

The Japanese Culture and Licensing

Careful analysis, understanding others, cooperative approach are effective traits that lead to success

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The characteristics of cultures should be understood and considered for successful technology transfer between countries.

I shall start by touching upon trade friction between U.S.A. and Japan. I recognize it is a serious problem. Every Japanese newspaper carries the current news about the trade friction between our two nations and on TV every newscaster comments on this issue almost everyday.

The Japanese are much concerned about the problem. They are aware that protectionism in the United States is on the verge of exploding and that anti-Japanese feelings seem to be spreading even among American intellectuals. The famous journalist, the late Theodore H. White, held the opinion that Japan was unfair and to be blamed for the trade friction. These kinds of opinions are well known in Japan. And tough senators such as Senator Danforth and the noted lobbyist, Mr. Whalen, are also know in Japan.

Nevertheless, I feel optimistic about this issue, since I believe we will be able to overcome the problem associated with it. Until 16 months ago, I had been working at the 50/50 joint-venture company between DuPont and Mitsui as sales manager in charge of the local market. I felt no culture gap between myself and my colleagues, other than my ability to speak Japanese. At that time, I always said, "My left side works for America, my right side works for Japan. This makes me neutral."

I also had a delightful experience in international cooperation as a governmental delegate at the United Nations. My task was protecting our chloro-fluoro-carbon business throughout the world.

Thanks to the international cooperation afforded by CFC, co-producers such as DuPont, Allied, Pennwalt, ICI, Hoechst, Montedison, AKZO, DuPont-Mitsui Fluorochemical, Daikin, Asahi, Showa-Denko and so on, we succeeded in stopping the banning of the sale and production of CFC products based on a hasty and political decision at the United Nations.

I believe the human being is the same, regardless of

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eye color, hair color, skin color, way of thinking, religious beliefs and so on.

As for business, I used to keep close contact with my counterparts in America, Europe and the Asia/Pacific area. For example, when I received inquiry letters from some would-be customers outside Japan, I promptly sent off telexes or letters referring such inquiries to my counterparts. As the result I have experienced problems related to my business.

I shall express my opinion about a number of subjects based on my experiences as a legal specialist in a Japanese firm as well as a sales manager in an America/Japan joint-venture company.

CHARACTERISTICS OF CULTURE AND TECHNOLOGY TRANSFER

When we conduct technology transfer negotiations we should understand the difference in characteristics between cultures and take such differences into consideration.

People's Behavior Pattern

To highlight the contrast between U.S.A. and Japan, I pick up some features about the Japanese people. The Japanese have some traditional mores. In the Japanese society great talkers or eloquent men are not regarded with respect. Men were always trained not to talk too much under the traditional motto, "Silence is Gold, Eloquence is Silver."

The best communication in the Japanese society is on a heart-to-heart basis. Best friends, husbands and wives, well-communicated boss and his or her staffs, sometimes do not need any kind of word, including body language, to communicate with each other. The Japanese usually do not express their own opinions explicitly. Even businessmen do not speak on definite terms.

The higher their rank, the vaguer and more indefinite their expressions become.

In the Japanese society it is said to be impolite and a breach of etiquette to express one's opinion definitively. Therefore, the Japanese often try to avoid making definite commitments even at business negotiations.

Further, top-ranking people are apt to express their opinions vaguely, so as not to be caught out by others, or not to reveal their own characters, as a matter of self-protection.

Most of the Japanese, from the top to the bottom, are not international. Regrettably, they do not satisfactorily understand foreign people, their culture, and their way of thinking and feeling. That is why the Japanese sometimes make mistakes or cause misunderstanding

in the international community.

Finally, the Japanese generally are poor at English or any foreign language.

The Concept of Contract

In the Japanese society, the best contract is the most concise and simple one. If anything new to the parties happens, they open negotiations again according to any terms and conditions that had been agreed upon in the original contract. These kinds of terms and conditions are quite unique to Japanese contract. They negotiate about new matters and how to handle or settle a problem on a bonafide basis.

This system stems from the concept that both parties should be co-workers or collaborators or friends. This is a popular attitude among Asian peoples such as the Chinese, the Korean and the Japanese, it seems.

Reluctance About Litigation

Generally, the Japanese prefer negotiations over litigations. Although in these days this tendency has changed a bit. Thanks to much experience, obtained through technology transfer negotiations with foreign parties, some Japanese firms, especially the very active ones, are quite aggressive and are not reluctant to sue.

Slowpoke in Decision But Quick in Action Once the Decision Is Made

Let us examine the system of management in Japanese organizations. This concerns not only public and governmental sectors but also private sectors.

It takes a management lots of time to reach a decision because of the fundamental procedures involved, such as the Ringi and Nemawashi systems. Once the decision is made, they are quick in action since people who have been involved in the plan through the Ringi system are cooperative in promoting the plan as decided. These two systems can be defined as follows:

Ringi system — It shows a collective character in the decision-making process. The planner draws up the original plan in a written form and obtains the approval of his seniors in the ascending order, from supervisor to manager to general manager to director and then to the top management. Before the final executive decision is made on the plan, the approval of the officers and the key members in the related departments is obtained. Therefore, people involved in the plan not only have vertical coverage but also horizontal coverage in the way of obtaining internal support for the plan.

Nemawashi — It is the indispensable procedure for securing the approval of various people concerned when we work under a system of Ringi. Nemawashi is also sought for in other aspects for which cooperation is essential. Originally, Nemawashi stemmed from a gardening technique. *Ne* means root, *mawashi* stands for turning around or circling around in Japanese. When replanting some trees or any other plants from one place to another, gardeners should make the removal very carefully and deliberately. It is most important for gardeners not to cut off the indispensable roots or to lose the soil or other substances attached to the roots so that the plant may continue its current life without any trouble after replanting.

Nemawashi is precisely the essence of the care and the consideration needed in human society in order for

its members to cooperate and co-exist with one another pleasantly.

Both Ringi and Nemawashi are the kinds of wisdom devised in the Japanese society, particularly with respect to its organization.

Effective Cooperation With the Japanese

If Americans want to cooperate with the Japanese, let the Japanese do what they do best. The Japanese participate in keen competition from the kindergarten level of school to the university level to obtain a better future. All firms in Japanese industries are also extremely competitive.

But the relation between customers and suppliers is not merely a vendor-vendee relation but a cooperative one. The longer these cooperative relations continue, the stabler the suppliers' position becomes. Japanese suppliers always do their best to meet severe market demands.

American success stories tell us. "Leave the Japanese market to Japanese experts." This is advocated by IBM, McDonald, and others, and it is my opinion. Americans are very creative. They have made many inventions. There are still many Edisons.

On the other hand, the Japanese are quite adept at improving technologies and at market development. Therefore, a combination between the two people would be unrivaled throughout the world, by achieving the best utilization of their respective merits.

Attention to Each Country's Laws and Regulations and Differential Diagnosis to Respective Country

Japanese firms, especially American market-oriented ones, are keen on investigating the American laws and regulations and following the political development. For such a purpose, some of them have liaison offices in Washington, D.C. and also have American consultants and lawyers.

Therefore, my recommendation to the American business would be to open their liaison office in Tokyo to keep in contact with top leaders and key persons in governmental agencies as well as in business circles, in order to have on hand more actual or up-to-date information about the Japanese market.

SOME DIFFERENCE OF CURRENT TECHNOLOGY TRANSFER FROM THAT OF ONE DECADE BEFORE

In terms of technology transfer Japan has been a "net trade deficit" country for these 40 years, unlike the U.S.A., U.K., and West Germany.

Japan has imported various kinds of technologies mainly from the U.S.A., West Germany, Switzerland and the U.K. However, in the past 10 years, technology export from Japan have increased as a result of improvement made in Japanese technology.

According to the Official Report on Scientific Technology Transfer by Japan in 1985, the value of technology export from Japan in 1984 reached Y164.6 Billion (\$750 MM), an increase of 11% over 1983. On the other hand import in Japan in 1984 amounted to Y550 Billion (\$2.5 Billion) also showing an increase of 11% over 1983. The export to import ratio was 0.3 in 1984.

By industry, Japan's four big industries technology

transfers were as follows:

Export in 1983

1. Steel	Y40.2 Billion (\$180 MM)	Increase by 38.6%
2. Electrical	Y35.6 Billion (\$160 MM)	Increase by 0.2%
3. Chemical	Y35.4 Billion (\$160 MM)	Increase by 360%
	Y31.4 Billion (\$140 MM)	Increase by 6.8%

4. Other Industries**

** Not including Chemicals, Machinery, Construction, Fibers, Transportation and Ceramics.

Import in 1983

1. Electrical	Y91.9 Billion (\$420 MM)	Increase by 3.1%
2. Transportation	Y46.9 Billion (\$210 MM)	Decrease by 16.8%
3. Chemical	Y42.3 Billion (\$190 MM)	Increase by 7.5%
4. Mechanical	Y28.5 Billion (\$130 MM)	Increase by 4%

Industries with exports exceeding imports are steel and construction. Their exports had overtaken imports after 1974 and 1975, respectively.

Source: Official Report 1985 by Science & Technology Agency P. 156, 159, 160. (Translated by K. Kumieda)

Patterns of Technology Transfer Agreements

Technology import have conventionally taken the form of straight license and/or joint-venture. Recently, international collaborations have increased in number.

RESPONSIBILITIES TO WORK TOWARD INTERNATIONALLY ACCEPTED NORMS IN CARRYING OUT THE TECHNOLOGY TRANSFER PROCESS

International Cooperation to Reinforce the Industrial Property Rights

Trilateral summit meeting for harmonization between three parties, USPTO, EPO and JPO started a couple of years ago. Highly-developed countries such as the U.S.A., Canada, EC and Japan are all responsible for working together with other countries. The goal is internationally-accepted norms for technology transfers in order to establish a harmonized international society that extends beyond national borders.

As a result of the harmonization talks, Japan has adjusted its regulations with 1985 amendments:

1. Faster Examination System.
2. Longer deadlines for foreign applicants in bringing office action to JPO.

Still more amendments are to be made in the near future. The following bills are scheduled for deliberation in the National Diet:

1. Improvement on multiplicity of claims.
2. Extend the statutory period of notice of opposition.
3. Extend the submission period of priority certificate.

Another Approach Toward International Harmonization by Japan

Recently, the Japanese Police Agency started severe control against counterfeiting trademark.

How America Is Responding to the Harmonization Approach

I understand that there is a sharp contrast between first-to-file principle and the first-to-invent principle for patent applications.

The question is whether the U.S.A. would stick to the first-to-invent principle. Other countries are carefully watching America's attitude. And they are extremely cautious about any rise in protectionism in the U.S. as evidenced by her strengthening of ITC's legal functions.

Japan Has No Restrictions on International Agreements for Technology Transfer

After concluding an international agreement, the Japanese party is required to submit it to Japan's FTC for reviews. But FTC only checks whether the agreement includes per-se illegal clauses such as a tie-in clause or something of a purely legal nature, in order to maintain fair trade in the Japanese market.

SUCCESSFUL TECHNOLOGY TRANSFER AND TRADE FRICTION

Trade friction between the U.S.A. and Japan is such a serious subject that working through technology transfer alone cannot bring about a complete resolution. As you know, current trade friction has been mainly caused by a very intricate mutual dependence by the two nations, not only in the economic sphere but also in the political one.

Anyway, Japan has also to pay more attention to countries other than the U.S.A. And Japan has to actively support other Asian countries by a variety of means including technology transfer to put them on the road to prosperity. By spreading wealth around the world including Asia, new markets will open to America and Japan. This should produce good results in solving the trade friction between the U.S.A. and Japan.

CONCLUSION

In order to maintain a constant partnership as well as an everlasting friendship between the United States and Japan, top leaders of both nations should reexamine their stand and take the best possible measures courageously. According to my observation, it is much more important for Japan to liberalize immigration, namely, to open the door to immigrants, boat-people, job-hunters from foreign countries to emulate the excellent example set by U.S.A. in her bicentennial history.

That is why a liberalized society both in the human aspect and in the physical one such as trades of goods and capitals would be free of trade friction.

COMMENTS

1. Trade Friction

The trade issue is of great importance to the U.S. and Japan and to the rest of the world. Many of us in the U.S. fear the talk of protectionism. In the long run, it would be a disaster for the U.S. as well as for Japan.

There is a very great need in the United States for understanding of Japanese culture and of the Japanese people. There is indeed much anti-Japanese sentiment

in the U.S., mostly fed by our free press. People tend to believe anything in print. Therefore, reporters can write the most unfair and slanted things about any subject and a great many people believe it.

Many Americans feel that Japan is trying unfairly to take a greater and greater market share here in the U.S. However, for some reason (probably the press again) people here feel that the Japanese are trying to do so unfairly and to the detriment of Americans.

Americans do not know that the Japanese are interested in and admire many parts of the American culture. They do not know that the Japanese are our best friends in Asia. They do not know or understand that Japan accepted and put on quotas for imports of autos to the U.S. without any force from the U.S. Just by our asking they agreed. I feel that if we can bring out that in Japan there is a real affection for America, Americans and the American culture, many will be surprised and we will send them away with something to think about.

The better trading parties know each other, the greater are efficiencies and meeting of expectations.

2. Heart-to-Heart Basic Communication

Many Americans do not understand the heart-to-heart communication on which Japanese society is based. This and other cultural points are excellent. They must be understood to explain the Japanese Way.

3. Decision Making

The Japanese are frequently slow to make decisions because of the Japanese concept that everyone should participate in the decision and the decision is more of a consensus than is often true in the United States.

Americans may appear to make faster decisions. Fre-

quently, a problem arises with American companies because the management that is involved in the negotiations of an agreement is very enthusiastic about it, but other people in the organization have not been informed about the agreement or reasons for it. They may have to be convinced later on that it is something worth devoting substantial effort.

I believe one would be very wise to emphasize the Ringi and Nemawashi systems and distinctions.

4. Reluctancy to Litigate

Although characteristics of operation in Japan, some suffocate Japanese companies in operation. The U.S.A. now recognizes that litigation may become a necessary part of the negotiation process, at least with more aggressive competitors for self-protection.

5. Effective Cooperation With the Japanese

Japanese companies have demonstrated a strong ability to improve licensed technology particularly respecting a design simplification resulting in investment and operating cost savings.

I believe Americans and Japanese have common interests and are often working together. I think the Pacific Industrial Property Association is a good example of legal and cultural exchange for common good.

6. Responsibilities to Work Toward Internationally-Accepted Norms

The technology transfer process is always undergoing change to accommodate an environment of legal, financial and political forces. Today, attention is focused on concepts of "harmonization" and "minimum standards" before such political forums as WIPO and GATT.