
September 24,2012

Seminar for Students of Yangon University Department of Law

How can Myanmar lawyers contribute to national development of Myanmar – tentative assumption by Japanese attorney/tax accountant based on China's economic development model after its Reform and Opening-Up (1978)

Japan CAST Group
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(Executive Summary)

1. To achieve stable national development, it is necessary for Myanmar to acquire the technology of “Monozukuri (means manufacturing)” to produce all stage of industrial products including raw materials to completed goods. Without such technology, Myanmar’s market shall be swept by imported goods from foreign countries such as China and Thailand, and thus GDP growth rate shall inevitably stagnate because of persistent trade deficit.

2. Therefore, methodology to acquire technology of “Monozukuri” equivalent to that of China or Thailand in next 30 years should be regarded as the most important factor for Myanmar’s national development. Sooner or later, social infrastructure such as electrical power and airport shall be necessarily developed and Japan’s ODA (Official Development Assistance) will surely support such development. However, technology of “Monozukuri” can only be acquired from constant sincere effort in next 30 years. Now is the time for Myanmar to plan the national strategy toward acquisition of the technology of “Monozukuri”.

3. China can be a good sample in planning such strategy. China had almost no technology of “Monozukuri” at the time of 1980. However, as of 2013, China has drastically changed to the world’s representative great “Monozukuri” country. The keys to such change are “Processing Trade” and “Joint Venture”. Myanmar lawyers can contribute to Myanmar’s national development by studying Chinese “Processing Trade” and “Joint Venture” thoroughly from the legal aspect and paving the way to introduce them into Myanmar.

Q1 What kind of company is CAST Group?

CAST Group is a consulting group which was established by Tatsuo Murao, the speaker of this seminar, in August 1999. The group consists of about 130 staff including 14 Japanese attorneys, 16 Chinese attorneys, 1 Vietnamese attorney, and several CPAs and tax accountants certified either in Japan or China. The Group has its offices in Osaka, Dalian, Beijing, Shanghai, Sozhu, Guangzhou, Shenzhen, Hong Kong, Vietnam (Ho Chi Min City), and Myanmar (Yangon) besides the headquarters in Tokyo.

Approximately, 80% of our revenue is made from the business related to the transaction between Japan and China or Hong Kong. However, we regard it as very important to promote relationship between the ASEAN countries including Myanmar in future.

Q2 Could you tell us the career of the speaker?

The speaker was graduated from Kyoto University, Faculty of Economy in 1990, and subsequently worked for Kobe City Government, Bureau of City Planning as a legal staff for 3 years, from April 1990 to March 1993.

During this period, he passed the bar exam of Japan. The bar exam at that time was so unreasonably difficult that only about 600 candidates out of about 40,000 could pass the exam in that year. (After the Judicial System Reform, currently the number of the successful candidates in each year has increased to approximately 2,000.)

He subsequently took the legal training program for 2 years (Under the Japanese legal system of the day, the person who passed the bar exam was allowed to take a 2 year training program at the national institute to take classroom lectures

and practical training regarding practice of judge, prosecutor, and attorney, while receiving salaries as deemed public servant. Now, the term of training has been shortened to 1 year and the salary system has been abolished.), and he was admitted to the Japanese bar in April 1995. He worked for Oh-Ebashi LPC and Partners (a major law firm which currently has about 100 attorneys) from April 1995 to August 1999. He was transferred to Shanghai, China on August 31st, 1996 for the first time and has been specialized in transactions between China and Japan for 17 years since then.

He has resided in Hong Kong since December 2007, and makes business trips to Shanghai, Tokyo, Osaka, and Yangon every month. After September 2012, he travels to Yangon and stays there usually for 3 to 4 days every month to study Myanmar's legal system. He has been studying very hard.

Q3 What is the major aim of this seminar?

In 1980, when China has started the Reform and Opening-Up Policy (1978) to take the element of market economy consisting of “competition” into this socialist nation, it suffered from serial economic difficulties brought by 10 years of Great Cultural Revolution from 1966 to 1976 (the GDP per person was only 304 USD, which is one third of that of Myanmar as of 2012, 834.6USD),

However, after going through 1980s, the period economic growth stagnated (the GDP per person in 1990 was 339 USD) and professing Market Socialism Economy in 1992 (system consists of “competition” to promote the market economy), China entered into the high economic growth period. The GDP per person phenomenally increased to 946USD in 2000 and 6075USD in 2010. China’s nominal GDP overtook Japan in

2010 and ranked as the world’s second largest economy. In 2012, China’s nominal GDP is 138% of that of Japan and estimated to become twice the size of Japan by 2015.

We believe it is helpful for early improvement of Myanmar’s legal system to make a survey of the situation how China has implemented the laws in this process.

Furthermore, we believe it is also meaningful that the speaker, as an attorney and tax accountant of Japan specializing in studies of Chinese law, does this kind of analysis.

Q4 Why has such comparison not been made with Japan?

Japan rebuilt the country destroyed by World War II (1945) and created a great economic power called “the Miracle in Asia” after going through special procurement demand for Korean War (1950-1953) and the high economic growth period (1955-1973). (Although after the collapse of bubble economy from 1990 to 1991, Japan had experienced 20 years of economic stagnation until implementation of economic development strategy called “Abenomics” under the second Abe Administration inaugurated in December, 2012. During this period, nominal GDP was overtaken by China, as stated above.) Japan’s such rapid recovery was based on and contributed by the power of “Monozukuri” which had existed in Japan since before WWI. This power enables Japan to produce every stage of the industrial products from raw material to completed goods at high level.

However, unfortunately Myanmar seems at the present to lack this power of “Monozukuri”. Therefore, Myanmar should learn from the country which originally lacked the power of

“Monozukuri”, but acquired it afterwards. That is China

China was a poor country because it had no power of “Monozukuri” at the time of 1980. However, it made sustained national efforts to develop the power of “Monozukuri” in every 10 years, 1990s, 2000s, and 2010s, which brought the wealth to the country.

Therefore, no matter whether participants of this seminar like China or not, we believe China is the most suitable country to be referred in planning future economic development strategy and accompanying early improvement of legal system in Myanmar.

Q5 What kind of negative impact will occur on the future of Myanmar, if Myanmar does not place emphasis on “Monozukuri”?

Comparison between transition of GDP of the countries called the “CLMV” among the ASEAN member countries and that of China shows that a gap has been greatly widening for 10 years from 2003 to 2012 (please refer to the PowerPoint document attached) .

Vietnam, among the CLMV, has the socialist system as China does and started Doi Moi Policy (the Vietnamese version of Reform and Opening-Up Policy of China (1978)) in 1986. However, the economic growth of Vietnam does not really have vigorousness and, notably, persistent trade deficit has been placing a burden on the GDP growth.

What is the reason why such persistent trade deficit occurs in Vietnam?

This is just because Vietnam has not successfully developed technology of “Monozukuri” necessary to produce a wide range of industrial products from raw materials to completed goods.

Under these situations, the Japanese companies which have entered into the Vietnamese market have no choice but to import from Japan, China and Thailand parts and modules

which cannot be procured locally from Vietnamese companies. Turning eyes to basic goods, those imported from China and Thailand have dominated the Vietnamese market and the goods manufactured by Vietnamese companies play only a minor role in the market.

If Myanmar does not place emphasis on “Monozukuri” of products from raw materials to completed goods, Myanmar will become the “second Vietnam” and Myanmar’s market will be dominated by imports from China and Thailand.

Can Myanmar introduce a high tariff rate to prevent imports from flowing into its domestic market?

Q5 What kind of negative impact will occur on the future of Myanmar, if Myanmar does not place emphasis on “Monozukuri”?

The answer to this question is no. Myanmar has been a founding member country of the General Agreements on Tariffs and Trade (GATT) since 1948 as well as a founding member country of the World Trade Organization (WTO) established in 1995. Furthermore, it is also because Myanmar bears legal obligations to eliminate tariff barriers under the rules of the ASEAN Free Trade Area, which is the Free Trade Agreement among the ASEAN member countries, and the Framework Agreement on Comprehensive Economic Co-

operations between the Association of Southeast Asian Nations and the People’s Republic of China (ACFTA), which is the Free Trade Agreement with China. Therefore, instead of taking a negative approach of blocking out imports, Myanmar should strategically develop sound technology capable of manufacturing any and all kinds of industrial products from raw materials to completed goods with strong national determination to have “Monozukuri” take root in Myanmar.

Q6 Is it not required for us, lawyers, to contribute to Myanmar’s national development, leaving a strategy to gain technology required for “Monozukuri” to President Thein Sein, economic ministers and Pyidaungsu Hluttaw?

I must say “yes”. We, as lawyers, can make contribution to national development by conducting a study, from the legal aspect, on how China has achieved its success as the world’s

representative great “Monozukuri” country for mere 30 years although it started from scratch without any manufacturing technology. This should be our mission.

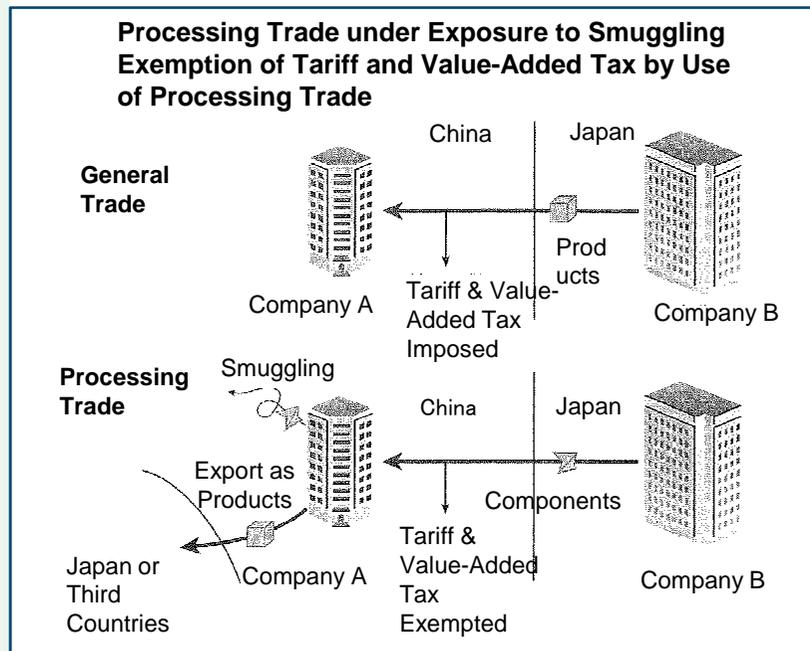
Q7 What are key points of legal system which have brought China to the world’s great “Monozukuri” country for 30 years?

There are two key points for China’s success. One is processing trade and the other is joint venture between Chinese companies, mainly the state-owned enterprises, and

foreign companies.

Q8 What is Processing Trade?

Processing Trade is a type of trading system contrasted to General Trade and Bond is a core element of Processing Trade. Namely, Tariff and Value-Added Tax (equivalent to Commercial Tax in Myanmar) are imposed in case of General Trade, which is a principle trade system. On the contrary, these Tariff and Value-Added Tax are not imposed in case of Processing Trade, which is an exceptional trade system. For such exceptional treatment of Processing Trade, intermediary goods or completed goods processed by using imported parts or modules are required to be exported.



Processing Trade, which is a traditional system starting from June of 1978 before the Reform and Opening-Up in December of that year, reflects the situation of poor China at that time where there was nothing such as technology and **The only thing they could provide for acquiring simple technology or small fund from overseas was cheap labor for processing simple industrial products and they had to import all of the parts or materials necessary for processing from overseas (This situation is similar to that of present Myanmar).** In such situation, if Tariff is imposed on each part or material, no matter how cheap labor is, any foreign company does not place an order to Chinese companies. Therefore, in order to fully take advantage of cheap labor, they invented Processing Trade, which refrains from imposing Tariff and Value-Added Tax (Value-Added Tax was implemented from January 1, 1994 and had been named differently before that) as far as the imported things are exported back.

Q8 What is Processing Trade?

Processing Trade is still widely used mainly in Guangdong Province (Southern China) such as Shenzhen and Dongguan although General Trade has become prevalent now. Around 2007 when Vice Premier Wang Yang was Secretary of Communist Party Committee of Guangdong Province, a dispute arose that Processing Trade is not necessary because it is mainly used in labor intensive industries which produce low added value. However, with the surge of employment anxiety triggered by “The Lehman Shock” on 15th September, 2008, the tone of the argument changed towards that Processing Trade is still necessary for stabilizing employment in China and such tone continues until now. It is certain that Processing Trade decreases by increasing labor cost caused by China’s enrichment in the developed Coast Areas. It still plays an important role for securing employment opportunities mainly in economically undeveloped West Central Areas and North East Areas.

Processing Trade in China is not performed only in the places which the customs especially supervises, such as Bonded Areas

It can be used anywhere in China. If the same system is implemented into Myanmar, many foreign companies will place an order to manufacture industrial product to such areas which can provide cheap labor and sincerely strive for “Monozukuri” as long as such areas are equipped with social infrastructure like electricity and distribution network (This is the indispensable condition precedent.). Foreign companies will certainly provide much advice on technology necessary for “Monozukuri” in that process. Through such process, Myanmar companies using Processing Trade can acquire technology, which will produce stable employment opportunities in that area, make trade of balance positive as a result and certainly make Myanmar a rich country.

Q9 How is Processing Trade supervised by the customs?

Processing Trade has always the risk of smuggling since bond (namely, not paying Tariff and Value-Added Tax) is its core element. It is because if imported goods with bonded treatment are distributed inside China without paying Tariff and Value-Added Tax, this situation is the same as that of smuggling. Therefore, the customs makes an intense effort to supervise and manage Processing Trade. Such supervision and management are conducted by checking whether or not all what was imported was actually exported, namely the balance of what was imported and what was exported.

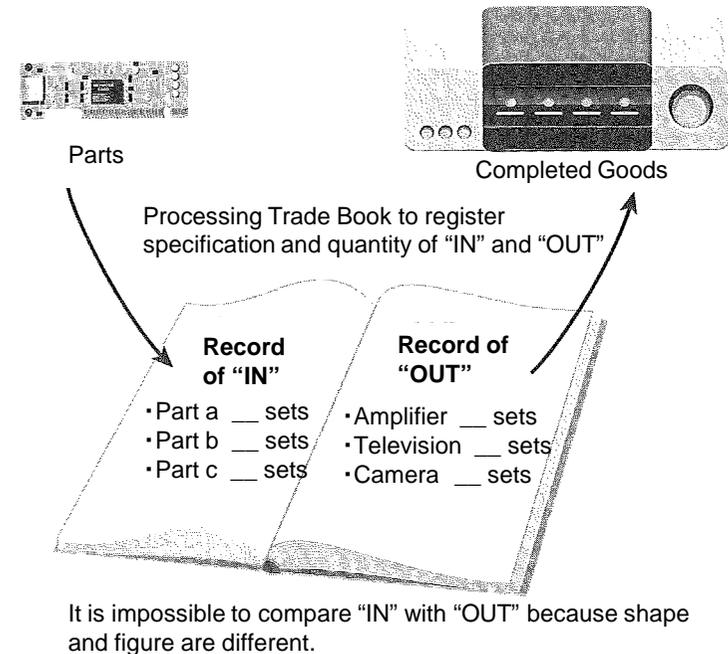
Next question is what the tools for such supervision and management are. There are two tools; one is Processing Trade Book and the other is Management of Standard Used Amount. In short, the former is registering the bonded imported product from overseas and the product exported back to overseas after processing. There are papery one and electric one. Both are common in that their purposes are to register IN (import) and OUT (export) in a chain reaction. Processing Trade Book is

periodically checked by the customs within one year at longest to prevent the situation where unlawfulness continues for a long time. The latter, Management of Standard Used Amount, is a design drawing in sum. It is impossible to check if IN was actually exported only by Processing Trade Book because OUT is completed goods whose shape and figure are different from IN, namely the part. As a result, they cannot supervise and manage without a drawing showing what kind of, how many and where such bonded imported part is used in the completed goods. If there is any change of specifications in a drawing, or Management of Standard Used Amount, they must report each change to the customs. It is because the customs cannot check precisely In and Out if the customs does not know such change of specifications.

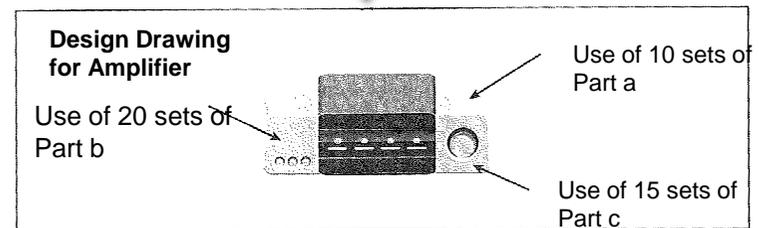
The customs is responsible for checking if the total amount of IN and OUT are balanced in this way (The standard for management is quantity, weight and length, etc.). In the event the customs finds that the total amount of OUT is less than that of IN, the customs orders such Processing Trade company to pay required Tariff and Value-Added Tax at the timing of check because the difference may have been illegally distributed. We must bear in mind that the customs currently conducts a check strictly on “the case where the total amount of OUT is more than the total amount of IN”, which was not considered as a serious problem before the Lehman Shock. The reason why this type of management has become strictly conducted is that if they allow such situation, the case where actual amount is 20,000 even if the declared amount is 10,000 cannot be checked and the customs has become to believe they must prohibit such situation because, on second thought, this allows free smuggling which distributes goods without paying any Tariff and Value-Added Tax concerning the amount of difference, 10,000 in China.

As stated above, it is necessary to establish a system to strictly check the balance of imported part and exported completed goods, namely IN and OUT, through Processing Trade Book and Management of Standard Used Amount by the customs in order to implement Processing Trade overall in China.

Strict Investigation into Records of “IN” and “OUT” - Role of Processing Trade Book -



Design drawing is required.



Q10 Is it a good idea to start Processing Trade nationwide from the beginning, in the event Myanmar introduces Processing Trade?

It is not reasonable to start Processing Trade nationwide right from the beginning. It takes time that the customs develops skills of supervising and managing companies engaged in Processing Trade. Therefore, the first thing to do for the government is to decide the areas where it intends to pursue the economic growth by introducing Processing Trade, and for the first 10 years, experiments and examinations should be repeatedly conducted to assess whether a model of economic development by utilizing Processing Trade is workable in Myanmar. It is reasonable to introduce Processing Trade nationwide after such experimental period when experience is considered to have been sufficiently gained.

China also took a cautious approach where Shenzhen, next to Hong Kong, was designated at the initial stage as an experimental area of economic development through Processing Trade and then Processing Trade had been introduced nationwide afterwards. As a result, Shenzhen, which used to be a rustic fishing village around 1980, has become the wealthiest city in China along with Shanghai.

The prime reason why the Chinese government chose Shenzhen was that, at the stage where the world's trust towards processing trade had not yet been cultivated, only Hong Kong companies or Taiwanese companies which had no measure but to make economic exchanges through Hong Kong

could be expected to place orders. The government thought it is convenient that companies placing orders are located closely in Hong Kong or Taiwan in providing assistance of "Monozukuri" technology and this would work well. In fact, such government's scenario was wonderfully realized.

What Myanmar should study from these historical facts is that Myanmar needs to thoroughly think at the initial stage who will be the first client to place an order of industrial products and where is a convenient location for such client to provide technical assistance of "Monozukuri" to Myanmar companies involved in Processing Trade. That is to say that you have to think carefully where the place equivalent to Hong Kong for Shenzhen is for Myanmar. If the answer to this question is Thailand (the Japanese companies having entered Thailand included), it is rational for Myanmar to set up an economic experimental area aiming at development by Processing Trade in the area along the border with Thailand where traffic infrastructure in the Thai side has been developed and electrical power generated in the Thai side can be used. Myanmar should bring customs elites in such economic experimental area and provide thorough training programs for supervising and managing Processing Trade. We think this will make it possible that Myanmar accumulates for relatively short period of time (10 years) enough experience so that Processing Trade can be introduced nationwide.

Q11 What is a joint venture company?

Joint venture company is a company established jointly by a state-owned enterprise, which is a core business entity under the socialist state, and a foreign company. In China, projects which foreign companies participate in were not given permission in principle for about 20 years from 1979 to 11th December, 2001, i.e. China's accession date to the WTO, unless such projects were conducted in a form of joint venture. Considering these situation, foreign companies had to give up setting up wholly-owned subsidiaries and were compelled to choose joint venture companies to implement such projects.

Joint venture company is a kind of “international marriage” and state-owned enterprises have opportunities to observe from inside technology of “Monozukuri” foreign companies bring in joint venture companies. These opportunities made state-owned enterprises gradually get familiar with foreign companies' manufacturing methods and apply what they learned to manufacturing industrial products with higher standard.

In case of Myanmar, learning opportunities through formation

of joint venture companies with foreign companies are likely to decrease, in comparison with China, as the amended Foreign Investment Law enacted in November, 2012 and its related regulations have limited cases where formation of joint venture companies is mandatory (in other words, foreign companies are widely allowed to establish wholly-owned subsidiaries).

However, in the event Myanmar strongly desires to acquire a certain technology in the process of development of “Monozukuri” technology for raw materials to completed goods, Myanmar may aim at a Tax Holiday system including tax incentives far more favorable than usual ones so that foreign companies, considering joint venture as a possible option, are urged to establish a joint venture company.

Here, lawyers in Myanmar can make contribution to national development by incorporating outcome of study on “how China made a success in attracting numerous investments from foreign companies by use of its Tax Holiday system” into future development of legal system.

(Attached Materials)

- 1 Data of Transaction of the GDP Growth of China and the countries which later joined the ASEAN
- 2 Memo in English for preparation of interview by Myanmar Times (1)
- 3 Memo in English for preparation of interview by Myanmar Times (2)

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