ENVIRONMENTAL REGULATION FOR FOREIGN TRADE AND INVESTMENT IN JAPAN *

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I. GENERAL POINTS

1. Japan has attracted world-wide attention because of its rapid economic development. At the same time, it has also come to be known for the environmental damages resulting from such economic activities. Japan is a small country with a population of over 100 million people. The rapid economic growth and concentration of population in urban areas inevitably has detrimental effects on the human environment everywhere. Moreover, seriuos health damages have arisen, such as Yokkaichi asthma and Kawasaki asthma, caused by air pollution and Minamata disease and Itai-itai disease induced through water pollution by mercury and cadmium, respectively.

Internationally, Japan has been criticized for "pollution dumping" —unfair competition due to advantageous prices as a result of bearing no cost for pollution control— or for "pollution export"— destruction of the environment in foreign countries by Japanese industries and capital.

2. Under such circumstances, both the people and the Government of Japan have begun to take vigorous action to protect the environment. As for the legislative framework, the following laws have been enacted, in addition to the Basic Law for Environmental Pollution Control (Law No. 132 of 1967) in order to take necessary control measures.

Air Pollution Control Law (Law No. 97 of 1968).
Water Pollution Control Law (Law No. 138 of 1970).
Noise Regulation Law (Law No. 98 of 1978).
Offensive Odor Control Law (Law No. 91 of 1971).

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3. As is generally known, environmental problems are today tackled on a global basis. The problem of destruction of the ecosystem should also be studied from the same viewpoint. Environmental problems must be solved by concerted international effort. Examples of international environmental pollution are marine pollution of the Mediterranean Sea and the Baltic Sea, and the transfrontier air pollution in Scandinavia.

Besides the direct pollution of the environment cited above, indirect environmental problems resulting from international trade or capital transactions, should also be taken as a matter of world concern owing to the pollution potential of goods and capital transacted. I wish to express my appreciation for the fact that this Conference has taken up this most important matter.

4. Japanese attitude and measures with respect to environmental control of foreign trade and investment.

As has been mentioned, Japan is making a considerable effort to protect the environment by developing, among others, necessary statutory control. Insofar as domestic measures are concerned, pollution control in Japan appears to be more strict than elsewhere. However, environmental regulation of foreign trade and investment has only just begun in Japan. Public awareness of the need for regulation in this field is growing. The present state of such regulations in Japan is outlined in the following pages.

II. Environmental trade control

1. Generally, trade including export and import, is regulated by the Foreign Exchange and Foreign Trade Control Law (Law No. 228 of 1949).

In addition, there are some laws controlling the export and/or import of certain goods.

2. Export Control.

a) Under the Foreign Exchange and Foreign Trade Control Law, certain goods-specified in the Attachment 1 of Export Trade Control Order (Cabinet Order No. 378 of 1949) cannot be exported without the approval of the Minister of International Trade and Industry (Article 1). Details of the wide-ranging specified goods are altered, according to the relevant situations of the time.

The purpose of the control may be classified by types of goods as follows:

1) Goods under excessive competition requiring exportation permit.
2) Strategic goods.
3) Goods for which domestic demand needs to be controlled.
4) Goods the exportation of which is prohibited.
5) Goods infringing upon industrial property rights.

At present, there exists hardly any control of export based particularly on environmental consideration.

It may be added, however, that exportation of endangered birds and their eggs requires prior approval under the aforementioned Cabinet Order. These export items are controlled for the purpose of protecting special birds [1] and their eggs, regulated under the Law relating to the Regulation of Transfer of Special Birds (Law No. 49 of 1972).

This law was enacted in accordance with the convention between the Government of Japan and the Government of the United States of America for the Protection of Migratory Birds in Danger of Extinction' and their Environment. Under this law, special birds or their eggs shall not be exported except when the exportation is recognized as particularly inevitable, such as export for international cooperation, academic study, or breeding purpose (Article 4). It is to be noted that under the Foreign Exchange and Foreign Trade Control Law, no direct export control is made with the objective of preserving the environment of importing countries. This could be attributable to a great variation in environmental protection measures taken by importing countries.

b) International plant quarantine is regulated in Japan by the Plant Quarantine Law (Law No. 151 of 1950).

Exporters of plants and their containers or packagings for which quarantine certificate of an exporting country is required by the importing country, must have them inspected and approved by plant quarantine officers (article 10).

c) The abovementioned is the compulsory export control based on laws. There are however, some goods for which exportation is controlled by administrative guidance on a volunteer basis for the environmental protection of importing countries. One such instance is pesticides. Domestically, sales of pesticides like BHC and DDT are forbidden under the Agricultural Chemicals Regulation Law (Law No. 82 of 1948).

[1] The Law applies to 28 kinds of birds, including shorttailed albatross, oriental white stork, and Japanese crested ibis.

It is not desirable, naturally, that such pesticides be exported to countries with similar environmental control concerning pesticides. Nevertheless, some nations are in need of such pesticides to increase agricultural production or to prevent malaria.

Consequently, the Japanese Government has taken administrative steps, to require exporters of BHC or DDT to obtain in advance a written consent from the importing country involved.

3. Import Control

a) Import is controlled in accordance with the Import Trade Control Order (Cabinet Order No. 414 of 1949), based on the Foreign Exchange and Foreign Trade Control Law.

The control measures vary according to which of the following categories an item falls under:

(1) Automatic Approval Goods (AA goods)

(2) Automatic Import Quota Goods (AIQ goods)

(3) Import Quota Goods (IQ goods)

In order to import an item, it is necessary to obtain an importation permit, issued by an authorized foreign exchange bank. The permit is automatically granted for AA goods. The import quota must be allocated by the Ministry of International Trade and Industry before the permit is obtained for the importation of AIQ and IQ goods. While quota is granted automatically for AIQ goods, quota for IQ goods is granted taking into account supply and demand conditions, impact on domestic industries, and other conditions. The import quota system has up to now been admistered, based primarily on economic considerations, including the state of balance of payment and the protection of domestic industries.

However, Japan being a member of GATT is not permitted to enforce the import quota system on the balance of payment ground. Hence, the promotion of trade liberalization.[2]

b) It is only recently that import control has received increased attention in connection with the protection of the environment in Japan. What deserves particular attention, in this regard, is Polychlorinated Biphenyls (PCB).

[2] It is understood that liberalization of trade is completed for AA and AIQ goods, and not yet for IQ goods.

PCB was designated as an IQ item, under Import Trade Order on June 10, 1974. Consequently, importation of PCB is not allowed, except for testing or research purposes (MITI Notification No. 254 of 1974). The underlying causes for the enforcement of these control measures are the following:

Concern about PCB arose with the Kanemi Rice Bran Oil incident that broke out in northern Kyushu area and other points in the autumn of 1968. This is an incident in which PCB, used as a heating medium, leaked from a pipe in the food processing equipment and contaminated the rice oil being processed. It subsequently poisoned over one thousand people who ingested the PCB contaminated oil. Principal symptoms of the poisoning were edema of the upper eyelid, nausea, vomitting, weakness of limbs. The incident aroused a wide public concern in the country. At about the same time, environmental pollution by PCB also became a matter of concern abroad. Futhermore, PCB was detected in marine products and human milk in Japan. Towards the end of 1971, a tanker stranded off the coast of Niigata resulted in the release of a large quantity of oil. Concern was expressed about the toxic effects of chemical dispersants used on marine life, including fish and seaweeds, and, directly or indirectly, on human health.

It was against this background that the Toxic Chemicals Control Law (Law No. 117 of 1973) was passed. The law came into effect on April 16, 1974. The aim of the law is defined as the prevention of environmental pollution by chemical substances (Article 1). According to the law, permission from the Ministry of International Trade and Industry is required to import specified chemical substances (Enforcement regulation specifying PCB as such a substance, became effective on June 10, 1974), except for the material needed for testing or research purposes (Article 11). A product which contains specified chemical substances and is designated by Cabinet Order, may not be imported (Article 13).

In addition, those who intend to import new chemical substances must file required information in advance with the Ministry of Health and Welfare and the Ministry of International Trade and Industry, except when the materials are needed for test or research purposes (Article 3).

The abovementioned trade control of PCB as a nonliberalized item under Import Trade Control Order, is a step taken in accordance with the regulation of the importation of specified chemical substances under the Chemical Substances Control Law.

Questions may be raised upon whether such importation control would be a non-tarriff-barrier restricted under GATT, or not (Article 11). Nonetheless, this type of trade control is understood to be a necessary

measure for the protection of life and health of men, animals or plants admitted by GATT as one of the general exceptions (Article 20-6).

c) Importation of pesticides is controlled by the Agricultural Chemicals Regulation Law (Law No. 82 of 1948). Importers of the pesticides to which the above law applies are not allowed to sell them unless they have registered with the Ministery of Agriculture and Forestry (Article 2). The Ministery is empowered to instruct the alteration of items registered, or the improvement of properties of pesticides registered. The Ministery has further the power to nullify the registration, when it judges that the importation of a pesticide will lead to environmental pollution (Article 6-3).

d) Importation of food is controlled by the Food Hygiene Law (Law No. 233 of 1947). Prior notification to the Ministery of Health and Welfare is necessary for importing food,[3] its additives, devices, containers, or packagings for sales or commercial purposes (Article 16).

Except when the Ministery of Health and Welfare decides that importation will cause no danger to human health, the importation of chemical compounds and/or products and food containing chemical compounds, is prohibited (Article 6).

e) As regards international plant quarantine, restriction, prohibition or inspection of imports, this is made under the Plant Quarantine Law.

f) The abovementioned is the control of imports from the environmental standpoint. It may be added that even when the import itself is not controlled, there are certain cases in which it is impossible or difficult to import an item, because of the domestic pollution control effected by various laws.

Motor vehicles fall under this clasification. Cars have rapidly become a common article throughout the nation. Everywhere one finds traffic congestions and accidents. Furthermore, cars are contributing to aggravate air pollution by emitting toxic exhausts.

The Government has been taking strong measures to control motor vehicle exhausts. Such control is based on the Air Pollution Control Law (Law No. 97 of 1968), and the Road Transport Vehicle Law (Law No. 185 of 1951).[4] The Air Pollution Control Law provides that the Director-General of the Environment Agency shall establish maximum permissible

[3] Article 3 of the Regulations of the Food Hygiene Law and Table II attached there to, designate a large number of chemical compounds, including sodium chlorate and sodium nitrite and products and food containing them.

[4] Concerning the control of motor vehicle exhausts in Japan, see the attached paper "History of Automotive Emission Control Measures in Japan".

limits on the amount of exhaust gas from motor vehicles (Article 19-1). Should the Ministry of Transport establish, by an order pursuant to the Road Transport Vehicles Law, necessary requirements relating to the control of the emission of motor vehicle exhaust, this department must take care to secure the maximum permissible limits (Article 19-2).

According to the Road Transport Vehicles Law, structures of vehicles must meet the specified technical requirements set for safety purposes (Article 40). The safety requirements include installation of a device to control the emission of smoke and soot, gas with offensive odor, and toxic gas.

At present, the Environment Agency is considering the establishment of exhaust control, to become effective in 1976, aiming at reducing the amount of nitrogen oxides in exhausts to one-tenth of the present volume. However, eight out of nine domestic manufacturers are calling for the postponement of such control measures. At the same time, banning of sales of premium gasoline with lead, beginning in March, 1977, is under consideration by the Government. No measures are currently being taken to directly control the importation of motor vehicles for the protection of the environment. Nevertheless, the abovementioned domestic environmental measures, leading to establishment of requirements concerning vehicle structures, may restrict, in practice, the importation of motor vehicles.

With respect to oil, no import control is enforced.

However, stringent ambient quality standards, set under the Basic Law for Environmental Pollution Control, and emission standards for sulfur oxides, established under the Air Pollution Control Law, make it necessary for the industry to either import fuels that are as purified as possible, or to desulfurize oil after importation. [5]

There are cases when agreement is reached between a company and a local government on the use of low-sulfurized clean oil, as a condition for admitting the establishment of a plant.

III. Regulations on Internation Investment from the Environmental Viewpoint

1. Regulations on Foreign Investment

a) The investment of foreign capital in Japan is regulated by the Law of Foreign Investment (Law No. 163 of 1950).

[5] With respect to emission standards and ambient standards for sulfur oxides, see the attached table.

Japan became a member of the OECD in 1964. The Government of Japan has been promoting a policy for liberization of capital movement since 1967, to meet the OECD. Code of Liberization of Capital Movement. This policy has been put into practice through administration of the Law of Foreign Investment.

b) Under this law, foreign capital is controlled through the permit system. Detailed standards for issuing permits are provided for. As there is no specific standard related to environmental protection, no direct regulation of foreign capital can be made from such a point of view.

c) Japanese people would not welcome foreign capital for industries which would cause environmental pollution. The problem is whether such foreign enterprises will abide by various domestic laws and regulations for environmental protection. Direct regulations on foreign capital seems to be unnecessary, if the observance of such regulations is guaranteed.

d) It is rather difficult to assess to what extent foreign investment is actually restricted, as a result of strengthened domestic pollution control. In order to determine this, such assessment should include checking with potential foreign investors for Japan.

It can be said, however, that the environmental laws and regulations are not applied more stringently to foreign enterprises merely because they represent foreign capital. The same is true of the activities of foreign enterprises. This is basically owing to the principle of national treatment under the international law.

2. Regulations on Overseas Investment

a) Overseas investment is controlled by the Foreign Exchange and Foreign Trade Control Law and the Ministerial Ordinance concerning Control of Invisible Trade Transactions (Ministry of Finance Ordinance No. 58 of 1963), established under the Law. Anyone who wants to obtain foreign securities, whether available abroad (Article 32) or at home (Article 31), has to obtain a permit from the Ministry of Finance. However, in some cases the functions relating to permits for foreign securities are entrusted to the Bank of Japan. This permit system has been operating in a very flexible manner, in line with the Government's capital movement liberization policy.

b) The history of this permit system does not record any case where a permit has been denied based on the consideration that such an investment would cause environmental pollution in the invested country.

However, there are some movements in Southeast Asia against Japanese enterprises and investment, on the grounds that they are contributing to the extension of environmental pollution in their countries. For example, there has been a case recently in Thailand where a local firm with Japanese capital was criticized for releasing mercury into the environment.

Under such circumstances, members of opposition parties urged at a recent parliamentary session, that the overseas investment be strictly regulated for the industries that might cause environmental pollution in foreign countries. No concrete measures, however, have been taken in this regard.

The following are positive standards relating to the issuance of a permit under the Law of Foreign Investment (Article 8):

1) to contribute, directly or indirectly, towards improving the balance or payment,

2) to contribute, directly or indirectly, to the development of key industries or public utilities corporations, or

3) to be necessary to continue or renew the existing agreements on technical assistance, relating to key industries or public utilities corporations, or to change the provisions thereof.

On the other hand, the following are negative standards:

1) the provisions of contracts are not fair or do not meet the laws and regulations,

2) the conclusion, renewal, or other changes of provisions of contracts, are considered to be caused by frauds, menaces, or other unfair pressures, or

3) contracts are considered to produce adverse effects on the rehabilitation of Japanese economy.

Substance	*Applicability*	*Test method*	*Effective date*	*Regulations*
Carbon monoxide	New cars	4 mode test	Sept. 1, 1966	Maximum density 3.0% for ordinary or small-sized cars (gasoline powered only).
	do	do	do	Maximum density 2.5% for ordinary or small-sized cars (gasoline powered only). For cars in production, the effective dates are Jan. 1, 1970 for passanger cars and Sep. 1, 1970 for buses and trucks.
	do	do	Jan. 1, 1971	Maximum density 1.5% for ordinary or small-sized cars (LPG powered only).
	do	do	do	Maximum density 3.0% for mini cars.
	New cars (light duty cars)	10 mode test	Apr. 1, 1973	Maximum emission rate 26 g/km for ordinary, small-sized or mini cars. For cars in production, the effective date is Dec. 1, 1973.
	do	do	do	Maximum emission rate 18 g/km for ordinary, small-sized or mini cars (LPG powered only). For cars in production, the effective date is Dec. 1, 1973.
	New cars (heavy duty cars)	6 mode test	Apr. 1, 1973	Maximum density 1.6% for ordinary or small-sized cars. For cars in production, the effective date is Dec. 1, 1973.
	do	do	do	Maximum density 4.5% for ordinary or small-sized cars (LPG powered only). For cars in production, the effective date is Dec. 1, 1973.

HISTORY OF AUTOMOTIVE EMISSION CONTROL MEASURES IN JAPAN

Substance	*Applicability*	*Test method*	*Effective date*	*Regulations*
Carbon monoxide	New cars	Idling test	Aug. 1, 1970	Maximum density 4.5% for ordinary or small-sized cars.
	do	do	Jan. 1, 1971	Maximum density 4.5% for mini cars.
	Used cars	do	Aug. 1, 1970	Maximum density 5.5% for ordinary or small-sized cars.
	do	do	Oct. 1, 1972	Maximum density 4.5% for ordinary or small-sized cars.
	do	do	Oct. 1, 1973	Maximum density 4.5% for mini cars.
Hydro-carbons (emitted from exhaust pipe)	New cars (light duty cars)	10 mode test	Apr. 1, 1973	Maximum emission rate 3.8 g/km for ordinary, small-sized or mini cars except those with 2 cycle engines. For cars in production, the effective date is Dec. 1, 1973.
	do	do	do	Maximum emission rate 3.2 g/km for ordinary, small-sized or mini cars except those with 2 cycle engines (LPG powered only). For cars in production, the effective date is Dec. 1, 1973.
	New cars (heavy duty cars)	6 mode test	do	Maximum density 520 ppm for ordinary or small-sized cars. For cars in production, the effective date is Dec. 1, 1973.
	do	do	do	Maximum density 440 ppm for ordinary or small-sized cars (LPG powered only). For cars in production, the effective date is Dec. 1, 1973.

HISTORY OF AUTOMOTIVE EMISSION CONTROL MEASURES IN JAPAN

Substance	*Applicability*	*Test method*	*Effective date*	*Regulations*
Hydro-carbons (blow-by gas)	New cars	———	Sept. 1, 1970	Positive crankcase ventilation system is required for ordinary, small-sized or mini cars. For cars in production, the effective date is Jan. 1, 1971.
Hydro-carbons (evapo-rated)	do	———	July. 1, 1972	Maximum evaporated amount 2.0 grams per one test run for ordinary, small-sized or mini cars (gasoline powered only). For cars in production, the effective date is Apr. 1, 1973.
Parti-culate matter	New diesel cars	———	do	Maximum pollution level 50% as provided for under Japan Industrial Standard D-8004 for ordinary or small-sized cars (diesel engine powered).
Nitrogen oxides	New cars (light duty cars)	10 mode test	Apr. 1, 1973	Maximum emission rate 3.0 g/km for ordinary, small-sized or mini cars except those with 2 cycle engines. For cars in production, the effective date is Dec. 1, 1973.
	do	do	do	Maximum emission rate 0.5 g/km for mini cars with 2 cycle engines. For cars in production, the effective date is Dec. 1, 1973.
	New cars (heavy duty cars)	6 mode test	do	Maximum density 2,200 ppm for ordinary or small-sized cars. For cars in production, the effective date is Dec. 1, 1973.

EMISSION CONTROL MEASURES REQUIRED FOR USED CARS

Applicability	*(Displacement)*	*Retarding of Spark Timing*	*Enforcement date* [1] *Equipping with emission* [2] *control facilities*
passenger cars			
	(more than 1800 cc)	— —	May 1, 1973
do	(1600 - 1800 cc)	May 1, 1973	Dec. 1, 1973
do	(1000 - 1600 cc)	do	Apr. 1, 1974
do	(1000 cc or less)	do	Apr. 1, 1975
Trucks	— —	do	do

[1] These enforcement dates are those for the areas of Tokyo and Osaka, and those for other areas were also established.

[2] Emission control facilities include automatic spark timing retarders, catalitic converters, or others.

	Pollutant	*Environmental standars*	*Emission standards*
Smoke	Sulphur oxides (SO_x)	In terms of sulphur dioxides (SO_2) 1. Daily average: 0.04 ppm 2. Hourly average: 0.1 ppm	1. General standards: K = 6.42 — 22.2 2. Special standards: K = 2.92 — 5.26 3. Standards for use of fuel; S portion 0.5 — 1.2%
	Smoke dust	In terms of suspended particulate matter: 1. Daily average: 0.10 mg/m³ 2. Hourly average: 0.20 mg/m³	1. General standards: 0.10 — 0.80 g/m³ 2. Special pollution level standards: 0.05 — 0.40 g/m³ (varies according to type and size of facilities)
Hazardous matters	Lead (Pb) and its compounds	Now under study at the Central Pollution Countermeasures Council	10 — 30 mg/Nm³ (varies according to the type of facilities)
	Fluorine (F), hydrogen fluoride, etc.	Not determined	1.0 — 20 mg/Nm³ (varies according to the type of facilities)
	Cadmium (Cd) and its compounds	Not determined	1.0 mg/Nm³
	Chlorine (Cl_2) and hydrogen chloride	Not determined	Chlorine... 30 mg/Nm³ Hydrogen chloride... 80 mg/Nm³
	Nitrogen oxides (NO_x)	In terms of NO_2: Daily average: 0.02 ppm	See annex below
	Dust	In terms of suspended, particulate matter: 1. Daily average: 0.10 mg/m³ 2. Hourly average: 0.20 mg/m³	In accordance with the Standards of the Structure, use and management of dust-generating facilities

ANNEX. EMISSION STANDARDS FOR NO_x

Division / *Facilities*	*Standard value* — *New facility*	*Existing facility*	*Scope of control to be applied*	*Period for control*	*Concentration of residual oxygen (0.2%)*
Boiler					
[1] gas	130	170			5%
[2] solid fuel		600	New facility:	Two years for an	
	480		40 000 Nm^3/h	existing facility (by	6%
(lowgrade coal)		750	Existing facility:	June 30, 1975)	
liquid fuel		230	100 000 Nm^3/h		
	180				4%
(crude oil tar)		280			
Metal heating			New facility:	Two years for an	
furnace	200	220	10 000 Nm^3/h	existing facility (by	
Petroleum			Existing facility:	June 30, 1975)	
refining/	170	210	40 000 Nm^3/h		11%
petrochemical furnace					6%
Nitric acid producing facility	200	200	All facilities	Three years for an existing facility (by June 30, 1976)	—

[1] This excludes heating furnaces for forge-welded steel tubing.
[2] This excludes cracking furnaces and independent heating furnaces for manufacturing ethylene, and reforming furnaces for producing methanol and ammonium.