LEGAL ASPECTS OF DOING BUSINESS IN ASIA AND THE PACIFIC

3

INTERNATIONAL BUSINESS SERIES

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LEGAL ASPECTS OF DOING BUSINESS IN ASIA AND THE PACIFIC

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Introduction

NANCY L. HART

Foreign trade with Asia will flourish for the remainder of the twentieth century. Its economies are the fastest growing in the world. Non-communist nations had growth rates of three to seven per cent in 1981,[1] and Bank of America predicts that Asian economies, as a whole, will grow at an annual rate of six per cent through the 1980s.[2] Furthermore, since most of these countries are small, they depend on outside revenues for economic survival, and there are excellent prospects for trade with this region.

Why is Asia booming? The West is discovering a new market for its merchandise, especially intermediate and high-technology products.[3] Labor is relatively plentiful and inexpensive and the area holds the promise of unexploited petroleum, natural gas and mineral deposits.

Most of these countries are energy importers and high oil prices will retard growth somewhat in the immediate future; the boom will slacken but it will not stop.[4] The majority of Asia is still dependent on raw materials or light manufactures for the bulk of its export earnings, but trade in electronics and more advanced manufactures is expanding. Some countries are suffering from the higher prices of imported capital goods, so import substitution industries and export expansion are major goals. The poorer countries also are hurt by a lack of infrastructure development and the volatility of crop prices. Smaller nations are very susceptible to the economic situations in Europe, Japan and the United States, and they have been injured by economic slowdowns in these industrialized countries. Asian-based companies want to diversify their markets so that they will be less exposed to the economic problems of their larger trading partners.

Beyond these few statements, it is impossible to generalize about Asia as a whole because the countries are so diverse. Asia spans the entire spectrum of economic development, from post-industrialized societies like Japan, Australia and Singapore, to agricultural economies like Burma, Thailand and Sri Lanka.

Australia and New Zealand

Both countries are considered good investment sites because of stable governments, good infrastructure and well-educated labor forces.[5] Both are struggling with inflation and are slowing growth rates in order to ease price hikes.[6] Australia is recovering slowly from a 1974 recession and growth is expected to surge, led by gains in the extractive industries.[7] The 1980 trade balance showed a surplus of US$1.8-billion but there are some hidden factors which keep the figure on the negative side.[8] Labor has been Australia's chief difficulty. There is a shortage of skilled workers and unions are demanding higher wages, thus increasing the price of Australian exports.[9]

New Zealand's growth has been relatively static in the past few years, registering a 0.5 per cent drop in fiscal 1980/81. Inflation is running at seventeen per cent and this is New Zealand's most serious problem. The country has an adverse balance-of-payments and high unemployment. Imports will remain at current levels in the near future with best prospects in energy-related fields.[10] (New Zealand must depend on oil imports but is rich in other natural resources.[11])

Japan

Japan has been the model for economic development since its growth spurt of the 1960s. Now, growth is leveling; economists predict a four to five per cent growth rate in the coming year.[12] Japan is completely dependent on outside sources for energy, and this contributed to an overall trade deficit in 1980 of US$19-billion.[13] Exports in fiscal 1979 totaled US$105-billion and imports reached US$107-billion.[14] The country is trying to remedy its energy insufficiencies by entering joint ventures in petroleum and natural gas fields.[15]

The coming years should see a reduction in inflation as the economy slows down.[16] The government has encouraged housing and consumer expenditures but the public has yet to respond.[17] Japan also faces increasing pressure from the West to open its markets.[18] It has agreed to all six of the Multilateral Trade Negotiation Codes and this will allow purchases from other countries, most notably in government procurement.[19]

China

When the Chinese opened the door to foreign trade in 1979, overseas businesses rushed in, eager to take advantage of a great untapped market. To date, the results have been mixed. The Chinese fear exploitation and foreign companies complain of vacillating economic planning, which has forced the cancellation of some contracts.[20] Overseas firms have also been stunned by the new thirty-three per cent tax on foreign-backed joint ventures.[21] As a result, trade slowed in the last year, although this is also due to high inflation and balance-of-payments problems.[22] Trade with China would be so remunerative that no one is willing to retreat completely.[23] The People's Republic is trying to exploit off-shore petroleum reserves, but output has not been as high as expected and the Chinese are planning to cut back on energy-inefficient heavy industry.[24] There is a market for high-technology equipment.[25]

Southeast Asia

Most of these countries have low levels of industrialization and are hampered by their reliance on agricultural and primary processing exports.[26] They are trying to build export markets in manufactured products and are inviting foreign investment. The best opportunity for sales and investment in 1981 lies in the Asian Rim of the Pacific Basin.[27] A study by the Chase Manhattan Bank predicts that the Southeast Asian countries will outgrow nations to the North because of energy concerns; Malaysia will be the new model for development in this area.[28]

The perspective for the immediate future is somewhat dampened by recessions in the large industrial nations. Only Singapore, Indonesia, and China will exercise high growth rates.[29] Indonesia and Malaysia, with their potential for greater petroleum exports, will receive sizeable amounts of foreign capital.[30] South Korea, Thailand and the Philippines will lose the most because they are not yet completely industrialized and the lack of foreign investment will have a disproportionate effect.[31]

Inflation rates will stay at current levels and only South Korea is expected to improve slightly in the coming years.[32] In other countries, the government will have to intercede and try to slow growth rates. This will mean high interest rates, tight credit, and sluggish investment.[33] Only Singapore and the Philippines will have readily available credit.[34] Market analysts are optimistic in the long-term, as capital imports and new industries will increase industrial output.[35]

South Asia

This is the poorest section of Asia; the economies are dependent on primary products or textiles for export earnings.[36] They have large balance-of-payments deficits, which are expected to increase steadily owing to imports of energy and manufactured goods.[37] India provides an example of the problems experienced by these nations. Although the country is beginning to move from textiles to more sophisticated exports, its foreign debt reached record levels in 1980 and it is expected to grow, albeit more slowly, in the coming years.[38]

Many South Asian governments once hostile to foreign investment are now seeking limited joint ventures.[39] This is especially true of Bangladesh and Burma, who are now operating with major oil companies in exploration projects.[40] Nevertheless, progress in this region is not expected to be dramatic.[41] Most of these countries still depend heavily on foreign aid.[42]

ASIAN ORGANIZATIONS

ASEAN

This organization is comprised of Singapore, Malaysia, Indonesia, Thailand, and the Philippines. The basic idea behind ASEAN was to create a preferential trading area and industrial complementation schemes in order to better trade positions with the outside world.[43] ASEAN officials feel that complementation is necessary because the economies of these nations are so similar that the countries would compete against each other in similar products.[44] To date, ASEAN has not been a great success because of nationalistic feelings; most countries feel that domestic problems come first.[45] The private sector will be the real force behind complementation schemes; there has been some interest in regional trade and finance but no solid commitments.[46] Gradual tariff reductions on 6,000 items were approved in 1980.[47] Some basic industry projects have begun in Indonesia and Malaysia after long delays.[48]

ESCAP

This UN-based organization was founded in 1947 to establish regional cooperation on social and economic problems. Developed countries are also members. The organization has had little real success; its major achievement is the establishment of the Asian Development Bank, which has successfully raised funds for rural development.[49] The bank is committed to projects that will enable agricultural countries to restructure their economies and boost export sales.[50] Japan and the United States are the major donors to the bank; Canada, West Germany, Britain, France, and Australia also contribute.[51] The bank provided US$6.65-billion dollars from 1967–1979 and US$1.26-billion in 1979 alone.[52] Bank officials note that needs will rise sharply and predict that a US$50-billion loan program will be required by the end of this decade.[53]

World Bank

This is not strictly an Asian organization but it does contribute greatly to development projects in this region of the world. In fiscal 1980, the bank and its affiliates made loans of US$12.2-billion.[54] Most of the projects were related to agriculture and rural development or to transportation, although energy accounted for a surprising share. This is in contrast to past policies.[55]

AGRICULTURAL COMMODITIES AND RELATED PRODUCTS

Almost all countries in Asia, with the exception of Hong Kong, Singapore, and Japan, depend on agriculture for a large portion of their gross domestic product.[56] Most of the world's rice, sugar, and rubber is produced in this area and domestic economies are based on the processing of primary products.[57] The countries which rely on agricultural products for foreign exchange earnings have balance-of-payments deficits since commodity prices have fallen steadily in relation to the prices of manufactured goods. Furthermore, the largest purchasers, like the United States and Europe, are self-sufficient in these products, especially in rice and vegetable oil.[58] Primary goods are also subject to the vagaries of the weather and the commodity markets. Recent efforts to stabilize prices through international agreements have not been successful.[59]

Australia

This country is the world's largest producer of wool (thirty per cent) and forty-five per cent of all wool traded is exported from Australia. The country also sells large quantities of wheat (third in world production), meat and dairy products (third), and sugar (second).[60] Food accounted for 33.78 per cent of exports in 1979 and held steady throughout the last decade.[61] Although agriculture is the predominant export industry in Australia, it represented only six per cent of the gross national product.[62] Dependence on primary products as a source of foreign exchange has caused wide swings in the balance-of-payments.[63] 1978 was a poor year, but a recent boom in the agricultural sector will be a major factor in a more optimistic outlook for the near future.[64] Long-term prospects are for steady agricultural output, but a gradual decrease in primary product processing.[65]

Bangladesh

Agriculture constituted thirty-four per cent of exports in 1978, and earned US$552-million. Tea, spices, and fish were the top products.[66] Although Bangladesh exports other primary products, they represented less than twelve per cent of total export revenues.[67]

Burma

Rice is the principal export crop and was responsible for 49.92 per cent of total exports in 1977.[68] Wood, primarily teak, comprises another twenty-four per cent (including some processing).[69] The agricultural sector is not performing up to expectations because of poor planning. The government has nationalized many industries which support agriculture and the farmers have little incentive to participate in government programs. Infrastructure development is needed to improve transportation of crops.[70]

Fiji

Sugar and honey are the main cash crops, composing 81.01 per cent of exports in 1977 and earnings of US$104-million. Vegetable oil is second. Tea comprises ten per cent of the country's overseas sales and Fiji produces 34.38

per cent of the world's supply. Fish, spices, vegetables, and cocoa are also sold abroad.[71]

Indonesia

In the 1960s, agriculture was responsible for sixty per cent of export earnings, but this has changed substantially in the past twenty years.[72] In 1979, food and agricultural products accounted for 27.93 per cent of exports and there is no expectation that agricultural exports will rise to former levels.[73] Indonesia produces 11.28 per cent of the world's rubber and 18.74 per cent of the world's wood.[74] Palm oil is also exported.[75] Indonesia has the capacity to develop a large agricultural income and the state's new five year plan stresses crop diversification and increased rice output.[76]

Malaysia

Food and agricultural raw products represented almost forty per cent of total exports in 1979.[77] Malaysia produces 26.28 per cent of the world's rubber and 31.82 per cent of the world's non-soft vegetable oil.[78] The country also sells timber, rice, coconuts, pineapples, pepper, cocoa, sage, and tea.[79] Three main crops: rice, rubber, and palm oil, made significant gains in 1979. However, like all countries dependent on agricultural exports, the economy is susceptible to the ups and downs of the commodity markets.[80] The government plans to spend more public funds on agricultural development, especially on downstream processing of raw materials, since processed goods have a higher added value.[81] Food manufacturing and wood products have led foreign investment in the past few years.[82]

New Zealand

Like Australia, food and agricultural raw products are the most important exports. In 1979, meat accounted for 24.52 per cent and proceeds from overseas sales were US$755-million. New Zealand produces 16.26 per cent of the world's wool and 14.24 per cent of the world's butter. Cheese, fish, fertilizer, and animal oils are also sold.[83] New Zealand's exports of meat and dairy products dropped substantially when the United Kingdom joined the EEC and the country is now developing markets in Latin America and the Middle East.[84] Food processing, wood, and paper industries are important segments of the manufacturing sector and the government wants to strengthen export performance through agricultural efficiency. It will invest in machinery to aid in this goal.[85]

Pakistan

Although manufactured goods are gaining as a source of foreign revenue, food and primary products constituted 57.8 per cent of exports in 1979.[86] Rice is the biggest export (twenty per cent) and earned US$224-million. Pakistan provides nine per cent of the world's rice.[87] Wheat and cotton are the other important crops and the output is expected to rise six to seven per cent in the next year. The government has established a new Agricultural Price Commission which will set prices in an effort to reduce seasonal fluctuations.[88]

Papua New Guinea

Food represents about forty-four per cent of exports: sugar and honey account for 17.36 per cent, and vegetable oil for another 13.45 per cent. Papua New Guinea produces 17.34 per cent of the world market in the non-soft vegetable oil.[89] There is good export potential for fruit, meat, and fish.[90] The government is encouraging foreign investment in food and timber industries and hopes that they will raise returns. It is particularly interested in the development of legume and grain crops and higher-level wood and food processing industries. The State also intends to upgrade the fishing industry and open processing plants.[91]

Philippines

This country relies on primary products for over forty per cent of its export dollars.[92] Sugar and honey are the principal crops, followed by vegetable oil.[93] However, agricultural production is growing only half as fast as manufacturing.[94] The government wants to increase export revenues by stressing food-related industries and has entered a joint venture with a UK company for the construction of an agro-industrial complex.[95]

Sri Lanka

In 1977, food and agricultural raw products accounted for 73.64 per cent of exports.[96] Major crops were tea, rubber, and coconut products.[97]

Thailand

Food made up over half of Thailand's exports in 1979.[98] Rice led sales and earned US$656-million. Rubber is the second largest crop and posted revenues of US$302.5-million.[99] Twenty-five per cent of the economy is based on agriculture, but manufacturing almost equals this level.[100] The country is trying to upgrade commodity exports by developing processing industries, especially in timber.[101]

Commodity Agreements

These treaties have been hotly debated in the past few years. Their purpose is to stabilize and raise commodity prices in order to assure steady export earnings for producers, but negotiations on individual products have not fared well. Rubber was the only product on which an agreement was reached in 1980, and the future of successful pacts seemed unlikely. However, tea producers were able to agree on an output quota.[102]

MINERALS, NON-AGRICULTURAL COMMODITIES AND RELATED INDUSTRIES

Although Asia is not so rich in resources as Africa, Australia and South-east Asia contain a wealth of minerals. Over sixty kinds are found in Australia alone.[103] Fifty-five to sixty per cent of the world's tin is mined in this area.[104] Copper, lead, zinc, and iron ore are also found in abundance.[105] Raw minerals also provide the basis for metal manufacturing and related industries.

For many years, it was not profitable to exploit these resources because of the cost of extraction and the vagaries of the commodities market. However, in the 1970s a 'long-term' mineral boom began in Asia, particularly in coal and uranium, because they can be used as alternative fuels.[106] It is expected rapid growth will continue through the 1980s and there are good prospects for foreign investment in mining ventures and for sales of extractive equipment.[107]

Australia

Australia exports coal, iron ore, zinc, silver, gold, tungsten, nickel, and bauxite; the latter provides the basis for the aluminum industry.[108] Mineral sales earned US$4.5-billion in 1980, and ores and metals accounted for about twenty per cent of exports.[109] The mining industry grew slowly in the 1970s since output exceeded demand, but it is expected to grow quickly in the 1980s, especially since uranium deposits have been discovered.[110] Foreign investment will probably play a major role in the financing of mining projects, even though the government restricts non-Australian ownership to fifty per cent in this area.[111] Japanese and American companies have already committed themselves to aluminum projects.[112]

Burma

Before World War II, minerals accounted for about forty per cent of the export earnings and the country was considered one of the richest in natural resources. Tin, tungsten, and semi-precious metals were mined.[113] However, the industry was dominated by foreign firms, who left when the petroleum industry and a major tin company were nationalized in 1963. Exports dropped to less than five per cent. Attempts are being made to revitalize the tin smelting industry through barter arrangements and the government has indicated that it may be more receptive to foreign investment in the future.[114] The mineral sector staged a production gain of 15.8 per cent in 1979.[115]

India

Mining and the metal processing industry have been over-shadowed by the textile industry and much of India's industrial metal wealth has been underexploited. India has the third largest magnesium deposit in the world and ranks second in bauxite, although these minerals are not produced in great quantities.[116] Ores and metals accounted for 14.3 per cent of exports in 1979 and metal manufacturing and metals represented another 10.95 per cent but these industries have shown little growth in the past ten years.[117]

Indonesia

After petroleum, tin is the major mineral export. Indonesia is the third largest producer of tin in the world and provides thirteen per cent of the world's total.[118] The growth of the mining industry in recent years has exceeded the overall growth rate.[119] The government is stimulating selective foreign investment in the iron and steel industries.[120] However, administration has been exploited at the expense of unemployment and there are plans to stress more labor-intensive industries in the near future.[121]

Malaysia

Minerals have greatly contributed to economic growth in Malaysia; the country is the largest producer of tin (thirty-two per cent), and iron and copper are also mined. Ores are a major source of exchange earnings and accounted for 11.89 per cent of exports in 1979.[122] The government is promoting resource-based, export-oriented industry.[123] New projects include an aluminum plant, an iron sheet factory, and a joint venture to produce several metal-based products.[124]

Papua New Guinea

Papua New Guinea has some of the richest copper deposits in the world.[125] The boom in the extractive industry is nowhere more apparent. In 1970, minerals comprised less than one per cent of exports, but by 1979, the figure had skyrocketed to 59.87 per cent.[126] The government invites foreign investment in this area, although it may insist on thirty per cent equity. Several mining firms have committed themselves to extraction projects and hefty capital flows are expected to continue since mineral resources have been unexploited in the past.[127]

Philippines

Minerals are the second leading export earner by value in the Philippines.[128] They accounted for 14.53 per cent of total exports in 1979.[129] Copper is the most important commodity and the Philippines is the world's leading producer of chromite. Gold and iron ore are also exported.[130] The state intends to upgrade the industry and to begin refining operations, since the export value of processed goods is higher. A new copper smelter is one of the new projects designed to increase the industrial base. Foreign ownership is restricted to thirty per cent in mining operations.[131]

Thailand

Thailand produces fifteen per cent of the world's tin and revenues reached US$241-million in 1979.[132] Minerals comprised 11.52 per cent of total exports in the same year.[133] Once considered poor in natural resources, Thailand has been attracting foreign investment in mineral exploration. A joint venture between Austrian and American companies is starting potash production and the government and a Belgian firm are building a new zinc refinery.[134]

Others

Almost all other Asian countries have mineral resources, although few are exporting sizeable amounts. Coal is used primarily for domestic industry. New Zealand is considered to have vast mineral possibilities but minerals comprised only five per cent of exports in 1979.[135] South Korea is developing a metals manufacturing industry.[136]

TEXTILES

The textile industry, which has been the mainstay of Asia, has recently fallen on hard times. Imports of raw material and equipment are becoming more expensive. Furthermore, the finished product does not have a high added value. The most serious obstacle facing cloth manufacturers is the protectionist attitude of Western nations. Import quotas are negotiated bilaterally through the Multi-Fiber Arrangement under the auspices of the General Agreement on Tariffs and Trade (GATT). In recent years, the restrictions have become