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Business Opportunities In Japan

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I. INTRODUCTION

For many years the acknowledged position of the Japanese government was to protect its domestic markets from foreign incursions. Referred to as the "hot house" strategy, the government protected its domestic industries from foreign competition until they were strong enough to fend for themselves.

United States firms seeking to penetrate the Japanese market met with numerous overt and covert government restrictive policies, a hostile attitude by Japanese industry and a xenophobic public mentality. In addition, unfamiliar Japanese business practices, interlocking company ties, a language difficult to master, a lack of information, a complex distribution system and a fierce domestic market were conditions which kept all but the strongest and most adventurous U.S. companies out of the Japanese domestic market.

Nor was there any need, until recently, for U.S. businesses to risk failure in Japan's unfamiliar environment. The U.S. market was big enough. Exporting, offshore manufacturing and marketing were exotic concepts and were not considered worth the effort by most U.S. businesses.

Two developments changed all that: the highly visible Japanese invasion and capture of U.S. markets in steel, cameras, autos and consumer electronic products, and the global economic downturn that followed the 1973 oil crisis. As a result, U.S. businesses looked to the long-closed Japanese markets. They began to petition the United States government for changes. The government reacted in a number of ways. Pressure was put on the Japanese to restrict their U.S. exports under threat of import restrictions, local-content bills were passed and quotas were imposed. The United States Government pressed the Japanese to open their markets to American products and investments.

The Japanese reacted in classic Japanese fashion. Rather than meet the pressure head on, they tempered it. Bamboo is an ancient Japanese building material. It has great resiliency. It bends and sways with the wind unlike stronger materials, such as iron, that remain rigid until they reach the breaking point and snap. Similarly the Japanese accepted the criticism launched against them, patiently listened to the American view and asked for "time to study the matter." Each meeting by a joint-study team, each visit by a head of state and each change of government was usually followed by some concession on the Japanese side. Slowly and grudgingly they opened their markets to foreigners. The markets were opened too fast for some domestic Japanese interests and not fast enough for some U.S. interests.

The liberalization effort by the Japanese government, allowing a certain internationalization of the economy and increased understanding of Westerners by the Japanese, has produced results. Currently the Japanese market is relatively free of governmentally imposed entry restrictions. Still, in the minds of many, Japan remains a closed market. An exhaustive study prepared in 1983 for the United States-Japan Trade Study Group by McKinsey & Co., a leading U.S. business consulting firm, reveals many facts and misconceptions about the Japanese market but reaches the following conclusion: "Japan is indeed a difficult market, but it is hardly a closed or controlled one. In fact, it is probably one of the most fiercely competitive economies in the world. There are some very real restrictions facing foreigners, but these ironically are less than in some Western countries."[1]

Americans may be surprised to learn that the amount of direct investment by U.S. firms in Japan is greater than that of Japanese firms in the United States. The McKinsey study points out that the return on assets among foreign firms in Japan was better than that of their Japanese counterparts. Yet despite the potential and proven profits, the U.S. direct investment in Japan was the same as it was in Belgium—which has a gross national product about one-tenth the size of Japan's.

What follows is an examination of how changes in Japanese laws, government policies and attitudes have made Japan more receptive to U.S. exports and investments. This Outline will examine the liberalization of the "Foreign Exchange and Trade Control Law," the lending policies of the Japan Development Bank in assisting foreign firms, the opportunities for U.S. firms to participate in Nippon Telegraph & Telephone Company's multibillion dollar procurement and the aggressive efforts by the central and local governments to attract foreign in-

1. McKINSEY & CO., JAPAN BUSINESS: OBSTACLES AND OPPORTUNITIES (prepared for the United States-Japan Trade Study Group, 1983) [hereinafter cited as the McKINSEY study].

vestments to Japan. Finally, this Outline will examine the types of U.S. products and services that represent good prospects for entry into the Japanese market, and how they should be introduced.

II. FOREIGN EXCHANGE AND TRADE CONTROL

A. History of Foreign Investment and Trade Control Laws

For several decades following World War II, foreign exchange transactions in Japan were kept on a tight rein by the central government. With the scarcity of foreign exchange that then existed, one would have thought that the government would have welcomed an influx of outside capital. That, however, was not the case. Direct investments by foreign firms were heavily regulated. The government remained intransigent in the face of U.S. entreaties to relax those controls, and kept a close watch over foreign investments. These strict government controls remained in effect until the early 1970's.

Beginning in the 1970's limited foreign capital inflows were permitted. This usually took the form of loans arranged by the government through international financial institutions such as the World Bank. The reason given for the continued restrictions was a desire to control the national debt. The government claimed that this debt would be a burden on the nation should the economy experience a significant downturn. That line of reasoning, however, did not explain why direct foreign investments of equity capital were so tightly controlled. The real reason for those restrictions, as expressed by foreigners, was to prevent too much foreign control of domestic production assets.

The most comprehensive law affecting foreign investment in Japan was, and still is, the "Foreign Exchange and Foreign Trade Control Law"[2] (hereinafter cited as "Foreign Control Law"). When first enacted, it purported to be a temporary post-war reconstruction measure aimed at protecting Japanese industries devastated by World War II. The Foreign Control Law regulated virtually all foreign exchange and trade transactions. It required prior approval or licensing from the appropriate Japanese governmental agency unless the intended activity was specifically exempted from control by the Foreign Control Law itself or its subordinate regulations. There were few such exemptions. Procedures for obtaining the necessary government approvals were

2. Law No. 228 of 1949 (effective Dec. 1, 1949).

contained in various ministerial ordinances promulgated by the Ministry of Finance.

Like most Japanese laws, the Foreign Control Law gave wide discretion to the operating officials. The Japanese legislature traditionally passes laws drafted in broad general language and leaves it up to the bureaucracy to interpret those laws under the principle of "administrative guidance." There is no established "right" of appeal against an unfavorable ruling, and bureaucrats generally do not have to explain their actions. The dominant aspect of the Foreign Control Law was the strict necessity for prior government approval before a foreign firm could establish a business or otherwise invest in Japan.

Operating in tandem with the Foreign Control Law was the "Law Concerning Foreign Investment"[3] (hereinafter cited as the "Foreign Investment Law"). This law purported to encourage foreign investments and to have as its goal the gradual relaxation of all controls until full liberalization was achieved. The Foreign Investment Law set up positive and negative guidelines to be met by foreign firms seeking approval of transactions under its controls. Despite its announced purpose, the law actually made it more difficult for foreigners to do business in Japan.

The Foreign Investment Law created a two-tier approval system which caused confusion and uncertainty for the U.S. businesses. An application for the introduction of capital or technology which by its terms exceeded one year was controlled by the Foreign Investment Law. The Foreign Control Law governed similar activities if the term was less than one year. Changes in both laws were made by a series of cabinet orders issued by the Executive Branch, or by ministerial ordinances issued by the Ministry of Finance, rather than by amendment of the basic laws themselves. It was also difficult to get a clear answer from the bureaucracy why a particular application to do business was approved or rejected.

Generally only joint-ventures involving transfer or licensing of U.S. technology to Japanese companies were approved. Foreign capital investment in any joint-venture was limited to 50%. In 1973 a policy allowing 100% foreign investment was adopted in principle, but there were significant limitations with prior approval being the most onerous. Few, if any, wholly-owned foreign subsidiaries were approved. Additionally, only such foreign

3. Law No. 163 of 1950.

investments were approved as the administrating officials believed benefited the Japanese economy, or at a minimum aided the particular Japanese partner involved. Since practically the only means of investment open to U.S. firms was the 50/50 joint-venture, many "shotgun" marriages were formed which in time proved unsatisfactory to both parties. One U.S. lawyer practicing in Tokyo stated that for the first six months after the current liberalization amendment[4] was passed, he spent virtually all his time unwinding pre-liberalization joint-ventures.

In 1956 a cabinet order was promulgated authorizing "Yen-Based Companies."[5] This was announced as a major liberalization measure. Its "liberalization" value was, however, questionable. It permitted foreign firms to acquire newly issued stock of Japanese firms by purchasing shares with Japanese yen legally converted from designated hard foreign currencies. There were other restrictions which effectively prevented any large-scale investment by foreign companies. The scheme was finally abandoned in 1964 under pressure from the United States Government. But rather than instituting a genuine liberalization measure, the Japanese government forced U.S. companies that had qualified under the Yen-Base provisions to reapply for approval under the foreign control and investment laws as had been previously required.

Pressure from the United States continued to build for complete liberalization rather than piece-meal, token measures. Throughout, the intractable nature of the administering Japanese bureaucracies continued to puzzle or irritate U.S. businesses. Faced with the unpleasant task of disapproving a controversial application, the bureaucracy simply stalled. Applications languished in government offices with no action taken one way or another. Many applicants simply gave up in disgust.

The experience of Yale & Towne is illustrative of the problem. In 1964 this U.S. lock manufacturer filed a request with the Ministry of International Trade and Industry (MITI) to establish a wholly-owned subsidiary in Japan. No action was taken. MITI sat on the application until Yale & Towne finally withdrew it in 1975, nine years after the initial filing. Unaccustomed to this passive resistance American businessmen became angry or frustrated. "I

4. *See infra* notes 5-10 and accompanying text.

5. Cabinet Order No. 321 of 1956 (Cabinet Order Pertaining to the Standards for Validating Foreign Investments Act of 1950).

wish they would give me a 'yes, no or go to hell,' " was the way one involved party expressed himself.

Slowly the Japanese government began to give way under foreign pressure, mostly from the United States, for complete liberalization. The first significant liberalization measure was announced in July 1967 after lengthy meetings between the United States and Japanese governments. Thereafter a series of such meetings was held and the strict controls were gradually relaxed until finally a major amendment to the "Foreign Control Law" was passed in December 1979.[6] This amendment became effective in December 1980. It substantially relaxed government control over foreign investments and opened the Japanese market to U.S. interests.

B. Characteristics of the 1980 Amendment

The amendment abolished the Foreign Investment Law and effectively brought all foreign investment and international economic activities of, or with, Japan under one law: the Foreign Control Law. More importantly, it shifted from the principle of "prior approval" to the principle of "notice after the fact."

The basic changes in the "Foreign Control Law" can be summarized as follows:

1. The amendment provides a notice requirement under which foreign investors are only required to file notice with the appropriate agency of their intention to invest in Japan;
2. The amendment makes government approval "automatic" unless the application is affirmatively disapproved within a short period prescribed by the law.

The Japanese government explained the new law in the following way: "From a legal viewpoint, the Foreign Exchange Control Law was amended in 1980 to introduce the concept of "free in principle" under which investors are only required to report their planned investment instead of applying for [prior] approval [as] under the previous system."[7]

C. Effects of the 1980 Amendment

It is difficult to establish a direct cause and effect relationship between liberalization and foreign investment in every case, but the trend is clear. According to MITI

> [t]he number of foreign enterprises moving into the

6. Law No. 65 of 1979 (effective Dec. 1980).

7. STUDY GROUP FOR DIRECT FOREIGN INVESTMENTS IN JAPAN, REPORT (Aug. 1983) [hereinafter cited as STUDY GROUP REPORT].

> Japanese market has been on the rise in recent years, centering around fast growth sectors such as machinery and chemical industries, with American firms leading. Foreign investment in Japan during the fiscal year (FY) 1982[8] recorded an all-time high of $749 million, bringing the cumulative total to $4.161 billion as of the end of FY 1982. About 2,400 foreign-affiliated firms were operating in Japan as of the end of FY 1982. There are among them a number of firms that hold the largest share of the local market, who enjoy a leading position in the industries concerned. Thus, foreign-affiliated firms in Japan are definitely playing a substantial role in Japanese economy.[9]

The manufacturing industry accounts for 75% of the capital invested by foreign enterprises, and the United States leads all foreign investor nations with 60% of the total foreign-affiliates operating in Japan. At present 20% of the foreign-affiliated manufacturing companies are wholly-owned foreign subsidiaries. The general trend is toward a larger proportional share of foreign equity in foreign affiliates.

Experts on Japanese trade and commercial matters generally credit the 1980 Amendment with liberalizing both the law and Japanese attitudes toward foreign investment. "The 1980 Foreign Exchange Law was more than simply a domestic change. The capital outflows and increased activity in foreign exchange and capital markets that have occurred since the law was enacted demonstrate that the change is having genuine consequences on Japan's international financial transactions."[10]

An exhaustive study of the implications for United States-Japan trade and investment was conducted by the Hudson Institute.[11] The final report cites four major consequences of the law that positively fosters increased opportunities for U.S. businesses in Japan:

1. The law has had the effect of bringing together conflicting domestic interests of different groups in Japan. The Ministry

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8. Japanese fiscal year is from April 1st to March 31st.

9. INDUS. LOCATION GUIDANCE DIVISION, MITI, REPORT: INDUSTRIAL INVESTMENT IN JAPAN (Oct. 1983).

10. *See* Law No. 65 *supra* note 6.

11. HUDSON INSTITUTE, INC., JAPANESE INDUSTRIAL DEVELOPMENT POLICIES IN THE 1980'S: IMPLICATIONS FOR U.S. TRADE AND INVESTMENT (Oct. 1982).

of Finance and the Bank of Japan are examples. As one U.S. businessperson states, "[f]or the first time these guys are singing from the same sheet of music."

2. The law will have the effect of further increasing the trend toward internationalization of the yen. This can be seen in the enlightened attitude taken by the Japan Development Bank.
3. The law will affect the efficiency of the capital market. Japanese firms will no longer be able to take advantage of open capital markets in other countries while limiting foreigners' access to Japanese capital markets. Japanese interest rates are significantly lower than world interest rates. Foreign businesses will now be able to make use of Japanese loan sources.
4. There has been a pent-up domestic demand for foreign assets caused by the Japanese government's restrictive policies. Now that capital liberalization has occurred, this demand is being released. The charge that Japan has been using a controlled capital market to maintain an artificially low exchange rate (and thus promote exports) will no longer be valid.

The only areas still statutorily closed to direct foreign investments are agriculture, forestry, fisheries, mining, petroleum, leather and leather products manufacturing, and industries pertaining to national security and public order. Everything else has been liberalized. In the opening pages of its report, the Study Group for Direct Foreign Investment in Japan stated, "[t]he first thing we want foreign investors to know is the fact that Japan is by no means negative toward foreign investment but positively welcomes it."[12]

III. JAPAN DEVELOPMENT BANK

A. Background

The Japan Development Bank (the Bank) is a wholly-owned government financial institution established in April 1951 under the provisions of the Japan Development Bank Law.[13] Its basic lending policy has always reflected changes in government policy. The cabinet prepares a basic lending policy for the Bank each fiscal year. Its loans are made only to government targeted sectors

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12. *See* STUDY GROUP REPORT *supra* note 7.

13. LOAN DIVISION, INTERNATIONAL DEPARTMENT, JAPAN DEVELOPMENT BANK, INTRODUCING THE JAPAN DEVELOPMENT BANK (1982).

and industries. Its major international funding source is the issuance of foreign bonds and notes. Like other Japanese lending institutions, the Bank practices "window guidance," a Japanese euphemism for making sure the Bank's practices are in keeping with the prevailing government policy. A decision to finance a particular project is based on that project's contribution to the implementation of government policy.

The Bank's lending terms are very attractive. Funds are provided for capital investments such as the purchase of land, buildings and equipment. There is no limit on the loan amount, and the loans can cover as much as 50% of the total investment costs. There is a grace period granted during any construction period. Loans are denominated in yen. The interest rate is fixed and is the same as the long-term prime rate set by Japan's leading long-term credit and trust banks. Rates as low as 7.3 percent per annum are available. The Bank will also cooperate with private banks and lending institutions to co-finance large projects.

B. Funds Made Available to U.S. Businesses

In the 1960's the Bank had been making some loans to foreign-affiliated Japanese companies, but the amounts were small and heavily restricted. Not many foreign businesspersons were even aware that such loans were available. Fewer yet had the patience and stamina to apply for such loans and pursue their application through to fruition. Then came a shift in government attitude. The Bank announced that "[b]eginning in fiscal 1983, the Bank will actively assist foreign-owned companies investing in Japan from the standpoint of furthering international industrial cooperation."[14]

In December 1983 the Bank announced the first such subsidized loan to a foreign-owned firm, Applied Materials of Santa Clara, California, a semiconductor equipment producer. Applied Materials received a $3.4 million loan to build a factory and research center at Narita, located just outside Tokyo. The loan was granted despite the fact that Applied Materials competes directly with Japanese companies in the same line of business in Japan. Viewed from all angles the loan represented a significant departure from the Japanese government's previous domestic industry protective stance.

The final arrangements were made after nearly a year of

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14. *Id.*

negotiations. Gary Robertson, Treasurer of Applied Materials, said "[w]e have not seen any obstacles being placed in people's paths. I think that many companies that have tried to get into the Japanese market have not been patient enough."[15] Applied Materials had reason to be pleased — $2.3 million of the $3.4 million loan was granted at an interest rate of 7.3 percent, with the remainder at 8.2 percent.

IV. NIPPON TELEGRAPH AND TELEPHONE CORPORATION (NTT)

A. Background

The Nippon Telegraph and Telephone Corporation (NTT) is a wholly-owned government monopoly responsible for the procurement of all communications equipment used in Japan. NTT's purchases are estimated at $3.2 billion annually. Until 1981 no significant purchases were made from foreign firms. Domestic procurement was limited to a few chosen companies referred to as the "Den-den family," consisting primarily of Fujitsu, Hitachi, Nippon Electric and Oki Electric. So exclusive was this family that even other well-known Japanese companies such as Sony, Matsushita (Panasonic) and Toshiba were unable to obtain any significant amount of procurement business from NTT. Legally NTT is under the jurisdiction of the Ministry of Posts and Telecommunications, but in point of fact it functions as an independent entity almost totally ignoring the Ministry's legal supervisory position. So independently does NTT operate that the Ministry has trouble finding jobs for its retiring bureaucrats at NTT. The assurance of industry jobs for retired ministry personnel is a privilege traditionally enjoyed in all Japanese bureaucracies. The arrangement fosters a symbiotic relationship between a particular ministry and the industries it controls. Few would be so bold as to rebuff a request by a government agency to allow a retiring official to join its ranks.

Under increasing domestic pressure at home to open up its procurement to companies outside of the Den-den family, NTT came under still more pressure from the United States to allow participation by U.S. firms. Beginning with the Tokyo round of multilateral trade negotiations in 1978 and 1979, NTT soon became the symbol of a closed market. A series of high level

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15. San Francisco Exam., Dec. 20, 1983, at 1, col. 2.

intergovernmental meetings were held. They were emotionally charged and given to acrimonious accusations and counter-accusations. At one point NTT's President, Tokuji Akikusa, was widely reported, perhaps incorrectly, to have said, "The only thing NTT will buy from the U.S. is mops and buckets."

B. NTT Opens Its Procurement to U.S. Companies

NTT had such influence and political clout that it could almost defy the Japanese government and the Post and Telecommunications Ministry officials. It took tremendous effort and political pressure to force NTT to open its procurement to non-Japanese suppliers. Finally in December 1980 an agreement was reached. NTT introduced new procurement procedures in compliance with the General Agreement on Tariffs and Trade's (GATT) code on government procurement and a supplemental United States-Japan Agreement. For the first time, NTT procurement was technically open to U.S. firms, effective January 1981. This agreement was to be for an initial trial period of three years, ending December 31, 1983.

When the initial three year term came to an end, the parties decided to extend the agreement through March 1984. Then a significant development took place. In July 1984 three telecommunications bills reorganizing NTT passed the lower house of the Japanese Diet. The highlight of the bills is that effective April 1985, up to 50% of NTT will become privately owned. The new reconstructed NTT will be granted "a free hand" in doing business.[16]

C. Lack of Interest by U.S. Businesses

Attempts by U.S. businesses to sell to NTT have been disappointing despite the fact that the barriers are down. This presents quite an anomolous situation. After protesting so strenuously about NTT's closed door policy, U.S. companies seem generally disinterested now that the door is open. The American Chamber of Commerce of Japan, long a critic of Japanese impediments to trade, now finds itself criticizing American companies for not taking advantage of the opportunities available to them. A statement by the Chamber, made in a different context, but equally applicable to NTT, says:

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16. *April 1985 Deregulation of Telecom Business Certain*, JAPAN ECON. J., July 24, 1984.

> [a]ny American company that thinks it "deserves" a share of the Japanese market simply because it is an American company, is barking up the wrong tree. That, sad to say, is the attitude held by all too many Americans both within and without the government when it comes to Japan.[17]

For its part, NTT seems to have taken all reasonable steps to make it easy for U.S. firms to sell to NTT. In January 1981, in what has been described as a "changing of the old guard," Dr. Hisashi Shinto, the highly respected former president of Ishikawajima-Harima Heavy Industry, was appointed NTT president. Widely acclaimed as the doyen of Japanese businessmen, Dr. Shinto did not come up through the NTT ranks and is not part of their "old boy" network. He moved positively to implement the government's internationalization policy. He has been given "high marks for combating an [NTT] allergy to foreigners."[18]

Dr. Shinto has made a change at NTT. He is on record as wanting more foreign participation. He has travelled to the United States and used his personal influence to encourage greater foreign participation. He is presently considering dividing NTT into several independent and private organizations to make it less of a bureaucratic conglomerate. At his direction, NTT's procurement procedures are being widely published and distributed in English. NTT has sponsored several high level and working level seminars in the United States. A permanent public relations office, established in New York, sends out regular mailings on NTT activities and a new office was recently opened in Los Altos, California, near the "Silicon Valley." The U.S. House Subcommittee on Telecommunications along with the Department of Commerce recently sponsored a series of congressional workshops on NTT procurement. More importantly, Dr. Shinto's policies have filtered down to the operational level where the day-to-day decisions are made.

Nevertheless, U.S. corporate executives remain skeptical about NTT's intentions. Many contend that NTT is merely "going through the motions" and, though they will make a few token purchases from U.S. firms, the "big ticket" orders will still go to the

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17. In late December 1983, the author visited NTT and discussed its U.S. procurement policies with high ranking NTT officials including the director of the International Procurement Department. He expressed a desire to have more U.S. participation in NTT procurement.

18. *High Technology Gateway: Foreigners Demand a Piece of NTT's $3 Billion Market*, BUS. WK., Aug. 9, 1982, at 43.

Den-den family. This may be true. NTT's policy is still to restrict its communication satellite development to domestic firms. United States central office telephone switch manufacturers also question NTT's sincerity. However Americans knowledgeable about Japanese ways of doing business claim American companies can sell to NTT if they will make the effort. "A lot of American companies don't do the groundwork and are not willing to modify their equipment to meet NTT standards," says a Tokyo-based representative for a U.S. company which has been successful in selling to the Japanese.[19]

D. Americans Are Now Selling to NTT

Businesses which have made the effort have been rewarded. Plantronics, Inc., a small California corporation, received NTT approval to sell its headsets to Japanese companies three months after the new procurement agreement was signed. Plantronics had been trying to enter the Japanese headset market for ten years. Within one month after the initial breakthrough, Plantronics obtained NTT approval for a second generation version of its original product. It is now firmly established in the Japanese telecommunications market.

For the fiscal year ending March 31, 1983, twenty-one U.S. firms were awarded NTT contracts for a total of $40 million. Major contracts include $9 million to Motorola for pocket pagers, $5 million to ITT for digital PABX and $3.5 million to AT&T for satellite echo-cancellers. Other smaller orders were placed with U.S. companies for such products as LSI manufacturing equipment, intelligent multiplexer, 200mm flexible disk cartridges and CCP cable connector equipment.

Compared to NTT's $3.2 billion annual procurement, $40 million sales by U.S. firms is indeed a "drop in the bucket." But given the fact that three years ago NTT's U.S. purchases were almost zero, it represents an opportunity which U.S. companies previously did not have. NTT purchases from foreign firms from April 1983 to September 1983 were $28 million, up 60% over purchases for the same period in 1982. Total foreign purchases for FY 1984 are estimated at $140 million. Clearly that represents a change.

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19. *See id.*

V. TECHNOPOLIS

A. Background

In 1980 the Ministry of International Trade & Industry (MITI) coined the word "technopolis" and announced plans to build two or three such technopolises in Japan. A technopolis — a combination of the English word "technology" and the ancient Greek word for a city-state, "polis" — is to be an industrial complex consisting of three interlocking components:

1. An industrial unit — composed of factories, distribution centers and other business facilities;
2. An academic group — composed of universities, public research and development institutions; and
3. Living areas — to house managers, teachers, engineers, scientists and their families.

Each technopolis is to be located next to a "mother city" with a population of 200,000 or more, and close enough to an airport or railway station to permit a round trip to one of the major cities of Tokyo, Osaka or Nagoya within one day. The main features of the technopolises are to be completed by 1990, with further development continuing into the 1990's. The distinguishing feature of the technopolises is that they will be built around advanced technology industries rather than massive steel and concrete manufacturing complexes.

When MITI's plans were announced, 40 of Japan's 47 prefectures instantly opted to host such high-tech towns. The lobbying was so intense that MITI revised its original plans and increased the number of planned technopolises to nineteen. Several of them are now close to completion. All are receiving substantial central and prefectural government support. The program is proceeding much faster than initially thought possible.

B. Implication for U.S. Businesses

In tune with MITI and the central governments' new found interest in welcoming foreign investors to Japan, the prefectural governments with technopolises in their prefectures are vying with one another to attract foreign investors. Several have dispatched teams of government and investment promoters to visit U.S. high-tech centers in hopes of attracting them to their particular technopolis. MITI has established an Industrial Location Guidance Division to handle inquiries from foreign companies.

This office works with MITI's Industrial Relocation Division and the technopolises' coordinating offices established in each technopolis' parent prefecture.

The Japan Development Bank has shown a direct interest in the technopolis concept. This is very important in a country like Japan where government involvement in any project almost guarantees its success. Although the Bank may not provide all the funding for a particular foreign project, its involvement lends the government's stamp of approval and is a strong incentive for private banks to participate.

Materials Research Corporation, a New York based semiconductor manufacturer, was interested in opening a plant in the Oita Prefecture, one of the technopolis sites. Sheldon Weinig, Material Research's president, said of the project, "[w]e are being helped tremendously by the Japanese government." Skeptical at first, Mr. Weinig conferred with United States Ambassador to Japan Mike Mansfield. "I told Ambassador Mansfield that I was afraid we were being set up." He replied, "If you're being set up, enjoy it." Materials Research opened its plant in Oita last year, ahead of schedule.[20]

Fairchild Cameras and Instrument Corporation has announced a wholly-owned venture to produce integrated circuits (ICs) in Kumamoto, Kyushu, the technopolis known as Japan's "Silicon Island." Union Carbide also is establishing a wholly-owned venture to produce chemicals in another technopolis in the prefecture of Hyogo.

MITI has earmarked Y230 million of its annual budget for the semipublic Japan External Trade Relations Organization (JETRO) to develop "come to Japan" programs. Fifty investments by foreign firms in Japan have been made in the past two years. One-third of these were in the high-tech field.

VI. NEW AND EMERGING OPPORTUNITIES FOR U.S. BUSINESSES

For the past 10 to 15 years U.S. businesses seeking to enter the Japanese market have been saying, "[a]ll we want from the Japanese is a chance to compete with them on an equal basis." Liberalization of restrictive laws, changes in official attitudes and the trend toward internationalization of the economy significantly accomplishes that goal. It

20. *See* Wall St. J., May 12, 1982, at 24, col. 3.

does not give U.S. businesses a competitive advantage. It only frees them to compete in what has been termed the worlds' most competitive market. The extent to which U.S. businesses will succeed in that market will depend on the strength of their products and services and their marketing power.

A. **The Consumer Market**

On the basis of past successes, it is possible to select certain types of products, services, and business opportunities that are likely to do well in Japan. The consumer market is the most dynamic. Products for that market require the most careful selection before entry, and constant nurturing after entry. The reason is obvious—this is the area where national customs and cultural differences are most pronounced.

The earlier entrants into the consumer market were well-known brands manufactured by well-known companies. The following table gives some examples:

U.S. Products With Significant Market Share in Japan[21]

Product	Brand/Company	Approximate Market Share (%)
Safety razors	Schick	70
Soft drinks	Coca Cola	60
Paper diapers (Pampers)	Procter & Gamble	50
Heat resistant cookware	Corning Glass	30
Tomato juice	Del Monte	30
Wax	Johnson & Johnson	30
Tissue paper	Kleenex	20
Photographic film	Kodak	20

This led to the conclusion that a good product must be one that was overwhelmingly successful in the United States. Although in the early days this may have been the case, it is no longer true. Over 90% of Japanese consider themselves "middle class" and shop accordingly. Over four million travel overseas each year and are thereby exposed to foreign goods not available in Japan. This is particularly true of the under thirty age group. So the range and acceptability of products in Japan is widening. This had led to

21. Source: Manufactured Import Promotion Organization (MIPRO), May 1982.

what one study calls "the softening of product image."[22] The Japanese no longer simply buy foreign products because they have gained acceptance in their country of origin. "People are now looking," the study points out, "for products that didn't previously exist in Japan, products clearly differentiated from other goods that can meet customer's ranging needs."[23]

This provides an opportunity for even fairly new U.S. companies with a high quality, unique product to market it in Japan. Among the younger consumers trendy apparel, cosmetics, tennis wear, ski wear, leotards and body building equipment are considered good prospects. These younger people are much more likely than their older relations to buy products that are distinctively American and stand out as such. They are less inhibited. If the product has wide appeal among younger generation Americans, chances are it will have a strong appeal among Japanese in the same age group.

Additional insight into the extent to which aggressive salesmanship by U.S. companies has penetrated the Japanese consumer product market is provided by the Christian Science Monitor. That publication reports that almost 81% of Japanese surveyed made extensive purchases of foreign food-stuffs, while 67% reported purchasing clothing, 54% household articles, 40% sporting equipment and 14% reported purchasing foreign-made furniture. The enormous success of U.S. fast food chains has become legendary, with McDonald's sales in Japan topping $304 million in 1983. Denny's restaurants have become so popular that many Japanese do not even think of them as American. "Japan's postwar 'baby boom' generation, in fact, is hooked on hamburgers and french fries, Shakey's pizzas, Coca Cola and Baskins Robbins ice cream," says the Monitor. A typical Japanese golfer dons Slazenger sports wear and uses Wilson clubs to hit Dunlop balls. The Japanese also consume large quantities of imported perfumes, whiskey, tableware, fruits, chocolates, jam, sports equipment and cosmetics. (As reported in Washington-International Communications, December 5, 1983.)

B. The High-Tech and Capital Goods Market

The market for production materials, high-tech and capital goods is somewhat more sophisticated than the consumers' goods market. Here the U.S. businesses may be dealing in areas in which the

22. MANUFACTURED IMPORT PROMOTION ORGANIZATION, SELLING TO JAPAN, FROM A TO Z (1983).

23. *Id.*

Japanese excel. In this category product strength is all important. The U.S. product must have some quality that clearly puts it ahead of Japanese products in the same field. It should have a significant advantage over competing Japanese products in some respect, be it basic technology, know-how or production technique, or it should fall into a category constituting a market that is economically too small to interest a domestic Japanese manufacturer.

A U.S. product that satisfied most of those criteria was snow-making machinery. Skiing has become quite popular in Japan, but scant snowfalls coming late in the season plagued the ski resorts. Japanese manufacturers did not have the technology or the large domestic market for snow-making equipment. U.S. manufacturers have both and imported U.S. snow-making equipment has been doing quite well in Japan. Another example is U.S.-manufactured automatic pinsetting machinery which sold quite well during a big bowling boom.

Even with technologies presumed to be wholly dominated by the Japanese, energetic U.S. firms find customers in Japan. Few areas are more dominated by Japanese manufacturers than the robotics market. Yet the Pittsburgh-based American Robot Corporation recently delivered the first of several robots to Sony Corporation for use in electronics assembly. The U.S. firm said it hoped to capture up to 5% of the Japanese market in the next few years. (As reported by Washington-International Communications, December 5, 1983.)

The McKinsey study listed four basic characteristics, one or more of which are vital preconditions for the successful entry of products into the Japanese market. These are products which (a) are resource driven, (b) have a definite technological lead, (c) are "new" to Japan, or, (d) fit a special niche. The commercial attache's office of the United States Embassy in Tokyo listed several product areas considered to have excellent possibilities, all of which meet one or more of these preconditions:

1. Analytical instruments;
2. Avionics;
3. Biotechnology;
4. Communications equipment;
5. Computer graphics;
6. Construction related machinery;
7. Cryogenic equipment and materials;
8. Electronic components;

9. Graphic arts equipment.

C. The Service Market

The Japanese economy is noticeably shifting from an era of expanding industrialization to one of service-oriented businesses. Three separate studies by the office of the Prime Minister reveal that service accounted for 34% of total consumption in 1982, as compared with 26.9% in 1979. (Focus Japan, August 1983.)

Rising levels of income, the increasing popularity of the five-day work week and housewives taking on part-time jobs, give the Japanese more leisure time and more disposable income. Consumer-oriented services are definitely on the increase.

The new internationalized climate coupled with basic changes in customer behavior is opening up a whole new range of services to U.S. investors. Many of these are services that did not previously exist in Japan. Financial services are a good example.

Under the New Bank Law of 1982 foreign banks are now able to participate in Japan's special bonds markets and issue their own certificates of deposit. Allstate Insurance recently announced the establishment of its wholly-owned operation in Japan. Cancer insurance, which previously did not exist in Japan, is now available through the American Family Life Insurance Company. These types of services should be particularly attractive to U.S. investors who can enter the market with a distinct advantage. They have the kind of experience in the United States which is transferable to Japan, and since these services are new to Japan, there is no significant competition to overcome.

Currently, there is a definite need for computer software services. In this area Japan lags far behind the United States. A significant percentage of CAD/CAM systems used in Japan are of U.S. origin.

VII. IMPORTANCE OF PROPER MARKET ENTRY

A. Persons experienced in Japanese ways of doing business agree that just as important as the product or service is the way it is introduced. U.S. products or services attract high visibility. The fact that a particular U.S. company is entering the market rapidly becomes known within the industry. Japan is a place where things must be done right the first time. One seldom has a second chance. "Americans have many advantages in competing with the Japanese," says a prominent U.S. executive. *Ways Some U.S.*

Firms Crack Japan's Market, U.S. NEWS & WORLD REPORT (Aug. 29, 1983). Murray Eisner, President of Shaeffer Eaton Division of Textron and one who has had considerable marketing experience in Japan, gives this advice:

> We must overcome our inferiority complex that the Japanese and other foreign manufacturers are taking our livelihood away from us. One advantage many American firms have is more style and innovation than most Japanese companies do. If you have a quality product that stands out from the crowd, you have a good chance of selling in Japan . . . you have to understand consumers' expectations . . . [and] you have to be competitive . . .

Mr. Eisner, however, adds this important cautionary note:

> I think American companies that can legitimately export have not done their homework thoroughly. They haven't found the right people to get distribution for their products. You can't just go into a country and say, 'Here's my soap' or 'my pen' or 'my refrigerator', and start selling it; you've got to study in great depth the mentality of the market and the competitive environment.

B. Planning the Market Entry

With most of the inhibiting restrictions now lifted, many different market entry methods are open to U.S. businesses. They range from licensing the product to establishing a wholly-owned foreign subsidiary.

The most successful U.S. companies in Japan are those that have systematically planned their entry. Information gathering is the first and perhaps the most important phase.

The information gathering process should focus on two factors:

1. The main characteristics and advantages that the product, service or company has, at the time of entry, that formed the basis for the decision to do business in Japan.
2. The most efficacious mode of entering the market, and how to conduct business in response to the changing conditions that are sure to develop after the initial entry.[24]

Based on this information, the company will design its strategy.

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24. *See* McKINSEY study, *supra* note 1.

The major components of that strategy should consist of the following:

1. Product suitability — Is the product saleable in Japan? This is basic market analysis, well-developed in the United States, applied to the Japanese market. This phase should take into consideration all of the factors discussed in section VI "New and Emerging Opportunities for U.S. Businesses."
2. Competition — an analysis of the competition is the next step. At a minimum, such factors as potential market share, industry practice, pricing policies and industrial concentration should be considered.
3. Mode of Entry — the two phases of information gathering discussed above should prepare the U.S. company for the most important decision it must make — the proper method of entry. There are a number of alternatives with varying implications based on the company's intentions in Japan.

   At opposite ends of the spectrum, depending on the product, are licensing and the establishment of a wholly-owned company. For a product with a short life cycle, where management is more interested in short-term profits than in establishing a long-term presence in Japan, a licensing arrangement is best. Where management is interested in establishing a permanent presence in Japan, its ultimate goal should be the establishment of a wholly-owned subsidiary.

   The decision of which mode of entry to pursue is important because it commits the company to a course of action which cannot be easily reversed. Some companies have no long-term interest in Japan. For those that do, the development of a long-term strategy beginning with the initial entry and incorporating a plan for coping with changing conditions once in the market, is vital. It is the one area where the level of commitment in time, effort and money ultimately pays dividends.

VIII. CONCLUSION

The positive attitude of the Japanese government with respect to direct investment of foreign capital, the lending policies of the Japan Development Bank, NTT's open invitation to U.S. suppliers and the programs by the various technopolises to lure foreign investors into Japan are all evidence that there is currently in Japan a favorable climate for U.S. investment in Japan. The statistics support this conclusion.

The highest recorded direct investment volume by foreign businesses was $524 million in fiscal 1979. For the period April through December 1982, direct investments had already reached $624 million. This represents a 220% increase over the same period of the previous year. The Japan Development Bank reported that as of November 1983 it had received 17 requests for loans from U.S. affiliated firms, 87% of which were from high-tech manufacturers of integrated circuits, pharmaceuticals and biotechnology. The Bank plans to increase its budget for foreign loans to Y10 billion. Clearly the obstacles to investment in Japan have been substantially removed.

The Japanese market is no longer the closed market it once was. It is a lively, vibrant and growing market which U.S. companies can now enter. Once in the market, however, competition is formidable. The need for thorough preparation before entering is an absolute necessity, as is a strong commitment and perseverance after entry. Many U.S. companies already in the market are prospering, some better than their Japanese counterparts. But there is ample room for further penetration by U.S. companies with quality products, innovative services and the right approach.