

Japanese International Trade and Investment Law

By Mitsuo Matsushita and
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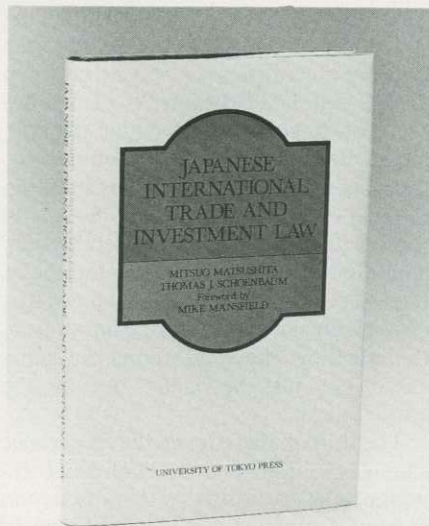
One of the current issues in American academic circles is the question of which books should be included in the core curriculum reading list for college freshmen and sophomores, as those books that every educated person should read.

Although there is no similar list of required reading for foreign businesspeople, scholars and political leaders regarding the U.S.-Japan relationship, it has often occurred to me during my 10 years of living and working in Japan that such a "core curriculum" is needed. It would be especially useful for those businesspeople who are about to become involved with Japan, and who need a quick but comprehensive understanding of how Japan works.

I am sure any proposal to create such a list would generate almost as much debate as to what books, studies and other writings should be included, as does the question of what to do about America's ongoing trade deficit with Japan. Yet I have no hesitation in recommending that among the books that should be included as required reading is this slender (fewer than 250 pages) volume by two law professors, Mitsuo Matsushita of Tokyo University and Thomas J. Schoenbaum of the University of Georgia. It should then be kept handy for future reference when specific information on Japanese laws and regulations is needed.

In it, the two have managed to distill a complex subject into nine easy-to-read chapters that will provide even the most reluctant student of Japanese trade and investment issues with the basic background knowledge on how the Japanese system is supposed to work.

I say supposed to work because, as well all know, much of how the Japanese



or any other system actually operates depends a great deal on the individuals involved and their reaction in any given situation.

It may come as a surprise to many Americans, raised on horror stories of administrative guidance and other Japanese practices, to learn that Japan does indeed have a comprehensive system of laws and regulations that govern how Japan reacts to international trade and investment issues. Even among those who are aware of them, there is often a lack of understanding of relevant Japanese laws and regulations that impact on these issues.

This book, with its clear, easy-to-read, yet scholarly look at Japan's trade and investment laws and regulations, and the ministries and agencies that implement and enforce them, will go a long way toward explaining the differences between the Japanese way and the American way.

The chapter on the Japanese legal system should prove quite enlightening to Americans who are not generally aware that much of Japan's legal system, including its trade and investment laws, is based on European models, despite the country's Americanized Constitution. Japan's Civil and Commercial Codes, for example, are based on German models. This might explain why the Europeans find it somewhat easier to operate in Ja-

pan than we Americans and are therefore somewhat less ferocious in their demands that Japan do things "their way."

The book is divided into nine chapters, starting with a look at Japan and the International Trading System. It then moves on to Governmental Authority over Trade, Regulation of Import and Sales Activities, Export Regulations, Investment and Establishment, Antitrust Law, Foreign Services in Japan, Intellectual Property, and Taxation (including the controversial new consumption tax). The appendices are flow charts showing the overall organization of the Japanese government, the Ministry of International Trade and Industry, the Ministry of Finance and, most interestingly, the Office of the Trade and Investment Ombudsman (OTO).

The OTO has come to be regarded as somewhat of a paper tiger among foreign businesspeople in Japan, but this chart clearly shows the relationship between the OTO and the various ministries, several of which have their own internal OTO offices (noticeable by their lack of such an office are the Ministries of Posts and Telecommunications and Construction).

Being scholars themselves, the two authors have also included an excellent bibliography of works available in English, for those who might wish to do further study on Japanese trade and investment law.

But it is the prologue of this book that proved most interesting to me, for in it the authors have cut straight to the heart of the current differences between the United States and Japan over trade and investment issues.

In it they write: "The question for the 1990s is how to cooperate with Japan to enhance political and economic security and peace and prosperity in the world. This involves creating a new political and economic order to govern relations with Japan. The concept of Japan as a defeated power under the tutelage of the United States has clearly run its course, as has the era of trade friction, Japan bashing, and 'us versus them.' New ties and institutional arrangements must be forged between Japan and other nations in order to establish a better basis of understanding and cooperation."

They also criticize the perception that

Japan's rise to economic power is the result of American and European economic stagnation. They correctly point out that both the U.S. and Europe are economically viable and highly competitive. In particular they take issue with the theory of American deindustrialization, pointing out that U.S. manufacturing output, as a share of GNP, increased in the 1980s. Japan has not surpassed the United States and Europe economically—it has merely

matured to their level, thanks in no small part to the willingness of America and Europe to cooperate by providing technology, markets, financing and management techniques.

The problem is that the Japanese economy has matured at such a rapid pace that no one—Europe, the United States or Japan itself—has really adjusted to the new reality. That will only happen when Japan, the U.S. and Europe finally

accept the idea that they are not engaged in economic warfare but rather in a cooperative effort to unleash the energies of their peoples to provide goods and services that will benefit people everywhere.

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Outing

Izumo: Land of Myth And Tradition

The date was November 13, 1989. The place Shimane Medical University Hospital in Izumo City. Only one year old, little Yuya Sugimoto was undergoing a transplant to give him a new liver, and the donor was his 26-year-old father. This was the first time this procedure (taking part of a liver for transplant from a healthy, live donor) had been performed in Japan, and only the fourth time in the world.

A dramatic tale involving a small child, this was a major human-interest story that was watched nationwide. Organ transplants are still relatively rare in Japan, since the concept of brain death has yet to gain general acceptance, and healthy donors are allowed only in extraordinary situations. Was this an emergency? Was the procedure justified? How would he and his father fare? It was surgery for the family and shock therapy for the Japanese medical establishment. At the same time, it was a revelation to society. What was this cutting-edge technology doing in Izumo? Izumo is supposed to be a quiet backwater known for its famous shrine and mythological associations.

It is these traditional attractions that have drawn the *Journal* to Izumo for this first article in the "Outing" series. Izumo has long been known as a prime portal

for technology and culture flowing off the Korean peninsula to ancient Japan—one of the leading founts in Japan's earliest internationalization.

With a population of about 83,000, the city of Izumo nestles in the fertile Izumo Plain and has thrived as a commercial center for nearly a thousand years. It is 75 jet minutes from Tokyo, with three flights daily. Going more leisurely by train or the very popular red-eye express buses takes 12–13 hours.

The town's name—Izumo—is also the name for the eastern half of Shimane Prefecture on the Japan Sea. And Izumo City is the western focus of this broad area (the eastern focus perhaps being Matsue, where the prefectural capital is located). Although the city tourism office bewails the lack of any glittering tourist attractions, and most of the people who visit the Izumo region just pass through the city,

it would be a mistake for you to just pass through.

Every region has a history of some sort, but few are as resplendent as Izumo's. Every region also has a pithy little slogan that it uses to attract visitors—"Where the Cranes Roost," "The Lights Never Go Out," "Land of a Thousand Dances," and that sort of thing—but few are as true as Izumo's: "Land of Myth and Tradition" and "Your Spiritual Home."

Mythical traditions

All Japanese have been exposed to the ancient mythology at some point, and the bulk of this mythology is set in Izumo. Thus visitors fleeing from the stressful tensions of urban life can wander around Izumo's peaceful environs at ease, constantly coming upon the sites where famous stories are supposed to have taken place. "So this is where...And that

