



## Report on Conclusion of Cooperation Agreement with CIETAC

Kosuke Yamamoto, President of JCAA

In order to sign the Cooperation Agreement between JCAA and The China International Economic and Trade Arbitration Commission (CIETAC), I visited Beijing, China from March 7 through March 8, 2002, accompanied by Mr. Onuki, Manager of JCAA's Osaka Office.

Up to this time, JCAA had kept certain contacts with CIETAC but had not come to enter into official agreement with it, while JCAA had concluded cooperation agreements with 41 ADR institutions around the world.

Recent rapid expansion of the economic relationship between Japan and China will necessarily bring about an increase of commercial disputes involving both countries' enterprises. Such disputes, of course, may be resolved in national courts of relevant jurisdiction, but national court judgments are generally difficult to enforce in other countries. In addition, in order for parties to disputes to enjoy the advantages of diversified dispute resolution methods, greater promotion of arbitration and other ADR is necessary. In this

regard, it would certainly be of much value to establish a cooperative and close relationship between JCAA and CIETAC. With this view, JCAA had approached CIETAC with a proposal of executing a cooperation agreement between the two

organizations since last year. Upon gaining CIETAC's willing consent, I arranged the earliest visit to Beijing to bring our proposal to fruition as soon as possible.



CIETAC was established in 1954 by The China Council for the Promotion of International Trade (CCPIT). CCPIT is an organization conducting a wide range of public services including expediting trade, attracting investments, and promoting the introduction of foreign technologies. The current Chairman of CCPIT is Mr. Yu Xiaosong, who concurrently serves as Chairman of CIETAC. The day-to-day operation of CIETAC is supervised by Dr. Wang Sheng Chang, a CIETAC vice chairman. Dr. Wang is a young gentleman who is fluent in English and widely known in the international arbitration community. CIETAC currently handles about six

hundred cases a year, one-third of which are international in nature. The number of executives and regular employees is about sixty.

The Cooperation Agreement provides for the following collaborative activities of JCAA and CIETAC:

- (1) Cooperation in the promotion of arbitration and other ADR;
- (2) Establishing and running of conferences and seminars on arbitration and other ADR;
- (3) Mutual provision of facilities or administrative services; and
- (4) Exchange of information and visits.

Before the signing ceremony, I visited the CIETAC headquarters located in Beijing City. The building was pretentious, with comfortable office space. When I was directed around the hearing room area, I saw some western people amid Chinese in the biggest hearing room, where I learned that a hearing of an arbitration case involving a British company was being held. In that case, I heard, the hearing was conducted in English.

The signing ceremony was held at Kunlun Hotel, Beijing. The signer on the CIETAC side was Mr. Liu Wenjie, a CIETAC vice chairman who is also holding the post of Vice Chairman of CCPIT. When Mr. Yu, who was not slated for the ceremony due to attendance at the National People Representatives Meeting (China's national parliament), unexpectedly appeared to witness, he was greeted with a round of cheers. For the JCAA side, I signed the Cooperation Agreement and witnesses were Mr. Hatano, Counsellor at the Embassy of Japan to China, Mr. Kitagawa, General Manager of the Japan-China Economic Association's Beijing Office and Mr. Onuki. In his congratulatory speech, Mr. Yu stated that he expected the partnership between both organizations would be getting stronger along with further development of the Japan-China economical relationship.

At the Japan-China vice-ministerial-level talk held on the day after the signing, our Cooperation Agreement was introduced as one of the noteworthy cases of advance in the two countries' partnership. ■

---

## A New Arbitration Law Is Now Being Drafted

The Judicial Reform Promotion Plan was decided by a Cabinet meeting in March, this year. According to this plan, a new arbitration law is to be presented to the ordinary Diet session of 2003. The Office for Promotion of Justice System Reform establishes the consultation group of arbitration experts and is preparing for legislation.

Mr. Masaaki Kondo, Counselor for the Cabinet Office, is in charge of the secretariat for the consultation group. He made a speech on drafting a new arbitration law at JCAA's general con-

ference and indicated such issues in drafting a new arbitration law as the adoption of UNCITRAL model law, qualification of neutrals, interim measures of protection, and statute of limitations. He emphasized that a new arbitration law should be easy to use and comply with an international standard.

The present arbitration law was enacted more than 100 years ago. Being so old is pointed out as one of reasons why there are not many caseloads of arbitration in spite of the scale of Japan's economic activity. The final report of the Judicial Reform Council, which has an influence on drafting a new arbitration law, mentions the necessity

of a legal infrastructure for arbitration that keeps up with economic globalization.

The results of the public questionnaires seem to agree that UNCITRAL Model Law should be used as a base for the general provisions and that a new arbitration law should not distinguish between domestic cases and international cases, as well as between civil cases and commercial cases.

Most arbitrators in Japan are lawyers. In relation to the Lawyers Law, a qualification for an arbitrator is one of the issues. The minutes of the consultation group discussion express the majority opinion that a specific qualification was not required for an arbitrator.

The study group considers the enforcement of interim protection measures, taking UNCITRAL 's discussion into consideration. The point of the discussion is whether an arbitral court should be

allowed to have the enforcement of interim measures. It is thought to be an important matter from the viewpoints of due process and consistency with the preservation of evidence by courts. There are a variety of opinions on each side, yes or no, on the enforcement of interim measures. A policy has not been determined yet.

A statute of limitations is also one of the issues. There is old case law that states that time limits should be reset if the parties concerned start such arbitral proceedings as appointing an arbitrator. However, as for drafting a new arbitration law, a statute of limitations is carefully considered because arbitral proceedings are different from ADR organization to ADR organization and there are no still less-formalized arbitration proceedings in the case of ad-hoc arbitration.



---

## APEC ADR EEP 2000 in Hawaii

APEC ADR EEP is an executive education project to promote ADR which leads to facilitation of international trade in the APEC region. APEC funding of US \$200,000 is allocated to this three-year project. Both the first seminar/workshop, held in Bangkok in 2000, and the second, in Mexico City in 2001, were reported in previous issues of the JCA Newsletter. JCAA 's former president, Mr. Norihiko Maeda is the Project Overseer.

The project 's third workshop was held last April 10-13 in Honolulu, in conjunction with the International ADR Conference sponsored jointly by the East-West Center, the University of Hawaii Law School and two other institutions. The Conference program was adjusted to accommodate the objective of the workshop, and APEC experts

benefited from the interchange with the Conference participants.

At the workshop, the assumption that ADR alone could keep the interest of senior executives for 1/2 day was reexamined. APEC experts who were present noted that the past two seminars of this project were designed to have interesting themes other than ADR and the success was brought about, at least partly, due to this approach. It was generally agreed that, while 1/2 day or longer seminars were good for the technical level consumers of ADR service and ADR service suppliers, it was unrealistic to expect senior executives to invest their time and effort to learn ADR when they have no immediate need, and that it would be better to make a short speech on ADR at their companies or take opportunities to do so at gatherings such as monthly Chamber of Commerce meetings.

The speech should be tailored every time to the level and interest of the listeners.

Based on this understanding, APEC experts decided to develop a more flexible teaching material than the prototype agreed upon in Bangkok. It is a set of modules which enables the speaker to produce a speech that best fits the audience without too much time and energy by selecting a certain number of them. An APEC expert from New Zealand, Mr. Rodney Gates,

volunteered to draft the modules. Actually, the first draft has already been prepared and circulated to all experts for comments and suggestions. The idea of placing the teaching material on the APEC website was supported by all experts and the adjustment with another APEC ADR project is now being pursued.

The next and probably final event of ADR EEP 2000 is now planned to take place this coming September in Manila. ■



**Sitting (L R):** Mr. Norihiko Maeda (Project Overseer, JCAA Senior Adviser), Ms. Gao Fei (CIETAC), Ms. Patricia L. Lontoc (AIM)  
**Standing (L R):** Mr. Toshihiko Omoto (CIArb), Mr. Carlos Rodriguez Gonzalez-Valadez (Lawyer), Ms. Etsu Inaba (IIST), Mr. John Barkai (University of Hawaii), Mr. Rodney J. Gates (consultant), Mr. Husseyn Umar (BANI), Mr. Peter S. Caldwell (Arbitrator & Mediator), Mr. Toshio Sawada (ICC), Judge Thammanoon Phitayaporn (THAI Arbitration Institute)

## The Expert Network of International Arbitration

Since the Expert Network of International Arbitration (ENIA) held its first meeting on December 10, 1999, it has been consistently working actively. The 29th meeting was held in last July. ENIA's previous activities and its future outlook are outlined below.

ENIA was established for the purpose of conducting activities to promote international arbitration in Japan. It is constituted of JCAA; The Japan Shipping Exchange, Inc.; Japan Federation of Bar Associations (JFBA); Japan Patent Attorney Association; Ministry of Justice; Ministry of Economy, Trade and Industry; Ministry of Land, Infrastruc-

ture, and Transport; and several experts. Mr. Hanamizu, attorney-of-law, serves as its chairman. The vice-chairmen are Mr. Yamamoto, President of JCAA and Mr. Matsumoto, Executive Director of JSEI.

ENIA has been engaged in diversified activities including:

1. Recommendations on Amendment of Arbitration Law

The Japanese Arbitration Law ("Law") has not been amended or supplemented in its substance since its enactment in 1891. The Law has some inadequacies under today's circumstances. Consequently, the Judicial Reform Promotion Headquarters headed by Prime Minister Junichiro Koizumi has set up the Arbitration Law Study

Group, where the desired contents of the new Arbitration Law are discussed.

ENIA is keen that new Arbitration Law be enacted. In terms of its provision, ENIA has made a recommendation mainly suggesting that the UNCITRAL Model Law of Arbitration of 1985 should be adopted as Japan's new Arbitration Law with bare minimum modifications.

## 2. Implementation of Mock Arbitration


Contrary to open court, arbitration proceedings are normally closed to the public. One can hardly imagine exactly how arbitration proceedings are conducted unless he has been a party to arbitration. ENIA therefore promoted Mock Arbitration to present a concrete picture of arbitration to people concerned, including businessmen and lawyers. Under the joint auspices of five organizations including JCAA and JFBA, a Mock Arbitration was held in Tokyo on Nov. 9, 2001, and in Osaka on Nov. 15, 2001, respectively. The cast and narrators in the Mock Arbitration included active businessmen, lawyers, and professors. The number of visitors to the two venues totaled approximately 1000, and many of them com-

mented that the Mock Arbitration was interesting.

## 3. Launch of Internet Portal Site

To date, Japanese ADR organizations have only had their respective Internet homepages. The ENIA participating organizations agreed to operate a joint Internet site providing a comprehensive information service about ADR. After considerable preparation, they managed to launch the "ADR Japan" Internet portal site on March 15, 2002. From now on, they are trying to make improvements to the site, including updating and enriching the information, and inviting other organizations to participate in it.

## 4. Establishment of Training Program for Arbitrators

Because arbitration is a system without appeal, qualification of arbitrators is a critically important factor. In Japan, however, the number of arbitration cases has been small, and there has been no training program for arbitrating skills. ENIA is trying to establish a skill-training program for arbitrators. ENIA intends to provide the first 2-day training program in this coming October, and to enrich the program continuously. 

---

## Xiamen Arbitration Commission Visit




On July 11, 2002, a delegation of the Xiamen Arbitration Commission (the "Commission") to Japan visited JCAA's Tokyo Office. Xiamen is a

commercial and industrial seaside city in Fujian, China. Against backgrounds of China's constitution of Arbitration Law in 1995 and its entry into the WTO in 2001, the importance of the Commission's role as an arbitration institution is growing. The purpose of this delegation was to collect information on Japanese legal systems, including arbitration and ADR. As one sphere of this effort, they visited JCAA. The



delegation was comprised of six members, and headed by Mr. Zhang Bin Sheng, Director of the Commission, and former Vice-Chairman of the All China Lawyers Association.

The delegation members and JCAA 's repre-

sentatives exchanged information on each country 's arbitral systems and the two organizations ' activities. The discussion was very intense and active. The meeting finished 30 minutes behind schedule. 

---

## **JCAA Report PR Activities for ADR**

The Office for Promotion of Justice System Reform establishes the Consultation Group of ADR Experts and proceeds with preparatory work for possible enactment of ADR basic law. As discussion among the Consultation Group develops, interest in ADR is also expanding gradually among nations.


JCAA has carried out four projects to raise nations ' recognition of ADR in cooperation with the Japan Chamber of Commerce & Industry, using the budget of the Small and Medium Enterprise Agency since last year.

First, JCAA makes advertising brochures for ADR and distributes them to medium and small companies. JCAA also publishes the monthly JCA Journal, which provides articles on ADR.

Second, JCAA holds ADR seminars and offers consultation to resolve commercial disputes in cooperation with the Chambers of Commerce & Industry in the principal cities. The targets of the seminar are businesspersons and business executives.

Third, JCAA is planning to hold a Mock Mediation in cooperation with the Japan Federation of Bar Associations as well as the Japan Chamber of Commerce & Industry this November. Last year, JCAA held a Mock Arbitration to show actual proceedings in Tokyo and Osaka. More than a thousand people attended it, and most of them commented that it helped them to understand what arbitration is.

Fourth, JCAA is making out a roster of mediators at present. Commercial disputes cannot be resolved smoothly without able ADR neutrals. JCAA established a committee consisting of attorneys and academics to secure excellent mediators. The roster will be completed by the end of this year.

Court-annexed mediations are often used and very trusted in Japan. On the other hand, the mediations that are provided by private ADR organizations are not a popular method for dispute resolution. In addition to international arbitration, JCAA would like to make every effort to gain nations ' reliance on domestic ADR as much as court-annexed ADR and litigation. 

## **The Japan Commercial Arbitration Association**

Website: <http://www.jcaa.or.jp>

Address: Taishoseimei Hibiya Bldg. 4F 9-1, Yurakucho 1-chome, Chiyada-ku, Tokyo 1000006 Japan

Tel: +81-3-3287-3061 Fax: +81-3-3287-3064 Email: [arbitration@jcaa.or.jp](mailto:arbitration@jcaa.or.jp)