THE PROTECTIONIST BAR AGAINST FOREIGN LAWYERS IN JAPAN, CHINA, AND KOREA: DOMESTIC CONTROL IN THE FACE OF INTERNATIONALIZATION

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I. INTRODUCTION

With the advent of the new millennium and a rapidly changing international outlook, Japan, China, and Korea[1] have been at the forefront of recent media attention, focused primarily on the rapidly gaining influence and power that these countries wield on a level no longer limited to Asia. Some observers argue that these countries have untapped economic potential, especially with regard to China, which is in the position to become a global economic powerhouse as its economy continues to grow and expand internationally. Furthermore, participation in the World Trade Organization and other multilateral agreements, such as GATS, has created the need for a global standardization of services offered to support and safeguard the rights of foreign investors.

The gradual opening of these three major players in East Asia to international organizations and standards suggested to many observers that the legal services market, under the same premise, would also be opened to foreigners who wished to practice the law of their home countries abroad. However, the current trend suggests otherwise. Recent revisions to China's Lawyers Law put stricter standards and compliance measures on foreign lawyers and foreign law firms, while Japan still prevents Japanese lawyers (*bengoshi*) from being hired by non-Japanese firms. Korea won't even permit foreign law firms to set up shop in their country. What force is behind the protectionist nature of the largest East Asian economies regarding legal services and the relationship between domestic and foreign lawyers?

One important difference between these three countries' legal systems is the role of the lawyer within the system, and more specifically, the number of "lawyers" currently existing within the system. China, with over 110,000 lawyers, has structured a very different legal community than Japan, where the exceedingly strict pass rate on the Japanese bar exam means that only 1,000 Japanese can become lawyers each year. This number does not, however, include the separate positions of patent agent (*benrishi*), tax agent (*zeirishi*), in-house corporate attorneys, drafters of private legal documents (*shiho shoshi*) and document drafters for administrative agencies (*gyosei shoshi*), which greatly increases the number of the legal community if the definition of "lawyer" is an open one.[2]

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[1] Throughout this paper, "Korea" is used to refer to the Republic of Korea, i.e., South Korea.

[2] Neil Boyden Tanner, Essay, *The Failure of International Law to Internationalize the Legal Profession*, 17 J.L. & COM. 131, 134 (1997). These differing categories of lawyers are often comprised of individuals who studied law at university level but did not pass or chose not to take

Another fundamental difference in the legal systems of these three countries lies in the structure of their bar associations. While China's Ministry of Justice ("MOJ") has actively played the functional role of China's bar association, Japan's tiered bar system and Korea's independent bar association have remained separate from each country's Ministry of Justice, creating at times inconsistent policy decisions between the bars and the governments. The differing connections between the state and the lawyer population for each of the three countries might also suggest something about the level of strictness with which each country chooses to regulate its foreign lawyer population. For example, a more tightly controlled, government-regulated community might implicate a different set of regulations and barriers than a country where there is a more loosely structured relationship between the state actor and the private community.

This paper argues that the interplay between each country's Ministry of Justice and its local bar association creates a pervasive protectionist atmosphere surrounding the legal profession, with strongly perpetuated domestic worries over job security being the driving factor behind the stringency of recent changes to the regulations. While the degree and means of protectionism vary by country due to individual characteristics inherent to each nation, the uniform concept of state management and involvement in the private legal sector shared between these countries helps to create pervasive protectionist control over the legal profession in all three. With the government and, in certain cases, the local bar associations having so much pull over regulations dealing with foreign lawyers, this effectively creates a lockout for foreign lawyers in certain crucial sectors of the legal services market. While cooperation with the WTO and other multinational standards is likely, at least more openly than before, the protectionist force in each of these countries will be hard to unseat through the simple threat of defaulting on international agreements.

II. HISTORICAL BACKGROUND OF LAWYERS AND LAW IN EAST ASIA

It has been widely acknowledged that the legal tradition of East Asia is rooted in a very different foundation than the liberal history of the West. Instead of prioritizing values such as individual rights and self-determination, the Confucian paradigms of mediation in dispute

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the Japanese bar exam, preferring instead to take another exam and become a specialized type of quasi-lawyer.

resolution, a moral foundation for government, flexible enforcement, and a focus on reform, rather than isolation, for offenders provide the reasoning behind the lack of individual legal rights and a developed legal profession in East Asia, and especially in China.[3] Societal emphasis in China and Japan on fostering well-behaved citizens to support the status quo meant that more effort was spent on ensuring that citizens occupy an active place in society than on punishing them by placing them outside of the system, thereby creating anger and tension towards the current regime.

With the gradual opening of Japan to Western traders and importers by the late 1800s, the legal system began to gain more Western characteristics, such as the promulgation of a constitution in Meiji Japan and the creation of a more stabilized law school system and court system in urban China. The concept of lawyers as a negative component of society, dating back from the litigation tricksters in imperial China, and the marginal role that "lawyers" played in Tokugawa Japan, began to give way to a Western-introduced respect for the profession of law. This Western influence extended even further as Chinese and Japanese began to travel abroad to study European law, and then bring these ideas home for incorporation into the civil and criminal codes of their respective countries. Prior to World War II, the legal communities in these three countries were becoming more established and more regulated, with the creation of a bar association and ethical rules for lawyers in China (based on the Japanese model), the strengthening of Japanese law to include European codes, and the adoption of Japanese law and the legal system in Japanese-occupied Korea.

The outbreak of war in Asia meant the breakdown of all existing legal models, as the years immediately after the war saw the arrival of "popular justice" in China and the reign of Mao, as the concept of "rule of law" was replaced by "rule of the masses." American intervention in Japan and Korea modified the old Japanese-influenced systems by implementing a Western "rule of law" concept through democracy, based on a combination of the U.S. constitutional system and Japan's civil law tradition, which was strengthened by the economic development of both countries in the post-war era. Japan adopted the democratic structure and the "rule of law" concept more fully, whereas Korea found itself struggling with the general principles behind these ideals.[4] The direct American control in Japan due to the occupational forces perhaps helped to solidify this structural transition in Japan and promote a foreign

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[3] Cynthia Losure Baraban, Note, *Inspiring Global Professionalism: Challenges and Opportunities for American Lawyers in China*, 73 IND. L.J. 1247, 1254 (1998).

[4] Chan Jin Kim, *Korean Attitudes Towards Law*, 10 PAC. RIM. L & POL'Y 1 (2000).

presence in professional life. Until 1955, qualified foreign lawyers were allowed to represent at least foreign clients in Japanese courts under Article 7 of the 1949 Bengoshi Law,[5] but were soon relegated to the position of "trainees" affiliated with Japanese law firms or companies.[6]

Reasons cited for this shift away from embracing American law and legal culture include, in addition to the influence of the Occupation and general anti-American sentiment, concerns that American-style litigation, legal expenses, and damage awards would dominate the primarily dispute resolution/ settlement-oriented Japanese legal structure.[7] Japanese lawyers, led by the Japan Federation of Bar Associations (Nichibenren), wanted to limit the number of lawyers in the existing domestic monopoly, and also wanted to exclude foreign lawyers from their market, for reasons discussed above. Aside from foreign "trainees," who could be supported by Japanese legal sponsors, and several notable exceptions—Baker & Mackenzie and Coudert Brothers established partnerships with Japanese law firms in the 1970s, and Milbank, Tweed, Hadley & McCloy opened its own office in Tokyo in 1977—the Japanese legal market was effectively closed to foreign lawyers until 1986.[8]

Finally, the economic growth of the 1970s, which pushed Asia along the path towards internationalization, led to an increased demand for lawyers, particularly foreign-qualified ones,. China, now free of the Cultural Revolution moratorium on an organized legal profession, Japan, and Korea all began to look at their respective legal services industries for two reasons: first, to attract and participate in the growing multinational investment surge; and second, to ensure that they could protect their domestic legal services industry as well.

Each country had a different initial response to this international challenge. Japan, after much American-led global debate, partially opened its legal market to foreign lawyers in 1986 through amendments to the Foreign Lawyer's Law (Law Number 66) and continued to gradually reduce restrictions on practice by foreign legal professionals through the rest of the 1980s and 1990s. The growing presence of law firms in Japan has encouraged a further Americanization of legal

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[5] John O. Haley, *Redefining the Scope of Practice Under Japan's New Regime for Regulating Foreign Lawyers*, 21 LAW IN JAPAN 18, 18-25 (1988). *Bengoshi* is the Japanese word for "lawyer" and is used to refer only to Japanese lawyers.

[6] Glen S. Fukushima, *The Liberalization of Legal Services in Japan: A U.S. Government Negotiator's Perspective*, 21 LAW IN JAPAN 5, 5-17 (1988).

[7] R. Daniel Kelemen & Eric C. Sibbitt, *The Americanization of Japanese Law*, 23 U. PA. J. INT'L ECON. L. 269, 295-6 (2002).

[8] *Id.* at 296; "Tokyo," Milbank, Tweed, Hadley & McCloy LLP website, *at* http://www.milbank.com/off_07_h.html.

practice,[9] but not without continuing restrictions. Currently, foreign lawyers are allowed to advise clients on home country law, but remain unable to advise on Japanese law. In addition, foreign law firms are still prohibited from hiring Japanese lawyers in Japan, but are allowed to create "specified joint enterprises" (*tokutei kyodo jigyo*) with Japanese firms, where the Japanese side of the enterprise can advise on Japanese law. A number of American and British firms have adopted this structure.[10] Furthermore, foreigners who wish to qualify to practice their home countries' law in Japan (rather than just act as "consultants" to the law, which removes much of their power and authority) need at least five years of experience practicing in their home jurisdiction, although the 1995 Amendments to Law Number 66 allowed for the inclusion of two years' experience as a legal trainee in Japan, if applicable, towards the five-year requirement.[11] The Nichibenren kept its control over foreign lawyers by retaining the ability to discipline them if necessary.[12] Currently, there are about 185 registered foreign lawyers in Japan (up from about 80 in 1998), and about 21,000 Japanese legal professionals in Japan: 18,000 lawyers, 2,000 judges and 1,000 prosecutors, due to the low and regulated pass rate of the Japanese bar exam.[13] This amounts to about one legal professional per 6,300 people.[14]

China, on the other hand, did not officially open its doors to foreign law firms until 1993, and even that opening was not without strict regulations. Prior to that point, only a few foreign law firms had ventured into post-Mao China to create representative offices, and those firms were generally able to circumvent the weak regulations in existence. Post-1993, foreign law firms had to jump through a number of hoops before they were allowed to create a branch office in China, such as registering with the Ministry of Justice (a limited privilege); restricting their office

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[9] *Id.* at 300.

[10] *Id.* at 300-301.

[11] Susan E. Vitale, Note, *Doors Widen to the West: China's Entry in the Word Trade Organization Will Ease Some Restrictions on Foreign Law Firms*, 7 WASH. U. J.L. & POL'Y 223, 233 (2001).

[12] *Id.* at 234.

[13] Japanese Ministry of Justice information (1999), as provided by Shuji Yanase, partner at Nagashima Ohno & Tsunematsu, during a speech at Columbia Law School on November 5, 2002. The pass quota for the Japanese bar exam, now at 1,000 people per year, was previously set at only 500 lawyers being able to pass per year. Regardless of the doubling of number of successful test takers, this is still a pass rate of less than 3%. In contrast, the United States bar pass rate hovers between 70% and 80%, depending on date of exam.

[14] Tetsushi Kajimoto, *Fight gets under way to increase public's access to legal aid*, JAPAN TIMES (Feb. 28, 2001), *available at* http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20010228b5.htm. In contrast, there are 941,000 legal professionals in the United States -- one for every 290 people. In Britain, the corresponding figure is 83,000, or one in every 710, while in France, it is 36,000, or one in every 1,640. Furthermore, the majority of these 18,000 Japanese lawyers are concentrated in large cities like Tokyo (8,000) and Osaka (2,400). Some district court jurisdictions (about 70 of 253) have only one lawyer operating at most within their vicinity.

location to one of fifteen pre-approved cities and limiting themselves to only one office; prohibiting their firms and lawyers from interpreting Chinese law, hiring Chinese lawyers, or taking the lawyers' qualification exam; submitting confidential client information to the Chinese government in the form of "client questionnaires;" and meeting the especially tough restrictions for the chief representative of the foreign law firm. [15] These restrictions, while including similar requirements to Nichibenren's minimum practice specifications (albeit less strict, requiring only three years instead of five), also stipulate that the chief representative must be a citizen of the country of origin of the law firm, and must reside for over half the year in China so as to be covered by China's tax jurisdiction.[16]

However, unlike in Japan, foreign law firms in China had found more ways to circumvent these rules, such as hiring Chinese legal assistants who have technically passed the Chinese bar but have surrendered their licenses to work at a foreign firm,[17] establishing satellite offices, and forming "consulting firms" in cities other than where their primary office is located, in order to circumvent the old "one office" and "restricted city" policy of the Ministry of Justice.[18] These methods of avoiding China's stricter regulations indicate that there was still room to maneuver within the system, even with more stipulations. There is also a much larger number of lawyers within China, as there is no quota regarding pass rate on the Chinese bar, and that number is increasing rapidly—from 200 a decade ago to the present 110,000 lawyers, with 104 foreign law firms and 28 Hong Kong law firms currently operating within China's borders. [19] This dramatic increase in law professionals is generally attributed to China's rapid economic development and accession to the WTO, as will be discussed in Part III.

Korea, by contrast, kept its legal markets firmly closed in the face of expanding international investment in Korea. The Korean Ministry of Justice, instead of gradually opening the country to foreign law firm presence, has resolutely prohibited any foreign firm from creating a branch office in Korea, despite statements that suggested otherwise in 1996.[20] The estimated number of lawyers in Korea is only 5,000, and,

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[15] *Id.*

[16] *Id.* Japan also has the same residency requirement.

[17] Winston Zhao, Speech given at Columbia Law School (Nov. 19, 2002).

[18] Vitale, *supra* note 11, at 229.

[19] *Number of Lawyers Rapidly Rising in China*, PEOPLE'S DAILY (July 8, 2002), *available at* http://www.china.org.cn/english/Life/36430.htm.

[20] Kim Sung-jin, *Legal Services Market—Opening to Hike FDI*, THE KOREA HERALD (Nov. 3, 2002). The Foreign Direct Investment Plan issued by the Ministry of Finance and Economy of

when combined with a limited pass rate of the Korean bar exam set at 1,000 new lawyers per year, highlights how the Korean bar effectively shuts all foreigners out of the highly protected Korean legal market. Foreign lawyers, on an individual basis, have been employed as consultants by Korean firms since the late 1970s, and have as such essentially been practicing law in Korea (requiring only the final approval signature on documents which must be completed by a Korean attorney).[21] However, legally, foreign lawyers are not allowed to operate their own firms and cannot even register with the Korean government as legal consultants. Adding to the problem are the repeated promises of Korean government officials that regulations enabling foreign lawyers to practice law in Korea are in the works—often followed by no visible changes in Korea's legal landscape.

Thus, focusing solely on pre-WTO regulations in China and Korea, and before the last amendments to Law Number 66 in Japan, foreign lawyers, if allowed to practice at all, are relegated to a small sphere of practice that places them in a position of reliance on domestic lawyers in order to complete most transactions. The market openings promised by the influence of the WTO on Korea and China seemed to suggest a large, if forced, opening of Asian legal markets to accommodate the new economic changes. In addition, given the grim domestic outlook in Japan, it seemed logical that an opening of the legal markets to foreign lawyers might help attract the foreign investment necessary to bring Japan back from the brink of financial collapse. However, it is interesting to note that all three countries did the opposite: with the opening of their markets and the chance for large influxes of foreign investment, each decided to regulate its legal market more strictly by failing to remove—or, in some cases, create more stringent—barriers to foreign lawyers attempting to enter these Asian markets.[22] The next section of this paper will explore why this was the case, by looking at the development of each country's legal community in relation to foreign lawyers, with a special focus on the origin and perpetuation of the domestic protectionist attitudes that have kept these legal markets highly regulated.

Korea in May of 1996 stated that the legal services sector would be open to foreign investment from 1997, but no such efforts have been made to liberalize the domestic legal market to date.

[21] *Id.* One notable example of a foreigner acting as "legal counsel" to a Korean law firm is Jeff Jones, who has been employed for some time by the large Korean law firm Kim & Chang.

[22] This is especially curious in China's case, because foreign lawyers, in mid-1980s China, were considered allies of the government in terms of opening China to foreign investment.

III. CASE STUDIES: COMPLIANCE MASKING PROTECTION?

A. Japan

While international focus and discussion has centered on Japan's projected attitude regarding foreign lawyers, the domestic struggle between the protectionist faction of the Nichibenren and the Ministry of Justice over the development of the new legal system has largely been ignored. This tension has been visible since the late 1970s, when the Nichibenren pressured the Ministry of Justice to refuse Coudert Brothers a visa to establish a law firm in Japan due to the unresolved status of foreign lawyers at the time.[23] This refusal caused American businessmen and lawyers to label the issue as a barrier to trade in bilateral trade negotiations in the 1980s, and in 1982 the United States Government began to get involved with negotiations on behalf of these groups as part of the trade agenda.[24] The enactment of Law Number 66 on April 1, 1987, which was viewed as a potential watershed in terms of foreign lawyers practicing in Japan, was so restrictive that it stunted growth of the foreign firms in Japan and gave them only a limited ability to serve both foreign and Japanese clients.[25] One of the restrictions prohibited foreign firms from using their own names in the Japanese market, requiring them instead to call themselves by the managing partner's name, thereby making some firms almost unrecognizable to the client base that they were trying to serve.[26] The subsequent and only slightly less restrictive amendments to the Law in June of 1994, while removing the name requirement discussed above, did very little else to ameliorate the situation. Even with the promise of more lenient amendments to the strict 1987 Law, the Ministry of Justice was catering to the Nichibenren's major protectionist fear that foreign lawyers would interfere in the practice of Japanese law.[27]

It is important to note that the Ministry of Justice has not always been so accommodating with regard to the Nichibenren's openly

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[23] Jason Comrie-Taylor, *The "Appropriate" Role for Foreign Trainees in Japan*, 15 UCLA PAC. BASIN L.J. 323, 338 (1997). Prior to Coudert Brothers' application for a visa, the Ministry of Justice had already issued a visa to Isaac Shapiro to establish an office of Milbank, Tweed, Hadley & McCloy in Japan in 1977.

[24] *Id.*

[25] Keleman and Sibbitt, *supra* note 7, at 300.

[26] Tanner, *supra* note 2, at 137 n.42. In the case of Milbank, Tweed (see note 23), the firm was not allowed to call itself "Milbank, Tweed" but instead had to call itself "Grushkin *Jimusho* (office)," as the managing partner at the time was Jay Grushkin.

[27] Comrie-Taylor, *supra* note 23, at 344-345. This regulation, while allowing bengoshi to employ foreign qualified lawyers, still bans foreign lawyers from employing bengoshi, thereby still making it difficult for foreign law firms to be the "one stop" service providers they aim to be in Japan.

protectionist attitude towards the legal profession in Japan. For example, in the late 1980s, the Ministry of Justice proposed raising the yearly pass rate of the Japanese bar exam from the set rate of 500, but the protectionist faction of the Nichibenren strongly opposed this proposal, arguing instead that the increase in the number of lawyers would adversely affect the quality of the legal profession.[28] The Ministry of Justice and Supreme Court's proposal that the required two year training program which follows any successful attempt at the bar exam (in lieu of a formal law school system) be shortened to one and a half years also met with opposition from the Nichibenren.[29] With the question of legal reform heating up, and including broader topics such as graduate legal education and judicial reform, the Liberal Democratic Party—Japan's largest political party—and the Keidanren—or the Japanese Federation of Economic Organizations—are now beginning to exert their own influence over the reform process. Their overwhelming political clout means that, unless the Nichibenren "quickly, radically, and publicly changes" its position on the issue of opening up the legal profession, it will be left without influence as the two major political players will act towards their own, separate goals without concentrating on reforms that might expedite access to lawyers and justice.[30]

The swift approach of the millennium brought wider-scale change to the Japanese legal system, primarily due to the involvement of outside interests beyond the Ministry of Justice the Nichibenren. In particular, the 1999 establishment of the Justice System Reform Council widened views on bengoshi beyond those of the Nichibenren, allowing for the proposal in June 2001 of such wide-sweeping changes to the legal system as free association between foreign and Japanese lawyers, with the resulting organizations being permitted to share profits freely, use any name they choose, and employ bengoshi.[31] With the exception of employing bengoshi, which is still under consideration by the

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[28] Setsuo Miyazawa, *Reform in Japanese Legal Education: The Politics of Judicial Reform in Japan: The Rule of Law at Last?*, 2 ASIAN-PAC. L. & POL'Y J. 89, 90 (2001).

[29] *Id.* at 93. The Nichibenren, however, knowing that they were most likely outnumbered on this issue, took a rare step towards involving itself with the training of young lawyers by offering a compromise plan where it would provide supplemental training as attorney trainees to those who had finished their stint at the Legal Training and Research Institute (LTRI).

[30] *Id.* at 118.

[31] Sheona Dote, *Japanese lawyers scramble to protect their walled gardens from outsiders*, ASAHI SHIMBUN (Dec. 23, 2002), *available at* http://www.asahi.com/english/national/K2002122300120.html.

Nichibenren and the Ministry of Justice, all of the reforms proposed by the independent committee are scheduled to take place in 2003.[32]

The creation of the Justice Reform Council is interesting because it stands as positive proof against the typical argument that, with regard to massive overhauls of any existing system, Japan's motivation comes primarily from external forces. Despite what is generally perceived about Japan's impetus for change, it is obvious that, in this specific situation, change was initiated at least primarily by domestic actors, rather than stemming from international pressure. While international pressure may have contributed to the timing of the Japanese decision to reform its legal system, it appears that the domestic situation and changing views on how the existing system should be structured were the main forces behind the changes. It has already been widely discussed on various fronts how GATS and other trade-related multilateral agreements were, in fact, "little more than an illusory attempt at deregulation with little practical effect" on Japan, especially with regard to the legal profession.[33] While American organizations had been pressuring Japan to open its doors to foreign lawyers from the first glimmer of economic promise in foreign investment in the mid 1970s, it was the formation of an independent domestic committee and a new voice in the debate (besides that of the Nichibenren) that truly contributed to tangible change in the Japanese legal system.

One of the key domestic factors that many argue has contributed to the shift in Japan's attitude towards its own legal profession is the gradual expansion of Japanese law firms. Whereas the old Japanese system was based on small firms and solo practitioners, the recent wave of mergers of Japanese firms to create full-practice megafirms indicates a broad national movement towards larger, more diverse practices. As the market begins to open to include new sectors, Japanese firms, especially those who do not envision an immediate joint enterprise with a foreign firm, are merging to create more comprehensive firms that can handle any potential situation for any type of client. Nagashima Ohno & Tsunematsu is credited with beginning the recent wave of megafirm mergers on January 1, 2000, by merging the large firm of Nagashima & Ohno with Tsunematsu Yanase & Sekine, thereby creating a joint firm with around 150 lawyers dealing with a wide variety of domestic and international

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[32] *Id.* This includes the widely-publicized decision to expand the number of passers of the Japanese bar exam from 1,000 to 3,000 and creating a law school system, similar to the states, to provide graduate legal education rather than simply at an undergraduate level.

[33] Tanner, *supra* note 2, at 142. The only major concession from the Japanese point of view was giving up the reciprocity requirement—in other words, that only allowed foreign lawyers to be from jurisdictions which gave reciprocal rights to Japanese nationals who wished to practice law in those jurisdictions.

legal issues. More recently, the December 1, 2002, merger of one of Japan's "big four" firms, Mori Sogo, with Hamada & Matsumoto has created Mori Hamada & Matsumoto, a firm of 160 attorneys that is already being regarded as one of the top capital markets firms in Tokyo as well as a pioneer in rapidly developing technology fields such as telecommunications and information services.[34] Other Japanese firms are rapidly gaining on the former "big four" Japanese firms as "aggressive expansion" becomes crucial in Japan's tight market.[35]

One approach taken by some domestic firms that decide against rapid internal expansion is, as mentioned above, the formation of joint enterprises with foreign firms, thereby creating full-service law firms whose mix of Japanese and foreigners might seem more appealing to foreign companies who wish to do business in Japan. On May 1, 2001, Clifford Chance, a large British firm, merged with the newly formed Tanaka & Akita (created for the sole purpose of merging), and on that same day, Tokyo Aoyama Law Offices, Baker & McKenzie's Tokyo partner, merged with one of the oldest Japanese firms, Aoki & Partners. Both mergers created new, comprehensive joint enterprise law firms that would offer appealing services to foreign clients as well as domestic business.

In response to these two actions taken by larger firms, other domestic firms have chosen to focus on areas of specialization, especially those areas that might become important with the increase in foreign interest in Japan. Foreign firms are responding by either engaging in the creation of joint enterprises, as a number of British and American firms have already done, or strengthening their Japanese branch offices through rapid expansion.

However, in response to the domestic drive for more lawyers and larger law firms, the protectionist arm of the Nichibenren, instead of representing the expansion policy that some Japanese lawyers have already embraced, remains fairly steadfast in its opposition to the expansion of the Japanese legal profession. Members of the Nichibenren still fear the anticipated removal of the legal block keeping foreign

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[34] Mayumi Saito, *Law Firms Going Global*, JAPAN INC. (Jan. 2003), *at* http://www.japaninc.net/print.php?articleID=996.

[35] *Japan, Profiles 2002*, ASIALAW (2002), *at* http://www.asialaw.com/directories/asialaw2002/japan/default.htm. The former "big four" firms, which include the heritage Mori Sogo, Nagashima Ohno & Tsunematsu, Anderson Mori, and Nishimura & Partners, still had a strong foothold in the market prior to Mori Sogo's merger. All firms were at least 80 lawyers in size, which is considered to be a huge law firm by traditional Japanese standards. Although all four firms were looking to hire more laterals and at least 20 new lawyers by this past October, their positions are being challenged by fast growing firms, such as Asahi Law Offices (currently at 70 lawyers) and Mitsui, Yasuda, Wani & Maeda.

lawyers from hiring bengoshi, stating that this ability to form partnerships would "open the floodgates to multinational firms" and lead to a situation like in Germany, where many of the firms, after going through similar partnerships with American and British firms, are now considered to no longer be "pure German."[36] In early 2002, the Nichibenren passed a protectionist measure designed to penalize Japanese firms who enter joint ventures with American firms by effectively barring foreign firms from registering as limited liability partnerships if they want to use cross-firm branding for their Japanese practices.[37] Other arguments from the Nichibenren are also openly protectionist in nature: the vice president of Nichibenren was quoted as saying that the current status quo is desirable simply because "people who do not know Japanese law very well should not be allowed to practice it."[38]

This reflects a common misperception of some Nichibenren officials as to what the job of foreign lawyers truly is in Japan. Rather than competing for business, foreign lawyers often operate in very different spheres from their Japanese counterparts, contributing not only their expertise to complement Japanese lawyers' work in areas such as business negotiations, but also, on a more basic level, their language skills.[39] The ability to conduct sophisticated business negotiations, though common among foreign lawyers, has been lacking in Japanese legal education thus far, as the focus has always been on litigation.[40] The misconception that foreign lawyers are looking to usurp Japanese lawyers is, therefore, incorrect on two counts, as theorized by various foreign lawyers in Japan. First, foreign lawyers are looking to facilitate business in the region, not practice Japanese law; training in different jurisdictions means that different lawyers from different countries have different strengths which should be utilized to their fullest capacity. Second, even if bengoshi were trained to be better business negotiators, perhaps through the new graduate legal education program, the size potential for Japan's legal market has remained largely untested due to the strict control of the Nichibenren (along with the Supreme Court and the Ministry of Justice) over the number of practicing lawyers. As stated by

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[36] Mayumi Negishi, *Recession opens lucrative doors for foreign lawyers*, JAPAN TIMES (Nov. 23, 2002), *available at* http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20021123b3.htm. Critics of this argument dismiss this theory as purely protectionist propaganda, and that the effect in Germany is not as drastic as the Nichibenren would allow people to think.

[37] *Japan set to penalise firms with foreign joint ventures*, THE LAW., March 4, 2002, at 5. Limited liability status, which was just introduced in Japan, would allow Japanese lawyers to have more than one office in Japan and allows for certain tax advantages.

[38] Dote, *supra* note 31.

[39] *Id.*

[40] *Id.*

one American lawyer, Japan has one of the world's largest financial markets and can stand to "absorb" all of the lawyers, both foreign and locally trained, that are likely to enter the system.[41]

At a time when domestic lawyers are struggling to expand their practices and foreign lawyers are searching for efficient ways to serve their clients, the Nichibenren is actively supporting the major obstacle between an efficient legal market—one with space for everyone—and the current understaffed, less-than-efficient system that currently marks Japan's legal profession. The promise of massive legal reform is about to become a reality this year, but the failure of the Nichibenren (as well as the Ministry of Justice on this occasion) to support partnerships between foreign and domestic lawyers indicates that the protectionist attitude so commonly attributed to Japan remains pervasive throughout government decisions. It is this precarious balance between the ineffectiveness and protectionist agencies and ministries that creates the unique blend of forces influencing the Japanese legal market and leads to the highly regulated protectionism which has frustrated foreign lawyers attempting to break into the Japanese legal market.

B. China

Between China's announced accession to the WTO in 1999 and actual joining in 2001, some observers foretold major internationally driven changes to many of China's economic and political structures. While China did choose to open much of its markets through the Bilateral Agreement of November 15, 1999, however, it decided not to allow foreigners to hold majority control in local law firms.[42] This move was not a surprise to many; after all, many other WTO members refused such open foreign control on their legal markets. That move notwithstanding, the promise of greater market access for foreign lawyers was still very tangible. In 2000, China's Justice Minister Gao Changli added to the enthusiasm already reflected in the press regarded the expected lessening of restrictions around foreign law firms by stating that "after China joins the [WTO], the legal service sector in China will be further opened . . . in accordance with WTO commitments."[43] Plans to open the legal services market to foreign lawyers included lifting the geographic ban on locations

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[41] *Id.*

[42] Raj Bhala, *Enter the Dragon: An Essay on China's WTO Accession Saga*, 15 AM. U. INT'L L. REV. 1469, 1518 (2000). Through the agreement, China promised to "allow foreigners majority control not only of accounting firms, but also of architectural, computer services, dental, engineering, management consulting, medical, and urban planning firms," while notably retaining control over the local legal market.

[43] Vitale, *supra* note 11, at 243.

of satellite offices of foreign firms as well as increasing the number of foreign law offices allowed to establish branches in China.[44] In accordance with these discussions, the "Administrative Regulations on Representative Offices of Foreign Law Firms in China" ("Regulations") took effect on January 1, 2002. The "Rules of the Ministry of Justice for the Implementation of the Regulations on Representative Offices of Foreign Law Firms in China" ("Rules") were issued on July 4, 2002, and took effect on September 1, 2002.

The formal opening of China's legal market to foreign lawyers in 1992 was pronounced a good domestic change for China, with a total of 103 offices of foreign firms being set up by mid-2001.[45] Foreign firms were seen as attractive commodities, as they were expected to "serve as 'bridges' and 'windows' for China in attracting foreign investment, and promote cooperation between Chinese and foreign legal professionals."[46] However, when China joined the WTO, the State Council began to immediately regulate China's legal market, paying particular attention to foreign lawyers and foreign law firms. The Regulations issued by the State Council, as discussed above, provide various guidelines around the establishment of branch offices of foreign law firms post-WTO accession, focusing on the types of legal services that foreign firms can and cannot provide for their clients as well as the general requirements around practicing law as a foreign lawyer in China.

Thus, if China's stated goal was to increase foreign interest in the country by allowing foreign lawyers to set up satellite offices, both the Regulations and the Rules have a contradictory impact by regulating foreign lawyers' actions within Chinese boundaries. The most persuasive theory behind the sudden switch in policy is that China, in an attempt to protect its infant legal profession, is attempting to protect domestic lawyers from increased competition that could result from an unregulated legal market for foreign lawyers.[47] Instead of the massive market-opener that the WTO accession was expected to be for China, the Provisions, which became effective on September 1, 2002, allowed for more enforcement around "earlier" rules and, according to a foreign lawyer in

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[44] *Id.* at 244.

[45] Charles Chao Liu, Note, *China's Lawyer System: Dawning Upon the World Through a Tortuous Process*, 23 WHITTIER L. REV. 1037, 1087 (2002).

[46] *Id.* at 1087.

[47] As theorized by some foreign lawyers in China, these regulations are intended to shield Chinese businesses and some government offices from direct contact by foreign lawyers. *See Chinese Rules on Foreign Law Firms Impede Trade, Chamber of Commerce Says*, 19 INT'L TRADE REP. (BNA) 1693 (Oct. 2, 2002).

China, a "narrowing of concessions made in a number of areas."[48] While the actual text of the rules may appear more permissive than pre-WTO standards for China's legal market, thereby indicating a seeming compliance with bilateral agreements and other WTO-associated international standards, the enforcement abilities given to China through these provisions suggest a net tightening, rather than loosening, of the rules governing foreign lawyers. For example, clients' lack of complete freedom to choose which law firm will represent them is a major impediment to investment in the eyes of many foreign businesses.[49] Also highly restrictive in nature are the regulations that prohibit foreign lawyers from acting in arbitration cases or with government agencies.[50] This prohibition, which includes even everyday filings such as for business patents or licenses, effectively bars foreign lawyers from performing jobs that non-lawyer foreigners are legally allowed to do in China.[51] This block between foreign lawyers and government agencies is additionally difficult because foreign lawyers are not always able to get sufficient materials for due diligence that Chinese lawyers are able to procure from these same agencies.[52] Finally, the facts that foreign law firms must wait at least three years after opening their first office to apply to open another office in China, that the application process could take up to nine months, and that even *that* approval would be granted by Chinese authorities only if they determined a "need" for the additional office, frustrate foreign lawyers by handing an unnecessarily large amount of power to the Ministry of Justice in regulating the expansion of foreign law firms in China.[53]

One of the possible motivations behind China's strategic decision regarding the drafting of these provisions, as well as arguably one of the major drawbacks to China's early 1990s plan for rapid expansion of the

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[48] David Murphy, *Fencing in the Foreign Lawyers: Foreign lawyers see pressure from rival domestic law firms as the reason for new restrictions on what work foreign law firms can do in China; If fully implemented, the rules could deal a significant blow to their business*, FAR E. ECON. REV. 26, 27 (Aug. 29, 2002).

[49] *Id.* at 27. Foreign companies complain that they want to have the freedom to choose their own representative law firms due to a variety of factors, and this inability to do so might factor into their decisions whether or not to try and break into China's investment market.

[50] *Id.* at 27. Winston Zhao, *supra* note 17, commented during his speech at Columbia Law School that this regulations means that foreign lawyers must retain local counsel for litigation under the new regulations, which seemingly makes independence almost an impossibility in this situation. This also makes the point of arbitration somewhat questionable if it is regulated in such a manner.

[51] *Chinese Rules on Foreign Law Firms Impede Trade, supra* note 47. However, arbitration, as noted by a Chinese legal specialist, is solely between two parties, which will make it hard for the government to enforce.

[52] Speech given by Winston Zhao, *supra* note 17. Local lawyers also have better access to officials for regulatory issues than foreign lawyers, notes Zhao.

[53] *Chinese Rules on Foreign Law Firms Impede Trade, supra* note 47.

legal practice in China, was that China had not previously defined what the role of lawyers, domestic or foreign, were within current Chinese society. The 1997 Law on Lawyers and Legal Representation ("Lawyers' Law"), intended to define the role of domestic lawyers within China, is still a relatively new, vague law. Some argue that the vagueness inherent in China's description of the role of domestic lawyers or law firms has directly contributed to the protectionist legislation that China has now passed regarding foreign lawyers, for the best way to open up China's markets to foreign investment is to clearly delineate, as Japan is in the process of understanding, the separate, non-competitive spheres that foreign and domestic lawyers can co-occupy in China's legal market.[54] Because of the mistaken belief that domestic and foreign lawyers will be competing for the same work under the Chinese system, domestic lawyers, in advance of the enactment of these Provisions, bargained with the Ministry of Justice to utilize "home advantages contrary to the spirit of China's opening up."[55] One of the biggest critiques by both foreign and Chinese lawyers regarding the new foreign lawyer regulations is that the role that lawyers are supposed to play remains very uncertain and very vague, so even the proposed impact of the laws cannot be assessed at this time.[56] However, clarification of the laws by the Ministry of Justice might only lead to a tightening of restrictions overall. As one Chinese law specialist noted, ambiguity and vagueness might be beneficial for foreign lawyers in this situation.[57]

While both China and Japan are struggling with the issue of protectionism versus the opening of their respective markets to foreign investment, the roles played by the Ministry of Justice and the local bar association in China are the direct opposites of the roles played by their Japanese counterparts. Whereas the Japanese Nichibenren often acts the part of the strongly protectionist agency in Japan, the local bar association in China is virtually powerless. Instead, it is the Ministry of Justice that continues to regulate lawyers and oversee their duties, thereby creating a stronger and more direct link between lawyers and the state in China than

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[54] Murphy, *supra* note 48, at 27. *See also* Vitale, *supra* note 11, at 245. China's lawyers, prior to the 1996 Lawyers' Law, had been called "legal service worker[s] of the state," but the Lawyers' Law gave them the more independent title of "legal service worker[s]" and in general gave them general autonomy in terms of type of legal practice and dealings with clients

[55] Murphy, *supra* note 48, at 26.

[56] Speech given by Winston Zhao, *supra* note 17.

[57] *Chinese Rules on Foreign Law Firms Impede Trade*, *supra* note 47. In this article, it was noted that even the concept of a legal opinion in China is still very vague and undefined, so regulations against foreign lawyers being able to issue legal opinions in China might actually have very little practical effect. As one legal specialist noted, "If you have a client who asks, what do they have to do to open a joint-venture under Chinese law, it certainly means you can't issue a document that says 'Opinion' on top . . . . But of course nobody does that."

in Japan. Additionally, it was the Ministry of Justice, rather than intermediary organizations, that pushed for the newer restrictive regulations surrounding foreign law firms, and which is in fact at odds with the Ministry of Finance over these rules, perhaps due to the economic repercussions that stricter regulations will have over foreign investment inflow into China.[58] It appears that the Ministry of Justice, as a sort of watchdog or protector of the Chinese legal market, is attempting to afford Chinese firms the time to grow from their current workshop-type atmosphere to a meaningful size in order to give these domestic firms the ability to compete with foreign law firms for the inflow of legal business into China, but is this really necessary? Or is the Ministry of Justice, by controlling the legal services market so closely, simply trying to expand its current power?[59]

On several grounds, it appears that the immediate addition of foreign lawyers to China's economy would not crush the domestic bar but might actually enhance its quality—as more foreign lawyers, under these current Provisions, look to partner with domestic lawyers depending on their clients' needs, the quality of domestic lawyers will also need to improve so as to remain competitive and guarantee future demand. The presence of foreign lawyers will push domestic firms to look beyond their own boundaries and adopt a more international outlook in their practices. Perhaps the most persuasive argument against this protectionist standard is that it bars clients from the best lawyering that they could receive: by removing foreign lawyers from various realms of the legal market, the Ministry of Justice is effectively blocking Chinese law specialists from their areas of expertise, thereby "weakening the ability of clients to protect their interests in China" and causing a possible net loss for foreign investment.[60]

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[58] *Id.* The fact that the MOJ and MOF are at odds here suggests that, even when faced with the desire to open China economically, the MOJ is still willing to sacrifice some of that economic investment in order to protect its local legal market.

[59] It is important to note that, while discussion are being undertaken to possibly separate the close link between the government and the bar associations, insiders note that this move is still too little, too late. One professor notes that the Ministry's moves for reform were "not new" and that these changes still left the power to register or disqualify a lawyer with the government, rather than with the bar association. *See* Daniel Kwan, *Justice Ministry's Reforms Deemed Too Little, Too Late*, SOUTH CHINA MORNING POST (Jan. 6, 2003).

[60] *Chinese Rules on Foreign Law Firms Impede Trade*, *supra* note 47. Also, the fact that fewer Chinese lawyers will be able to receive valuable training from international law firms will limit the number of Chinese law practitioners who possess the international legal skills that foreign law firms are looking for. This will in turn hurt domestic lawyers who are looking to improve local lawyering standards, thereby acting as a double-edged sword for the progress of lawyering in China. Qiang Guo, "Are Foreign Lawyers Gaining Ground in China?," PERSPECTIVES, Vol 4. No.1, (2003), *online at http://www.oycf.org/Perspectives/20_033103/ForeignLawyer.htm.*

Early this year, perhaps in response to outcry among foreign lawyers in China and a letter submitted on September 27, 2002 by the American Chamber of Commerce to the Ministry of Justice and the Ministry of Trade, the Ministry of Justice approved the establishment of fourteen overseas law offices, eleven of which were second offices of foreign firms.[61] Duan Zhengkun, the vice-minister of Justice, promised that the Ministry of Justice would continue its policy to open up the domestic legal services market, and further commented that foreign firms have promoted foreign investment in China.[62] While many remain concerned about China's historical ability to comply with international treaties, this early concession may indicate a new trend of more open compliance with international standards.

C. Korea

The current situation in Korea presents perhaps the best possible test case with regard to the question of what happens when a country closes its doors entirely to foreign lawyers. Indeed, Korea currently has one of the most restrictive legal markets in Asia—more so than even China or Vietnam—as foreign lawyers are not only unable to advise on non-Korean law (something which foreign lawyers are even permitted to do in Japan and China) but also are prohibited from setting up branch offices at all in Korea.[63] Under the current regulations established by the Attorneys-at-Law Act, in order for a foreigner to practice in Korea, that individual must pass the Korean bar examination, the same exam that Korean nationals are required to take.[64] The Korean Bar Association states that no foreigner has ever passed this exam.[65] This stringent regulation has met with much outcry among international legal communities, who call Korea's actions unfair discrimination against foreign lawyers and general violations of international agreements that Korea has participated in, such as GATS and OCED. This total refusal to allow foreign law firms inside Korea has forced those firms who wish to

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[61] *China approves more overseas law firms*, XINHUA ECONOMIC NEWS SERVICE (Jan. 10, 2003). The other three firms were Hong Kong firms who were being allowed to set up their first mainland office. This brings the total number of foreign firms in mainland China to 163.

[62] Ibid. As a result of this move, many more international firms might be moving their China practice from Hong Kong to mainland China, which would further stimulate the economy through the pull of more foreign business.

[63] Julia Tonkovich, *Recent Development: Changes in South Korea's Legal Landscape: The Hermit Kingdom Broadens Access for International Law Firms*, 32 LAW & POL'Y INT'L BUS. 571 (2001).

[64] Jeff Maddox, *Liberalized legal services market essential element of financial hub*, THE KOREA HERALD (June 16, 2002).

[65] *Id.* However, there is at least one known Korean-speaking foreigner with a law degree from Seoul National University.

have a Korean practice to have an office either in Hong Kong or Tokyo that is equipped to handle all Korean-related legal work, or deal with "foreign legal consultants" employed only by Korean firms.[66]

Both outsiders and insiders attribute this general resistance to American-style lawyering and the presence of foreign firms to two main factors: domestic pressure to keep legal markets closed so as to protect jobs and work for Korean lawyers, and Korea's general uneasiness with the concept of the rule of law. Korea, like Japan, received strenuous international pressure in the mid-1980s to open its legal markets; however, what was strikingly unlike Japan's reaction is that Korea, although enacting legislation which would effectively force the legal market open, chose in the end to do nothing.[67] The government's decision to enact that legislation was scornfully viewed as Korea's bowing to pressure from the United States; domestic lawyers also created a hostile atmosphere by categorizing the opening of Korea's legal market as a "crisis" and a "threat."[68] Other reports suggested that the Korean Ministry of Justice played an actively protectionist role by encouraging domestic lawyers to form more law firms so as to be better placed to combat foreign encroachment on Korean territory.[69]

Other domestic attempts to open the legal services market, including the Foreign Direct Investment Plan issued by the Ministry of Finance and Economy of Korea in 1996, which forecast the opening of Korea's legal markets by 1997, also proved to be false alarms. Now, with Korea's accession to the WTO, ten countries (including the United States, the European Union, Japan, and Canada), in accordance with the Doha Development Agenda (DDA) services trade liberalization, have been calling on Korea to open its legal services market, even prior to the March 2003 WTO deadline for submission of market-opening schedules.[70] The three specific areas that this proposal focuses on are (1) allowing foreign lawyers to register as foreign legal consultants and be afforded proper recognition as foreign lawyers; (2) allowing foreign lawyers to engage in partnerships with Korean lawyers and be able to both establish offices and/or be employed by Korean law firms in Korea; and (3) allowing

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[66] Often, as noted by one partner at an American law firm, the only way that foreign law firms have found to circumvent the highly restrictive Korean regulations regarding foreign law practice is to have lawyers, often Korean returnees, stationed in their Hong Kong satellite office with their families residing in Korea, and splitting their time between Hong Kong and Korea. This is an interesting contrast in enforcement to mid-1980s China.

[67] Maddox, *supra* note 64.

[68] Tonkovich, *supra* note 63, at 576.

[69] *Id.*

[70] *10 countries urge Korea to open legal service mart*, THE KOREA HERALD (Sept. 30, 2002). *See also* Kim, *supra* note 20.

foreign law firms to set up offices, either jointly with domestic law firms or separately.[71]

While the logic behind opening Korea's legal markets to foreign participation seems to be in line with Korea's general goal of opening its markets to international investment, domestic lawyers and Korean Bar Association (KBA) officials still seem to be strenuously resisting these proposed changes based on a negative view of litigation and the high likelihood that an influx of foreign lawyers would result in making Korea a more litigious culture.[72] Other protectionist arguments include the possible loss of talented Korean legal professionals to larger foreign firms, and the possible takeover of the domestic legal market by international mega-firms.[73] This argument primarily states that foreign law firms, instead of being satisfied with their ability to provide consulting services on foreign laws, would try to become actively involved in local litigation and the Korean legal consulting market, thereby usurping clients and work of Korean lawyers.[74] The KBA has stated that a "full-fledged opening would deal a harsh blow to local players" in terms of the Korean legal market.[75] This is the same protectionist argument offered by both Japanese and Chinese domestic lawyers, who have yet to realize the differing spheres of influence and work that the two types of lawyers can play, simultaneously, within one country. Another argument put forth by the KBA and domestic lawyers is that "any liberalization of the market will pave the way for the return of Koreans who are qualified as lawyers in the US," which has been dismissed by others as other countries such as Hong Kong and Singapore have kept this issue under control.[76]

The culture argument often put forward by KBA officials and domestic lawyers regarding the rule of law in Korea adds a historical dimension to the protectionist argument against foreign lawyers. This argument states that the rule of law and its democratic form are alien to the culture of Korea, which aligns itself more with personal relationship

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[71] *Id.* Note that these demands are very similar in nature to the demands currently under consideration in Japan regarding partnerships between foreign and domestic firms.

[72] *Id.* As one KBA official stated, "Foreign law firms could encourage Koreans to file lawsuits once there is a dispute, which would turn Korea into a lawsuit heaven like the U.S. Korea has had a non-litigious culture compared with other developed countries. Chaebol (big business) and the government should first consider the trouble an increased number of litigation filed by minority shareholders, individuals and non-government organizations urged on by foreign law firms would bring to them."

[73] Ibid.

[74] Ibid.

[75] Michael Choo, *Reluctance to open legal market*, THE KOREA HERALD, (Oct. 16, 2002). *See also Wish you were here?*, THE LAWYER (Aug. 13, 2001).

[76] *Id.*

building as a means of strengthening society.[77] Proponents of this argument point to the past twenty years of governmental corruption, especially of the Executive, which, instead of strengthening this concept through leading by example, sufficiently weakened the idea of rule of law that Korean citizens now find it hard to place their faith in the law.[78] While this argument may have some merit, culturally speaking, it assumes that Korea can continue to exist without fully acknowledging the rule of law, which is at odds with Korea's membership in any international organization, including the WTO. In order to maintain good international standing and abide by the provisions of agreements such as those used for WTO, Korea has no choice but to accept the rule of law. Without opening the legal services market to foreigners voluntarily and gradually (as both China and Japan have done), there will not be any cultural exchange between Korean lawyers and foreign lawyers, which would best allow foreign lawyers to understand the nuances and specifics of the Korean legal culture. Officials from organizations like the American Chamber of Commerce in Korea note that the positive results of internationalizing the legal services market will far outweigh the negatives, including creating "currency inflow and tax benefits for the republic as a whole," which the faltering economy will need in order to compete as an international player.[79]

The Ministry of Justice, in response to increasing pressure from the international scene, has made vague comments suggesting that Korea might yet again be on the verge of opening its legal markets (which it will be forced to do by next year) by stating that it is considering allowing foreign legal consultants to enter the legal services market. An official at the Ministry of Justice noted that partnerships were inevitable, but that the timing was under consideration and that they will take into account "both the benefits to the local legal community and clients before making a decision."[80] This statement suggests that, while international interests (in the form of the clients) will be taken into account, equal weight will be given to the domestic voice of protectionism as Korea decides when to open the most restrictive legal services market in East Asia.

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[77] Tonkovich, *supra* note 63, at 578.
[78] Kim, *supra* note 4, at 45.
[79] Kim, *supra* note 20.
[80] *Id.*

IV. PIPE DREAM OR FORESEEABLE FUTURE? THE PATH TOWARDS LIBERALIZING THE LEGAL SERVICES MARKET IN EAST ASIA

After looking at the individual country examples, some common themes can be seen in each country's individual struggle with the liberalization of its legal services market towards outside influence. Each country is dealing with the growing need for lawyers within society, as the domestic need for lawyers is rapidly outpacing its supply and foreign clients are strenuously demanding legal representation from foreign law firms. Each country's government, meanwhile, is dealing with international pressures to open its legal borders while balancing protectionist interests from domestic forces, which often include the government itself. Finally, each country is dealing with the changing role of the lawyer within society, as the status of lawyer within society seems to be changing from an elite profession to a necessary, growing one that hopefully (for the purpose of strengthening the quality pool of domestic lawyers) will attract more and more talent away from other industries.

One commonality that will be interesting to watch over time is the role that the Ministry of Justice and the local bar associations will play both jointly and separately in influencing the legal services market in each country in the future. In Japan, the Ministry of Justice seems to be the more liberal force, as the Nichibenren often pushes for protectionist standards. In China, the local bar association is all but invisible as the Ministry of Justice creates, interprets, and enforces all regulations regarding foreign lawyers. In Korea, the Ministry of Justice and the local bar association work together in their united goal of protectionism and support for domestic lawyers in a fledgling legal market. This raises a host of interesting questions regarding possible interplay between the citizens of each country, their agencies, and the government. For example, what is the possibility of domestic pressure for change, rather than simply international pressure? Domestic lawyers in all three countries have begun to speak out against the restrictive markets, noting that increasing foreign investment and cash inflow would be in the best interest of each of these countries' respective economic growth and/or recovery. What happens when domestic pressure reaches the level of international pressure—will that force change faster than the threat of international sanctions could?

Hopefully, the result of easing restrictions on the legal services market will result in the strengthening of domestic legal services through the influx of foreign lawyers and the creation of partnerships, rather than

competition. It will allow foreign lawyers the ability to learn about the communication culture of the domestic lawyers so that the client will be afforded services without the risk of cultural misunderstandings. It will allow domestic lawyers to find their niche within an opening market and put them at ease with foreign lawyers and law practice. In addition, the benefit of the influx of foreign investment might result in stronger economies and therefore less domestic uncertainty over financial collapse and job certainty, which might result in an opening of the mindset (especially in Japan) that professions need to be regulated because of the limited amount of work that exists.

However, even with all of those potential scenarios, final questions still loom. What do all of these rapid changes mean for the legal services market within these three countries? Is there a risk of both domestic and foreign law firms becoming pawns in larger economic and trade issues, such as has already started to happen in China? What happens when the legal community increases exponentially in Japan? What happens when Korea finally opens its doors to foreign law firms and partnerships—is this going to result in measurable benefits in foreign investment? Or, if the level of foreign investment doesn't immediately change, will this disprove the hypothesis that foreign investment and the presence of foreign lawyers go hand in hand? How will the role of lawyers in legal development and enforcement play out in Asia? Hopefully, these questions will be answered soon, once the system in each country has been defined more clearly for foreign and domestic lawyers alike through open cooperation with standards put in place through WTO and other international agreements. However, in light of the protectionist issues and forces that still hold varying degrees of power in these three countries, this may take longer than foreign—and some domestic—lawyers would like to wait.