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## Introduction—U.S./Japanese Trade: Its Scope and Legal Framework

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# INTRODUCTION—U.S./JAPANESE TRADE: ITS SCOPE AND LEGAL FRAMEWORK

DAN FENNO HENDERSON\*

For the past several years, the United States has had more trade with Japan than with any other country in the world, except Canada. Furthermore, the state of Washington has had the highest per capita exports to Japan of any of the states, due largely to wheat, logs, and jet aircraft. Besides its obvious benefits, growing trade interdependence has caused its own frictions which have, in turn, required intervention by the American and Japanese governments. This has produced treaties as well as national legal regulation in both Japan and the United States to supplement the private law of sales. Something of the scope and trends of U.S./Japanese trade, as well as the Japanese regulatory devices and the international legal framework, is presented below.

## I. SCOPE AND COMPARISON OF U.S./JAPANESE FOREIGN TRADE

In 1965, the United States, with a population double that of Japan, had a total import-export trade which tripled Japan's overall trade.

TABLE I—U.S. AND JAPAN TRADE IN 1965<sup>1</sup>

	<i>Popula- tion</i>	<i>GNP</i>	<i>Per Capita Income</i>	<i>Export</i>	<i>Import</i>	<i>Total Trade</i>
U.S.	195 million	\$676 billion	\$2500	\$27.3 billion	\$21.4 billion	\$48.7 billion
Japan	98 "	78 "	633	8.4* "	8.2 "	16.6 "

\* 1966 Japan exports were \$9.8 billion

As the figures show, Japan is much more dependent on its foreign trade than is the United States, for trade is about 21% of Japan's gross national product (GNP) as opposed to 7% for the United States. This fact becomes even clearer if it is remembered that Japan is the world's leading shipbuilder and third largest producer of crude iron

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<sup>1</sup>United States statistics from U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, STATISTICAL ABSTRACTS OF THE U.S. 868 (1966); Japanese statistics from JAPAN ECONOMIC YEARBOOK 70 (Oriental Economist 1966) [hereinafter cited YEARBOOK].

and steel (after the United States and Russia), while importing 92% of its iron ore and 17% of its coking coal. Japan, a leading textile and auto producer, also imports 100% of its raw cotton, wool, crude rubber, phosphate ore, and bauxite and 99% of its crude oil.<sup>2</sup> For the fifth largest industrial complex in the free world (after the United States, West Germany, Britain, and France), this is a remarkable dependence, for the most basic raw materials, on world markets usually thousands of miles away.

Furthermore, Japan is not only highly dependent on foreign raw materials generally; its trade is also remarkably focused on the United States.

TABLE II—JAPANESE TRADING PARTNERS IN 1965<sup>3</sup>

	<i>Import</i>		<i>Export</i>
U.S.	29.0%	U.S.	29.3%
Australia	6.8	Liberia	4.4
Canada	4.4	Australia	3.7
Philippines	3.1	Hong Kong	3.4
Iran	3.0	Communist	
		China	2.9
U.S.S.R.	2.9	Thailand	2.6
Saudia Arabia	2.8	Formosa	2.6
Communist China	2.8	Canada	2.5
West Germany	2.7	West Germany	2.5
England	2.0	England	2.4

TABLE III—MAJOR REGIONAL BREAKDOWN OF JAPANESE TRADE IN 1965<sup>4</sup>

	<i>Imports</i>	<i>Exports</i>
North America	37.2%	34.7%
Asia	33.4	32.5
Europe	12.3	15.3
Oceania	8.0	4.8
South America	4.8	2.9
Africa	4.3	9.7

Commodity breakdowns for Japanese imports in 1965 show that imports were predominantly agricultural, fuel, and raw materials (plus

<sup>2</sup> See Ohara, *Legal Aspects of Japan's Foreign Trade*, 1 J. WORLD TRADE L. 1 (1967).

<sup>3</sup> YEARBOOK at 70.

<sup>4</sup> *Ibid.*

heavy industrial equipment), and Japanese exports have been predominantly light manufactured products.

TABLE IV—JAPANESE IMPORTS BY COMMODITY IN 1965<sup>5</sup>

	<i>Value</i> <i>(in millions)</i>	<i>% of total</i>
Foodstuffs . . . . .	\$1,470	18.0
Indian corn . . . . .	231	2.8
Wheat . . . . .	251	3.1
Sugar . . . . .	156	1.9
Textile Raw Materials . . . . .	847	10.4
Wool . . . . .	343	4.2
Cotton . . . . .	442	5.4
Hemp . . . . .	38	0.5
Metallic Ores & Scraps . . . . .	1,019	12.5
Iron ores . . . . .	524	6.4
Steel scraps . . . . .	153	1.9
Non-ferrous metal ores . . . . .	287	3.5
Other Raw Materials . . . . .	1,354	16.6
Rayon pulp . . . . .	37	0.5
Hide & leathers . . . . .	59	0.7
Soy-beans . . . . .	226	2.8
Crude rubber . . . . .	91	1.1
Lumber . . . . .	493	6.0
Tallow . . . . .	42	0.5
Phosphate rocks . . . . .	48	0.6
Salt . . . . .	36	0.4
Mineral Fuels . . . . .	1,626	19.9
Coal . . . . .	270	3.3
Petroleum . . . . .	1,308	16.0
Chemical Products . . . . .	408	5.0
Potassium fertilizer . . . . .	45	0.6
Machinery . . . . .	711	8.7
Business Machines . . . . .	108	1.3
Metal processing machinery . . . . .	62	0.8
Passenger automobiles . . . . .	28	0.3
Others . . . . .	733	9.0
Iron & steel . . . . .	141	1.7
Total . . . . .	8,169	100.0

<sup>5</sup> YEARBOOK at 69.

TABLE V—JAPANESE EXPORTS BY COMMODITY IN 1965<sup>6</sup>

	<i>Value</i> (in millions)	<i>% of total</i>
Foods & Drinks . . . . .	\$ 344	4.1
Fish & Shellfish . . . . .	231	2.7
Tea . . . . .	3	0.04
Fibers and Products . . . . .	1,582	18.7
Raw Silk . . . . .	14	0.2
Woolen Yarn . . . . .	38	0.4
Cotton Yarn . . . . .	20	0.2
Rayon Yarn . . . . .	22	0.3
Synthetic Fiber Textiles . . . . .	186	2.2
Woolen Textiles . . . . .	87	1.0
Cotton Textiles . . . . .	303	3.6
Silk Textiles . . . . .	36	0.4
Rayon Textiles . . . . .	68	0.8
Spun Rayon Textiles . . . . .	90	1.1
Garments . . . . .	287	3.4
Chemicals . . . . .	547	6.5
Chemical Fertilizers . . . . .	87	1.0
Non-Metallic Minerals . . . . .	265	3.1
Cement . . . . .	21	0.2
Ceramics . . . . .	84	1.0
Metals & Products . . . . .	1,718	20.3
Metal Products . . . . .	305	3.6
Iron & Steel . . . . .	1,290	15.3
Non-ferrous Metals . . . . .	123	1.5
Machinery . . . . .	2,643	31.3
Textile Machinery & Parts . . . . .	82	1.0
Sewing Machinery . . . . .	72	0.9
Radio Receivers . . . . .	216	2.6
Ships . . . . .	713	8.4
Railway Rolling Stock . . . . .	41	0.5
Automobiles . . . . .	237	2.8
Others . . . . .	1,357	16.1
Lumber . . . . .	24	0.3
Plywood . . . . .	65	0.8
Optical Instruments & Parts . . . . .	179	2.1
Cameras . . . . .	53	0.6
Toys . . . . .	98	1.2
<b>Total . . . . .</b>	<b>8,452</b>	<b>100.0</b>

<sup>6</sup> YEARBOOK at 67.

Turning specifically to U.S./Japanese trade, Tables VI and VII show exports and imports by commodities.

TABLE VI—COMPOSITION OF U.S. EXPORTS TO JAPAN IN 1965<sup>7</sup>  
(Percentage Distribution of Major Categories)

Total	100.0
Food & Live Animals . . . . .	23.4%
Beverages & Tobacco . . . . .	1.8
Crude Materials, Inedible (Ex. Fuels) . . . . .	30.9
Mineral Fuels, Lubricants & Related Materials . . . . .	6.7
Animal & Vegetable Oils & Fats . . . . .	1.8
Chemicals . . . . .	7.3
Manufactured Goods Classified by Material . . . . .	3.3
Machinery & Transport Equipment . . . . .	20.4
Miscellaneous Manufactured Goods . . . . .	4.2
Other . . . . .	0.2

TABLE VII—COMPOSITION OF U.S. IMPORTS FROM JAPAN IN 1965<sup>8</sup>  
(Percentage Distribution of Major Categories)

Total	100.0
Food & Live Animals . . . . .	3.7%
Crude Materials, Inedible (Ex. Fuels) . . . . .	2.1
Animal & Vegetable Oils & Fats . . . . .	0.2
Chemicals . . . . .	1.9
Manufactured Goods Classified Chiefly by Materials . . . . .	44.7
Machinery & Transport Equipment . . . . .	23.2
Miscellaneous Manufactured Articles . . . . .	22.1
Other . . . . .	2.1

<sup>7</sup> U.S./JAPAN TRADE COUNCIL, U.S. TRADE BALANCE WITH JAPAN 5 (1966). For more details on 1965 exports, see U.S. BUREAU OF INT'L COMMERCE, DEP'T OF COMMERCE, OVERSEAS BUSINESS REPORTS 4 (Sept. 1966).

<sup>8</sup> U.S./JAPAN TRADE COUNCIL, *op. cit.* *supra* note 7, at 5.

Of all the states, Washington has the highest per capita trade through its ports to and from Japan.

TABLE VIII—PER CAPITA EXPORTS BY STATE<sup>9</sup>

<i>State</i>	<i>Per Capita Export</i>	<i>Population (in millions)</i>
Washington	\$25	3
California	21	18
Oregon	18	2
Texas	14	10
Illinois	10	10.5
Ohio	7	10
New York	5	18

The commodity breakdown of Japanese trade through Washington ports is as follows:

TABLE IX  
U.S. EXPORTS TO JAPAN THROUGH WASHINGTON PORTS<sup>10</sup>  
1964 & 1965  
(Value in \$1,000)

	<i>Annual 1965</i>	<i>Annual 1964</i>	<i>Percent Increase</i>
GRAND TOTAL	141,052	77,034	83.1
<i>Food &amp; Live Animals</i>	36,880	20,331	81.4
Fish & fish preparations . . . . .	1,563	970	61.1
Wheat, unmilled . . . . .	26,109	16,418	59.0
Barley, unmilled . . . . .	157	696	-77.4
Corn, unmilled . . . . .	5,271	2	*
Feeding-stuff for animals . . . . .	2,791	829	236.7
Other foods & feeds . . . . .	989	1,416	-30.2
<i>Crude Materials</i> . . . . .	49,885	39,931	24.9
Hides & skins, undressed . . . . .	2,363	1,473	60.4
Logs . . . . .	37,817	25,312	49.4
Pulp & waste paper . . . . .	6,794	7,190	- 5.5
Iron & steel scrap . . . . .	1,207	1,242	- 2.8
Non-ferrous metal scrap . . . . .	1,345	3,592	-62.6
Other crude materials . . . . .	359	1,122	-69.0

<sup>9</sup> Based on the writer's calculations using standard population figures for 1963 and data reported in U.S./JAPAN TRADE COUNCIL, JAPAN BUYS AMERICAN IN ALL FIFTY STATES (1965).

<sup>10</sup> These figures are derived from U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, FOREIGN TRADE REP'T EA-663 (1964-1965).

TABLE IX (continued)

<i>Inedible Tallow</i> . . . . .	906	1,436	-36.9
<i>Chemicals</i> . . . . .	1,010	1,156	-12.6
<i>Manufactured Goods</i> . . . . .	14,124	12,370	14.2
Copper, refined . . . . .	12,220	9,656	26.5
Aluminum . . . . .	1,165	809	44.0
Other manufactured goods . . . . .	739	1,905	-61.2
<i>Machinery &amp; Transport</i>			
<i>Equipment</i> . . . . .	37,974	1,773	
Non-electrical machinery . . . . .	1,255	1,587	-20.9
Electrical machinery & apparatus . . . . .	2,555	156	*
Telecommunications apparatus . . . . .	1,995	4	*
Transport equipment . . . . .	34,168	32	*
Aircraft . . . . .	33,425	7	*
<i>Miscellaneous Goods</i> . . . . .	273	-37	637.8

\* Percentage increases too large to be meaningful.

TABLE X

U.S. IMPORTS FROM JAPAN THROUGH WASHINGTON PORTS<sup>11</sup>  
1964 & 1965  
(Value in \$1,000)

	<i>Annual</i> <i>1965</i>	<i>Annual</i> <i>1964</i>	<i>Percent</i> <i>Increase</i>
GRAND TOTAL	59,499	44,942	32.4
<i>Food Products</i> . . . . .	6,531	7,204	- 9.3
Fish & fish preparations . . . . .	4,484	5,042	-11.1
Tuna, preserved . . . . .	2,805	3,536	-20.7
Mandarin oranges, canned . . . . .	1,785	1,927	- 7.4
Other food products . . . . .	262	235	11.5
<i>Lumber</i> . . . . .	419	942	-55.5
(Philippine mahogany) . . . . .	(312)	(842)	-62.9
<i>Chemicals</i> . . . . .	502	672	-25.3
<i>Manufactured Goods</i> . . . . .	39,525	30,737	28.6

<sup>11</sup> These figures are derived from U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, FOREIGN TRADE REP'T IA-253 (1964), IA-254 (1965).



TABLE X (continued)

Veneers, plywood boards, etc.	3,851	2,848	35.2
(Philippine mahogany plywood) . . . . .	(1,473)	(1,067)	38.1
(Birch plywood) . . . . .	(1,444)	(826)	74.8
Pearls & precious stones . . . . .	11,453	9,502	20.5
Iron & steel . . . . .	12,304	8,653	42.2
Universals, plates & sheets	9,218	6,210	48.4
Wire, except wire rod . . . . .	902	879	2.6
Tubes, pipes & fittings . . . . .	1,274	1,262	1.0
Toys, games & sporting goods . . . . .	1,613	1,406	14.7
Other manufactured goods . . . . .	10,304	8,328	23.7
<i>Machinery &amp; Transport</i>			
Equipment . . . . .	7,726	4,604	67.8
Non-electrical machinery . . . . .	2,305	2,168	6.3
Passenger automobiles, new . . . . .	1,120	640	75.0
Other machinery and transport equipment . . . . .	4,301	1,796	139.5
<i>Miscellaneous Goods</i> . . . . .	4,796	783	512.5

Three further trends are important to the overall understanding of U.S./Japanese trade. First, it has been growing rapidly. Japanese overall imports, for example, have more than tripled (\$2.4 to \$8.2 billion) in the past decade, with the United States portion of Japanese trade remaining level at roughly 30%. Overall, Japan's share of total world trade has increased from 2% to 5% since 1954 at an annual rate of 15% (e.g., 27.6% in 1964; 21.4% in 1965; 14.4% in 1966). This is even substantially larger than the impressive 9.3% average annual increase in the Japanese GNP over the past ten years. Second, the shift recently in Japanese exports from light to heavy industrial (including chemical) products is noticeable. This means that Japan may commence to compete more with American heavy industry of which it has heretofore been a major customer, purchasing both products and technology. No doubt adjustments must be made to accommodate Japan's shift into heavier manufacturing, including automobiles. Third, in 1965 for the first time Japan had a favorable trade balance (\$359 million) with the United States, and this trend con-

tinued in 1966. Whether the Vietnam War is the cause and therefore whether the favorable balance will survive the war are difficult questions to answer now.

## II. JAPANESE LEGAL CONTROLS ON TRADE

While vigorously seeking to expand its exports since 1949, the Japanese Government has maintained strict controls over the terms for export transactions and restrictions on competitive imports<sup>12</sup> (*i.e.*, mostly manufactured items) until very recently. The licensing of exports by Japanese officialdom has been used to require payment in approved currencies, usually cash on delivery of the goods. Technically, these rules are known as "standard methods of settlement," which usually means C.I.F. or F.O.B. Yokohama with an irrevocable letter of credit arranged so that payment can be exchanged in Japan against shipping documents.<sup>13</sup> Additionally, these regulations have been used to impose a so-called "check price" on certain products. The check price sets a minimum below which Japanese exporters are not allowed to sell to foreign buyers. If they go below the check price, the officials will not grant an export license. However, check prices are embodied only in informal rules (*naiki*) with little basis in law. In fact, the Tokyo District Court has declared the check price on transistor radios illegal, and refused to enforce it in favor of one Japanese seller, who had pleaded the check price in defense to a claim for damages measured by the difference between the check price and the contract price.<sup>14</sup> Nevertheless, large quantities of certain goods had already apparently moved between Japan and the United States at less than the check prices by the technique of refunding in yen currency part of the letter of credit price to the foreign buyer's agent in Japan.

Another purpose of Japanese export controls has been to prevent

<sup>12</sup> The major regulations are: Foreign Exchange and Foreign Trade Control Act (*Gaikoku kawase oyobi gaikoku böeki kanrihō*) (Law No. 228, 1949, as amended 1964) [hereinafter cited FECA], English translation in 5 Eibun hōreisha Law Bulletin Series [hereinafter EHS] No. 5010; Cabinet Order Concerning Control of Foreign Exchange (*Gaikoku kawase kanri-rei*) (Cabinet Order No. 203, June 1950, as amended 1964), in 5 EHS No. 5130; Cabinet Order Concerning Export Trade Control (*Yushutsu böeki kanri-rei*) (Cabinet Order No. 378, 1949, as amended 1966), in 5 EHS No. 5060; and Cabinet Order Concerning Controls of Import Trade (*Yūryū böeki kanri-rei*) (Cabinet Order No. 414, 1949, as amended 1964), in 5 EHS No. 5090.

<sup>13</sup> These detailed regulations are explained, in English, in the looseleaf service INSTITUTE OF FOREIGN EXCHANGE & TRADE RESEARCH, JAPAN FOREIGN EXCHANGE AND TRADE CONTROL HANDBOOK pts. D & E (1961).

<sup>14</sup> *Domex Int'l Co. v. Yokohama Tsusho K.K.*, HANREI JIHŌ (No. 430) 17 (1966) (Tokyo Dist. Ct., 6th Civ. Dep't, Aug. 28, 1965). *But cf.* *Okura Shoji K.K. v. Japan*, 19 Keishū 9 (Sup. Ct., G.B., Jan. 20, 1965) (conviction, implicitly premised on the validity of check price system, upheld).

piracy of foreign designs registered in Japan and to assist quality inspections to maintain trade association standards. These useful provisions<sup>15</sup> have enhanced the good reputation of Japanese products abroad.

Finally, the quota problem should be mentioned in connection with Japanese exports.<sup>16</sup> This device started with cotton textiles and has spread in recent years to other products, such as synthetic fibers and flatware. The quotas are creatures of U.S./Japanese agreement whereby the Japanese have undertaken to limit the total exports of a given product to the United States. This "voluntary" limitation of Japanese exports has resulted from the highly competitive nature of certain Japanese manufactured goods, both in price and quality. American cotton textile manufacturers in particular have been unable to cope with Japanese selling prices in the United States. In an attempt to protect the local manufacturers' position, or at least assist them over a transition, the United States has extracted quota limitations from Japanese exporters, who have probably agreed only because they realize that if they compete too successfully, the American manufacturers might be successful in raising a tariff against their goods.

National regulations of the United States have also played a role in adjusting frictions caused by Japanese exports. Sometimes Japanese prices have been low enough to cause American manufacturers (*e.g.*, steel companies<sup>17</sup>) to invoke the United States anti-dumping laws,<sup>18</sup> although to date such complaints have been difficult to substantiate. In the future it will be interesting to see whether certain noncompetitive American manufacturers will be successful in establishing further countervailing actions such as quotas or amendments strengthening the anti-dumping laws.<sup>19</sup>

Even more than exports, imports have been highly regulated by Japan in order to permit Japanese industries to become competitive enough, it would seem, so that imports of manufactured goods would, in most cases, not occur. Japanese restrictions on imports have taken the form originally of foreign exchange budgeting of funds available and licensing of payment controlled under the Foreign Exchange and

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<sup>15</sup> Export Inspection Law (*Yushutsu kensahō*) (Law No. 97, 1957), in 5 EHS No. 5595.

<sup>16</sup> See HUNSBERGER, JAPAN AND THE UNITED STATES IN WORLD TRADE 278, 341 (1964).

<sup>17</sup> For a list of other complainant industries see 111 CONG. REC. 12541 (1965).

<sup>18</sup> Antidumping Act of 1921, §§ 201-12, 42 Stat. 11, as amended, 19 U.S.C. §§ 160-71 (1964).

<sup>19</sup> For proposed amendments see H.R. 8510, 89th Cong., 1st Sess. (1965).

Trade Control Act of 1949. In the 1950's, this method of controlling imports was satisfactory to accomplish a dual purpose: (1) to manage Japan's scarce foreign exchange balances, and (2) to select the kinds and quantities of imports to maximize the growth and development of Japanese industry.<sup>20</sup> Of course, tariff policy was also used on occasion to discourage imports of certain products, even though such foreign products might be allocated foreign exchange.

1. *International Regulations.* This restrictive scheme worked well until about 1959 when the United States and other members of the General Agreement on Tariff and Trade (GATT) began to insist that Japan, a member since September 1955, should liberalize her trade. Trade liberalization in Japan<sup>21</sup> had stood at 16% when she joined GATT in 1955, and it had reached only 22% by April 1959, in contrast to a 90% liberalization achieved by Western Europe. In 1961, a Cabinet Council for Promoting Liberalization of Foreign Trade and Exchange was set up to promote foreign trade and foreign exchange liberalization. By October 1962, 88% liberalization had been achieved. Then in February 1963 the International Monetary Fund (IMF) informed Japan that she should no longer impose foreign exchange restrictions on current payments for balance of payments reasons. In other words, the IMF recommended an article 8 (rather than article 14) status for Japan under the IMF agreement.<sup>22</sup> Also, Japan then changed its status in GATT from an article 12 to an article 11 status.<sup>23</sup> Under article 11 a nation may not impose restrictions on imports in order to maintain its balance of payments. In 1964, Japan became a member of Organization for Economic Cooperation and Development (OECD), which also requires, in principle, a maximum liberality in foreign trade and investment. So, article 8 status under IMF, article 11 status under GATT, and membership in OECD were all international law commitments inconsistent with the restrictions of the old Foreign Exchange and Foreign Trade Control Act of 1949, which basically prohibited all transactions involving foreign exchange with nonresidents, unless such transactions were approved by officialdom. Hence, the Act was amended effective April 1, 1964.

2. *Licensing of Imports.* Many foreigners may have felt that the

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<sup>20</sup> FECA § 52.

<sup>21</sup> Ohara, *supra* note 2, at 6.

<sup>22</sup> INT'L MONETARY FUND, ARTICLE OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND (1962) [effective Dec. 27, 1945]; Ohara, *supra* note 2, at 7.

<sup>23</sup> Ohara, *supra* note 2, at 7. See also 1 GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS 28 (1952).

April 1964 amendments to the Foreign Exchange and Foreign Trade Control Act of 1949, purporting to liberalize Japanese trade, were illusory. In fact, it is still necessary under the present import system to obtain an import license from an officially authorized bank to cover every import into Japan. What the amendment to the law actually did was restrict imports, in a sense, by requiring a license for the import transactions itself, while liberalizing foreign exchange payments needed to perform the sales contract. This change in and of itself, then, obviously did not liberalize Japanese trade, but simply required a license to import, instead of a license to pay. Thus, by formally complying with the requirements of IMF article 8 and GATT article 11, little concession was made by officialdom in relaxing the controls and paperwork involved in Japanese imports. However, by April 1966, on an item basis (rather than evaluation basis), Japanese imports were liberalized to 93.2%. Japan, however, reserved 120 restricted items, otherwise required to be freed by GATT provisions. These 120 items included a number of very important manufactured trade items, whereas of course many of the liberalized items were raw materials nonexistent in Japan (comprising perhaps 80%) or which foreigners do not produce at all and which therefore involved no competition between foreign and domestic makers.

Even the liberalized items, as noted, must still be licensed by one of the authorized banks under one of two procedures: (1) Under the "automatic approval system" the importer requests an import license from a bank which simply processes a license and issues it after ascertaining that it complies with section 4, paragraph 2, of the Cabinet Order Concerning Import Trade Controls. (2) The automatic import *quota* system is used for certain liberalized goods in order to give the Ministry of International Trade Industry information about the flow of goods by issuing import quota certificates. The certificate is automatic, free, and ordinarily promptly issued.

Much as the voluntary "quota system" imposed on textile imports in the United States has disappointed Japanese producers, the obstacles and irritating paperwork involved in Japanese licensing procedures have caused problems for certain American manufacturers, particularly those in the automobile industry where imports are still restricted and subjected in addition to high tariff rates. Nevertheless, during a developmental period, Japan intends to protect smaller or "cottage type" industries in Japan, as well as some new industries,

from the full blast of international competition.

Several countries, particularly in Europe, have applied discriminatory tactics against Japan, including invoking article 35 of GATT.<sup>24</sup> The United Kingdom, France, and the Benelux countries recently discontinued their use of GATT article 35, but have allegedly used other methods of discriminating. Also, Japan apparently feels that West Germany, Italy, and Sweden discriminate without invoking GATT article 35, and of course the United States and Canada have imposed quota restrictions, "voluntarily" accepted by Japanese exporters.

3. *Tariffs.* At GATT ministerial conferences in 1964 and 1965, Japan submitted 125 industrial items and 200 agricultural items, respectively, for exclusion from tariff cuts.<sup>25</sup> These items cover roughly 9% of total imports. Generally, the most common Japanese duty is 20% on an *ad valorem* basis, and the highest rate is 50%, with a few inconsequential exceptions. The amount of customs duty collected by Japan in 1962 amounted to 20% of the total amount of imports dutiable.

In conclusion then, although on an item basis, Japan is on a 93.2% free import basis, there are still substantial restrictions in terms of procedures and tariffs, even on some liberalized items. Also, many important competitive items are still placed on a nonliberalized quota basis requiring a permit to be issued at the discretion of officials. The foregoing can do no more than suggest the range and kinds of problems raised by international and national regulatory schemes as they apply to the dynamic Japanese economy and particularly its critical external trade.<sup>26</sup>

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<sup>24</sup> GATT art. XXXV:

1. Without prejudice to the provisions of paragraph 5(b) of Article XXV or to the obligations of a contracting party pursuant to paragraph I of Article XXIX, this Agreement, or alternatively Article II of this Agreement, shall not apply as between any contracting party and any other contracting party if:

(a) The two contracting parties have not entered into tariff negotiations with each other, and

(b) either of the contracting parties, at the time either becomes a contracting party, does not consent to such application.

2. The CONTRACTING PARTIES may, at any time before the Havana Charter enters into force, review the operation of this Article in particular cases at the request of any contracting party and make appropriate recommendations.

<sup>25</sup> See MINISTRY OF FINANCE, CUSTOMS ADMINISTRATION IN JAPAN 1-21 (1963).

<sup>26</sup> Though the following do not emphasize the legal issues, see generally HOLLERMAN, JAPAN'S DEPENDENCE ON THE WORLD ECONOMY (1967); HUE, JAPAN'S TRADE IN ASIA (1966); HUNSBERGER, *op. cit. supra* note 16.

