

Summary Report of the Terminal Evaluation

1. Outline of the Project	
Country: People's Republic of China (China)	Project Title: Economic Legal Infrastructure Development Project
Sector: Legal and judicial development	Type of assistance: Technical Cooperation Project
Division in Charge: JICA China office	Total Cost: 509 million
Cooperation Period	(R/D): November 18, 2004 - November 17, 2007
	(Extension): November 18, 2007 - November 17, 2009
	(F/U) :
	(E/N) (No charge)
	1) Implementing Agency: Ministry of Commerce (MOFCOM) 2) Partner Organizations: Legislative Affairs Commission of the National People's Congress (NPC) Standing Committee, NPC Financial and Economic Affairs Committee, Supreme People's Court, State-owned Assets Supervision and Administration Commission, State Administration for Industry & Commerce (SAIC), Securities Regulatory Commission, etc.
	Supporting Organizations in Japan: Ministry of Economy Trade and Industry (METI), Japan Fair Trade Commission, Ministry of Justice
	Other related cooperation:
1-1 Background and Outline of the Project	
<p>Based on the record of discussion ("R/D") agreed by Chinese and Japanese sides on November 18, 2004, JICA implemented the Economic Legal Infrastructure Development Project ("the Project") with MOFCOM as an implementing organization and the Financial and Economic Affairs Committee of NPC, the Legislative Affairs Commission of the NPC Standing Committee, and the Legislative Affairs Office of the State Council as supporting organizations for three years from November in 2004 to November in 2007. The purpose of the Project was to support revision of the company Law, development of the Anti-monopoly Law and laws on markets and distribution, which are urgent along with the development of market economy in China, and human resources development in legislative and enforcement organizations.</p> <p>Although the evaluation team in November 2007 regarded then results highly, it recommended that the Project should be extended for the Anti-monopoly Law sub-project and the Laws on market and distribution sub-project. It was because that the anti-monopoly sub-project could not support the enforcement system as originally scheduled due to delays in the law development and that there emerged new challenges relating the Laws on market and distribution as the Chinese market system developed. After discussion between related organizations of Japan and China, extension R/D was concluded on May 14, 2008 to extend the Project until November 17, 2009. An external consultant conducted the evaluation on the extension period in November 2009.</p>	
1-2 Project Overview	
<p>The Project aimed to support revision of the Company Law, development of the Anti-monopoly Law and as laws on market and distribution circulation and human</p>	

resources development in legislative and enforcement organizations. It carried out activities such as training in Japan and seminar in China for five years from November 18, 2004 to November 17, 2009.

(1) Overall goal

Companies, an important player in Chinese economy, enjoy opportunities of starting and developing their business in a sound economic order; fair and free competition of companies is promoted; and thereby, consumers' interests are protected and national economy's sound and sustainable development is realized. Besides, exchange and mutual understanding are promoted between experts and practitioners of economic law and company law in Japan and China.

(2) Project purposes

The capacities of officers in legislative organizations and law enforcement organizations in China are developed and the establishment of transparent economic law and company law systems is promoted, which utilize knowledge of Japan and advance harmonization with international rules.

(3) Outputs

Sub-project 1: Development of the Company Law

[Output 1-1] Legislative officers understand the following points; the bill using that knowledge is drafted and enacted.

- 1) Promoting the investment and starting a business
- 2) Sound management of company (standardization of establishment of company and corporate governance)
- 3) Sound mechanism to protect the legitimate rights and interests of stockholders and creditors
- 4) Legal consistency between Company Law and related laws (e.g., Securities Law, laws on three kinds of enterprises with foreign investment, Law on Enterprise Bankruptcy, M&A related laws, Measures for the State-owned Assets Management.)

[Output 1-2] Enterprise registration system and its operational framework are established in following manners :

- 1) The establishment of regulation on enterprise registration is promoted based on knowledge of Japan in accordance with the purpose of the revised Company Law.
- 2) The development of training materials on enterprise registration practice are promoted based on knowledge of Japan.

[Output 1-3] Development of enforcement system for conflict resolution and against violations based on the legislative purpose of the revised Company Law.

Sub-project 2: Legislation of the Anti-monopoly Law

[Output 2-1] Legislative officers understand the following points and, utilizing that knowledge, the Anti-monopoly Law is drafted and enacted.

- 1) Prevention of abuse of dominant market position
- 2) Prevention of mergers and acquisitions which lead to excessive concentration of economic power
- 3) Harmonization with the Price Law and the AntiUnfair Competition Law

- 4) Independence of enforcement system of the Anti-monopoly Law
- 5) Non-discriminatory treatment of domestic and foreign capital

[Output 2-2] Enforcement system is established based on the legislative purpose of the Anti-monopoly Law and the following points and the Anti-monopoly Law is transparently, fairly and effectively enforced.

- 1) Coordination of the Anti-monopoly Law enforcement ministries and ministries supervising specific industry
- 2) Minimization of the scope of exclusion from application of the Anti-monopoly Law
- 3) Development and disclosure of related regulations and guidelines

Sub-project 3 Joint study on laws on market and distribution

[Output 3] Knowledge of legislative officers about laws and regulations on markets and distributions is accumulated.

(4) Inputs (as of November 2009)

Japan:

Short-term experts (advisors and speakers): 92 persons

Consultants for project management since May 2005

Trainees: 248 persons

Administrative cost for the symposium in China

China:

Counterparts: 248 trainees to Japan

Seminar participants: 394 persons in total

Symposium participants: 317 persons in total

Office for Japanese experts

Arrangement of venue for seminar

2. Evaluation Team

Members	<p>(1) Terminal evaluation (November 2007)</p> <p>Japanese Evaluation Team</p> <ol style="list-style-type: none"> 1) Leader: Masato Watanabe, Deputy Representative, JICA China Office 2) Anti-monopoly Law: Ryohei Tamura, Deputy Director, International Affairs Division, Japan Fair Trade Commission 3) Evaluation planning: Akira Okubo, Representative, JICA China Office 4) Economic law / evaluation analysis: Eri Habu, Associate professor, Department of Economics, Graduate School of Economics of Yamaguchi University <p>Chinese Evaluation Team</p> <ol style="list-style-type: none"> 1) Leader: Wu Zhen Guo, Deputy Director General, Department of Treaty & Law, MOFCOM 2) Deputy leader: Feng Yan, Division Director, Department of Treaty & Law, MOFCOM 3) Evaluation planning: Zhao Li Li, Anti-monopoly Law Office, Department of Treaty & Law, MOFCOM
	<p>(2) Terminal Evaluation on extension period (November 2009)</p> <p>Japanese Evaluation Team</p>

	<p>1) Leader: Michiyo Hamada, Commissioner, Japan Fair Trade Commission</p> <p>2) Anti-monopoly Law (enforcement and guidelines): Ryohei Tamura, Deputy Director, International Affairs Division, Japan Fair Trade Commission</p> <p>3) Anti-monopoly Law (curriculum on training and seminar): Toshiyuki Igarashi, International Affairs Division, Japan Fair Trade Commission</p> <p>4) Economic Law / evaluation analysis: Eri Habu, Associate professor, Department of Economics, Graduate School of Economics of Yamaguchi University</p>	
Periods	<p>November 18 - December 1, 2007</p> <p>November 4 - November 13, 2009 (Extension Period)</p>	Type: Terminal Evaluation

3. Summary Results of Evaluation

3-1 Achievement of Outputs

The actual number of Japanese experts, Chinese counterparts and Trainees in Japan were more than that of the original plan so that more outputs were produced than expected in the Project Design Matrix (PDM).

Legislation of the anti-monopoly Law delayed than the original plan and it was promulgated in August, 2007 and enforced in August, 2008. Deliberation of the NPC Standing Committee delayed almost one year, so the output 2 such as “Recommendation on organization of development of the Anti-monopoly Law enforcement organizations” and “Identification and recommendation on challenges in enforcement of the Anti-monopoly Law” were expected to achieve in the extension period. The extended Project assisted in establishment of an enforcement system of the Anti-monopoly Law and formulation of guidelines on the Anti-monopoly Law for MOFCOM, National Development and Reform Commission NDRC and SAIC. In addition, ministries in charge of Companies and the Supreme People’s Court were added to a list of partner organizations so that the outputs were produced than those of PDM.

Activities were basically implemented according to the original plan and Japanese laws on markets and distribution. Regarding laws on markets and distributions, were comprehensively introduced with training materials. As a result, it was confirmed that Chinese needs this field include: the Commercial law, commercial transaction law, the Act on commercial transaction law on intellectual property right, electronic commerce law, various business laws and credit transaction law, etc.

3-2 Summary of Evaluation Results

(1) Relevance

The Project is deemed relevant from the following points.

- 1) Consistency with China’s development policy and Japan’s aid policy
 - (i) China set establishment of “the Socialist System of Laws with Chinese characteristics” until 2010 as a national goal. In the legislative plan for the 10th NPC Standing Committee (2003-2006), the Company Law and the Anti-monopoly Law were classified as Category I. Development of laws on markets and distributions was also urgent to meet the commitments for the WTO accession protocol.
 - (ii) Japan’s Ministry of Foreign Affairs published the "Economic Cooperation Program for China" in October 2001 and prioritized "Support of Reform and Open-up Policy" including "Improving efficiency and transparency in government and rule of law". Based on this policy, JICA carried out project formulation study on promotion of private sector in March 2002 and confirmed a strong need for cooperation on legislation of economic laws and judicial human resources development.
- 2) Improvement of knowledge and abilities of legislative officers met with the needs of Chinese government which aimed for prompt enactment of legislation. Introduction of Japan’s comprehensive system from legislation to implementation and typical cases based on original requests also met the needs of China.
- 3) The Project, through seminar, symposium, and training in Japan, introduced the legal system of Japan and provided legislative advice on drafting laws for Chinese officers who are responsible for legislation, review, and application and enforcement of laws. Comparative law method was appropriate because it deepened Chinese legal professionals’ understanding of the whole process from drafting to legislation to develop laws suitable to the current Chinese situation and contributed to human resources development in China.

Overall, the Project met strong needs from China and its relevance is very high.

(2) Effectiveness

Although the Project is considered relatively effective based on the achievement of project purpose and the relation between the outputs and project purpose, some activities were not implemented due to unexpected external factors. Residual activities were implemented by extending the cooperation period. Timely training and information were provided to introduce rules and guidelines and organization, function and operational process of enforcement authorities, which were utilized by Chinese side as reference. Regarding laws on markets and distribution, the Project achieved the planned output by assisting MOFCOM in its most urgent issues: automobile circulation; unfair transaction; and distribution policy.

Meanwhile, transfer of counterpart officials did not hinder the progress of the Project because of smooth takeover.

The Project purpose and outputs were properly related and outputs were sufficient. Overall, the effectiveness of the Project is very high because satisfaction of Chinese participants is high and the Project appropriately responded to their needs.

(3) Efficiency

Decision of adoption and extension by Japanese government were unprecedentedly fast so that the Project could start in a timely manner to meet requirements of the legislation plan of the NPC and needs of Chinese organizations which strived for legislation and implementation at a high pace. Therefore, the efficiency of the Project is high as a whole, except for cancellation of a symposium on the Company Law due to busy schedule on both sides.

The Company Law sub-project shifted its main activities flexibly from legislation to implementation because the Company Law was enacted shortly after the Project started. The shift also improved efficiency.

For the Anti-monopoly Law sub-project, the intensive inputs to the needs of China at the most important period of finalizing legislative work made efficiency very high. In addition, just before and after beginning of enforcement of the Anti-monopoly Law, the Project introduced Japan's regulations and guidelines as the key for law enforcement and carried out timely training activities and offered information on organization, function and operations of the Japan Fair Trade Commission, to which China referred when it developed corresponding regulations, guidelines and operational procedures.

The sub-project on laws on markets and distribution sub-project also made inputs sequentially in response to the needs of China. The Project organized training activities in Japan and seminars on the "Law concerning Recycling Measures of End-of-Life Vehicles". Besides, it offered timely training activities in Japan and seminars on distribution immediately after the second Japan-China High-Level Economic Dialogue in June 2009, which announced to launch the Japan-China Distribution Dialogues.

(4) Impact

The revised Company Law became effective in January 2006 and the Anti-monopoly Law was promulgated in August 2007 and enforced in August 2008. Regarding laws on markets and distribution, MOFCOM revised regulations on retail and further legislative work is ongoing. The progress of legislation proves the impact of the Project toward achievement of the overall goal.

As "support for private sector activities", one of priority areas in Japanese Economic Cooperation Program for China, the Project held law dissemination seminars and

conferences on the laws relating to the Project for Japanese companies operating in China. In addition, the Project broadly was aware of the problems which many Japanese companies had questioned, so that there is an impact from a new angle.

A comparative law study approach in the Project offered opportunities for Chinese legal experts to understand the significance of each law through the entire process from drafting to legislation, and they highly regarded the approach. As a result, understanding of Japanese law has deeply prevailed in China and gave it a turning point to comparative study in China, which has been mainly about the European civil law and Anglo-American common law. According to the partner organizations in the Project (NPC Legislative Affairs Commission, Finance and Economy's Affairs Committee, State Council Legislative Affairs Office, Supreme People's Court, Securities Supervisory Board and so on.), they had previously managed to study Japanese law only by obtaining the limited translated materials. The Project provided them with chances to advance the comprehensive understanding of Japanese law greatly. The partner organizations recognize that the Project contributed significantly to the legislation and implementation process for establishment of China's market economy and hoped continued legal cooperation between Japan and China. Thus the Project has produced a huge impact.

Chinese participants in training, symposia and seminar brought about continuous ripple effects of intellectual cooperation by reporting their study and research in their organizations even after the Project.

(5) Sustainability

Sustainability of the Project is based on factors of policy, organization and human resources.

Sustainability on policy is high because the Chinese government prioritizes and will prioritize legislation and revision of laws related to economic activities.

In terms of organization, MOFCOM as a main partner organization of the Project, has strengthened its influence to other organizations and demonstrated the ability of a cross-ministerial coordination. A communication tool through MOFCOM has been established among the participating organizations, and thus capacity of coordination on legal development is expected to be enhanced. Although three enforcement organizations of MOFCOM, NDRC and SAIC are independently responsible for particular issues on Anti-monopoly Law, officers in those organizations jointly participated in training activities in Japan and seminars so that collaboration among three organizations has been promoted.

As noted on impact, all partner organizations in the Project Legislative Affairs Office of the State Council deepened the comprehensive understanding of Japanese laws. The fact that they expressed a strong demand for continuous legal cooperation between Japan and China indicates high sustainability.

Since legal cooperation on particular law has strong ripple effects, the Project unearthed the needs of further cooperation on other law areas. As a characteristic of legal cooperation, the greater sustainability leads to the more needs of cooperation. It is urgent for JICA to establish long-term cooperation.

In terms of human resources, counterparts and officers in partner organizations have exercised their abilities and are involved in the Project even after they were promoted to higher positions. Those efforts would contribute to sustainability of the Project greatly.

3-3 Positive Factors

(1) Planning

The Project adjusted PDM and Plan of Operation (PO) according to the NPC

Legislative plan. The Project responded to Chinese needs properly.

(2) Implementation process

The Chinese government clarified revision of the Company Law, enactment of the Anti-monopoly Law and improvement of laws on market and distribution as important national goals. Chinese organizations' efforts according to the NPC legislative plan ensured the predictable outcome of the Project.

In addition, MOFCOM's improved cross-ministerial coordination capacity also contributed to the Project.

3-4 Challenges

(1) Planning

In China, legislation is done according to the legislative schedule which is issued every 5 years. The laws on the NPC Legislative plan must be promulgated within 5 years so that support to drafting those laws requires flexibility and speed. Therefore, the lead time from request to implementation hinders timely cooperation. It is necessary to establish a system to various needs flexibly.

(2) Implementation process

Coordination is a key to the success of legal assistance plan. Consultants for coordination he must have wide knowledge for legislation policies, processes, schedule and techniques of Japan and partner countries and collect information on legal enforcement system, organizational, external conditions for legal system. Coordinators should convey the information to experts on specific laws. As the Project went on, consultants improved coordination work which led to smoother implementation of the Project.

3-5 Conclusion

The Project improved capacity of Chinese counterparts on understanding, legislation and enforcement of the Company Law, the Anti-monopoly Law and Laws on markets and distribution. The revised Corporation Law was enforced in January, 2006 and the Anti-monopoly Law was promulgated in August, 2007 and enforced in August, 2008. Development of laws on markets and distribution is also ongoing.

In conclusion, based on a "comparative study" approach, Chinese Counterparts in the Project could develop their capacities so that the Project has carried a huge significance. In addition, understanding of Japanese law prevailed in Chinese counterparts and the Project gave an impact on Comparative law studies in China which mainly had studied Continental law in Europe and Anglo-American law. Chinese partner organizations in the Project expressed their strong needs of continuous Japan-China legal cooperation.

3-6 Recommendations

(1) In China, legislation is done according to the legislative schedule which is issued every 5 years. The laws on the NPC Legislative plan must be promulgated within 5 years so that support to drafting those laws requires flexibility and speed. Therefore, the lead time from request to implementation hinders timely cooperation. It is necessary to establish a system to various needs flexibly. Other international organizations adopts flexible operation mechanism which identifies area of laws broadly rather than specific law. JICA also should consider such mechanism.

(2) In China, there are various needs of law development and cooperation with Japan. As China becomes more important in global economy, Japan's legal cooperation contributes to not only Chinese companies but also foreign companies including

Japanese ones. It is necessary to discuss a long-term plan of Japan-China legal cooperation.

- (3) It is difficult to apply the DAC evaluation criteria based on traditional PCM method to legal assistance. It is necessary to methodology of evaluation indicators.
- (4) It is desirable for a long-term expert with legal professional ability to support overall management of legal assistance.
- (5) The Project contributed to interpersonal communication between Japan and China and more favorable business environment of Chinese and Japanese enterprises. In addition, Subproject on laws as markets and distribution promoted commissions between responsible officers of Japan and China in advance of official governmental discussion. In this sense, the Project can be identified as a model of J&CA's legal assistance. Therefore, ex-post evaluation is necessary to prove impact and sustainability.

3-7 Lessons

- (1) The translated materials, cases and commentaries about Japanese law created by the Project could be used for training young officials who will be responsible for drafting, legislation and dissemination. Correct translation of materials is often unnoticeable but most important in legal cooperation because the definition of articles in law is the key to legislation skills. Taking the lesson by the past projects, the Project was well prepared with enough budgets for translation.
- (2) It is necessary that materials for training in Japan should be distributed in advance to serve the participants for their preparation and to increase the efficiency of short-term training courses.
- (3) In legal cooperation, coordination is also the key to its success. A coordinator needs extensive knowledge about policies, processes, plans and skills of legislation in Japan and in a partner country. In addition to complicated coordination work, a coordinator should also collect information on law enforcement system, governance and personnel structure of enforcement organizations, legal environment in a partner country to input the appropriate information to academics and experts in Japan, who are responsible for advices on a particular law.