) Investment Chapters in EPAs

		date of signature	date of effect
1	Singapore	January 2002	November 2002
2	Mexico	September 2004	April 2005
3	Malaysia	December 2005	July 2006
4	Philippine	September 2006	undecided
5	Chile	March 2007	September 2007
6	Thailand	April 2007	November 2007
7	Brunei	June 2007	July 2008
8	Indonesia	August 2007	July 2008

- Recent BITs\* and all EPAs (Investment Chapters) encompass both liberalization and protection.

\*Korea, Vietnam, Cambodia and Laos

# 3. Japan's strategy for BITs

## (1) Background - change of international environment

- Diversification of investment destination  
(Eastern Europe, South America, Middle East and Africa)
- Rapid increase of BITs (7 times from 1990s)
- Intense international competition for natural resource and energy



**Need to support and protect of overseas affiliated companies**

## (2) Official position of the Japanese Government

Excerpt from the “Economic and Fiscal Reform 2008 (Basic Policies)”, the official roadmap for economic and fiscal policy:

With regard to BITs, (the GOJ) will proceed swiftly and flexibly with negotiations to meet the actual needs. It will also decide in a strategic manner the priority for entering into new BIT negotiations.

### (3) Criteria for entering into new negotiations

- Countries with a certain level of investment risk (e.g., frequent change of regulations, lack of transparency) that meet the following conditions:
  - 1) Has a substantial existing stock of Japanese investments or a potential for future growth in investments.
  - 2) Is a producer of natural resources such as oil, natural gas and rare metals.
  - 3) Can serve as a gateway for investments for regions such as South America and Africa.
- Countries with which a high quality agreement can be concluded with relatively low effort, because of an extremely positive stance.
- Specific requests from industry are also important material for deciding on new negotiation targets.



#### (4) Ongoing and future negotiations

##### Ongoing negotiations:

(EPAs) Switzerland, India, Australia

(BITs) Saudi Arabia, Uzbekistan, Peru, China-Korea (trilateral)

##### Possibilities for future BITs:

Middle East, Kazakhstan, South Africa, Colombia, Eastern Europe

## **II. Global trends in BITs**

**1. Increase in dispute settlements**

**2. Trend of advanced countries**

**3. Passive stance of some countries**

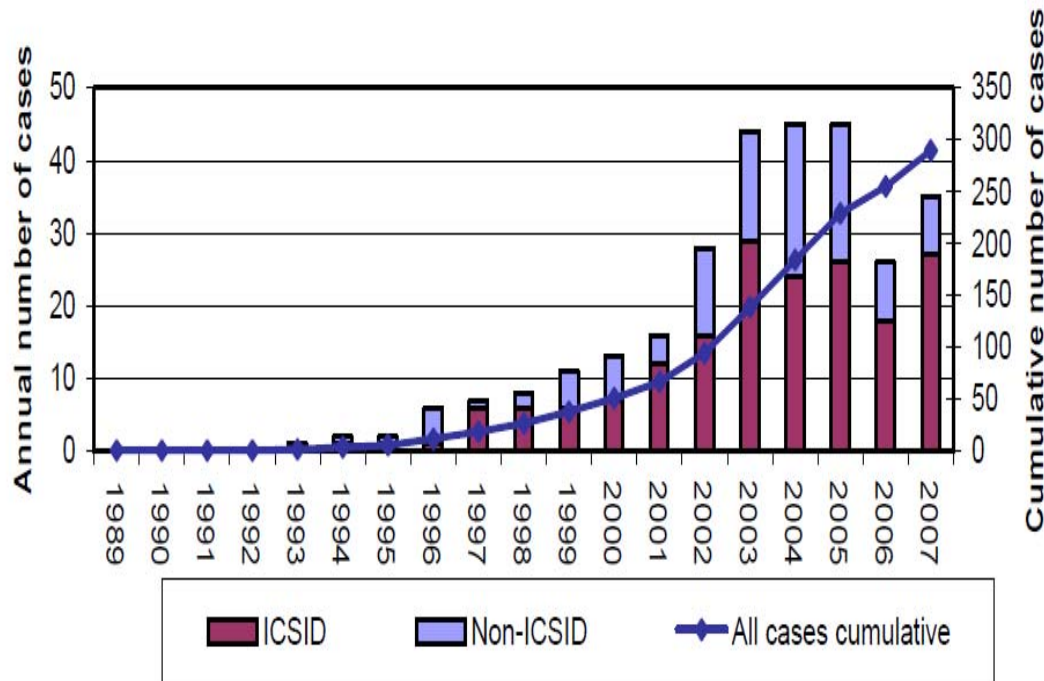
# 1. Increase in dispute settlements

Number of cases submitted to arbitration procedures under international investment agreements: 290 (as of end of 2007)

More than two-thirds of cases has been referred since 2002.

Number of cases involving Japanese companies: only 1

**Referrals to arbitration (1987-2007)**



Source: UNCTAD  
 Latest Developments in Investor-State Dispute Settlement  
 IIA MONITOR No. 1 (2008) UNCTAD/WEB/ITE/IIA/2008/3

**Number of cases by country (up to December 2007)**

Respondent	Number of Cases
Argentina	46
Mexico	18
Czech Republic	14
U.S.A.	12
Canada	12
Ecuador	9
India	9
Poland	9
Egypt	8
Romania	8
Russia	8
Ukraine	7
Venezuela	7

## 2. Trends in developed countries

### (1) United States

- Signed a BIT with Rwanda in February 2008. It is the second BIT involving the US in the 2000s, following Uruguay (2005).
- In 2007, the President's Export Council (PEC) submitted a request to begin negotiations with BRICs countries.
- Prospects for Brazil and Russia are extremely difficult; negotiations with India are expected proceed more smoothly.
- In June 2008, the US agreed with China to start BIT negotiations.

### (2) EU

- Investment protection agreements are the preserve of each member states, while investment liberalization agreement are mandated to the EC.
- If the Lisbon Treaty takes effect, the mandate for investment protection agreements are expected to be moved to the EC.

# 3. Trends in developing countries

Positive stance overall, with a few exceptions:

## (1) Pakistan

Call by Pakistan's Attorney General for "more caution" in concluding investment agreements (ICSID Arbitration Symposium, 2006).

## (2) Bolivia

Notified the withdraw from ICSID to the President of the World Bank on May 1st, 2007.

## (3) Brazil

Signed fourteen BITs from 1994 to 1999; none ratified due to opposition from Congress.

## **III. Japan's unique effort – “Improvement of the Business Environment” Chapter**

**1. Basic concept**

**2. Benefit to investors**

**3. Results in Mexico and Malaysia**

The “Improvement of the Business Environment” Chapter sets up a committee to allow investors and governments to work together to improve the business environment under an EPA framework.

- Invited investors can discuss directly with the other party’s government officials on various issues related to the business environment
- Topics of discussion include the improvement of infrastructure, simplification and facilitation of administrative procedures, improvement of public safety, protection of IPR, as well as investment-related issues.

• **Sub-Committees on Improvement of the Business Environment** are established under following EPAs.

Mexico (into effect in April 2005), Malaysia (July 2006), Chile (September 2007), Thailand (November 2007), Indonesia (July 2008), Brunei (July 2008 (P))

※The EPA with the Philippines was signed in September 2006 but has not taken effect.

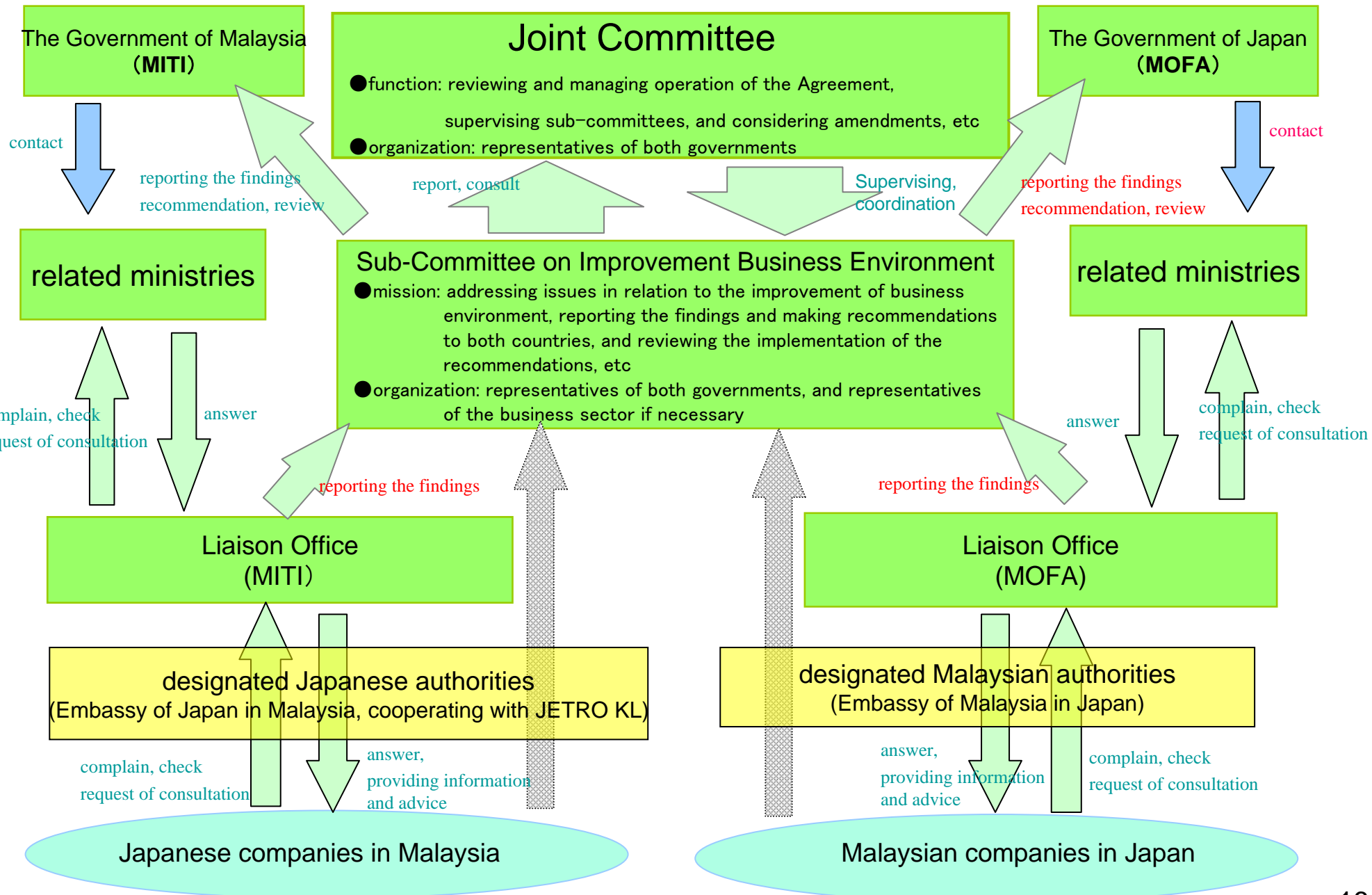
## 2. Benefits for investors

- All actors involved in a certain issue can meet together, not just government officials and claimants.
- Industries can raise an issue collectively, when individual companies may not be inclined to raise the issue on its own.
- Governments are required (as set forth in the EPAs) to take appropriate actions on request raised in the committee.
- Issues can be raised even if the government agency in charge is unclear, or if there are more than two agencies are involved.



# ex. Japan-Malaysia EPA

※Provisions and scheme may vary with EAPs.



# III. 2. Results of business environment improvement in Mexico and Malaysia

## Japan-Mexico EPA

The Sub-Committee held in April 2005, May 2006, and May 2007

### Main Participant

GOJ (MOFA, METI, Embassy of Japan in Mexico), JETRO Mexico Center, Nippon Keidanren (Japan-Mexico Economic Committee), Chamber of Commerce in Mexico, Japan Maquiladora Association, Government of Mexico (Ministry of Economy), etc

### Requests from Japan side

- **Improvement of public safety**
  - Damages decreased by opening a hotline connecting with the related ministry.
- **Anti-counterfeit. Standards and Conformity**
  - Opening a hotline connecting with IMPI
- **Improvement of tourism**
  - Introducing custom declaration card for travelers in Japanese
- **Improvement of customs and taxation procedure**
  - Opening a hotline connecting with the central custom, amending customs procedure
- **Infrastructure improvement**

### Requests from Mexico side

- **Improvement of import procedure of agricultural products**
- **Support for SME**
- **Entering service of nonstop flight\***

## Japan-Malaysia EPA

The Sub-Committee held in March and October 2007

### Main Participant

GOJ (MOFA, METI, Embassy of Japan in Malaysia), JETRO KL Center, The Japanese Chamber of Trade and Industry, Malaysia, JAMECA, Government of Malaysia (MITI), etc

### Requests from Japan side

- **Improvement of quality of electricity**
  - Budgeting for infrastructure improvement
- **Improvement of shortage of gas supply**
  - Starting consideration in the government
- **Improvement of public safety (truck hijack prevention)**
  - Strengthening patrol and setting monitoring camera, etc
- **Anti-counterfeit**

### Requests from Malaysia side

- **Information provision relating industrial standards**
- **Implementation of EPA**

\* Aero México started service between Narita and Mexico City in November 2006.

- Japan has made profits by investment in recent years. The GOJ promotes BIT negotiations strategically to protect and facilitate investment in overseas.
- On the other hand, response to BITs in the world shows a tendency of the polarization of positive and negative.
- Japan has accelerated the improvement of business environment in parallel with the promotion of BIT negotiations.
- It is essential to establish a win-win relationship with partner countries by best mix of policies to maintain the sustainability of the scheme of investment protection.