NEXI
Nippon Export and Investment Insurance

＊Unofficial Translation

Overseas Investment Insurance and Investment Treaties

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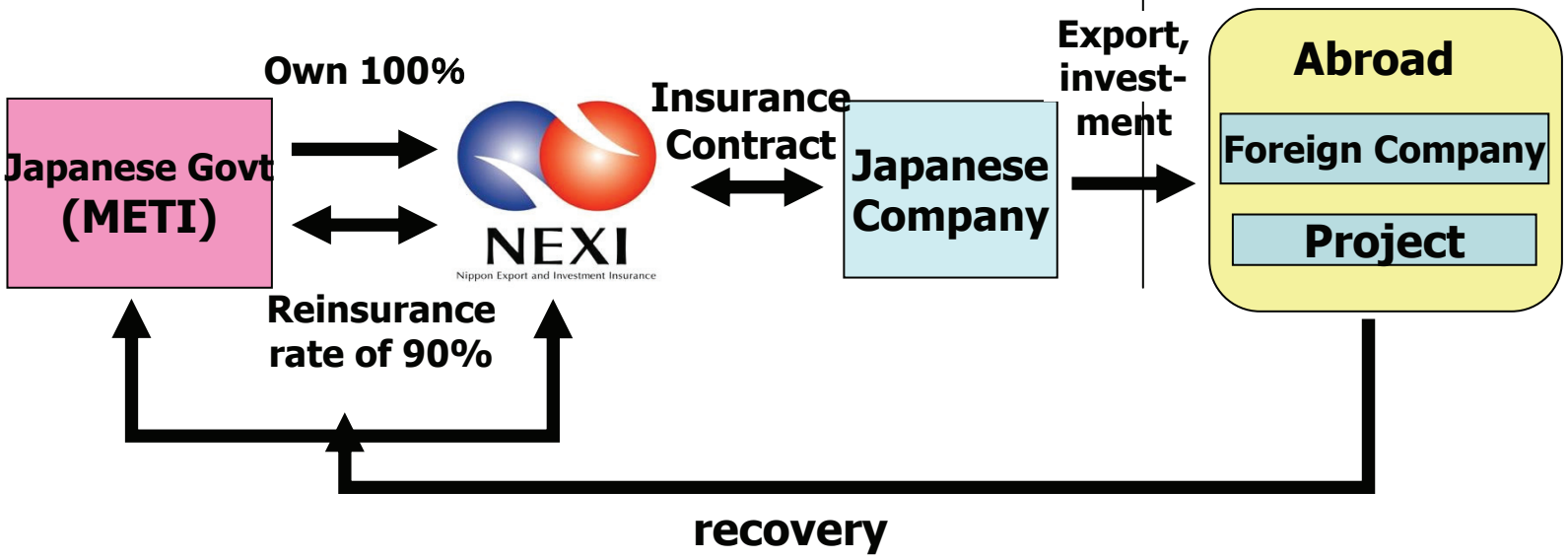
1.Scheme of NEXI's Trade and Investment Insurance

◎Trade and investment insurance system is intended to mitigate unavoidable risks that are inherent in overseas trading and investment transactions and that cannot be covered by ordinary marine insurance.

◎The Japanese trade and investment system was established in 1950 by the government and it has supported the expanding overseas trading activity of Japanese companies. In order to provide more professional and efficient administrative services, the state-managed service was taken over by NEXI, an incorporated administrative agency, in 2001.



2. Coverage of Investment Insurance

① Expropriation of shares, dividends, etc.,

OR

② Infringement of right

③ war

④ force majeure

} causes ↓

(a) inability to continue business

(b) bankruptcy

(c) suspension of business transactions with banks

(a) halt of the business for **more than 3 months**

OR

⑤inability to remit proceeds due to suspension of remittance for more than 2 months

3. Protection of Investment Interests by Investment Insurance: Case 1

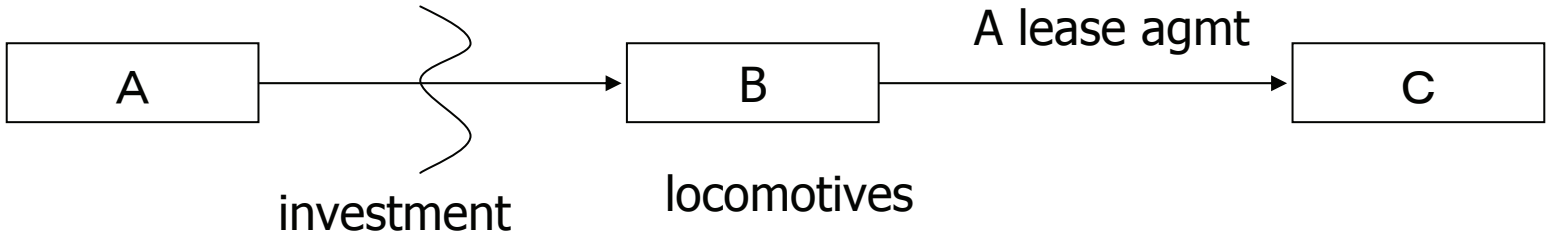
(Case 1)

① A Japanese trading company A established a company B in a country X in order to conclude a lease agreement of locomotives.

② B leased its locomotives to a private railroad company C in X and received lease payments.

③ A few years later, the X government stopped subsidizing C and C got behind in its payments. C filed for bankruptcy. B cancelled the lease agreement with C and wanted to take its locomotives back.

④ But X did not allowed B to do so by emphasizing a public purpose.



3. Case 1:Continued

(What NEXI did)

① NEXI recognized the circumstances as 6 months business halt and paid the insurance claim

② NEXI initiated the negotiation with a view to settle this case diplomatically. It negotiated directly with the X government in cooperation with the Japanese embassy in X. The X government finally agreed to buy the locomotives. – The purchase agreement was signed in front of the president of X.

3. Protection of Investment Interests by Investment Insurance: Case 2

(Case 2)

①A Japanese trading company B invested in the mining business in a country Y located in Latin America.

②The president of Y announced a policy of nationalizing the hydrocarbon industry and suggested a mining tax hike.

3. Case 2: Continued

(What NEXI did)

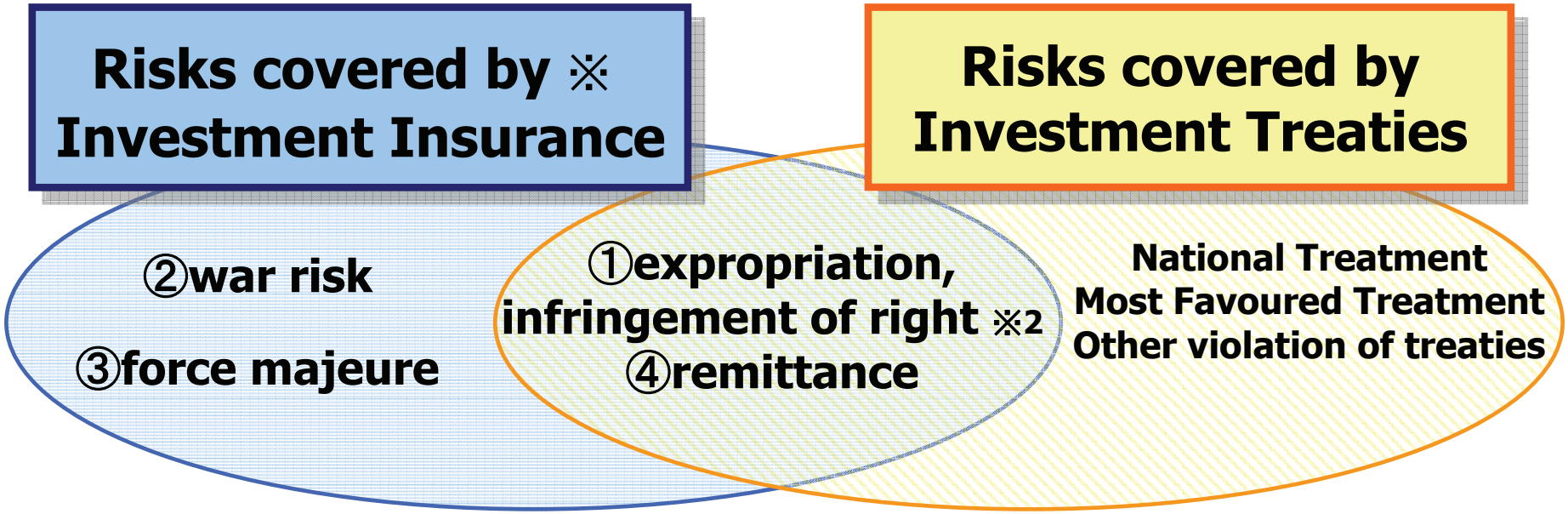
NEXI met the President and the mining minister of Y during their visit to Japan.

NEXI emphasized the possible negative impact of the proposed mining tax revision on the projects invested by the Japanese companies. NEXI requested special consideration of the President in order to avoid the devastating effect on the Japanese investment.

4. Japan's Investment Insurance and Investment Treaties

Investment Insurance	Investment Treaties
■Applicable countries：181 (as of July 2008) ■Applicable to a re-investment in a third country	■Countries which are signatories of EPA/BIT with Japan: 21 (as of July 2008) ○BIT signatories (13) （1）Egypt（2）Sri Lanka（3）China（4）Turkey、（5）Hong Kong、（6）Pakistan（7）Bangladesh（8）Russia（9）Mongol（10）South Korea（11）Viet Nam（12）Cambodia（※）（13）Laos（※） ○EPA signatories（8） （1）Singapore、（2）Mexico（3）Malaysia（4）Philippines（※）、（5）Chile、（6）Thailand（※）、（7）Brunei、（8）Indonesia （※）Singed but not yet entered into force ■ In re-investing in a third country other than the above, the country needs to have a BIT with the investment destination country.

5. Comparison of Investment Insurance and Investment Treaties



※ Inability to continue business is a prerequisite for investment insurance claim

※2 NEXI decides if the insurance claim is valid. In the case of an infringement of rights claim, it has to meet the requirement that the foreign government acts are discriminatory or violation of international agreements or domestic law. On a request of the insured, the risk of the breach of contract with the government can be covered.

6. Investment Insurance and Investment Treaties are complimentary (1)

Legal protection vs. Actual protection

- ○Investment treaties provide legal preventive measures against infringement of rights acquired by investment
- ○Investment treaties can prevent the insured events

6. Investment Insurance and Investment Treaties are complimentary. (2)

The frequent use of investment treaty arbitration will lead to the objective judgment in recognizing the insured events. It will promote the use of investment insurance.

- **NEXI decides if the alleged insured event claims are valid.**
  If an arbitral tribunal recognizes the violation of the investment treaty by the host countries, the decisions could support the investors' insurance claim and help NEXI's decision.
- **The accumulated experiences of arbitration decisions and negotiations with the host countries will lead NEXI's more objective judgment in recognizing the insured events.**
- **The investment insurance will become more useful for investors.**
  Arbitration decisions will facilitate NEXI's more objective and unbiased decision.

6. Investment Insurance and Investment Treaties are complimentary. (3)

Investment Treaties facilitates insurance claims recovery.

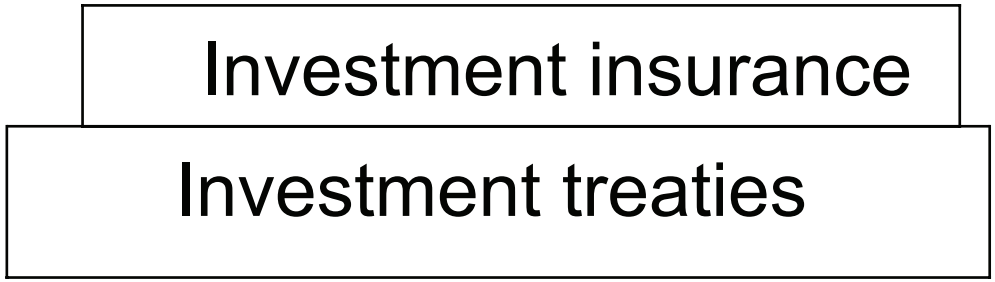
Investment treaties stipulate that the government of the other party shall recognize the subrogation rights of the Japanese government (METI/NEXI) in the event that the government (METI/NEXI) performs its obligation (as guarantor or insurer). Japanese government can also file an arbitration claim, which will help promote recovery of claims.

7. Investment Insurance and Investment Treaty in Germany and France

- In principle, Germany and Italy provide investment insurance only to investments in countries having an investment protection treaty with them.
- They do not provide any further investment insurance if the countries violate an investment treaty.

8. Investment Treaty and Investment Insurance for investors

- Figuratively, investment treaties are the first tier of security and investment insurance is the second tier.
- In the case of Japan, the first tier is too small to hold the second tier.
- It is a matter of choice of investors whether or not to obtain further assurance by investment insurance at the cost of insurance premium.



9. Number of BITs signed by selected countries [UNCTAD, As of June 2007]

Country	The number of BITs
Germany	135
China	119
Switzerland	114
UK	103
Egypt	100
Italy	100
France	98
Netherland	91
Republic of Korea	86
Belgium	84
USA	46
Canada	25
Japan	12

10. Other areas where the improvement of investment environment has been expected

- Double Taxation Treaties

  Concluded 56 countries(※)

  Under negotiation (including the revision negotiations) 5 countries

(※)only a few of them provide a withholding exemption for investment income.

- Social Security Treaties

  Concluded 10 countries

  Under negotiation/preparatory negotiation 7 countries