The Recommendation of the Seoul Japan Club for the Improvement of Business Environment

December 2011

Seoul Japan Club

Contents

Total: 35 Items (10 New Items, 25 Continued Items)

Preface

Since 1998, the Seoul Japan Club (SJC) has brought up areas that need improvement while doing business in Korea and also made recommendations for improvement to the Korean government. As the Chairman of SJC, I would like to thank the Korean government for responding to our recommendations in earnest and various measures taken until now. We are submitting the 14th recommendation and ask for a prompt answer and improvements made after reviewing it.

When Japan suffered extensive damage to the East Japan Earthquake that hit Japan on March 11, 2011, we are sincerely thankful for how Korea was one of the first to extend help to Japan. The earthquake also affected the Korean industry because the supply of stem materials and parts from Japan has stopped. However, Japan quickly restored and double tracked the supply chains. As a result of the earthquake, it became clearer that the industrial structure of both countries is in a complementary relation.

In the background of the Korean Wave in Japan, today's Japan-Korea relation is very positive, which is shown through the expansion of trade volume between both countries, the increase of direct investments to Korea by Japanese companies, and the increase of tourists.

The companies of both countries compete with one another in some areas, but in most part the two sides have established a partnership where companies can complement each other to conduct various activities. Therefore, a 'single economic region' for coexistence and co-prosperity will be established in the future. Moreover, I strongly believe that both countries should play a leading role for the economic development of East Asia.

SJC will also think that Japan-Korea FTA will accelerate and advance the industry and technical cooperation of both countries to vitalize both economies, as well as act as an effective means that greatly contribute to the global economy and give a great meaning to the overall Japan-Korea relation in the future. However, since the negotiation has not resumed yet, considering that it can obstruct the future development of both countries, we hope that the Japan-Korea FTA restarts the talk as soon as possible to be signed. At the beginning of this month, we have already requested for the resumption and signing of the FTA talks between the two countries to the Korean government.

SJC ask for the improvement of the Korean business environment. We will inform the improvements made to our member companies as well as other Japanese companies and continue to make recommendations to expand the economic relations of both countries. At the latest recommendation, we made recommendations in a total of 35 areas, including labor & labor relations, finance, intellectual property, individual agenda, living life. Among them, ten are new items and twenty five are continued items.

SJC will consider the global standards and Japan's current status at various committees of experts to analyze the current status of Korea, thereby drawing up recommendations indicating the problems. If there are contents in the recommendation that have already been modified, but we did not identify this from our investigation on Korea's improvements made on laws and systems, we sincerely ask for your understanding.

The four items for labor and labor relation are all continued items. Even though Japanese companies have a lot of interest on this area, considering the labor unions in Korea, it is difficult to make resolutions, which why they mostly concern hard core areas. However, we hope the Korean government will review the related items by taking into consideration of the fact that the investment environment of Korea cannot be improved without progress made on labor issues

There are two new items and one continued item for finance.

The largest numbers of items are in the field of intellectual property. We made several new recommendations, including ‘the Corrective Order on Infringement of Copyright, etc. in Korea and the Simplification of Application Procedure for Foreign Holder of Right’, ‘the Protection Scope of Logo and Icon for Design Protection Act’, and ‘the Provision of Judicial Precedents for Intellectual Property Cases’. We think highly of the Korean government’s response in these areas and there are many items that we look forward to being resolved through law revision in the future. Since it will be a great help in stabilizing corporate activities by protecting their intellectual property rights, we request for a continuous revision and improvement of the system.

In terms of individual items, the recommendations include ‘the Early Notification of Fair Trade Commission’s Investigation and Approval for Postponement’ and ‘the Improvement of Drug Pricing Post-Management System’. Even though, they are individual items, we ask for the Korean government’s revision because they have a ripple effect on many companies and people’s life.

Lastly, we request for the improvement of traffic problems in the field of living.

SJC also hope for increased investment made to Korea by Japanese companies, and in order to achieve this, we sincerely ask for positive response from the Korean government regarding the recommendations made.

December 2011

Seoul Japan Club

Chairman, Awaya Tsutomu

Labor / Labor Relation (4 Continued Items)

1) Abolition of the Obligation to Receive Approval When Making Disadvantageous Changes of the Rules of Employment 【Continued / Content Change】

In Korea, it is regulated by the Labor Standards Act that, in case where a company has changed its rules of employment to be unfavorable to its workers, the company should get the approval of the labor union to get the change into effect. However, if the approval is required, it is disadvantageous for the company at labor-management negotiations. Therefore, in order for the company to respond to the changes of business environment, we ask for the abolition of the 'obligation to receive approval when making disadvantageous changes' stated in Paragraph 1 of Article 94 under the Labor Standards Act.

2) Prohibition of Compensations for Paid Vacation 【Continued / Content Change】

Since the August 2003 amendment to the Labor Standards Act, the obligation to compensate for unused paid vacations has been exempted, while a system has been established to facilitate the use of paid annual leave. Therefore, the employer's obligation to provide financial compensation has been exempted under certain conditions. However, in the case where the financial compensation for vacations is stated in collective agreements and employment rules, it is difficult to amend it or implement a system to facilitate the use of vacations. As a result, it doesn't result in the actual use of paid vacations and an improvement in the balance between life and work (work-life balance).

Therefore, it is necessary to facilitate the use of vacations by widely promoting the importance of work-life balance to the public, as well as 'amending the law to ensure the financial compensations on vacations can be exempted without having to change collective agreements or employment rules' and 'making it clear that the abolition of financial compensations on paid vacations does not apply to the change of disadvantages'.

3) Extension of the Restriction on Employment Period of Non-Regular Workers 【Continued / Content Change】

The ratio of non-regular workers in Korea has shown an increasing trend even after the enactment of the 'Non-Regular Worker Protection Act' in 2009. It restricts the employment period of non-regular workers to two years, which is a short period for employers to determine whether or not the employee is appropriate for regular positions. From the employee's point of view, it is too short to show improvement in business knowledge or job function. The survey result of the current business condition has revealed that non-regular workers who worked for a longer period had a higher ratio of becoming a regular worker. Therefore, in order to promote the hiring of more workers in regular positions, we request for the extension of the employment period of non-regular workers and the legalization of outsourcing businesses for permanent workers.

4) Flexible Management of the Obligation to Hire a Person of National Merit 【Continued / Content Change】

In response to the past recommendation regarding the obligation to hire a person of national merit,

the Korean government has answered that 'provide a talented worker with the language ability needed by a foreign investment company' and 'recommend five times the number of people that will be hired to ensure the selection of talented workers'. However, there is still a mismatching between the kind of workers wanted by a company and the kind of people who are recommended to the company. In many cases, companies have to take on the burden of making extra efforts to improve the skills of the workers after hiring them.

Therefore, in order to resolve the mismatching, it is necessary to ensure active activities of foreign investment companies to allow them to hold training programs that meets their requirement of talented workers by investigating the kind of workers wanted by foreign investment companies.

Also, in the case of foreign investment companies, it is necessary for them to hire many employees compared to local Korean companies even if they both have the same business size because they need to hire bilingual workers. In particular, it is a huge burden for small-sized companies, such as th ose with only twenty employees, to hire a person of national merit, which is why we ask for the number of persons hired for this case to be eased.

Finance (2 New Items, 1 Continued Item)

5) Inclusion in Deductible Expenses for Interest Expenses on Domestic Borrowings through the Guarantee of Payment of Foreign Controlling Shareholders 【Continued】

In the case where money has been borrowed from a local financial institution after obtaining the guarantee of payment, the actual cash flow ends in Korea. It goes against the idea of fairness because it is exactly the same as the money raised domestically by a local company in the same field of industry with domestic capital. Therefore, even if a foreign controlling shareholder is required to provide the guarantee of payment, in the case where the amount of money borrowed from a local financial institution exceeds three times (six times for financial industry) that of the contributed shares of the same shareholder, we request for interest expenses and discount charges on the exceeded amount to be included in deductible expenses.

6) Simplification of the 'Financial Investment Services and Capital Markets Act' and the 'Reporting on Work Consignment' 【New】

In order to simplify the reporting duties of the 'Regulation on Work Consignment of Financial Institution' and the 'Financial Investment Services and Capital Markets Act' regarding the work consignment of financial institutions, we request for the following changes in the 'Financial Investment Services and Capital Markets Act':

i) Establishment of additional and new articles on ex post facto report: include additional and new articles on ex post facto report regarding work consignment to make the reporting procedure more efficient

ii) Unification of government agencies to be reported: unify the government agencies to be reported from the current two agencies to one agency

7) Easing of the Regulation on Foreign Exchange Funding, including the Foreign Exchange Stabilization Fund, etc. 【New】

Most of the foreign currency loans from the branches of foreign banks have been borrowed from the overseas main branch, which are very stable funds. Since the implementation of the Foreign Exchange Stabilization Fund on August 1, 2011, the borrowings from the main branch have also been included under the fund. This can give a huge burden to the branches of foreign branches because of the huge increase in the expenses needed for raising funds, as well as increase the overall burden of the Korean economy or industry because the interest rate of loans for general companies and local financial institutions can be increased.

In order to improve this, we request for the following to be considered: i) the reduction of the high rate of burden to be half of the current rate; ii) the measures to mitigate the burden on borrowings from the main branch that have a strong stable fund; and iii) the revision of flexible financial policies to establish an environment where the branches of foreign banks can provide stable financial services.

Intellectual Property (5 New Items, 17 Continued Items)

8) Simplification of Proving Infringements 【Partially Continued】

In order to prove infringements or damages in an intellectual property infringement lawsuit, there are many cases where it is necessary to obtain documents or information of the opposite party. However, since the regulation on the order to produce documents or information to the court is not properly established, there are cases where required documents or information are not being submitted.

Therefore, it is necessary to establish a system that orders the documents and information required to prove infringements or damages are submitted by the applicable party. Also, since the documents and information are mostly trade secrets, we request for a system that ensures that information leakage does not occur on the documents and information being submitted.

9) Expansion of the Regulation on Indirect Infringements 【Continued】

The act of supplying parts, materials, etc. that are used in the production or implementation of patented inventions to an infringer can be regarded as an infringement of rights as an indirect infringement. However, the current Patent Act only regards it as an indirect infringement when a party has supplied exclusive parts of patented inventions (articles that are ‘only’ used in the production or implementation of inventions). Therefore, it is necessary to rigidly judge whether or not the parts, etc. are exclusive parts of patented inventions. For example, even if someone maliciously supplied parts while being aware that they are being used in an infringed product, it is not regarded as an act of indirect infringement unless the parts, etc. are recognized as exclusive parts. This prevents the appropriate protection of patent rights.

In this regard, in order to strengthen the protection of rights, we request for the regulation to be revised so that the act of supplying parts, etc. while knowing the inventor and aware of its infringement to be considered as an indirect infringement.

10) Determination of the Validity and Invalidity of Patent Rights, etc. patent infringement lawsuits 【Continued】

In the case where there is a patent infringement lawsuit, in order for the defendant to fight for the validity or invalidity of patent rights, etc., it is necessary to file for patent invalidation at the Korean Intellectual Property Tribunal separately. This makes it difficult to efficiently carry out the procedures for infringement lawsuits.

Therefore, we request for the invalidation plea in a patent infringement lawsuit to be recognized and, in cases where the patent has been found to be invalid, there should be a system that promote dispute settlement in early stage and once at a single location based on court decision.

11) Abolition of Restrictions on the Eligibility of Persons Filing for an Invalidation Trial 【Continued】

Under the current system, the period where a person can file for an invalidation trial is until three months after the notice of registration has been made, but three months after the notice of registration, no one can file for an invalidation trial other than the stakeholders or examiners. However, since patent rights have a strong right as exclusive right, it is inappropriate from public service perspectives to maintain rights without newness or inventive step.

Therefore, in the case where patent rights have to be nullified from public service perspectives because of lack of newness and inventive step, we request for a system that allow anyone to file for an invalidation trial.

12) Expansion of the Scope of Amendments Based on PCT Applications 【Continued】

In the case where applications for international patents in accordance with the Patent Cooperation Treaty (PCT) enters the Korean market, amendments are only acknowledged if they are based on the translated text submitted during the entry to domestic procedure, while amendments that are based on the original text of international patents are not acknowledged. As a result, for example, if there is an error in the translated text, a problem in the acquisition of rights can occur because a proper amen dment cannot be made under the current system.

Therefore, in the case of applications for international patents under the PCT to enter the domestic pr ocedure, we request for the expansion of the scope of amendments to acknowledge procedural amendments based on the original text of applications for international patents.

13) Adoption of Patent Applications in Foreign Language 【Continued】

When applying for patents at the Korean Intellectual Property Office, it is required to apply them in Korean under the current system. However, considering the globalization of corporate activities and patent systems, it has become inevitable to apply for the same patent in various countries. In this regard, the current system has many problems, such as the need to translate into Korean in a short period and the restriction on procedural amendments when there is an error in the translated text.

Therefore, we request for the adoption of patent applications in foreign languages to permit patent applications in foreign languages.

14. Extension of the Response Period on the Notice of Reasons for Refusal Regarding Patent Applications & the Period for an Appeal against examiner's decision of refusal【Continued】

In the case of most countries, the response period, such as submitting a written opinion on the notice of reasons for refusal, takes about three to four months, but in the case of Korea, it is necessary to pay fees to extend the period because you are only given two months.

Therefore, we request for this period to be extended to three to four months like other countries. Also, the period of applying for an appeal against examiner's decision of refusal should be extended to be longer than the current thirty days.

15) Easing of the Timing Conditions for Divisional Patent Applications 【Continued】

After applying for patents, a number of companies may demand to acquire more effective rights by dividing applications according to changes in business strategies. However, the current system does not satisfy these demands because the opportunity for divisional applications is no longer recognized after patented.

Therefore, even if it has been patented, we request for the easing of timing conditions for divisional applications to allow patents to be divided up for a certain period.

16) Approval of Multiple Dependent Claims for Patent Applications 【New】

According to the current system, the patent claims cannot be written in the form of multiple dependent claims where there is more than one other claim. As a result, it is difficult to acquire multi-faceted patent rights.

Therefore, we request for the approval of multiple dependent claims as patent claims, which are allowed in the Japan Patent Office and the European Patent Office.

17) Protection of the Computer Program Itself According to the Patent Act 【Continued】

Under the current system, computer programs are subject to protection only if they are stored on recorded media (for example, DVD or CD-ROM). However, computer programs are activated once they are installed in the computer. Therefore, the program installed itself is not subject to direct protection since it isn't stored as recorded media. Due to the internet penetration, there are cases where programs are distributed through the network, which are also not subject to direction protection.

Therefore, we request for the computer program itself to be clearly defined as being subject to patent protection.

18) Improvement of Conditions for Registering Designs 【Continued】

In the case of Korea, even though it is the same applicant, if you apply for designs on part of a product after first applying for the design of the whole product, you may not be able to register the design application on part of the product because of the design application you already have on the whole product. Meanwhile, recently there were many infringements in the market because only the part of successful product design with high originality has been copied. Therefore, it is necessary to protect the rights of parts of a product.

In this regard, in the case where the same applicant has applied for parts of the design after prior applications, we request for the improvement of systems to allow registrations to be made instead of making refusing them.

19) Expansion on the Protection of Screen Designs in the Case where the Product and the Receiver is Separated 【Continued】

The Korean system asks for the uniformity of the product and screen design when applying for screen designs. As a result, for example, in the case of products like DVD players, in order to get protection on the controlling display screen to show the contents for operating the DVD on the TV screen, the application for the screen design can only be made as one body of television by stating 'TV with screen design'.

Therefore, for example, in the case where the product (DVD) and the receiver (TV) are separated from one another like DVD player and TV, we request for the improvement of the system so that design rights on the screen design can be obtained on parts of the product (such as the controlling display screen as parts of DVD).

20) Scope of Protection on Logos and Icons According to the Design Protection Act 【New】

Since Korea has joined the Locarno Treaty, it is being revised whether or not to introduce the classification of logos and icons those are irrelevant to the product. However, if the rights on the logo and icon itself are recognized regardless of the product, it will impede the creating of designs by a third party by expanding the scope of rights to be more than necessary.

Therefore, in the case of introducing such classification, we request for certain restrictions that will specify the scope of products when an applicant applies for logos and icons.

21) Reconsideration of Non-Examined Products According to the Enforcement Rules of Design Protection Act 【New】

In accordance with the Enforcement Rules of Design Protection Act that has been implemented beforehand, products that are highly popular with a short life cycle can be registered without substanti al examination. However, among the newly added products, many of them included are not highly popular, such as printers.

Therefore, if products like printers don't receive substantial examination, it can have harmful consequences, which is why we request for the classification of non-examined products to be thoroughly examined once more to be reconsidered.

22. Improvement of the Timing of Making Decisions on the Regulation of Prior and Subsequent Applications for Trademark 【Continued】

In most countries, including Japan and Korea, in the case where a person first applied for trademarks and received the registered trademark "A", it is not possible to apply for the registration of the same or similar trademark "B". However, in the case of Korea, unlike other countries, the decision on whether or not trademark "A" and trademark "B" are the same or similar is determined based on the filling timing of application of trademark "B". Therefore, even if the registered trademark "A" has gone extinct during the examination of trademark "B", in the case where it existed during the application of trademark "B", there are cases where trademark "B" is turned down because of registered trademark "A", which no longer exist anymore.

Therefore, in the case of other major countries, when determining whether or not the registered trademark that has been first applied by a person is the same or similar as the trademark applied afterwards, we request for the trademark that has been applied later to be made decision

after waiting for the development of the prior application.

23) Improvement of Writing Down Detailed Products of Trademark to Allow Comprehensive Reporting 【Continued】

From the perspective of fully protecting the rights, it is important to get comprehensive protection on the main products and its components, such as printer and printer cartridge, by attaching trademarks on them. However, when writing down detailed products for trademark application under the current system, the main products and its components cannot be written as one, which is why all of the products that fall under components have to be written.

Therefore, when writing down the detailed products for trademark applications, we request for the main products and its components to be written as a whole is allowed.

24) Improvement of Search Systems for Designs and Trademarks Provided by the Website of Korean Intellectual Property Office (KIPRIS) 【Continued/Partial Change】

There are English translation of publication of some designs and trademarks on the website of Korean Intellectual Property Office (KIPRIS), which can be searched in English. However, the English translation is not provided for publication of all designs and trademarks, making it difficult to search them in English.

Therefore, we request for further convenience by providing English translation on publication of all designs and trademarks.

25) Provision of Judicial Precedents on Intellectual Property 【New】

Currently, major court rulings are disclosed to the public on the homepage of Supreme Court of Korea, but they are only limited to some rulings without any information about rulings on intellectual property. In order to actively promote the use of intellectual property, it is necessary to identify the trends of court rulings, but it is impossible to efficiently conduct investigations in the current situation.

Therefore, we request for the disclosure of texts of judicial precedents on all court decisions on intellectual property, as well as the establishment and disclosure of database to allow users to search for information, including the classification of acts or conclusions and other documents.

26) Simplification of Applications for Corrective Orders and Related Procedures on the Infringement of Copyrights in Korea by Foreign Rights Holder (Organization) 【New】

As part of the measures to eradicate pirated goods on internet sales, Korea has a very advanced system that allows foreign rights holder (organization) to apply for the procedures of corrective orders on infringement, including copyrights. However, since the application has to be done in Korean, it is difficult to properly utilize the system as foreign rights holder (organization).

Therefore, we request for further improvements to allow applications in English or Japanese through the internet.

27) Problems with TV programs for Korean Viewers and Movie License Business 【Continued】

There are still regulations on Japanese contents in Korea, such as excluding Japanese television programs on terrestrial TV broadcasting. Many illegal uploading of Japanese contents with subtitles are also taking place through the internet, while many Korean programs are copying the formats of Japanese programs, which call for more attention to be paid to the intellectual property rights of various works.

Therefore, we request for the following: the ease of outdated regulations on Japanese contents as quickly as possible and crack down on pirated goods; the guidance on copied program formats, the instructions to comply with legislations on other works; and the implementation of promotional activities to raise public awareness about intellectual property.

28) Strengthening of Border Measures 【Continued】

Currently, the border measures of customs are, in principle, only applied to trademarks and copyrights. However, since recently counterfeit goods have become more diversified, there are concerns that counterfeit goods that infringe on other intellectual property rights, including patents, will come into Korea.

Therefore, we request for other intellectual property rights, including patents, to be included in customs protection.

29. Strengthening of Import/Export and Clearance Regulations of Products Infringing on Intellectual Property Rights & Expansion of Training to Distinguish Counterfeit Goods for Employees Concerned 【Continued/Partial Change】

Many countries, including Korea, have signed the Anti-Counterfeiting Trade Agreement (ACTA) and are working towards the enforcement of the treaty as early as possible. In order to respond to the complicated distribution channels of counterfeit goods, it has become important to crack down not only imports and exports, but also during the clearance of transshipment cargoes. As it has been advocated in ACTA, it is also necessary to develop intellectual property experts at enforcement agencies and improve their capabilities.

Therefore, until now, the cracking down on counterfeit goods was done during the import as border measures, but it should also be conducted during the export and clearance. Also, from now on, all companies should be aware of the problems with counterfeit goods by further expanding opportunities, such as holding training to distinguish counterfeit goods for customs employees.

Individual Requests (3 New Items, 2 Continued Items)

30) Necessity of Comprehensive and Proper Judgment When Conducting Surveys on Market Prices and Internet Prices Regarding Supply Prices of Multiple Supplier Contracts 【New】

In the case where a government agency has to supply necessary materials that are commonly needed, it is done by signing a contract between the Public Procurement Service and multiple suppliers. If a market survey is conducted and there is a lower price than the contract price, the Public Procurement Service can ask for the contract price to be reduced.

However, the prices that the Public Procurement Service uses for comparison (especially, the prices o n the internet) do not necessarily reflect the normal market price and commercial condition. Therefore, in the case where there is a request for reduction of contract price, regarding the survey on market p rices, we request for a comprehensive examination regarding internet market prices, including the reli ability, continuity and frequency of quantity.

31) Prior Notification and Approval of Postponement Regarding Investigations Conducted by Fair Trade Commission 【New】

In the case where an investigation is done on suspicion of violating the Fair Trade Act, there are many cases where on-site investigations are conducted without any prior notice. Also, even if it is difficult to respond to investigations due to the company's circumstances, it is almost impossible to postpone the investigation because the reasons of postponement are restricted. On the other hand, from the perspective of a company that has no past experience of receiving investigation from the Fair Trade Commission, it requires a considerable number of time and effort to respond to investigations. In the case of investigations by other government agencies (for example, National Tax Service, Korea Customs Service, Ministry of Employment and Labor, Ministry of Environment), companies have sufficient time to respond because lots of times prior notifications are made. Therefore, in the case of

investigations by the Fair Trade Commission, we request for prior notifications to be made before conducting on-site investigations like other government agencies. Also, in the case where a request for postponement has been made due to urgent matters at the company, we request for an amendment of related acts to allow, in principle, related dispositions and investigations to be postponed, unless there are special reasons not to allow them, such as destruction of evidence or possibility of running away.

32) Unification of the Agency in Charge of Managing the Wastes of Electric and Electronic Products 【New】

There are two agencies in charge of managing the treatment and recycling of various wastes that arise from work sites that produce electric and electronic products, which are the regional environmental offices in local areas and the Korea Environment Corporation. It is a huge burden for companies to submit similar data and feedback data to each regulatory agency and be under their management. Therefore, we request for the unification of the agency in charge of managing waste treatment of electric and electronic products.

33) Improvement of Post-Management System for Drug Prices 【Continued】

As of August 12 of this year, the new drug price policy announced by the Korean Ministry of Health and Welfare (the reduction of drug prices of patent expirations to 53.55% of the current level across the board by 2012) dampens the enthusiasm for doing business in Korea for pharmaceutical companies, while also it lowers the medical standards for the Korean people. Therefore, the compulsory reduction of originals due to patent expirations should be done at the lowest rate. Afterwards, in order to encourage free price competition between originals and generics, we request for the application of 'Market-Oriented Real Transaction Price System' for originals and generics.

34) Improvement of New Drug Pricing System 【Continued】

After the Insurance Drug Pricing System has changed to the Positive List System in January 2007, besides the Health Insurance Review & Assessment Service (hereinafter referred to as "HIRA"), the National Health Insurance Corporation (hereinafter referred to as "NHIC") was also added to the drug negotiation, which resulted in making the negotiation take longer than necessary. As a result, there are many cases where new drugs that have already received approval on effectiveness and safety from the health authorities are not being used in everyday medical treatment covered by insurance. Therefore, we request for improvements to be made so that the burden on pharmaceutical companies resulting from overlapping drug pricing negotiations by clarifying the work responsibilities of HIRA and NHIC.

Improvement of Living Environment (1 Continued Items)

35) Improvement of Traffic Problems 【Continued】

We request for the Korean government to strengthen crack down, including the motorcycles travelling on pavements, the vehicles ignoring traffic lights, and the buses speeding up unnecessarily and stopping suddenly, as well as guidance to improve traffic ethics.

Recommendation (Main Text)

1. Labor/Labor Relation

Name of item	1. Abolition of the Obligation to Receive Approval When Making Disadvantageous Changes of the Rules of Employment 【Continued / Content Change】
Present status/problems	The Korean law regulates that 'in the case where the rules of employment have changed to be disadvantageous to the workers, it is necessary to receive the approval from the labor union'. It is understood that, According to the changes in the Korean labor conditions, the above regulation has been stipulated since the amendment to the Labor Standards Act in 1989 with the purpose of preventing employers from unilaterally making unfavorable changes. However, 'the obligation to receive approval from the labor union regarding disadvantageous changes' has excessively restricted the activities of employers, which has become a huge obstacle in establishing a sound labor-and-management relationsh ip. In order to establish a sound labor-and-management relationship, it is important for both sides of labor and management to talk on equal terms, but in the case of employers, they have to get the approval of labor unions to make disadvantageous changes under any circumstances. If an agreement is not reached at the negotiation, it has to go to court for a ruling. Meanwhile, the labor union has the right to strike against employers, thereby making the legal system to be unilaterally unfavorable to employers. From the recommendation we made in 2010, the Korean government responded, 'in the case where it is recognized to be reasonable in social norms when making disadvantageous changes of the rules of employment, the judicial precedents ruled that the change can be valid without receiving collective agreement from workers'. Also, 'the Japanese judicial precedents and Labor Contract Act (Article 9 and Article 10) does not permit "unilaterally disadvantageous levy on workers" and the standards for reasonable judgment on change of rules of employment are almost the same as the Korean judicial precedents'. In the case of the Japanese judicial precedents, 'unilaterally disadvantageous levy on workers' is not permitted, while it is also possible f or employers to make changes without receiving the collective agreement of workers if it is deemed highly necessary or reasonable. Also, in the survey SJC has conducted on its member companies, we received lots of responses that said 'it is difficult to establish a flexible labor condition business environment' and 'there is no flexibility i n amending the rules of employment because even the slightest changes need to get approval'. Therefore, even in the case where it is believed to be reasonable in social norms under difficult business environment, it is actually difficult to make disadvantageous changes of the rules of employment. In the rapidly changing global economy these days, it is necessary to implement

	management measures that respond to them, but the excessive rights given to labor unions will decrease the competitiveness of companies doing business in Korea. We recommend that the biggest concern of foreign investors in Korea to be resolved by establishing an environment where labor and management can talk in equal terms, thereby aiming to make an environment that generates jobs through sound and safe investments. It is in line with the awareness of the same problem that the Korean government has faced while working towards the advancement of Korea.
Request for improvement	Taking the above present status and problems into consideration, we ask for the following three areas to be reviewed. 1) We request for the abolition of 'the obligation to receive approval when making disadvantageous changes' stated in Paragraph 1 of Article 94 under the Labor Standards Act (Writing Rules, Changes Procedures). 2) Among the response from the Korean government in 2009 and 2010, it was said that the 'Interpretation and Operation Guideline of Rules of Employment' (April 24, 2009) has been the basis for the comment in the response that 'the Japanese judicial precedents have almost the same standards for reasonable judgment on changes of rules of employment as that of the Korean judicial precedents'. Therefore, we request for the Operation Guideline to be disclosed to the public. 3) In the case where it is not possible to publicly announce the above Operation G uideline, we request for the provision of data, such as manuals, that employers can use as operation guideline when they make changes of rules of employment by considering the case laws.
Related agencies, related laws, etc.	Paragraph 1 of Article 94 of the Labor Standards Act
Reference	When changing the rules of employment in Japan, the custom is to have a labor-management negotiation, but it is not always necessary to get the 'approval'. (Article 90 of the Labor Standards Act).

Name of item	2. Prohibition of Compensations for Paid Vacation 【Continued / Content Change】
Present status/problem	The length of working hours is not necessarily proportional to labor productivity. Rather, emphasis on the work-life balance and appropriately use of vacations can enhance the productivity of work, as considered customary in advanced countries. According to the OECD survey, the annual working hours of Korean workers are 2,193 hours, which is 1.25 times more than the average hours of OECD member countries which is 1,749 hours. Because It is almost the same number that was announced last year, it is demonstrated that Korea's annual working hours are still and constantly higher than those of advanced countries. One of the causes of underused paid vacations is the concept of financial compensations on paid vacations that have been established according to the Korean judicial precedents. In this regard, in accordance with the amendment to the Labor Standards Act in August 2003, the 'system that facilitates the use of paid annual leave' has been newly established. As a result, the obligation of financial compensations by employers has been exempted under certain conditions, while it is also understood that the Korean government is actively reorganizing systems to facilitate workers to use their vacations. However, if you look at the actual circumstances, the workers are not actively using vacations due to the following reasons, which is one of the areas regarding which SJC received the most requests for improvements from its member companies during the survey. 1) Difficulty of amending the rules of employment and the collective agreements Most of the Japanese companies in Korea that signed the rules of employment and the collective agreements before the amendment of the act in August 2003 stipulated the financial compensation for paid vacations in the rules agreements. In the past recommendation, we received the response that 'in the case where it has been recognized to be reasonable in social norms, it is valid to change working conditions without getting collective agreement from workers'. In case of changes to the rules and agreements to abolish the system of financial compensation for unused paid vacation, however, such employers are required to obtain agreements of labor unions or employees notwithstanding their intention that the changes would promote the environment for employees to use their paid vacations. It is because that so many Korean employees consider their paid vacations as part of their salary, and consider it as their vested rights to demand the employers to buy unused vacations without refusal. 2) Difficulty of implementing systems for facilitating the use of paid vacations The current systems for facilitating the use of annual vacations require 'the written notification made three months in advance' and 'the designation of the period of use made two months in advance'. However, in the case where workers all use their annual leaves during the last three months of the year when the company is working hard to meet its annual business plan, it is not a realistic policy, especially in the manufacturing industry, because it could cause a huge inconvenience to the company's

	production plan.
Request for improvement	Taking the above present status and problems into consideration, we request for the following four areas to be reviewed. 1) Amendment of law systems In order to clarify that the financial compensations for paid vacations can be exempted without changing the rules of employment or the collective agreements, we request for the amendment of the law so that 'Article 61 of the Labor Standards Act comes before individual rule of employment or collective agreement'. 2) Excluded from disadvantageous changes If it is difficult, or if it takes long time to amend the law as mentioned above, we request for clarification that the abolition of the financial compensations for paid vacations should reasonably facilitate the proper use of vacations, if 'the system for facilitating the use of annual leave' is being implemented. Specifically we request that the Korean government publish on official gazettes or upload on its homepages its official administrative interpretation that the abolition of the financial compensations for paid vacations should not fall under disadvantageous changes. 3) Flexible management of systems for facilitating the use of paid vacations Taking into consideration that employees' use of vacations being concentrated at and toward the end of the year goes against the actual circumstances of labor conditions, we request for the current systems to be amended to enable employers to conduct stable corporate activities, while being considerate of the sound life of workers. Specifically, we request for changing the current regulation of 'written notification made three months in advance' to 'written notification made three to six months in advance' to ensure flexible management. 4) Strengthening of promotion to facilitate the use of vacations Fundamentally, there is a widespread concept among the workers that 'paid vacations=salary'. Therefore, it is necessary to raise and promote the public awareness about the value of using vacations and the importance of work-life balance to establish a social environment where it is easy for workers to use vacations.
Related agencies, related laws, etc.	<Related agencies> Ministry of Employment and Labor <Related laws> Article 1, Article 5, Article 61, Paragraph 1 of Article 94 of the Labor Standards Act
Reference	In the case of Japan, the administrative interpretation finds it illegal for a company to buy its employees' paid vacations excessively to the effect that employees should waive legally guaranteed minimum paid vacation days. Also, 'the system of planned annual leave' (Paragraph 5 of Article 39 of the Labor Standards Act) has been enacted as a means of facilitating the use of paid vacations, under which it is possible to encourage the use of vacations by excluding the employees' individual rights to designate or change clocks (such as 'the planned annual leave to have the summer vacation for 5 days during August').

Name of item	3. Extension of the Restriction on Employment Period of Non-Regular Workers 【Continued/Content Change】
Present status/problem	The ratio of non-regular employees in Korea has shown an increasing trend during the past several years. According to the recent statistics announced by the Statistics Korea (March 2011), there are 11,294,000 regular workers (an increase of 1.6% compared to previous year) and 5,771,000 non-regular workers (an increase of 5.0% compared to previous year). Also, the Non-Regular Worker Protection Act was implemented on July 1, 2009 as an aim to promote the transfer to regular worker status by restricting the period of using non-regular workers. Although two years has passed, there hasn't been any change in the ratio of non-regular positions who have been transferred to regular positions. This is probably because that there is a huge risk in hiring regular workers who are greatly protected, and that employers are not able to endure the increase in fixed costs. As mentioned above, the conditions surrounding non-regular workers have not changed much, which is why it is necessary to amend or reorganize the laws. The biggest problem for all parties concerned, including the Korean society, employers and workers, is that the employment period of non-regular workers is restricted to two years. 1) Employer If it is mandatory to change non-regular workers every two years, the workers would bring poor work performance because of lack of work proficiency. Also, even if employers want to transfer non-regular workers to regular positions, they cannot assign advanced works to them because it is difficult to determine whether or not that person is appropriate as a permanent worker based on the evaluation of the person's performance of only two years. 2) Employee Since non-regular employees usually perform simple works only, it is difficult for them to develop understanding of work or job skills to improve their own values in the labor market. After two years passes, if they are not placed in a regular employee position at the same workplace, and the job market is not good, they could lose their job without a chance to find a new one. 3) Korean society In addition to the non-increasing rate of regular workers, it is possible that there will be an increase of unemployment rate. Also, if the employment environment has low competitiveness, it can have a negative effect on bringing additional investments or creating new jobs. Meanwhile, according to the "Present Status of Fixed-Term Workers as of January 2011" published by the Korean government, the positive side of extension of employment period is that, among non-regular employees, those who have worked longer at the same place at the expiration of their contracts have a higher chance to move to regular employment position (19.7% for more than 1.5 year but less than 2 years, 23.7% for at or more than 2 years).

	The survey conducted against the member companies of SJC also showed that companies are willing to transfer non-regular employees to regular employees, if the period of employment is extended. Likewise, instead of restricting the period of use to 2 years, if the employment period extends, it will be more consistent with the Korean government's policies and further facilitate the transfer from non-regular to regular positions. The details of the amendment history of the law being considered, it is fully understood that it should not be easy to make changes. It will be beneficial, however, to all parties concerned, including the Korean society, employees, and employers, if e mployment period of non-regular employees is extended as soon as possible. It will also bring various positive effects to the Korean economy.
Request for improvement	Considering the present status and problems mentioned above, we request for the following two areas to be reviewed. 1) Extension of the period of employment for non-regular employees In response to the recommendations made in 2009 and 2010, the Korean government said that 'the proposal for law revision regarding the extension of the period of use from 2 years to the maximum of 4 years has been submitted to the National Assembly, and is still pending at the Assembly'. We request for information about the current status of t he proposal, and the schedule for the revision. 2) Legalization of outsourcing businesses for regular employees Because dispatched workers are regular employees of outsourcing companies, it will n ot only increase the number of regular workers, but will also ensure the job security of the workers without any time limit. This will improve the workers' job performance and work skills to enable themselves to achieve high working motivations. Also, from the perspective of companies that employ them, it is easier to acquire outstanding dispatched workers, making it possible to efficiently manage the business by assigning talented workers in appropriate positions. The purpose of Article 1 of the draft of 'the Act on the Protection of Dispatched Workers, etc.' is 'to contribute to job security and welfare enhancement, thereby ensuring workers are supplied smoothly'. The business of dispatching workers for regular positions is the kind of business that realizes what is stated in the Act. Also, since it brings many positive effects to the Korean society, we request for the approval and enactment of the proposed Act as quickly as possible.
Related agencies, related laws, etc.	The Act on the Protection of Fixed-Term and Short-Term Workers The Act on the Protection of Dispatched Workers, etc.
Reference	In the case of Japan, the maximum employment period of dispatching workers is as lo ng as 3 years. As for particular 26 types of jobs that require high expertise, no ti me limit is set for employment of dispatched workers (Paragraph 2 of Article 40 of the Act on Dispatching Workers). The size of employing dispatched workers for regular positions in Japan is not so large number but at present 330,000 employees are existing, which has increase

	d by about five times during the past decade.

Name of item	4. Flexible Management of the Obligation to Hire a Person of National Merit 【Continued / Content Change】
Present status/problem	Regarding the obligation to hire a person of national merit, in the case of a general workplace that hires more than 20 persons regularly in accordance with Article 30 of the Act on the Honorable Treatment and Support of Persons, etc. of Distinguished Services to the State (in the case where more than 200 workers are hired regularly at a manufacturing workplace), it is mandatory to hire more than certain ratio of persons of national merits. In this regard, we have proposed flexible management for foreign companies, which has been suggested 5 times from 2003 to 2007, while a total of 7 times including 2009 and 2010. Regarding this, in response to the recommendation made in 2007, the Korean government said, 'in the case of helping finding jobs for foreign invested companies, we make efforts to help find a person of national merit that is needed by the foreign invested company, such as a person that satisfies the language skills wanted by that company'. In the response made in 2009, 'we changed the term of 'employment order' to 'special employment of persons of national merits', and also allowed companies to have the right to select talented workers by allowing them to hire the person of their choice from job applicants of 5 times the number of person hired for that position'. Also, in the response made in 2010, we received the answer that according to measures taken in 2009, 'the mitigation measures are applied to both domestic companies as well as foreign invested companies, and since the recommended details have already been reflected in the system, it is not necessary to take a separate action since companies can flexibly manage the measures during the employment process to a certain extent'. In terms of making recommendations of persons with certificates among the job applicants to foreign invested companies, it has been evaluated that there is a wider choice is offered to companies by giving them the right to select talented workers to hire the person of their choice from the job applicants of five times the number of persons hired for that position. However, it is still lacking the conditions that are needed by foreign invested companies, which has resulted in not being able to select the right person or facilitate employment. To be specific, there were cases as follows: 1) The number of persons recommended for the position has increased, but this does not necessarily mean that there is an increasing trend of talented workers needed by foreign invested companies. Also, compared to the general new employees (among them, there are those who also have certificates of persons of national merits or certificates of deceased persons of national merits), there are many cases where they need separate training by the company to improve their capabilities. In that case, the ordinary new employees will feel unfairness from the training, which can have a bad effect on personal relations at work. Besides the extra costs spent on training after employment, there is a huge burden on the corporate governance, such as the person in charge of labor section worrying about how to mediate personal relations internally. 2) In the case where the person hired does not perform well due to lacking in job qualification, as of half a year after starting negotiation with the Ministry of Patriots &

	Veterans Affairs, an employment order is made and if there are no talented workers wanted by the company, there is no choice but to continue employing that person. 3) In particular, in the case of a small workplace of about 20 employees, since it is necessary foreign invested companies to hire more workers than local companies because of the need to hire employees who are bilingual, it is very difficult to do business when there is the burden to employ one person from applicants who have certificates of national merits. If the person lacks in job qualification and the above situations mentioned in 1 and 2 occur, it is a huge burden to companies because of the effect it has on the business in the long run. As mentioned above, there are reports from Japanese companies that they are greatly burdened by the obligation to hire persons of national merits. We respect the idea and policy of 'facilitating the employment of persons of national merits', but in order to find a balance between the employment promotion and the burden on companies, we request for some improvements to be made systematically.
Request for improvement	Taking the above present status and problems into consideration, we request for the following three areas to be reviewed. 1) We request for the measures implemented to provide applicants of national merits that are wanted by foreign invested companies through effective methods. This doesn't mean passive measures just to increase the number of applicants recommended or give the right to select talented workers to companies, but coming up with measures like actively conducting various activities with specific methods, including the survey to find out the qualification wanted by foreign invested companies and their standards; the kind of measures (training or practice) needed to meet that qualification; and what is needed to establish the setting for implementing that method. 2) Also, regarding the implementation of measures mentioned in 1, it is possible that there will be cases where it is difficult to implement measures made by the recommender. Therefore, in order to meet the qualification of talented workers provided by employers, we request for compensations or preferential measures for activities to improve functions and capabilities of applicants of national merits before or after employment (training or practice) to be included as part of the improvement activities. 3) In the case of small-size workplace with about 20 employees among foreign invested companies, considering that there is a huge burden on employment because of the need to hire bilingual employees, we request for measures to mitigate the number of employees that mandatory for employment.
Related agencies, related laws, etc.	Paragraph 1 of Article 94 of the Labor Standards Act <Related agencies> Ministry of Patriots & Veterans Affairs <Related laws> Chapter 4 Employment Promotion of the Act on the Honorable Treatment and Support of Persons, etc. of Distinguished Services to the State (Article 28 through Article 39)
Reference	

2. Finance

Name of item	5. Inclusion in Deductible Expenses for Interest Expenses on Domestic Borrowings through the Guarantee of Payment of Foreign Controlling Shareholders 【Continued】
Present status/problem	Among the money borrowed by domestic corporations, in the case of borrowings from foreign controlling shareholders and the amount borrowed through the guarantee of payment of the same shareholders exceeding the three times the contributed shares of that shareholders, interest expenses and discount charges on the exceeded amount are regarded as dividends and cannot be included as deductible expenses. If the money borrowed is from foreign controlling shareholders, since the payment of interest expenses and discount charges takes place overseas, it is understandable that taxation on thin capitalization rule is applied, but in the case of just borrowing from domestic financial institutions by acquiring guarantee of payment, the actual cash flow ends in Korea. Therefore, it goes against fairness since it is no different from a company of domestic capital in the same field of industry raising fund domestically.
Request for improvement	Regarding the money borrowed from domestic financial institutions through the guarantee of payment from foreign controlling shareholders, we request for interest expenses and discount charges on the exceeding amount to be included as deductible expenses even if the amount exceeds three times (six times for financial industry) the contributed shares of the same shareholders.
Related agencies, related laws, etc.	<Related agencies> Tax Analysis and International Tax Affairs Bureau, Tax & Customs Office and Foreign Exchange Policy Division, International Finance Bureau of the Ministry of Strategy and Finance <Related laws> Chapter 3 of Article 14 of the Act for the Coordination of International Tax Affairs
Reference	<Japan's case> Like Korea, in the case of the money borrowed from foreign controlling shareholders that exceeds three times (six times for financial industry) the contributed shares of the same shareholders, interest expenses and discount charges on exceeding amount are not included as deductible expenses, but regarding the money borrowed from a financial institution in Japan through the guarantee of payment from foreign controlling shareholders, it is not subject to taxation on thin capitalization rule. (Article 39-13 of the Enforcement Decree of the Act on Special Measures for Taxation)

Name of item	6. Simplification of the 'Reporting on Business Outsourcing' in the 'Financial Investment Services and Capital Markets Act' 【New】
Present status/problem	**1. Present Status** Excluding the cases where the business that received the approval of financial institutions have been restricted by regulations, including the business outsourcing of fundamental duties of financial services, it is possible to delegate duties to a third party, which are regulated by the two types of regulations as follows: **(1) Regulation on the Business Outsourcing of Financial Institutions, etc.** This regulation is applied when the duties approved by a financial institution are outsou rced to a third party. 1) Prior reporting ① Attach documents (a copy of contract, necessity of outsourcing, expected effect, etc.) stipulated in the same regulation to state the fact of business outsourcing 7 working days before the expected day of signing and report it to the governor of Financial Supervisory Service. ② Reported to: Bank Supervision Team, Bank Service Department of the Financial Supervisory Service 2) Ex post facto reporting ① In the case where the applicable financial institution or another financial institution engaging in the same financial industry has reported the same details to the governor of Financial Supervisory Service, where the type of business that the opposite party of business outsourcing is the same, or in the case where the details of change is minor when making partial change of the already reported details, the financial institution will omit prior reporting and submit the status report of ex post facto to the governor of Financial Supervisory Service. ② Reported to: Bank Supervision Team, Bank Service Department of the Financial Supervisory Service **(2) Financial Investment Services and Capital Markets Act and the Enforcement Decree of the Same Act** The same act is applied when trading financial investment products (securities, derivatives). 1) Prior reporting ① A financial investment business shall attach documents (a copy of contract, operating standard of business outsourcing, etc.) stipulated in the same act 7 days before the day of implementing business outsourcing and report it to the governor of Financial Supervisory Service (delegated to the Financial Supervisory Service) ② Reported to: Bank Supervision Team, Bank Service Department of the Financial

	Supervisory Service Financial Investment Team, Financial Investment Department of the Financial Supervisory Service 2) Ex post facto reporting: none **2. Problems** 1) There are too many prior reporting compared to ex post facto reporting, including details that have to be filled out and documents that have to be submitted, making it a huge burden to prepare the documents for submission. 2) In the case of 'Regulation on Business Outsourcing of Financial Institution', there is ex post facto reporting, but there isn't one for the Financial Investment Services and Capital Markets Act, even for minor changes in details, making it necessary to make prior reporting.
Request for improvement	**Details of request for improvement** We request for changes made to the Financial Investment Services and Capital Markets Act as follows: 1) New addition of ex post facto reporting Add a new paragraph or article to include ex post facto reporting on business outsourcing to improve the efficiency of reporting duties. 2) Unification of reporting agencies Unify the agencies that need to be reported to from the current two agencies to one agency. - Current agencies for reporting: Bank Supervision Team, Bank Service Department of the Financial Supervisory Service Financial Investment Team, Financial Investment Department of the Financial Supervisory Service
Related agencies, related laws, etc.	<Related agencies> Financial Supervisory Service <Related laws> ① Regulation on Business Outsourcing of Financial Institution ② Financial Investment Services and Capital Markets Act and the Enforcement Decree of the Same Act
Reference	

Name of item	7. Easing of the Regulation on Foreign Currency Funding , including the Macro-prudential Stability Levy, etc. 【New】
Present status/problem	1) According to the Macro-prudential Stability Levy that has been implemented since August 1, 2011, the following high burden charges have been levied on the daily average outstanding balance of liabilities in foreign currency for each bank, which need to be paid in US dollars to the Bank of Korea within 5 months after the amount has been notified within 4 months after the end of every business year (In the case of Japanese banks that closes in March, the deadline for the first payment is August of 2012). Rate of charge levied: less than 1 year: 20 bp, 1~3 years: 10bp, 3~5 years: 5bp, more than 5 years: 2bp 2) The branches of foreign banks raise funds mainly by relying on foreign currency borrowings. Therefore, after the implementation of the system, the funding cost has increased greatly. 3) The foreign currency borrowings of the branches of foreign banks are mainly financed by the overseas headquarter. As we have seen from past examples, such as the Lehman crisis, unlike the funds raised by the market, borrowings from headquarter ensures the bank balance is maintained safely even during the occurrence of liquidity crisis. Therefore, considering the purpose of the system to prevent sudden capital in-outflows, including the borrowings from the headquarter with stable funds to be subject to the levying of burden charges can be regarded as excessive burden on the branches of foreign banks. 4) The increase of funding cost due to burden charges will end up passing the burden to loan rates for general companies or local financial institutions, which is likely to increase the overall burden of the Korean economy and industry. 5) Also, besides the Macro-prudential Stability Levy, the regulations on foreign currency loans and bonds issued in foreign currency were strengthened after August 2007, it will restrict the business of the branches of foreign banks, as well as have an impact on Korean companies to raise funds in foreign currency easily.
Request for improvement	1) In order for the branches of foreign banks to play the role of supplying stable foreign currency funds needed in local industries and also facilitate the stable development and protection of the industry, we request for the rate of burden charges to be cut down to half of the current rate. 2) Considering the purpose of the system to ease sudden capital flows, we request for revision to mitigate the burden charges on borrowings from the headquarter with stable funds. 3) In order for the branches of foreign banks to reorganize the environment to provide stable financial services, we request for more flexible financial policies.
Related agencies, related laws, etc.	<Related agencies> The Bank of Korea (agency related to the Macro-prudential Stability Levy) <Related laws>

	Article 11-2 of the Foreign Exchange Control Act, Article 21-2~Article 21-10 of the Foreign Exchange Control Act
Reference	

3. Intellectual Property Rights

Name of item	8. Simplification of Proving Infringements 【Partially Continued】
Present status/problem	There are many cases where it is necessary to get the documents and information of the opposite party to prove the infringement and its damages.
Request for improvement	1) In order to prove the infringement and its damages, we request for a system that orders the opposite party concerned to submit documents and information (including trade secret) to the court. 2) In this regard, in the case where documents contain trade secrets, it should be only disclosed to those that are specially allowed, and we request for the procedures to be reorganized so that trade secrets are not leaked. 3) Also, in the case of an intellectual property trial in Korea, when a party concerned submits evidence that is considered to be trade secrets, the evidence is only shown in the court, but we request for it to be specified in law that the trial is held in camera. 4) Regarding the recommendations made on collecting evidences during court hearings, since the amendment bill of Article 132 and 3~5 of Article 224 of the Patent Act has been submitted to the Korean National Assembly in 2007, we believe most of it will be realized and request for the amendment to be enacted as quickly as possible.
Related agencies, related laws, etc.	<Related agencies> Ministry of Justice, Judicial Branch of Supreme Court of Korea, Ministry of Knowledge Economy, Korean Intellectual Property Office <Related laws> Civil Procedure Act, Patent Act, Utility Model Act, Design Protection Act, Trademark Act, Unfair Competition Prevention Act, etc.
Reference	In the case of Japan, according to the Article 105 of the Japanese Patent Act, it is legalized for the court to order the party concerned to submit necessary documents at an infringement lawsuit.

Name of item	9. Expansion of the Regulation on Indirect Infringements 【Continued】
Present status/problem	1) The current act includes the preliminary action of supplying parts or materials being used in the infringement of patent rights to an infringer as an action of infringement, but it is only restricted to exclusive parts (goods that are used only for production). As a result, in the case where the conditions for 'only' are strictly interpreted, it is difficult to be saved by the regulation on indirect infringements. 2) Also, it is believed that the conditions are actually applied strictly in litigations fighting for rights.
Request for improvement	In terms of strengthening the protection of rights, we request for the scope of indirect infringements to be expanded to include the action of supplying parts with malicious intent (such as knowing that they are patented inventions and using them in infringements).
Related agencies, related laws, etc.	<Related agencies> Judicial Branch of Supreme Court of Korea, Korean Intellectual Property Office <Related laws> Patent Act, Utility Model Act
Reference	In the case of Japan, it is regarded as an action of indirect infringements to produce or transfer goods that are used in production, even though the person knew that it was being used in a patented invention (Article 101 of the Japanese Patent Act). Besides this, please refer to Article 10 of the German Patent Act and Article 271 (c) of the US Patent Act.

Name of item	10. Determination of the Validity and Invalidity of Patent Rights, etc. in a patent infring ement lawsuits 【Continued】
Present status/problem	The current system does not allow the court to determine the validity and invalidity of patents as well as whether or not there has been an infringement at the same time.
Request for improvement	1) In order to efficiently implement the litigation procedures on patents, etc., we request for the recognition of the defendant's plea for the invalidity of patent in infringement lawsuits like in Japan, US and Britain (or similar to that effect), while also allowing the court to determine the validity and invalidity of patents as well as whether or not there has been an infringement at the same time. 2) In addition, in the case where the patented invention that is under the infringement lawsuit for patent rights has clearly lost the newness, there are cases where the court recognizes the invalidation plea and the abuse of patentee's right. In order to resolve the dispute as early as possible, we request for a new paragraph or article to be included in the Patent Act to allow the court to determine the validity and invalidity of the rights subject to infringement litigations, for example, 'in the case where it is recognized that a patent in an infringement lawsuit concerning patent rights or exclusive licenses should be invalid due to a patent invalidation ruling, the holder of the patent or exclusive license cannot exercise his/her right to the opposite party'.
Related agencies, related laws, etc.	<Related agencies> Ministry of Justice, Judicial Branch of Supreme Court of Korea, Korean Intellectual Property Office <Related laws> Patent Act, etc.
Reference	In the case of Japan, if a patent is recognized in an infringement litigation according to Paragraph 3 of Article 104 of the Japanese Patent Act, it is legalized in details that that person cannot exercise his/her rights.

Name of item	11. Abolition of Restrictions on the Eligibility of Persons Filing for an Invalidation Trial【Continued】
Present status/problem	1) In the current invalidation trial, a person is eligible to file for an invalidation trial only against the stakeholders and examiners 3 months after the registered public notice, while anyone can file for an invalidation trial only before 3 months passes after the registered public notice (Paragraph 1 of Article 133 of the Patent Act). 2) However, due to public reasons, such as lack of newness and lack of inventive step, we think it is necessary to allow anyone to file an invalidation trial whenever they want to from the perspective of public interest.
Request for improvement	1) We request for a system that allows anyone to file an invalidation trial whenever they want to for public reasons, such as lack of newness and lack of inventive step. 2) Regarding this request, we have got a response from the Korean Intellectual Property Office that explained the current system is being operated to recognize a wider scope of stakeholders. However, even if the management of the Patent Act is amended, it is difficult to say that the status of patent rights will get unstable due to the increasing number of cases filed for invalidation trials. Instead, since there will be no more ligations about the eligibility of the person filing for an invalidation trial , we think that more disputes will be settled earlier through the amendment of the act.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Paragraph 1 of Article 133 of the Patent Act
Reference	Many countries, including Japan (Article 123 of the Japanese Patent Act), US and Britain, there are no restrictions on the eligibility of persons filing for an invalidation trial to allow only stakeholders when there is a request for the invalidation of a patent by a third party after the registered public notice.

Name of item	12. Expansion of the Scope of Amendments Based on PCT Applications 【Continued】
Present status/problem	1) In the case where an international patent application of PCT enters Korea, it is possible to make amendments based on the translated text that had been submitted during the entry to the Korean market (Article 208 of the Korean Patent Act). The procedural amendments made based on the details of the original text of the international application, which was not written on the translated text, are not recognized. 2) However, from the perspective of a foreign applicant, if procedural amendments cannot be made based on the original text, it is causes inconvenience because there are cases where the intention of the original text is not fully expressed in the translated text.
Request for improvement	1) We request for Korea to also allow procedural amendments to be made based on the original text of international patent applications when dealing with international patent applications of PCT. 2) Regarding the amendment of the Patent Act that reflects the details recommended here, in order to minimize the confusions arising from frequent law amendments, we had heard from the Korean Intellectual Property Office that they will consider it when amending the Patent Act to satisfy the PLT (Patent Law Treaty) and the SPLT (Substantive Patent Law Treaty). However, the early effectuation of the PLT and the SPLT has not allowed prejudgment. 3) Meanwhile, Korea has amended the Patent Act almost annually during the past several years, which has led to the improvement of the patent system. 4) Therefore, regarding the recommendations we have made, we ask for the realization of our request without waiting for the effectuation of the PLT and the SPLT. on the original text of applications for international patents.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Patent Act
Reference	In the case of Japan, there is a system that allows amendments to be made by going back to the original text of international patent applications of PCT (Paragraph 2 of Article 184-12 of the Japanese Patent Act). Therefore, if a Korean has an international application in Korean, it is possible to make amendments on the international application that enters Japan based on the original text written in Korean. Also, this kind of system is not only adopted in Korea, but also applied in US and Europe.

Name of item	13. Adoption of Patent Applications in Foreign Language 【Continued】
Present status/problem	1) A patent applied to the Korean Intellectual Property Office should be made in Korean. 2) However, ①in the case where a patent application has to be made when there is the Paris Convention priority right before the one year period ends, it is necessary to do the translation in a short period, and ②if there are details not included on the statement or floor plan that were first attached (in other words, statement or floor plan that were included at the time when the application was translated from another language to Korean), the amendments you make to include omitted details after the application are not recognized. Therefore, if there is a translation error during the process of translating from another language to Korean, there are cases where the invention is not properly protected because the translation error cannot be corrected based on the text written in a foreign language.
Request for improvement	1) <u>We request for the adoption of patent application in foreign languages to be allowed</u>. 2) Regarding this recommendation, we had heard from the Korean Intellectual Property Office that they will consider it when amending the Patent Act to satisfy the PLT (Patent Law Treaty) and the SPLT (Substantive Patent Law Treaty). However, we ask for it to be amended as quickly as possible without having to wait for the effectuation of the PLT and the SPLT. 3) The Korean Intellectual Property Office is concerned that the adoption of patent applications in foreign language will increase the burden of examiners, but in this regard, similar to the case where international applications of PCT have entered Korea, in the case of examining applications in foreign language, if the applicant applies them in a specified period based on the Korean text that had been submitted, we believe there won't be a huge burden. 4) Also, in the case where it is difficult to allow applications in foreign language, we request for the system to first only allow English and later include other foreign languages gradually.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Patent Act
Reference	In the case of Japan, patent applications in foreign language are allowed according to Article 36-2 of the Japanese Patent Act. In addition, please refer to the US's 37CFR1.52(d), Article 25 of the Taiwanese Patent Act, No.21 of Paragraph 2 of Article 12 of Ordinance Concerning Thai Patent Act, and Paragraph 2 of Article 30 of the Indonesian Patent Act.

Name of item	14. Extension of the Response Period on the Notice of Reasons for Refusal Regarding Patent Applications & the Period for an Appeal against examiner's decision of refusal 【Continued】
Present status/problem	1) In Korea, the designated response period on the notice of reasons for refusals is usually 2 months. Also, the period when a person can file for an appeal against examiner's decision of refusal on rulings and reexaminations is 30 days (in the case where the extension of the period is allowed, additional 30 days are provided). 2) However, from the perspective of a foreign applicant that has to translate examples in the case where there are quotes from Korean literatures, it is difficult to respond within the designated period. 3) Also, it is possible to extend the designated period, but you have to go through the procedure of applying for extension whenever it is necessary, which requires expenses paid to the Korean Intellectual Property Office, as well as more expensive fees given to agents.
Request for improvement	1) We request for the designated response period on the notice of reasons for refusal to be 3~4 months. 2) Also, we request for the period for an appeal of dissatisfaction (request for trial, request for reexamination) to be extended and longer. 3) Also, in the case where it is difficult to extend the designated period to be longer, for example if there is no response within the designated period, we request for it to be regarded as applying for extension of period so that the necessary procedures and extension costs can be paid later when responding to the notice of reasons of refusal, which allows the applicant not having to apply for extension every one month. Even if this kind of system is adopted, for example, if there is no response or no actual application for extension within 6 months after sending the notice of reasons of refusal, a regulation can be established to regard it as withdrawing the application, which will prevent applications without responses on the notice for reasons of refusal accumulating in a large number.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Patent Act
Reference	If the response period is extended, it is believed the Korean Intellectual Property Office is worried about it affecting the patent term extension system, which is currently being considered for adoption, because of late registration. However, in the case of Japan, the response period for the notice of reasons of refusal is 3 months for foreigners (able to extend additional 3 months by application, Japanese method of examination manual 04.10). Also, in the case of Japan, the period for applying for an appeal against examiner's de

	cision of refusal is 3 months (Article 121 of the Japanese Patent Act). The response period for the notice of reasons of refusal in other countries are as follows: 3 months for US, 4 months for EPC, 4 months for China, and 3 months for Taiwan.

Name of item	15. Easing of the Timing Conditions for Divisional Patent Applications 【Continued】
Present status/problem	1) Under the current system, it is difficult to acquire multi-faceted and comprehensive rights with effectiveness because there is no way of finding one's rights in more definite scope of patent applications by dividing applications since there is a lack of scope. 2) In other words, in order to acquire effective rights, it is necessary to write down multi-faceted and comprehensive details about the scope of patent application that the applicant wants to get protection for the invention before receiving the grant of patents. 3) However, in the stages before the final decision (patent allowance) of the examiner and the results of the prior technology investigation survey come out, it is difficult for an applicant to predict to what extent the application should be made. Therefore, in many cases the scope of patent applications is not sufficiently effective during the grant of patents.
Request for improvement	We request for a system that allow divisional patent applications for a certain period after the decision to grant patents have been made.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Patent Act
Reference	In the case of Japan, an amendment of the same system has been implemented in 2007 to allow divisional patent applications until 30 days after granting patents (Paragraph 1 of Article 44 of the Japanese Patent Act), which was welcomed by many applicants.

Name of item	16. Approval of Multiple Dependent Claims for Patent Applications 【Continued】
Present status/problem	1) Currently, the dependent claims with multiple quotes (multiple dependent claims) are not acknowledged. 2) However, from the perspective of multi-faceted protection of inventions, we think multiple dependent claims should be recognized.
Request for improvement	1) We request for the recognition of the expression multiple dependent claims. 2) Also, regarding this request, in the case where multiple quotes of other claims are recognized, we have heard that the Korean Intellectual Property Office is worried that the calculation of various costs will get complicated because of the number of claims made at the same time as well as the difficulty of understanding the scope of various rights. However, this has not caused any problems in Japan and Europe where the same expression of multiple dependent claims is being used.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Patent Act, Examination Standard
Reference	The expression of multiple dependent claims is recognized in the Patent Cooperation Treaty between Japan and Europe.

Name of item	17. Protection of the Computer Program Itself According to the Patent Act【Continued】
Present status/problem	1) According to 2.2.1 of the Examination Standard of Inventions Concerning Computers, a computer program stored on recorded media is subject to protection under the Patent Act, but the computer program itself is not protected by the Patent Act. 2) However, many inconveniences as mentioned below have risen because only computer programs on recorded media are subject to protection, while the computer program itself is not protected. ① Computer programs are only activated when installed on the computer. The patent right is enforced when a user installed it on the computer or activated the installed program. Therefore, since a person who provides the program through the network does not store the computer program on recorded media, it is not interpreted as manufacturing and selling an infringed product and cannot directly exercise his/her rights. ② Meanwhile, it is realistically impossible to exercise rights on every user, and the infringement of patent rights is only applied when there is an intention to produce and do business, which means that individual users are not regarded as infringers.
Request for improvement	We heard that there is a review on amending the law to allow the computer program itself to be subject to protection by the Patent Act. Since it is very easy to copy inventions, including computer programs, we request for a clear regulation that state computer programs that are actually being distributed in the market are protected by the Patent Act.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Patent Act, Examination Standard
Reference	In the case of Japan, there are details regulated in Article 2 of the Patent Act and Examination Standard that state 'recorded media that store and allow computer programs to be activated' and 'the computer program itself' can receive patents. Also, in Taiwan, according to the amendment of examination standard in May 2008, as well as starting from February 2008 in Britain, the computer program itself is subject to protection as patents.

Name of item	18. Improvement of Conditions for Registering Designs (Approval of Subsequent Application that is Partially Same or Similar to that of Prior Design Applications by the Same Applicant) 【Continued】
Present status/problem	1) In Korea, even if it is the same applicant applies for partial design or part design after applying the whole design, it is rejected and cannot be registered because of the extensive scope of prior application. (Paragraph 3 of Article 5 of the Design Protection Act) Therefore, when developing a design, it is difficult to make applications in a timely manner to suit the development procedure where designs are decided consecutively in the order of the whole product and then each individual part. 2) Also, according to the increasing damages from counterfeit goods, it is not possible to strategically enforce rights by acquiring design rights on partial design or part design to prevent damages arising from copying only designs that are highly original among the designs of successful products. 3) Therefore, in the case of Japan, in order to strategically acquire the design rights on partial designs or part design, a person applies for the whole design and then applies for partial design or part design. Afterwards, when that person tries to apply in Korea by claiming the priority right, since the order of applications in Korea according to the claim of priority rights is from the whole design to partial design or part design, the partial design or part design of subsequent applications are rejected.
Request for improvement	In the case of applications made by the same applicant, we request for the partial design and part design of subsequent applications that are partially same or similar to that of prior design applications to be subject to protection, by providing an exclusion regulation on the condition of design registration according to Paragraph 3 of Article 5 of the Design Protection Act, as well as excluding them from being subject to refusal.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Paragraph 3 of Article 5 of the Design Protection Act
Reference	In the case of Japan, according to the law amendment in 2007, in the case of partial designs and part designs of subsequent applications by the same applicant, it is possible to make registration of subsequent applications without being rejected by the extensive scope of prior applications. (Article 3-2 of the Japanese Design Act)

Name of item	19. Expansion on the Protection of Screen Designs in the Case where the Product and the Receiver is Separated 【Continued】
Present status/problem	1) Under the screen design system currently being operated in Korea according to Article 2 of the Design Protection Act, in the case where a screen design is temporarily realized in goods, that good is regarded as a design that is available industrially in the state of showing screen design, which request for the unification of goods and screen. 2) Therefore, for example, in the case of products like DVD player, in order to protect the screen design that show the controlling display screen on TV or monitor, the application has to be made as TV or monitor. Currently, the applications can only be made by specifying the goods in comprehensive forms, such as a display that shows screen design. 3) The screen designs that emerged due to the advancement of modern information technology are not protected by the Design Act, even though it is essential to realize the purpose of use that are generally expected from the applicable product. This does not suit the product development procedure where there are companies that install the screen design to a product as its part and invest on installing it.
Request for improvement	Regarding the applications of screen designs, we request for the expansion on the protection of screen designs to provide design rights to protect screen designs as part of the product, even if the product and the receiver is separated.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Design Protection Act, Examination Standard
Reference	In the case of Japan, after the law amendment in 2007, regarding the screen design that is used for controlling needed to show the form of displaying its primary function, the protection of screen designs has been expanded so that it is protected as being included as partial shape, form, color or its combination of the product. (Paragraph 2 of Article 2 of the Japanese Design Act)

Name of item	20. Scope of Protection on Logos and Icons According to the Design Protection Act【New】
Present status/problem	1) Since Korea joined the Locarno Treaty, the classification of logos and icons (32 types) have been adopted regardless of the product. As a result, since there is no restriction on products regarding the validity of rights, there are concerns about whether or not the scope of rights has been expanded too much. 2) Excessive protection of rights holder ends up protecting even areas that are not originally requested for protection. Also, from the perspective of a third party, if the restriction on designs is too strict, it can hinder the development of the industry.
Request for improvement	The idea that the use and function of the product not being restricted should continue, but we request for certain restrictions to be established, such as specifying the scope of protection wanted by the applicant when making application.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Design Protection Act
Reference	In the case of Japan, logos that are not related to products that fall under the 32 types classified under the Locarno Treaty are rejected.

Name of item	21. Reconsideration of Non-Examined Products According to the Enforcement Rules of Design Protection Act 【New】
Present status/problem	1) Products that are subject to registration as non-examined products have been added according to the enforcement rules being implemented after the amendment of the Design Protection Act in April 1, 2011. 2) It can be understood that it is to give rights on highly popular products with a short life cycle as quickly as possible, but H5 (electronic calculator, etc.) has been added to the list of non-examined products due to the amendment, while 'printer' is included in H5-450 (data printers for computers). However, printers are not highly popular products, and also in the case of series products, the life cycle cannot be said to be long. Also, among F5 (advertisement goods, indication tools and product display tools), it is difficult to say that F5-120 'Product Display Tools' is highly popular products. 3) Likewise, rushing the registration of products that are presumed to have somewhat long period for product release in the market requires a lot of expenses and time in the future from the perspective of utilizing rights and avoiding infringements. Also, it can be seen as going against the purpose of adopting the system.
Request for improvement	We request for reconsideration of the following goods being classified as examined products and non-examined products. B3 General Goods B4 Bags and Wallets, etc. B9 Clothes and Daily Products; Universal Parts and Components C4 Household Sanitary Products C7 Congratulation and Condolence Products D1 Indoor Small Disposal Goods F5 Advertisement Goods, Indication Tools and Product Display Tools H5 Electronic Calculators, etc.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Design Protection Act, Enforcement Rules of Design Protection Act
Reference	In the case of Japan, all design rights are registered after going through examinations.

Name of item	22. Improvement of the Timing of Making Decisions on the Regulation of Prior and Subsequent Applications for Trademark 【Continued】
Present status/problem	1) The timing for making decisions on applying the regulation of prior and subsequent applications is 'the application timing' of subsequent applications. Therefore, despite the first to file rule, it is possible for the subsequent application to be registered because of the timing of the application, which establishes a structure where the benefit of prior application for the applicant is lost. 2) Since the timing of making decisions about the application of the regulation on prior applications is 'the application timing' of subsequent applications, in the case where there is a subsequent application "B" that is similar to that of the prior application "A" before confirmation on the refusal or withdrawal of the applicant "A", the subsequent application "B" is rejected even if the application "A" is refused during the application of subsequent application "B". Therefore, in order to acquire rights, the application has to be postponed for reapplication. 3) However, in the case where there is a subsequent application "C" by another person who applied after the subsequent application "B" before the reapplication, the prior and subsequent applications are reversed and the subsequent application "B", which is a reapplication, is rejected because it quotes the subsequent application "C".
Request for improvement	1) We request for the amendment of the law to make the timing of making decisions about the regulation on prior and subsequent applications to be 'when granting' the subsequent application, and also change the system so that the examination of the subsequent application starts after waiting for the result of the examination on the prior application. 2) Currently, the Korean Intellectual Property Office withholds the examination of subsequent application until the prior application is finalized. However, according to Paragraph 3 of Article 7 of the Trademark Act, the timing of making decisions on prior and subsequent applications is regulated as when making the application, which brings concerns that improvements will not be made through this system. For example, in the case where the prior application is cancelled due to the trial for the cancellation for nonuse, since the effect of the cancellation has no retroactive effect that goes back to when the application was made, the fact that the prior application was registered at the time when the subsequent application had been made doesn't change, which still makes it a problem.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Trademark Act, Trademark Examination Standard
Reference	Regarding some reasons of registration, it is regulated as 'when granting the patent' according to Paragraph 3 of Article 4 of the Japanese Trademark Act, but there is nothing stipulated about prior and subsequent applications. However, generally Japan takes the rule of handling as the timing of administrative measures, which is why the timing of making decisions about the registration for the Trademark Act is 'when granting patents'.

	Many western countries also considers ‘when granting patents’ as the timing of making decisions.

Name of item	23. Improvement of Writing Down Detailed Products of Trademark to Allow Comprehensive Reporting 【Continued】
Present status/problem	1) Currently, it is possible to write down comprehensive expressions about designated products, which were not allowed before. For example, (before) ink jet printer, laser printer, thermal printer (present) printer 2) However, it is still not allowed to use expressions like 'printers and its parts'. In the case where it is necessary to acquire trademark rights on parts, you have to write down all of the parts that will be used for that product. Also, in the case where a person wants to request for the protection of trademark rights on a new part, that person has to make new applications each time. 3) The act of attaching the same/similar trademark as the main product to the parts of the main product can cause confusion among consumers. The current method of having to write down lists of each item can be a problem because it allows another person to acquire rights instead.
Request for improvement	We request for the recognition of a comprehensive expression for designated products to allow 'main product and its parts'.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office <Related laws> Trademark Act, Trademark Act Examination Standard
Reference	In the case of Japan, it is allowed to write down the expression of 'electronic applied machines and its parts'.

Name of item	24. Improvement of Search Systems for Designs and Trademarks Provided by the Website of Korean Intellectual Property Office (KIPRIS) 【Continued/Partial Change】
Present status/problem	1) Since the Korean Intellectual Property Office provides English translations in some of the Korean public notices, it is possible to search designs and trademarks in English at the services provided by KIPRIS. 2) However, the English translation is only provided for some of the items for public notice and all of them are not translated into English. Therefore, the searches in English and Korean do not match one another.
Request for improvement	In order to improve the services provided by KIPRIS, we request for English translations to be provided for all public notices of designs and trademarks so that the same results are shown whether they are searched in English or Korean.
Related agencies, related laws, etc.	<Related agencies> Korean Intellectual Property Office, Korean Institute of Patent Information <Related laws> None
Reference	Japan offers information on trademarks through services provided through the Industrial Property Digital Library (IPDL), which can be searched in various ways.

Name of item	25. Provision of Judicial Precedents on Intellectual Property 【New】
Present status/problem	1) The homepage of the Supreme Court of Korea discloses information on the 'major court rulings', but they are limited to major ones and not all rulings are disclosed. Also, there are many court rulings on intellectual property cases that are not provided to the public. Therefore, it is difficult to efficiently conduct investigations about court rulings on intellectual property cases. 2) In addition, the name of the company is not shown in the written judgment to protect personal information, making it difficult to understand the case properly.
Request for improvement	1) We request for the full text of all court rulings concerning intellectual property to be disclosed to the public like the homepage of Japanese Intellectual Property High Court. 2) Also, when providing the information, we request for the name of the company to be shown, while also allowing them to be searched by classifying them according to law, conclusion or court.
Related agencies, related laws, etc.	<Related agencies> Supreme Court, Patent Court of Korea <Related laws> None
Reference	In the case of Japan, all court rulings concerning intellectual property that were made at the Intellectual Property High Court are disclosed to the public, while they can also be searched in various ways, including text or point of view.

Name of item	26. Simplification of Applications for Corrective Orders and Related Procedures on the Infringement of Copyrights in Korea by Foreign Rights Holder (Organization) 【New】
Present status/problem	1) In the case where a foreign rights holder (organization) files for corrective orders or recommendation procedures on the infringement of copyrights, including advanced policies and legal systems, as countermeasures against counterfeit goods on the internet, it can only be done in Korean through a company or an agent in Korea. 2) Therefore, even though it is an advanced system that is very meaningful, it is difficult to make sufficient use of it.
Request for improvement	We request for the above reporting system to be improved so that it can be reported through the internet from overseas or a copyright committee office from abroad in English or Japanese.
Related agencies, related laws, etc.	<Related agencies> Ministry of Culture, Sports and Tourism Korea Copyright Commission <Related laws> Copyright Act , etc.
Reference	

Name of item	27. Problems with TV programs for Korean Viewers and Movie License Business【Continued】
Present status/problem	1) Korea still forbids Japanese programs to be aired on terrestrial broadcasting stations. Considering that the Korean contents are dominating in the Asian market, including Japan, it is time for Korea to open its market in a fair way. 2) Also, there are many illegal uploading of Japanese contents with Korean subtitles through the internet, while many TV programs (program formats) are being copied, which shows a lack of awareness about intellectual property rights, including copyrights.
Request for improvement	1) We request for the outdated regulations on Japanese contents as quickly as possible. After both Japanese and Korean government agencies have come to an understanding about it, we ask for the opening of the market. 2) Also, we ask for the strengthening of copyright contracts, the guideline on compliance with laws, and awareness activities, as well as an enhancement of public awareness about intellectual property. 3) In particular, we request for the eradication of illegal uploading of counterfeit goods on the internet, as well as guidance from the Korean government regarding the copying of TV program formats.
Related agencies, related laws, etc.	<Related agencies> Ministry of Culture, Sports and Tourism Korea Copyright Commission <Related laws> Copyright Act , etc.
Reference	

Name of item	28. Strengthening of Border Measures 【Continued】
Present status/problem	1) Currently, according to the Customs Act, in principle, there are only regulations on trademarks and copyrights. It is necessary to expand the scope of application to patents, etc. 2) Meanwhile, due to the improvement of Korean companies' global competitiveness, including technology and design, there are an increasing number of counterfeit and piracy goods coming into Korea, making it a top priority to crack down on them.
Request for improvement	1) We request for the scope of application for border measures to be expanded to include patent rights as quickly as possible. 2) Regarding the expansion of the scope of application for patent rights, we have heard that the policy is to apply them gradually. We understand that it is difficult to crack down on products that infringed on intellectual property rights because it requires expert knowledge on the scope of rights and whether or not there has been an infringement. However, considering the globalization of economic activities of Korean companies and the improvement of competitiveness in product quality, technology, and design, we request for a system that enforce border measures on major intellectual property rights, including patent rights, as quickly as possible, to strengthen the busting of counterfeit and piracy goods coming into Korea.
Related agencies, related laws, etc.	<Related agencies> Korea Customs Service <Related laws> Article 235 of the Customs Act
Reference	The Japanese Customs Act allows border measures to protect all rights, including patent rights, utility model rights, design rights, trademark rights, copyrights, neighboring rights, circuit layout rights, and breeder's rights. (No.9 of Paragraph 1 of Article 69 of the Japanese Customs Act)

Name of item	29. Strengthening of Import/Export and Clearance Regulations of Products Infringing on Intellectual Property Rights & Expansion of Training to Distinguish Counterfeit Goods for Employees Concerned 【Continued/Partial Change】
Present status/problem	1) Among the imported goods that have been confiscated as products that infringed intellectual property rights by Japanese customs, there is a decreasing trend shown, but still many of them are coming into Korea. 2) Also, the distribution channel of products that infringe on intellectual property rights, including counterfeit goods, is getting complicated, and recently, there are concerns that many of them are coming through the transshipment from China. 3) In addition, in order to crack down on infringed goods of intellectual property rights, the customs employees in charge of import/export and clearance procedures play important roles in cracking down on counterfeit goods. Therefore, the training these employees concerned to distinguish counterfeit goods has become even more important than before.
Request for improvement	1) Until now, the crackdown on products that infringed on intellectual property rights occurred during import to Korea as border measures. In the future, we request for the crackdown on products infringing on intellectual property rights to be conducted also during export and clearance. 2) Also, regarding the training of customs employees to distinguish counterfeit goods, we request for more opportunities to be given to companies that are actually suffering from counterfeit goods, including member companies of associations protecting intellectual property rights during trading.
Related agencies, related laws, etc.	<Related agencies> Korea Customs Service, associations of trade-related intellectual property protection
Reference	8 countries, including Japan and Korea, signed the Anti-Counterfeiting Trade Agreement (ACTA), which regulates the prohibition of import/export and clearance of counterfeit goods, and the countries are working towards the effectuation of the agreement as quickly as possible. Also, the agreement stresses the importance of developing intellectual property experts and developing the countries' capabilities.

4. Individual Requests

Name of item	30. Necessity of Comprehensive and Proper Judgment When Conducting Surveys on Market Prices and Internet Prices Regarding Supply Prices of Multiple Supplier Contracts 【New】
Present status/problem	Before the Administrator of Public Procurement Service signs purchase contracts for supplies needed commonly by each government agency, only the multiple suppliers and supply prices (contract prices) are decided beforehand, afterwards, a contract (multiple supply contract) is signed to pay for the supplies directly by each government agency. A company that is registered as a multiple supplier needs to strictly follow the rule to not sell below the contract price. Therefore, in order to prove that supplies were not sold below the contract prices, evidentiary documents are submitted, including annual tax statements, sales trading statements, and sales ledgers. Meanwhile, lots of modern businesses are done through internet transactions, which can establish an on-line price that is lower than the contract price. Even if it is the internet market, if the Public Procurement Service finds out through market survey that there are supplies that are lower than the contract prices, it request for the lowering of contract prices based on what they have found. However, products of the internet market have the advantage of providing low-priced products because they are not sold at stores and only a small number of employees are needed. On the other hand, in some cases, there is a lack of credibility regarding the survey on the internet market, such as products supplied through unofficial distribution channels, selling supplies through one-time cheap advertisements, and selling in bulks to make up for losses at sales stores, because considering internet prices as the lowest market price and asking multiple suppliers to meet that price does not take the perspective of continued transactions and trust in the future into consideration.
Request for improvement	We request for improvements in two areas by considering the above present status and problems. ① When conducting a survey on prices, in the case where there is a price that is lower than the contract price, the present status of internet or on-line transactions should be investigated thoroughly, and in the case where that internet price is only applied temporarily, measures (price reduction) should be taken after monitoring the company's prices. ② It is usual for there to be a difference between the internet price and offline price. In other words, since there are additional services provided offline (including direct delivery, engineer's visit, manufacturing company's service, etc.), the price will go up. Please take all of these into consideration.

Related agencies, related laws, etc.	<Related agencies> Ministry of Strategy and Finance, Public Procurement Service <Related laws> Article 7-2 of the Enforcement Rules of the Act on Procurement Business (Multiple Supplier Contract) Article 21 of the Regulation on Handling Multiple Supplier Contracts (No. 1486 of Instructions of Public Procurement Service, March 31, 2010) (Adjustment of Contract Price and Highest Preferential Price)
Reference	

Name of item	31. Prior Notification and Approval of Postponement Regarding Investigations Conducted by Fair Trade Commission 【New】
Present status/problem	In order to find out whether or not a company has violated the compliance with laws, the Korean government conducts various investigations, but most on-site investigations (investigations by National Tax Service, Korea Customs Service, Ministry of Employment and Labor, and Ministry of Environment) send a prior notification before a certain period. However, the on-site investigation of Fair Trade Commission is conducted without prior notification in most cases. Also, there are only four conditions mentioned below under which a company may postpone the disposition or investigation by the Fair Trade Commission, making it difficult to postpone in actual circumstances. 1) In the case where there is an occurrence of natural disasters; 2) In the case where the company is going through the procedure of merger and acquisition, settlement by mutual agreement, court receivership, bankruptcy, or other similar cases; 3) In the case where ledgers and evidentiary documents are confiscated and kept in custody by an institution of high authority; or 4) In the case where there is a serious obstacle in the process of doing business for the company or its organizations due to fire, etc. Japanese companies that are engaging in business in Korea have large head offices, but most of the local branches in Korea are small-and medium sized companies. In the case where there is an on-site investigation suddenly without any prior notification, it is difficult to respond appropriately to the investigation. Also, since these companies have a small number of employees, it seriously disturbs the business by conducting investigations. Even if local Japanese companies want to postpone the investigation, it is difficult to do so because the reasons for postponement stated in the law are very limited.
Request for improvement	Taking the above present status and problems into consideration, we request for improvements in the following two areas. ① Provision of prior notification We request for prior notifications to be provided in advance (for example, one week notice) before conducting on-site investigations by the Fair Trade Commission. ② Additions made to reasons of postponing investigations In the case where the company has sufficiently prepared and made an indication to respond to an investigation by the Fair Trade Commission, unless there are special reasons like destruction of evidence or intention to run away, we request for the amendment of related laws so that, in principle, dispositions and investigations can be

	postponed.
Related agencies, related laws, etc.	<Related agencies> Fair Trade Commission <Related laws> Article 50-3 of the Monopoly Regulation and Fair Trade Act
Reference	

Name of item	32. Unification of the Agency in Charge of Managing the Wastes of Electric and Electronic Products 【New】
Present status/problem	The laws on the treatment and recycling of various wastes arising from work sites that produce electric and electronic products are divided into two, while there are also two agencies that are in charge of managing them. In other words, the agency in charge of the Waste Management Act is the Ministry of Environment, while the agency in charge of the Act on Resource Circulation of Electrical and Electronic Equipment and Vehicles (hereinafter referred to as “Resource Circulation Act”) is the Korea Environment Corporation. A person who discharges, collects, recycles, or disposes wastes has to be inputted into the ALLBARO-System of regional environmental offices. Also, industrial wastes (specified wastes) according to the Resource Circulation Act need to be inputted into the ECOAS-System of the Korea Environment Corporation As seen above, similar data and feedback data have to be reported to each regulatory agency, which places a huge burden on the company and there are lots of loss and confusion arising at work.
Request for improvement	Taking the above present status and problems into consideration, we request for the following: As seen above, there are two agencies in charge of managing wastes, which increase workloads to general companies. As a result, it is necessary to have employees to be in charge of those duties, which increases the fixed costs. Therefore, we request for the unification of agencies in charge of waste treatment of electric and electronic products.
Related agencies, related laws, etc.	<Related agencies> Regional Environmental Office under the Ministry of Environment and Korea Environment Corporation <Related laws> Paragraph 3 of Article 18 of the Waste Management Act Article 39 of the Act on Resource Circulation of Electrical and Electronic Equipment and Vehicles
Reference	

Name of item	33. Improvement of Post-Management System for Drug Prices 【Continued】
Present status/problem	**1. Present Status** On August 12, the Korean Ministry of Health & Welfare announced the Post-Management System for Drug Prices, which makes it mandatory to unilaterally reduce expiring drug patents by 30% during patent expiration and by 46.45% one year later. (Expected to start from 2012) **2. Problem** In the case of mandatory reduction of patent expiration of originals for all drugs, -20% is excessive for the current status, but it is serious to apply the government's proposal of -30% during patent expiration and -46.5% after one year. There is only a minor difference of 15% between originals and generics, but after this proposal, there is 0% difference one year after patent expiration. Actually, the difference of drug prices between originals and generics should increase. The government proposal pointed out the problem of how the price difference between originals and generics is small, but the proposal has provided the opposite solution. As a result of the huge reduction of all drugs mandatorily implemented by the policy, there is very little choice that companies can take on the business strategies for originals and generics, which hinders appropriate free price competition between companies. The price value of each drug should be decided by evaluating the medical market and adjust the drug price, such as the number of applicable patients, the critical condition of applicable diseases, the scope of development, the strength of patents, the manufacturing cost, the situation of competition, and the added value of information activities by selling company. The Market Price Linked Drug Price System, which was adopted in November of last year, had been implemented in line with these thoughts. However, we do not agree to the system of encouraging competition with excessive difference in drug prices by giving incentives through government authority. It is too harsh to forcibly reduce the prices of all drugs without looking back on the value of each drug.
Request for improvement	We request for revision of the 'system of unilaterally reducing the drug price of pharmaceutical products of patent expiration by 53.55% of the current price in 2012' was announced by the Korean government in August 2011 as follows: (1) Decrease the forcible reduction of originals of patent expiration. (2) Increase the difference of drug prices between originals and generics. (3) Afterwards, in order to encourage free price competition between originals and generics, the 'Market-Oriented Real Transaction Price System' should be applied to originals and generics. The patient's self-pay and insurance repayment to medical institutions should come from the actual purchase prices, while the actual sales prices

	in the market should reflect the drug prices of the following year. However, ① The payment of incentives to governmental medical institutions and insured pharmacies should be abolished. (reasons) It hinders the proper use of drugs due to excessive price competitions, and also because it causes medical inefficiency due to the input of business resources for negotiations on price decreases for each individual handling drugs. ② Regarding the huge gap of more than 10% between the market prices and drug prices, the interim measures to cut the decrease of drug prices should be abolished. (reasons) In the case where there is a huge gap of more than 10%, it can cause a situation like ①. A free price competition can be realized if there is a transparent rule where the state of the price competition is exactly reflected in the drug prices, which also realizes proper drug prices in calculating medical insurances. If interim measures are needed, it should be like what had been implemented before in Japan, which is the method of consecutively reducing the Reasonable Zone (R Zone). At the time, Japan adopted the drug price system linked with the weighted average market price, there were many medical institutions existing that relied their business resources on excessive margin from drug prices. Since Korean medical institutions don't rely on margins from drug prices, we don't think the interim measures are needed. **Example)** In the case of R Zone, in the 1st year: 15%, in the 2nd year: 10%, in the 3rd year: 5%. If the 4th year is 0%, the disparate ratio of drug prices from the 1st year to the 4th year will be the similar level of 20% continuously for the market prices, therefore, the revised ratio of drug prices should be -5%, -10%, -15%, and -20%, respectively. ③ If the investment performance of each company's R&D costs satisfies the requirements, regardless of how huge the disparate ratio of drug prices for market prices is, the exemption law that makes the decrease of drug prices to 10% should be abolished. 1) First reason is that the value of individual product is evaluated in the market according to each product; therefore, the price of each product is established individually. It isn't evaluated according to the company that is selling the product. There shouldn't be a completely different factor that exists together with the economic inducement on R&D investments in the free price competition of the market. As shown in the government proposal, the economic inducement of R&D investments can be made through various methods. 2) Second reason is that it is unilaterally unfavorable to foreign companies that make R&D investments through consolidated basis with the overseas head office. 3) Third reason is the same as ①. (4) Regarding drugs that are confiscated for unfair trading due to giving rebates; we call for the drugs to be strictly cut immediately without exemption measures. (5) Among other existing drug post-management systems, we request for the abolition of those that are overlapping, the guarantee of transparency of drug price trends after

	releasing them, and the improvement of predictability.
Related agencies, related laws, etc.	<Related agencies> Ministry of Health and Welfare <Related laws> 'Decisions and Adjustments of New Medical Technologies' of the National Health Insurance Act (Public Notice of the Ministry of Health and Welfare)
Reference	

Name of item	34. Improvement of New Drug Pricing System 【Continued】
Present status/problem	**1. Present Status** Calculation of low drug prices and extension of multiple negotiations due to bilateral negotiations for calculating drug prices **2. Problem** In January 2007, after changing from the Insurance Drug Pricing System to the Positive List System, the drug prices calculated for new drugs are 35% of the average of 7 advanced countries, which is extremely low compared to other countries. Also, starting from now on, it is necessary to negotiate the drug prices with both the Health Insurance Review & Assessment Service (HIRA) and the National Health Insurance Corporation (NHIC), which extends the negotiation period, and moreover, there are cases where the negotiation broke down. As a result, new drugs, which have already received approval for its effectiveness and safety from the health authorities by spending massive investments and long periods in development, are not being used generally in insured medical treatment, which causes lots of cases where there is no repayment on insurance. From January 2009 to April 2009, a total of 59 new drugs have been approved, but it has taken almost one and half year in average to negotiate the drug prices for approval (the longest is three years). Among them, only 29 drugs received insurance repayment through negotiation, while 9 drugs had the indication of the collapse of negotiation and 7 drugs are considered to have ceased to negotiate. Due to the extension of negotiations aimed at calculating low drug prices, the patent period during which investments spent on developing new drugs can be returned is shortened. Also, there is more pressure on the economic benefits of pharmaceutical companies that are tired from long-term negotiations resulting from calculating low drug prices, making it difficult to even get paid back for the expenses spent on developing new drugs due to the reduction of expected profits and low prices. Even in the case of new drugs that acquired sales approval by making investments on development in Korea, the prospect of getting back the investments made through the business is not bright, which leads to many drugs postponing the sale of the product. The legal grounds for NHC holding drug negotiations with each pharmaceutical company is according to Paragraph (1) of Article 42 of the National Health Insurance Act (refer to *1), but it is too weak for evidence. Also, considering the dynamics that the negotiation between an agency of regulatory authority and a private company is seriously imbalanced, this does not establish a fair and reasonable negotiation.
Request for improvement	(1) We request for a clarification on the duties between the HIRA and the NHIC so that the burden on pharmaceutical companies during drug pricing negotiations can be improved. ① We ask for the unification of the channel for negotiating new drug prices to be just

	the HIRA. ② In the case where the reasonability of the newly calculated drug price has been proven through the Health Technology Assessment (HTA) in the process of acquiring new drug prices with the HIRA, we request for that price to be respected. (2) We request for the abolition of the following regulations mentioned below because of lack of reasonability. ① The maximum price is the weighted average, including the generics of the product of the same type and same effectiveness. ② In the case where the insured drug price of less than three countries is below three countries, calculate the drug prices as 80% of the minimum prices of reference prices (limited to drugs developed in Asia).
Related agencies, related laws, etc.	<Related agencies> Ministry of Health and Welfare, Health Insurance Review & Assessment Service, National Health Insurance Corporation <Related laws> Article 42 of the National Health Insurance Act (the costs of medical care, including the calculation of medical care, shall be decided through contracts with the persons representing the medical industry specified by the President of the National Health Insurance Corporation and the Presidential Decree. In such a case, the contract period shall be one year. <Amended on December 31, 1999> 'Decision and Adjustment Standard of New Medical Technology' (Public Notice of the Ministry of Health and Welfare) 'Guideline on Drug Pricing Negotiation' (Public Notice of the National Health Insurance Corporation)
Reference	

5. Improvement of Living Environment

Name of item	35. Improvement of Traffic Problems 【Continued】
Present status/problem	1) Motorcycles travelling on pavements. 2) More traffic caused by vehicles ignoring traffic lights, the crackdown on road parking, and vehicles that enter the crowded crossroad when there is no room to move forward. 3) Buses speeding up unnecessarily and stopping suddenly.
Request for improvement	We request for more crackdown to ensure the safety of pedestrians, while also strictly complying with penalty regulations and traffic rules, as well as provide guidance to improve public awareness on traffic. Regarding sudden stopping and speeding of buses, it is very dangerous because the elderly and children can fall, and also we ask for guidance and training to improve the ethics of drivers of public transportation, such as refraining from reckless driving.
Related agencies, related laws, etc.	<Related agencies> Ministry of Public Administration and Security <Related laws> Road Traffic Act
Reference	