

5.3 Trade Implications for Foreign Financial Institutions

For banking and insurance, along with a number of other services such as advertising, engineering and legal services, it is difficult, and sometimes impossible, to deliver the service through cross-border trade. It is usually necessary to provide the service directly to the customer. Thus, such services tend to be delivered by direct investment enterprises (following the national laws and customs of their country of location), rather than by cross-border transactions.¹⁰²

The necessity of establishing a foreign presence to facilitate the trade of commercial banking and insurance services raises three issues related to the effects on trade of Japanese commercial bank and insurance regulations. First is the right of foreign firms to establish enterprises in Japan; second is the domestic regulatory treatment of foreign firms; and third is the local customs of business enterprises.

- Right of Establishment

As mentioned above, foreign banks are able to establish branches, subsidiaries or representative offices in Japan based on reciprocal treatment of Japanese banks in the foreign banks' home countries. Beyond the requirement of reciprocity, there is no formal means to block the entry of foreign banks, but there is a licencing procedure to establish each new branch that has been cited as time consuming.¹⁰³ According to the U.S. Department of Treasury, Japanese authorities have made efforts to expedite this process.

Foreign life insurance companies face no discriminatory treatment under Japanese insurance laws concerning their right to establish a local presence.

- The Domestic Regulatory Environment

There are no regulations that specifically limit the operations of foreign banks in Japan. In fact, as was outlined above, there are several areas in which foreign banks receive better than national treatment, and operate outside the regulatory

¹⁰² See J.S. Landefeld, O.G. Whichard, and J.H. Lowe, "Alternative Frameworks for U.S. International Transactions", in *Survey of Current Business*, Vol. 73, No. 12, U.S. Department of Commerce, Bureau of Economic Analysis, Washington, D.C., December 1993, p. 52.

¹⁰³ See U.S. Department of the Treasury, *op. cit.*, p. 217.