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**International Cooperation and Harmonization in the
Field of Competition Law: Experience from Legal
Development Support for Competition Law in Asia**

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**International cooperation and harmonization
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1. Introduction

Introduction



The main purpose of this presentation is to

“ Address the topic regarding competition law development support within Asia region (including East Asia and South-East Asia).”

Introduction



- ❧ In the last few years, I got the opportunity to visit Central Asia (Uzbekistan), East Asia (Mongolia, China), Southeast Asia (Viet Nam, Cambodia) frequently in relation to the project of support of law at the school of belonging.
- ❧ In these economies/countries the stage of economic development and the development of economic and social capital are also different from developed economies/countries. People's perceptions of market competition are more serious than those of developed economies/countries, while the introduction stage and the degree of experience of competition law are also diverse.

Introduction



- ❧ Market competition is a beneficial social mechanism in Asia's developing economies/countries to achieve efficiency in resource allocation.
- ❧ However, in reality, there were many phases in which competition was restricted from the viewpoint of fairness of distribution at the public policy decision places.
- ❧ The economic system and policy management also cause new unfairness of adherence structure between economic agents with the background of favoritism and cronyism. In Japan, there are problems of bid rigging and bid rigging in public procurements.
- ❧ This problem is however considered as corruption and is treated as a big social problem in the developed economies/countries.

Introduction



- ☞ Since the modernization of industries was achieved at a later stage by the “state”, resistance to government intervention was poor, and the exclusive and discretionary nature of administrative rights remained small especially in developing economies/countries in Asia.
- ☞ In addition, social cushioning and control functions against consumer exploitative abuses by domestic enterprises are still weak. The jurisdiction that should be a citizen's rights defense is weak with corruption problem.

Introduction



The social and political problems stated above are relevant with the Asian economic law development support, this report is thus based on the principle of local competition law in the Asian region.

I will thereby focus on discussion about the perspective of international cooperation in this presentation.



2. Current situation and need for support for competition law improvement in the Asian region

Current situation and need for support for competition law improvement in the Asian region



Japan has competition authorities with the world's most competitive law enforcement experience and is the largest technical support economy/country in East Asia.

“The problem is how to construct effectively and have effective technical support based on the needs of the recipient economy/country.”

Current situation and need for support for competition law improvement in the Asian region



In the East Asian region, because the needs of support are diverse among economies/countries and regions where the competition law is not well developed to economies/countries and regions with abundant accumulation in execution experience, the stage of development is not uniform.

I will thus present separately “country by country”.

Korea



- ❧ Republic of Korea (established the competition law in 1980 (so called fair trade law) and Chinese Taipei (enacted in 1992) have sufficient experiences in enforcing competition law, whilst Japan has diverse experiences in competition law enforcement and has become a provider of competition law maintenance support.
- ❧ It is necessary to cooperate among providing economies/countries as well as between providing economies/countries ("donor") and receiving economies/countries ("recipients") so that they do not become "competition for legal development support" that impersonates each other's "national interests".

Thailand and Indonesia



- ❧ Major operational details and guidelines have already been developed more than 15 years since the introduction of the competition law in Thailand (established in 1999) and Indonesia (established in 2000) , whilst the actual results of execution are mainly inequitable. There are few numbers - centered on regulated fields of trading methods.
- ❧ For these economies/countries, we are closer to practical application, such as research on concrete case studies and advancement of examination methods to formulate execution results on areas other than unfair trade practices such as cartel and abusive acts of dominant position. All in all, technical cooperation is required.

Viet Nam, Mongolia and Laos



- There is an immense development of major operational rules and guidelines in Viet Nam (enacted in 2005), Mongolia (enacted in 2005), and Laos (enacted in 2004) during 15 years since the first introduction and enforcement of the competition law. However, it is still insufficient, and the execution performance is still poor comparing to Japan.
- Technical cooperation aiming for full-fledged operation of competition law** (such as supporting detailed formulation of administrative rules and guidelines, supporting examination methods for forming execution performance etc.) **is necessary** as a framework for enabling effective law enforcement.

Philippines, Malaysia and Cambodia



In economies/countries with inadequate competition laws such as the Philippines (comprehensive competition law is not established), Malaysia (established in 2010), Cambodia (comprehensive competition law is not developed), **overall technical cooperation such as legal theory and execution system improvement is needed as a support for formulation of the draft legislation.**

Japan's Fair Trade Commission



- ✧ Japan's Fair Trade Commission (JFTC) undertakes technical cooperation with overseas competition authorities under the cooperation of Japan International Cooperation Agency (JICA) and others as well as aggressively promotes collective training of developing economies/countries (e.g. economy/country-specific training etc.).
- ✧ For the planning of the plan, the person in charge of the JFTC (specifically, the International Division of Secretariat of the Secretariat of the General Affairs Bureau, International Division) has formulated and implemented the program "ad hoc" for each individual training project and is currently in the process.

2. Current situation and needs for support for competition law improvement in the Asian region



- ▶ However, ad hoc response has not been working very well for the effective implementation of technical cooperation.
- ▶ In other word, as the JFTC among medium to long term technical cooperation, it is time to build up "strategies" of legal assistance to determine the demand from recipients and the kind of vision that should be carried out.
- ▶ Based on the strategies, regarding the planning and designing of individual project, it is necessary to consider the best program designed in accordance with the needs of the assisted economies/countries.
- ▶ In particular, some economies/countries in East and Southeast Asia, such as China and Indonesia, have completed the first phase of introduction and development of competition law.
- ▶ The level of staffs at the competition authorities who participate in the training program offered by Japan is improving every year.
- ▶ As a result, the advancement of contents of technical cooperation programs itself is also essential.

2. Current situation and needs for support for competition law improvement in the Asian region



▶ In view of such awareness of issues, with regard to planning and designing of oversea technical cooperation in the future, it is necessary to cooperate with institute activities relating to this theme, and to comprehensively analyze:

- (1) the needs of assisted economies/countries
- (2) the types of technical cooperation of Japan
- (3) the correlation of needs of the assisted economies/countries, as well as
- (4) the initiatives of the Legal Assistance of Europe and the United States and so on.

▶ Also, it is necessary to establish a system to make optimal program design aiming at the diversity of the technical cooperation menu to plan and design individual technical cooperation project .

▶ In addition, it can be said that designing the direction of medium-to long-term legal assistance of competition policy of Japan is being sought.



3. “Fairness” in Asian Competition Laws

3. “Fairness” in Asian Competition Laws



- ▶ At least in Asia, the competition law and policy of the United States’ type that only focus on free competition do not seem to be able to last long (based on my personal experiences).
- ▶ As Adam Smith ever said, efficiency could be achieved as if led by “an invisible hand of the god.” with individuals pursuing their own interest.
- ▶ However, Smith did not say that social justice could be attained through market.
- ▶ What he contended was merely that market competition contributed to the achievement of economic efficiency.
- ▶ When considering the future of competition law in Asia, it cannot be discussed outside the context of “the Fairness of competition.”
- ▶ After all, it took more than thirty years to have the Antimonopoly Act take its root in Japan.
- ▶ Transplanting the current legal system as it is from the developed economies/countries does not have the support from the citizen.
- ▶ As a natural result, it is not able to take root in the society.

3. “Fairness” in Asian Competition Laws



- ▶ Traditional competition law and policy can solve problems in a very limited manner (personal opinion based on my experience).
- ▶ As a matter of fact, severe social problems are lying ahead, such as environmental pollution and labor exploitation etc.
- ▶ The current challenge is how to respond to corporate social responsibility and to establish connections with labor law in the context of the theory of economic law.

3. “Fairness” in Asian Competition Laws



- ▶ One of the features of competition law in Asia is the emphasis on the regulation on unfair trade practices.
- ▶ Likewise, regulation on the abuse of dominant position which focuses on exploitative abuses is another distinctive feature.
- ▶ In Asia, there is a general tendency that maintenance of fair trade (protection of competitors) is more understandable and preferable than maintenance of free competition (protection of competition).
- ▶ There should not be dichotomy between “nation” and “market”.
- ▶ As can be seen in the Asian Currency Crisis, there arises the question of whether market mechanism could protect Asian regional “community” from the uncontrollable rampant effects of global excess capital liquidity that occurs occasionally.
- ▶ In this regard, the thoughts in the East and Southeast Asia competition laws, which focus on the maintenance of fair trade together with free competition, have a strong point and therefore can be effectively utilized (but not a weakness that should be overcome).



4. Conclusion: Universalism and Particularism in Asian Competition Laws

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- ▶ Basically, the competition law and other social systems in Japan originate from Europe and the United States.
- ▶ Competition law system should not be comprehended simply from the outside; however, it should be necessarily partly assimilated.
- ▶ Although Asian legal systems are mostly inherited from western laws, much of our so-called the “living law” has its origins from (the traditional culture of) the pre-modern time.
- ▶ After all, there are deviations between Asian economies/countries and Europe and the United States.
- ▶ With that being said, how should we weave this deviation into the theory of competition law?

4. Conclusion: Universalism and Particularism in Asian Competition Laws



- ▶ A compromise could be used to comprehend this matter.
- ▶ The difference of trade practice in each economy/country does exist when applying the policy.
- ▶ So, we must attach importance to the values of Asian competition laws, which emphasize the maintenance of fair trade, to wisely achieve the objective of that policy, with a more effective construction and application of the legal system.
- ▶ Meanwhile, regarding the overall framework of the competition law, in Europe or the United States, it is important to focus on how the legal principle of competition law has been developed and how the practice of the competition law has progressed.
- ✂ European competition law adopted the United States' style and has been developed independently – the European and the United States' competition laws cannot be simply put together as they have developed diversely.
- ▶ This is also related to the argument of what kind of assessment should be made towards the globalization of the competition law.

4. Conclusion: Universalism and Particularism in Asian Competition Laws



- ▶ With regard to the cross-border competition law cases, a conflict is likely to occur when one side of the competition authority adopts the universalism point of view and the other side adopts the particularism point of view.
- ▶ Then global harmonization might be essential to the outline of the legal system of where the two views are integrated.
- ▶ However, is the global harmonization alone really enough? (my personal concern)
- ▶ After all, in the United States, the current anti-trust thought which neglects fair trade is something inherent in the country today and we cannot say it is universal.
- ▶ In the history, there were times when the survival of rigid peasants and medium or small sized producers was considered important (i.e. the atomistic market structure was considered important) to protect social health (Jeffersonian democracy) even in the United States.
- ▶ From a historical point of view, we can never say that the standpoint of fair trade was something particular in the United States.

4. Conclusion: Universalism and Particularism in Asian Competition Laws



- ▶ In conclusion, the following three aspects are essential to the fixation of competition culture in Asia. (personal opinion)
- (1) The efficiency supremacism (public welfare) in competition law is being relativized from the area studies of the competition law.
- (2) Emphasis on fair competition and fair trade should be given positive evaluation, instead of being removed as something indicating the backwardness of Asian competition laws.
- (3) Japan's past experience of regulating "unfair trade practice" is essential to the social fixation of the competition law in Japan, and it should be passed on as required in the competition law legal assistance in Asia.



Thank you for your
attention