

7. Beyond Aggressive Legalism: Japan and the GATT/WTO Dispute

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I. Introduction

In a 2001 article in *The World Economy*, Saadia Pekkanen characterized Japan's recent trade strategy as "aggressive legalism."¹ Clearly, this is an adaptation of the famous term "aggressive unilateralism" coined by Professor Bhagwati to describe the US trade policy of the 1980s.² According to Professor Pekkanen, aggressive legalism can be defined as "active use of the legal rules in the treaties and agreements overseen by the WTO to stake out positions, to advance and rebut claims, and to embroil all concerned in an intricate legal game."³ While the author basically agrees with her analysis, some additional comments can be made about Japan's trade strategy, largely drawing upon the author's own experience at the Japanese Ministry of Economy, Trade and Industry (METI) – previously known as MITI (for the Ministry of International Trade and Industry).

This chapter consists of six sections. Section II briefly reviews Japan's experience with the GATT/WTO dispute settlement mechanism. Section III analyzes Japan's offensive use of the mechanism ("sword" aspects according to Professor Pekkanen), taking *Parts and Components* case and *Section 301 (Automobiles)* case as examples. Section IV analyzes Japan's defensive use of the mechanism ("shield" aspects according to Professor Pekkanen), taking the *Leather* case and the *Film* case as examples. Section V tries to forecast the future of Japan's aggressive legalism against the backdrop of the ongoing reform in legal education. Section VI concludes.

II. Japan's Experience with the GATT/WTO Dispute Settlement Mechanism.

The Japanese people have often been regarded as reluctant litigants. Although Professor Haley in his classic work demonstrated that this was a myth to a large extent,⁴ if one turns to the use of international tribunals by the Japanese government in settling legal disputes with other countries, the track record is not very impressive. Apart from a few cases in the 19th

¹ 24 *World Economy* (2001) 707-737.

² Jagdish Bhagwati, *The World Trading System at Risk*, Princeton University Press (1991), at 48.

³ Pekkanen, *supra* note 1, at 732.

⁴ John O. Haley, "The Myth of the Reluctant Litigant," 4 *Journal of Japanese Studies* (1978) 349.

century, Japan never had recourse to the adjudicatory process before international tribunals such as the Permanent Court of International Justice or the International Court of Justice either as a complainant or respondent until the *Southern Bluefin Tuna* case of 2000.⁵ Similarly, in the GATT/WTO context, Japan's reluctance toward active use of the panel process was quite prominent until the late 1980s. For several decades after its accession to the GATT in 1955, Japan was generally seen as one of those countries that leaned toward pragmatism as opposed to other countries that favored legalism.⁶ While there have been a number of formal complaints filed with the GATT against Japan (see Table 1), Japan seldom sought the panel process to settle disputes with other GATT contracting parties (see Table 2).

What explains this reluctance? Setting aside the myth of non-litigiousness of the Japanese (or the East Asians in general for that matter), several theories have been put forward. Professor Pekkanen posits that Japan's experience with Article XXXV (non-application or "opting out" clause) of the GATT was a crucial factor. Having observed that the GATT machinery had legal weaknesses and loopholes in its early years and that the Japanese government was no different from most others in refraining from the use of GATT's legal process, she goes on to argue that invocation of Article XXXV by fourteen countries against Japan at the time of its accession restrained Japan from being a "full" member of the GATT club. As a result, Japan's GATT diplomacy in the early years was concentrated on bilateral negotiations with the relevant countries for disinvocation of that Article.⁷

This explanation is not very convincing for several reasons. First, by the end of the 1960s, Japan succeeded in the negotiations for disinvocation of Article XXXV with most of its trading partners, but Japan's reluctance to have recourse to the formal dispute settlement mechanism of the GATT continued well in to the 1970s and the early 1980s. Second, as Table 2 indicates, the very first case where Japan invoked the consultation provision of GATT Article XXII was against Italy, which had earlier maintained Article XXXV vis-à-vis Japan. This suggests that Article XXXV was not a major inhibiting factor for Japan regarding the use of the GATT dispute settlement mechanism. Third, there were other trading partners that had not invoked Article XXXV against Japan, most notably the United States, but Japan was reluctant to lodge a formal complaint against these countries as well.

Professor Yamane, on the other hand, points out that Japan's current account balance

⁵ *Southern Bluefin Tuna Case—Australia and New Zealand v. Japan*, Award on Jurisdiction and Admissibility, August 4, 2000, rendered by the Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea. 39 *ILM* (2000) 1359.

⁶ Yuji Iwasawa, "WTO Dispute Settlement and Japan" in Marco Bronckers and Reinhard Quick, eds. *New Directions in International Economic Law – Essays in Honour of John H. Jackson*, Kluwer Law International (2000), at 474. See also, Pekkanen, *supra* note 1, at 708.

⁷ Pekkanen, *supra* note 1, at 709.

was a major factor in Japan's reluctance toward the active use of the GATT dispute settlement mechanism. She argues that Japan's permanent trade surplus puts the government in an awkward position in aggressively demanding access to foreign markets.⁸ While this may be the case, this is only a partial explanation because until the late 1960s the Japanese economy actually suffered from chronic trade deficit, but during this period, as we have seen above, Japan was not a very active user of the GATT dispute settlement mechanism. It could be that the Japanese officials had other policy priorities such as the disinvocation of Article XXXV during this period, but then how can the recent aggressive legalism be explained against the backdrop of the still persistent trade surplus maintained by Japan?

The author's own view is that the trade policymakers of the day were perhaps preoccupied with the notion of "those who live in glass houses should not throw stones." As Professor Pekkanen accurately observes, the reluctance may well have stemmed from fears of exposing Japan's many visible trade barriers and restrictive practices to legal scrutiny.⁹ As we shall see in Section IV below, this type of thinking would still dominate the mind of the policymakers in the mid-1980s. When this is combined with the relative inexperience with the art of legalistic presentations and language barriers, it is not surprising that Japanese trade officials of the day preferred bilateral negotiations to the formal dispute settlement mechanism.

Then, a turning point arrives sometime in the late 1980s. Professor Pekkanen argues that the specific point in time can be pinned down to 1988, when Japan won a case against Canada in the *SPF Dimension Lumber* case.¹⁰

The case involved a claim of GATT Article I (i.e., most-favored-nation treatment) violations in Japan's tariff schedule regarding dimension lumber. Canada essentially claimed that since spruce-pine-fir (SPF) dimension lumber, which was the major export item from Canada in this category, was a "like product" to non-SPF dimension lumber (mostly exported from the United States), the fact that Japan maintained duties on the former while eliminating the duties on the latter was a violation of GATT Article I:1. The panel argued that "[t]ariff differentiation being basically a legitimate means of trade policy, a contracting party which claims to be prejudiced by such practice bears the burden of establishing that such tariff arrangement has been diverted from its normal purpose so as to become a means of

⁸ Hiroko Yamane, "The WTO Dispute Settlement Mechanism and Japanese Traders," 1 *Journal of International Economic Law* 4 (1998) 683-689, at 689.

⁹ Pekkanen, *supra* note 1, at 709.

¹⁰ *Canada/Japan: Tariff on Imports of Spruce, Pine, Fir (SPF) Dimension Lumber*, Report of the Panel adopted on 19 July 1989 (L/6470 – BISD 36S/167). The panel report was submitted to the parties in April 1989. If this case were the turning point, the year would be 1989, rather than 1988.

discrimination in international trade”¹¹ and concluded that Canada did not discharge this burden. Professor Pekkanen argues that this panel ruling had a profound effect on domestic Japanese perceptions of the GATT at two levels. It affected domestic perceptions about the GATT’s fairness towards all the contracting parties, and also about the GATT’s utility as a legal weapon against foreign complaints and pressures.

While there is no doubt that the “victory” in this case encouraged the Japanese trade officials about the fairness and utility of the GATT dispute settlement mechanism, the author has some hesitations in regarding this case as the significant turning point in Japan’s policy toward the GATT dispute settlement mechanism. The hesitations primarily stem from the fact that this was a defensive case for Japan. After all, this was a dispute process initiated by Canada. A true turning point would be when Japan starts using the GATT dispute settlement mechanism actively to tackle “unfair” trade policies and measures maintained by its trading partners. In fact, that point would arrive even before the victory in the *SPF Dimension Lumber* case is to be confirmed. It would take the form of the *Parts and Components* case¹², as we shall see in detail in Section III.

In this regard, Professor Iwasawa makes a more convincing argument. According to Professor Iwasawa, the *Parts and Components* case was an epoch-making event. The road to the case was prepared by a series of losses in GATT panel cases in the late 1980s. First, in a panel report submitted to the parties in September 1987, the Japanese liquor tax was found to be in violation of GATT Article III:2.¹³ Then, another panel report submitted in October 1987 found the Japanese import restrictions on certain agricultural products to be in violation of GATT Article XI:1.¹⁴ Finally, a panel report submitted in March 1988 found that Japan’s export restraint under the Japan-US Semiconductor Agreement was a violation of GATT Article XI:1.¹⁵ Under such circumstances, Japanese government officials apparently felt that Japan too should

¹¹ *Id.* at para. 5.10.

¹² *EEC – Regulation on Imports of Parts and Components*, Report by the Panel adopted on 16 May 1990 (L/6657 – BISD 37S/132).

¹³ *Japan – Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*, Report of the Panel adopted on 10 November 1987 (L/6216 – BISD 34S/83).

¹⁴ *Japan – Restrictions on Imports of Certain Agricultural Products*, Report of the Panel adopted on 2 February 1988 (L/6253 – BISD 35S/163).

¹⁵ *Japan – Trade in Semi-Conductors*, Report of the Panel adopted on 4 May 1988 (L/6309 – BISD 35S/116). The panel concluded that the Japanese measure to restrict “dumped” exports of semiconductors to the United States and third markets – a typical “gray area” measures limiting the export volumes “voluntarily” through administrative guidance – was indeed a violation of GATT Article XI:1. This was a wakeup call to trade officials at MITI. Until then, voluntary export restraints were the weapon of choice in settling trade disputes with large trading partners like the United States and the EC. If those bilateral negotiations were illegal, MITI trade officials thought, perhaps it was a good idea to pursue more legalistic approach in the GATT.

assert its rights when it had a good case under the GATT.¹⁶

Professor Iwasawa lists two other factors that helped Japan in challenging the EC in the *Parts and Components* case. The Japanese trade officials had become accustomed to the GATT panel procedures, preparing defenses in the cases brought against Japan. This is consistent with Professor Pekkanen's observation regarding the Japanese perception of the GATT after the *SPF Dimension Lumber* case. Professor Iwasawa also points out that complaints were filed with the GATT in a businesslike manner in the 1980s, referring to the practice of other contracting parties.¹⁷

Once the victory in the *Parts and Components* case was confirmed, the trend towards aggressive legalism became irreversible. MITI started publishing its annual report on the GATT consistency of Japan's major trading partners in 1992.¹⁸ The report, which in Japanese carries a more blatant title of *Hukosei Boeki Hokokusho* ("Unfair Trade Report"), was intended to a Japanese answer to the United States Trade Representative (USTR)'s "National Trade Estimates" report. From the very beginning, the MITI report has been very critical of the aggressive unilateralism of the United States. From the MITI's standpoint, while the NTE report simply catalogues complaints by the domestic industry, the MITI report was more objective, using the GATT rules as the benchmark for selecting objectionable trade policies and practices.¹⁹

During this period, Japan also actively participated in the Uruguay Round negotiations on dispute settlement.²⁰ The primary goal for the Japanese delegation in the negotiations was to contain aggressive unilateralism of the United States, embodied in the frequent recourse to unilateral actions under Section 301 of the Trade Act of 1974. This objective was shared by many other delegations including the EC and India. As is well known, the result was Article 23 of the Dispute Settlement Understanding of the WTO, which provides that "[w]hen Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this

¹⁶ Iwasawa, *supra* note 6, at 477. I can confirm the accuracy of this observation based on my own experience. I joined the MITI's GATT affairs office in July 1989. By that time, the *Parts and Components* was well underway. When I asked my predecessor what motivated Japan to bring this case in the GATT, his answer was very clear: Japan had to have a clearly winnable case.

¹⁷ *Id.*

¹⁸ The report has been published annually ever since. The report is authored by a subcommittee of experts in the Industrial Structure Council, an advisory organ to the METI (MITI until 2001) Minister. However, since the secretariat function of the subcommittee is performed by the WTO department of METI, and the publication of the report is authorized by METI bureaucracy, the report strongly reflects METI's view on multilateral trade policy.

¹⁹ Pekkanen, *supra* note 1, at 711. See also Iwasawa, *supra* note 6, at 478.

²⁰ Pekkanen, *supra* note 1, at 711.

Understanding.” As we shall see in Section III, Japan would effectively use this provision to advance its interests once the WTO is established in the *Section 301 (Automobiles)* case.

The Uruguay Round was concluded at the Marrakesh Ministerial in April 1994, and the WTO Agreement came into effect on January 1, 1995. By this time, Japan’s aggressive legalism had become a firmly grounded policy. As Table 3 indicates, Japan has been a respondent in 13 cases on 10 distinct matters under the WTO as of January 2004. Table 4 shows that Japan filed a roughly equal number of cases (11 cases on 10 distinct matters) with the WTO during the same period – a marked departure from the past practice under the GATT.

III. Japan as a Complainant

To see Japan’s aggressive legalism in action, it would be useful to look at actual cases where Japan was a complaining party in the GATT/WTO dispute. Let us turn to the very first case of this kind, the *Parts and Components* case.

The factual background of the case is summarized by the panel as follows. In June 1987, the EEC included in its anti-dumping regulation, Council Regulation No. 2176/84, a provision intended to prevent the circumvention of anti-dumping duties on finished products through the importation of parts or materials for use in the assembly or production of like finished products within the EEC. The provision was subsequently incorporated in Article 13:10 of Council Regulation No. 2423/88 adopted on 11 July 1988 which stated, *inter alia*, that

“Definitive anti-dumping duties may be imposed ... on products that are introduced into the commerce of the Community after having been assembled or produced in the Community, provided that:

- assembly or production is carried out by a party which is related or associated to any of the manufacturers whose exports of the like product are subject to a definitive anti-dumping duty,
- the assembly or production operation was started or substantially increased after the opening of the anti-dumping investigation,
- the value of parts or materials used in the assembly or production operation and originating in the country of exportation of the product subject to the anti-dumping duty exceeds the value of all other parts or materials used by at least 50%.”

Article 13:10(d) of the same Regulation stated that the provisions of the Regulation concerning investigation, procedure and undertakings apply to all questions arising under

Article 13:10. Under these provisions, the EEC made the suspension of proceedings under Article 13:10 conditional on undertakings by assemblers and producers in the EEC to limit the use of imported parts and materials. During the period between the adoption of Article 13:10 in June 1987 and the establishment of the panel in October 1988, investigations under Article 13:10 resulted in the imposition of duties on products produced or assembled in the EEC in eight cases and in the acceptance of undertakings in seven cases. During this period there were four cases in which the acceptance of undertakings led to the revocation of the duties initially imposed. All investigations initiated and measures taken during this period under Article 13:10 involved products assembled or produced in the EEC by parties related to or associated with Japanese manufacturers whose exports of the finished like products were subject to definitive anti-dumping duties in the EEC.²¹

The motive behind this Council regulation was to counter “circumvention” by Japanese office equipment manufacturers of anti-dumping duties imposed on their products. In order to avoid anti-dumping duties on their finished products, the Japanese manufacturers established assembly plants in Europe and started shipping parts and components to those assembly plants. While this may have been a case of those anti-dumping induced investments so often seen in the 1980s, the EC authorities did not welcome this investment because they considered it was simply a “screwdriver” operation to circumvent anti-dumping duties on finished products, and enacted the new Council Regulation to counter this practice.

On 29 July 1988, Japan requested bilateral consultations with the EC under GATT Article XXIII:1 regarding the above-mentioned Council Regulation and measures taken by the EEC under this Regulation with respect to certain products produced or assembled in the EEC by companies related to Japanese companies. As the consultations did not lead to a mutually satisfactory solution, on 6 October 1988 Japan requested the establishment of a panel regarding this matter. At its meeting on 19 and 20 October 1988 the GATT Council agreed to establish a panel.²²

Before the panel, Japan argued that that the duties imposed under Article 13:10; the acceptance of undertakings under Article 13:10; and the provisions of Article 13:10 as such were inconsistent with the EC’s obligations under GATT Articles I and II or III, and not justified by GATT Article VI. The EC argued that both the application of Article 13:10 and the Article itself were justified by GATT Article XX(d). Japan further argued that the administration of Article 13:10 contravened GATT Article X concerning the publication and administration of trade regulations, *inter alia*, because the EC has failed to publish criteria for accepting

²¹ Panel report, *supra* note 11, at para. 5.1.

²² *Id.*, at paras. 1.1-1.2.

undertakings and to determine the origin of parts in a uniform manner.²³ In the end, the panel essentially accepted Japan's claims and arguments, finding the EC measures to be inconsistent with GATT Article III and not justified by Article XX(d). The panel exercised judicial economy and did not make a finding on the claim of Article X violations. The panel recommended that the CONTRACTING PARTIES request the EC to bring its application of Article 13:10 into conformity with its obligations under the GATT.²⁴ The panel report was adopted on 16 May 1990, and the EC eventually eliminated the relevant provision from the Council Regulation to comply with the panel's recommendation.

The second case we take up to illustrate the "sword" aspect of Japan's aggressive legalism is the *Section 301 (Automobiles)* case, which took place in the spring of 1995, immediately following the inception of the WTO. The significance of this case is highlighted when it is juxtaposed with a similar case involving Japan almost a decade prior to it – the *Section 301 (Semiconductors)* case of 1987.

Following the chronological order, let us first turn to the earlier case. On 14 June 1985, the US Semiconductor Industry Association filed a petition under Section 301 of the Trade Act of 1974, alleging that the Japanese government has created a protective structure that acts as a major barrier to the sale of foreign semiconductors in Japan.²⁵

The USTR initiated an investigation on 11 July 1985. The United States and Japan consulted in August, September, November and December 1985, followed by technical discussions in January and February 1986, and further consultations in March, April, May, June and July. On 31 July 1986, the United States and Japan reached agreement *ad referendum* under which Japan would increase access for US firms to the Japanese semiconductor market, and help prevent dumping of semiconductors in the United States and third country markets. The President approved this agreement in a determination under Section 301 and suspended the investigation,²⁶ and the USTR signed the final agreement on 2 September 1986.

However, the US semiconductor industry was not satisfied with Japan's implementation of the agreement. Following public comment and hearing processes, on 17 April 1987, the President determined that Japan had not implemented or enforced major provisions of the agreement, and in response proclaimed increased duties on imports of certain articles of Japan (i.e., certain televisions, powerhand tools, and automatic data processing

²³ *Id.*, at para. 5.2.

²⁴ *Id.*, at para. 6.3.

²⁵ 50 *Federal Register* 28866.

²⁶ 51 *Federal Register* 27811. This agreement triggers a separate complaint by the EC in the GATT. See *supra* note 15.

machines).²⁷

There was no question that the US action constituted violations of the GATT obligations, notably under Articles I and II, because the measure was targeted at Japanese products only and the level of the increased duties (100 percent *ad valorem*) went far beyond the bound rates in the US tariff schedule. Immediately following the Presidential determination, Japan requested consultations with the United States under GATT Article XXIII:1,²⁸ but Japan did not request the establishment of a panel regarding this matter.

MITI officials were eager to bring the case to the GATT, but they were not used to this kind of game. This was prior to Japan's victory in the *Parts and Components* case, and other officials in the government favored a bilateral approach to settle the matter. Their overriding concern appears to have been the "glass house" consciousness mentioned above. It was the heyday of aggressive unilateralism in the United States. Other Section 301 petitions had been filed with respect to the Japanese market, most notably regarding its rice market. On 10 September 1986, the Rice Millers Association filed a petition for relief from the effect of Japanese market barriers to US rice exports. Although the USTR had rejected this petition on 23 October 1986 choosing instead to pursue the matter in the Uruguay Round²⁹, the threat of a rice dispute in the GATT did not disappear immediately from the radar screen. Indeed, on 14 September 1988, the Rice Council for Market Development and the Rice Millers Association would again file a petition complaining that Japan's virtual prohibition on the importation of rice violated the GATT and denied benefits to the United States under the GATT, again to be rejected by the USTR for the same reason.³⁰ Since rice was an extremely sensitive issue at the time in the Japanese domestic politics, it is understandable that the Japanese trade officials had second thoughts about confronting the United States in the GATT.

It would not be a wild speculation to imagine a US trade official informally suggesting to a Japanese counterpart that if Japan went ahead with the GATT case on Section 301, the United States would be in a difficult position to persuade the petitioners in not filing a GATT case against Japan on rice. Although the injunction of DSU Article 3.10 ("It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.") was already there in the 1979 Dispute Settlement Understanding,³¹ perhaps there were not many in the Japanese government at the time who would be able to point to this provision.

²⁷ 52 *Federal Register* 13412.

²⁸ *United States – Unilateral Measures on Imports of Certain Japanese Products*, 21 April 1987 (L/6159).

²⁹ 51 *Federal Register* 39731.

³⁰ 53 *Federal Register* 44970.

³¹ *Understanding on Notification, Consultation, Dispute Settlement and Surveillance*, Decision of the CONTRACTING PARTIES on 28 November 1979 (BISD 26S/210), para. 9.

Now, let us fast forward to 1994. On 1 October 1994, only a few months before the establishment of the WTO, the USTR “self-initiated” an investigation under Section 302(b)(1)(a) of the Trade Act with respect to certain acts, policies and practices of the Government of Japan that restrict or deny US auto parts suppliers’ access to the auto parts replacement and accessories market in Japan. The background to this case was a failure of the Japan-US “framework” trade talks. Prime Minister Hosokawa’s refusal to accept numerical targets for imports from the United States made headlines because it was perceived as a clear departure from Japan’s traditional approach to the United States on trade issues.³²

The USTR’s investigation continued, and on 10 May 1995, the USTR determined that acts, policies and practices of Japan that restrict or deny suppliers of US auto parts access to the auto replacement and accessories market in Japan were unreasonable and discriminatory and burdened or restricted commerce. On 18 May 1995, USTR requested public comment and held a public hearing on 8 June 1995, on a proposed determination that the appropriate action in response would be to impose 100 percent tariff on luxury motor vehicles from Japan.³³

Japan immediately filed a request for consultations under Article 4 of the DSU, its first WTO complaint.³⁴ Unlike the 1987 *Section 301 (Semiconductors)* case, Japan was determined to request the establishment of a panel if the United States insisted on the imposition of the retaliatory tariff. By this time, aggressive legalism had become a firm policy for the Japanese trade officials. The “glass house” consciousness was something of the past. As Professor Iwasawa explains, it was widely expected that a panel would find the US unilateral measure to be inconsistent with the WTO Agreement.³⁵ Just as Japan tried to argue in 1987, the proposed measure would violate GATT Articles I and II if actually imposed. Not only that, now with the clear prohibition in Article 23 of the DSU of unilateral determination of nullification or impairment, the US action would violate the rules of the DSU as well.³⁶

Under such circumstances, the United States had no choice but to settle the case by abandoning numerical targets and not imposing the proposed retaliatory tariff, and obtaining in return a guarantee by the Japanese government to withdraw its complaint in the WTO.³⁷ Effective 28 June 28 1995, having reached a “satisfactory resolution” of the issues under

³² *Financial Times*, 12 February 1994, page 1, “Japan and US fail to reach accord: Rift casts shadow over trade ties as Clinton and Hosokawa back ‘cooling off’ period.”

³³ 60 *Federal Register* 26745.

³⁴ *United States - Imposition of Import Duties on Automobiles from Japan under Sections 301 and 304 of the Trade Act of 1974* – Request for Consultations by Japan, 22 May 1995 (WT/DS6/1). For detailed account of the case, see, e.g., Tracy M. Abels, “The World Trade Organization’s First Test: The United States-Japan Auto Dispute,” 44 *UCLA Law Review* (1996) 467-526.

³⁵ Iwasawa, *supra* note 6, at 481.

³⁶ See *supra* note 20 and the accompanying text.

³⁷ Iwasawa, *supra* note 6, at 481.

investigation, the USTR determined that the appropriate action in this case was to terminate the investigation and monitor compliance with the agreement in accordance with section 306 of the Trade Act.³⁸ On 19 July 1995, Japan and the United States notified to the WTO settlement of this dispute.

Not only did Japan play a hardball game with the United States in the legal battle, it demonstrated a considerable public relations skill in attracting support for its position from other WTO members. Professor Pekkanen describes how Japan effectively used the OECD forum to buttress its position,³⁹ but similar efforts were being made toward the general membership of the WTO. For instance, it persuaded the WTO Secretariat to distribute its position paper as a “for information” document.⁴⁰ This is a clear departure from the attitude that Japan showed in 1987, preferring an informal, non-transparent, bilateral solution. Professor Iwasawa, contrasting the 1995 *Section 301 (Automobiles)* case with the 1987 *Section 301 (Semiconductors)* case, makes the following observation regarding the former: “The US Administration apparently had failed to notice that Japan’s attitude toward the resolution of trade disputes had changed in the meantime. If the United States resorts to unilateral retaliations, Japan is determined to have recourse to the WTO procedures to obtain official condemnations of such actions.”⁴¹ In the legal battle with the United States, Japan clearly emerged as the victor. The economic consequences of this dispute may actually have been a more nuanced one because, as suggested by Professor Pekkanen,⁴² while the Japanese government steadfastly refused to accept any kind of numerical targets for import expansion, the Japanese auto manufacturers “voluntarily” undertook commitments to increase purchase of foreign auto parts. However, Professor Pekkanen ultimately concurs with Professor Iwasawa’s conclusion that Japan was the legal winner of this case. According to Professor Pekkanen, “The most important factor was the presence of the WTO rules that allowed the Japanese side to both articulate and legitimize its obduracy [in refusing numerical targets].”⁴³

IV. Japan as a Respondent

To illustrate the “shield” aspect of aggressive legalism, one could again contrast a dispute under the GATT and another dispute under the WTO, just as we compared the 1987 *Section 301 (Semiconductors)* case with the 1995 *Section 301 (Automobiles)* case above. In this

³⁸ 60 *Federal Register* 35253.

³⁹ Pekkanen, *supra* note 1, at 723.

⁴⁰ *Communication from Japan*, 22 May 1995 (WT/INF/2).

⁴¹ Iwasawa, *supra* note 6, at 481.

⁴² Pekkanen, *supra* note 1, at 724.

⁴³ *Id.*, at footnote 48.

section, we take up a case involving the leather industry under the GATT and a case involving the photographic film industry under the WTO.

Following the chronological order, let us first turn to the *Leather* case. As usual, it starts with a Section 301 petition. On 4 August 1977, the Tanners Council of America filed a petition, alleging violation by Japan of GATT Article XI in imposing quantitative restrictions on imports of leather from the United States, and excessively high tariffs.⁴⁴ The Special Trade Representative (STR) initiated an investigation on 23 August 1977. The United States consulted with Japan under GATT Article XXIII:1. While a panel was established to examine this matter in January 1979, the consultations continued and resulted in an understanding to expand the quota on imported leather. In light of this understanding, the President decided not to take retaliatory action, and Japan and the United States notified to the GATT Council about the settlement.⁴⁵ However, on 1 August 1980, the President directed USTR to monitor implementation of the understanding. Since the results of the 1979-82 bilateral leather understanding were unsatisfactory, USTR pursued another GATT dispute settlement course.

On 9 November 1982, the United States requested Article XXIII:1 consultations with Japan, which were held first on 27 and 28 January 1983. As they were not successful in producing a mutually satisfactory solution the United States requested a panel to examine the matter, which was established on 20 April 1983.⁴⁶ The panel summarizes the factual background of the case as follows: As a result of the 1979 panel process and the eventual settlement, new quotas for bovine and equine leather as well as bovine and equine wet-blue chrome were established in Japanese fiscal year 1979 in addition to the quotas existing previously. These new quotas were allocated to countries with a record of substantial supply of hides to Japan, based on the share of supply of raw hides, through bilateral consultations with the countries concerned.⁴⁷ The United States was not satisfied with the operation of these new quotas, but instead of asking Japan to increase the quota allocation further or to relax the licensing procedures, the United States took a very legalistic approach. As the panel noted, “the approach of the two parties had important differences. The United States approach was based essentially on legal arguments. Its main contention was that the Japanese restrictions were in contravention of Article XI and that, in addition, the restrictions also contravened Articles X:1 and 3 and XIII:3 and adversely affected tariff bindings. Japan’s case, on the other hand, rested

⁴⁴ 42 *Federal Register* 42413.

⁴⁵ *Japanese Measures on Imports of Leather*, Report of the Panel adopted on 6 November 1979 (L/4789 – BISD 26S/320).

⁴⁶ *Panel on Japanese Measures on Imports of Leather*, Report of the Panel adopted on 15/16 May 1984 (L/5623 – BISD 31S/94).

⁴⁷ *Id.*, at para. 11.

almost entirely on considerations resulting from the particular problems connected with the population group known as the Dowa people.”⁴⁸

As Professor Pekkanen observes, this non-legal approach adopted by Japan backfired because, as is often the case with other panels, the terms of reference of the panel was a standard one, mandating the panel “To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States (L/5462), relating to restrictions maintained by Japan on the import of certain semi-processed and finished leather, and to make such findings, including findings on the question of nullification or impairment, as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided for in Article XXIII:2.”⁴⁹

In a report submitted to the parties in February 1984, the panel made a legalistic finding that Japan’s leather quotas violated GATT Article XI:1 and caused nullification or impairment of US benefits under the GATT. The GATT Council adopted the panel report in its meeting held on 15-16 May 1984. The United States rejected as inadequate Japan’s mid-1985 proposal to replace the quota by a high tariff. On 7 September 1985, the President directed USTR to recommend retaliation unless the leather and leather footwear restrictions were satisfactorily resolved by 1 December 1985. In December 1985 Japan agreed to provide about \$236 million in compensation through reduced (or bound) Japanese tariffs. The United States raised tariffs on an estimated \$24 million in imports of leather and leather goods from Japan, effective 31 March 1986.⁵⁰

Professor Pekkanen goes on to observe as follows. “All in all, this was a hard lesson for Japan in terms of a legal game. In April 1986, Japan questioned the GATT legality of the continued US tariff increases but, in keeping with its non-legalistic emphasis, did not take up the issue formally or with any conviction.”⁵¹

The Japanese reactions to another complaint by the United States in 1996 (the *Film* case) would be markedly different. Again, the story starts with a Section 301 investigation. On 18 May 1995, the Eastman Kodak Company filed a petition pursuant to Section 302(a) of the Trade Act alleging that certain acts, policies and practices of Japan deny access to the market for

⁴⁸ *Id.*, at para. 41.

⁴⁹ Pekkanen, *supra* note 1, at 715.

⁵⁰ 51 *Federal Register* 9435.

⁵¹ Pekkanen, *supra* note 1, at 715-716. I would take issue with her last comment. It is true that Japan did not take up this issue formally in the GATT, but it was not because of the lack of conviction. When I joined the MITI’s GATT affairs office in 1989, my colleagues were all convinced that this was violative of the GATT rules, just as the unilateral imposition of retaliatory tariffs in the *Section 301 (Semiconductors)* case was illegal, but the decision had already been made not to challenge the United States regarding these matters.

photographic film and paper in Japan and are unjustifiable, unreasonable and discriminatory and actionable under Section 301. Kodak's allegation was mostly about competition policy in Japan, but the USTR had jurisdictional problem with other federal agencies (Department of Justice and the Federal Trade Commission) when it comes to competition policy. Furthermore, the WTO was already in place with its injunction on the use of unilateral measures under Article 23 of the DSU. Initially, the United States sought to settle the matter bilaterally, but Japan responded that it could not engage in negotiations under a threat of unilateral retaliations. Japan also made it clear that if the United States resorted to unilateral retaliation, it would challenge the measure in the WTO as it did in the *Section 301 (Automobiles)* case. Accordingly, the USTR painstakingly reformulated Kodak's claim into something that would fit in the WTO legal structure.

On 13 June 1996, the Acting USTR determined, pursuant to Section 304(a)(1)(A) of the Trade Act, that certain acts, policies, and practices of the government of Japan with respect to the sale and distribution of consumer photographic materials in Japan are unreasonable and burden or restrict US commerce and that these acts should be addressed by: (1) seeking recourse to the dispute settlement procedures of the WTO to challenge Japanese government's "liberalization countermeasures"; (2)(a) requesting consultations with the government of Japan under the WTO provision for consultations on restrictive business practices; (b)(i) requesting that Kodak provide information for submission to the Japan Fair Trade Commission (JFTC) concerning anticompetitive practices in this sector, (ii) providing information to the JFTC, (c) seeking to cooperate with the JFTC in its review of evidence of anticompetitive practices, and (d) studying the extent to which Japan's market structure for consumer photographic materials distorts competition in the United States and third markets. At the appropriate time, based on developments in these consultations and proceedings, the USTR would determine what further action needs to be taken to ensure that the barriers are eliminated.⁵²

On the same day, the United States requested formal consultations with Japan under the DSU and GATT Article XXIII:1.⁵³ On 11 July 1996, consultations took place and on 20 September 1996, the United States requested a panel, and the Dispute Settlement Body (DSB) established the panel on 16 October 1996.⁵⁴ The subject of dispute was Japan's laws,

⁵² 61 *Federal Register* 30929.

⁵³ *Japan - Measures Affecting Consumer Photographic Film and Paper* - Request for Consultations by the United States, 21 June 1996 (WT/DS44/1).

⁵⁴ The case number assigned to this particular case by the WTO Secretariat was WT/DS44. The United States had simultaneously filed two other complaints with the WTO. One was a more general challenge to Japan's Large Scale Retail Store Law (WT/DS45) and the other was consultations under restrictive business practices mentioned in the Federal Register notice above. The former case never reached the panel stage. The latter complaint was not part of the dispute settlement mechanism, and as Japan refused to consult with the United States unless the United States agreed to discuss restrictive business practices

regulations and requirements affecting the distribution, offering for sale and internal sale of imported consumer photographic film and paper. The United States alleged that: (a) the Japanese Government treated imported film and paper less favorably through these measures, in violation of GATT Articles III and X; and (b) these measures nullify or impair benefits accruing to the US (a “non-violation” claim). As the US challenge was largely concentrated on the Japanese government measures in the 1960s and 1970s, the United States had to produce a large amount of documentary evidence. To this, Japan rebutted with its own evidence, as well as a convincing logic to discredit the US challenge.⁵⁵

The report of the panel was circulated to WTO members on 31 March 1998. The panel found (a) that the United States had not demonstrated that the Japanese “measures” cited by the United States nullified or impaired, either individually or collectively, benefits accruing to the United States within the meaning of GATT Article XXIII:1(b); (b) that the United States had not demonstrated that the Japanese distribution “measures” cited by the United States accord less favorable treatment to imported photographic film and paper within the meaning of GATT Article III:4; and (c) that the United States did not demonstrate that Japan failed to publish administrative rulings of general application in violation of GATT Article X:1.

This was an almost complete victory for Japan. The United States did not appeal the panel’s ruling and the DSB adopted the panel report on 22 April 1997.⁵⁶ Professor Iwasawa concludes as follows: “The *Film* case illustrates that Japan is prepared to make effective use of the WTO dispute settlement procedures to refute unfounded allegations.” When it is compared to the non-legalistic response in the *Leather* case, the difference in the attitude of the Japanese government is all the more striking. Indeed, aggressive legalism has taken root in the Japanese bureaucracy and even beyond.⁵⁷

in the US consumer photographic film market, the parties failed to reach any agreement on this issue. For the whole case history, see James P. Durling, *Anatomy of a Trade Dispute: A Documentary History of the Kodak - Fuji Film Dispute*, Cameron May (2001).

⁵⁵ Pekkanen, *supra* note 1, at 717-721.

⁵⁶ *Japan - Measures Affecting Consumer Photographic Film and Paper*, Report of the Panel adopted on 22 April 1997, (WT/DS44/R).

⁵⁷ Professor Yamane notes that the *Keidanren* (Federation of Economic Associations) strongly supports the rules-based approach to the multilateral trading system. Yamane, *supra* note 8, at 687.

V. The Future of Aggressive Legalism

Professor Pekkanen points out that although aggressive legalism is now a well-established policy in Japan, trade officials still face certain constraints in pursuing this policy further. Her observations based on interviews with a number of Japanese officials are as follows:

Although an emphasis on the WTO legal rule is commonly seen as the most important means of dealing with Japan's trade partners, officials are quick to point out some important constraints. One commonly cited constraint is the lack of legal resources, with many officials pointing out that Japan only has 16,000 trained lawyers compared to about 900,000 in the US. Another is the continued security dependence of Japan on the US which, according to a surprisingly few, may induce Japan to be more cautious in its trade dealings with the US even in the WTO since bilateral negotiations precede the initiation of formal dispute settlement mechanisms. Finally, some officials point to the jurisdictional disputes between MITI and the MOFA [Ministry of Foreign Affairs] that have become even more important. While the basic laws of both ministries give them jurisdiction over foreign matters, the issue of 'who' rules in the WTO-legal realm affects their power and status domestically. The issue has become even more prominent because international or WTO treaties (considered the preserve of diplomats at MOFA) have significant consequences for domestic industries (almost always supervised by MITI). Whatever the truth of such jurisdictional claims, almost all officials agree that eventually some sort of administrative integration will be required – perhaps along the lines of the Canadian 'Ministry of Foreign and Trade Affairs.' This would not only help reduce the tremendous amounts of duplication across ministries but also allow Japan to confront its trading partners more effectively.⁵⁸

Regarding the second issue she identified, i.e. security concerns, Professor Pekkanen already concedes that a surprisingly few number of Japanese trade officials subscribe to that view. The security situation in East Asia is rapidly changing and the nature of Japan-US alliance is evolving accordingly. Perhaps reflecting this reality, the Japanese officials are no longer inhibited from challenging the United States in the WTO. As Table 4 indicates, the United States have been subjected to a number of WTO complaints filed by Japan.⁵⁹

The third issue, i.e. inter-ministerial rivalry between MITI (now METI) and MOFA, is

⁵⁸ Pekkanen, *supra* note 1, footnote 16.

⁵⁹ Curiously, while Japan challenged EC measures several times in the GATT context, most notably in the *Parts and Components* case, to date Japan has never filed a complaint against the EC under the WTO. Several explanations may be possible to account for this. First, with the decrease of anti-dumping actions by the EC involving Japanese products, there may be less pressure from the domestic industry to challenge the EC measures. Second, the EC has been an important ally of Japan in the agricultural negotiations in the WTO. On the dispute settlement front as well, the EC and Japan have been co-complainants in many cases. This feeling of comradeship may have affected the psyche of the Japanese trade officials.

a real problem. However, so far the two ministries have been, albeit reluctantly, able to cooperate with each other in dealing with WTO disputes. Certainly, coordination problems and transaction costs do exist, but they are not insurmountable difficulties. Also, this is typically an issue that becomes important only when Japan is on the offensive side. Most of the cases involving Japan as respondent are outside the jurisdiction of METI (with the *Film* and the *Leather* cases being important exceptions). In the *Liquor Tax* case, the relevant ministry was the Ministry of Finance. In the agricultural cases, the relevant ministry was the Ministry of Agriculture, Forestry and Fisheries. These ministries do not appear to have problems with MOFA in dealing with WTO disputes.

This leaves us with the first issue, i.e. lack of legal resources in Japan. Both METI and MOFA are suffering from constant shortage of in-house experts on WTO law. METI's WTO department has traditionally recruited many officers "on loan" from outside the bureaucracy – secondees from the Supreme Court, practicing lawyers in the private sector and even law professors. These experts have made valuable contributions to the development of Japan's aggressive legalism, but there are not enough of them. To make the matter worse, there is the language problem. The panel and Appellate Body process requires good command of English (both written and spoken). Thus, Japan, like most other WTO members, has had to rely on the expertise of legal professionals outside the country to advance and defend its position in the WTO process.

However, there is a chance that this situation may drastically change in the coming years. Despite widespread criticisms of the various reform agenda promoted by the current Koizumi administration, reform in the judicial system in Japan is making steady progress. In 1999, a blue-ribbon commission called Justice System Reform Council was formed by law to consider possible reform of Japan's system of administering justice. The Council submitted its final report to the Cabinet in June 2001.⁶⁰ Following the report, the Judicial Reform Headquarters was established within the Cabinet later in the year. In March 2002, the Cabinet adopted its action plan to implement what was recommended in the Council report.

The Council report and the action plan cover a wide range of reform agenda such as allowing citizens to participate in the deliberation of certain criminal cases, promoting "internationalization" of Japan's system of justice, and creating an effective mechanism for alternative dispute resolution. One of the pillars of the reform is reform in legal education. The

⁶⁰ The Justice System Reform Council, Recommendations of the Justice System Reform Council—For a Justice System to Support Japan in the 21st Century, 12 June 2001 (available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>).

primary aim of the reform in this aspect is to increase legal population substantially. For many years since the end of World War II, the number of people permitted to pass the bar examination has been capped at around 500 per annum. This was steadily increased since the mid-1990s to around 1000 per annum. Yet this has generated less than 19,000 practicing lawyers in Japan as of today, as noted above by Professor Pekkanen. The Council report recommends bolder steps as follows.

- Increasing the number of successful candidates for the existing national bar examination should immediately be undertaken, with the aim of reaching 1,500 successful candidates in 2004.
- While paying heed to the progress of establishment of the new legal training system, including law schools, the aim should be to have 3,000 successful candidates for the new national bar examination in about 2010.
- Through the progress of these types of increases in the legal population, by about 2018, the number of legal professionals actively practicing is expected to reach 50,000.

In order to achieve this goal, the report recommends the following measures.

- A new legal training system should be established, not by focusing only on the “single point” of selection through the national bar examination but by organically connecting legal education, the national bar examination and legal training as a “process.” As its core, law schools, professional schools providing education especially for training for the legal profession, should be established.
- Law schools should be established, with the aim of starting to accept students as of April 2004.

Following this recommendation and the Cabinet action plan, a law was passed in 2003 to enable universities to establish law schools at post-graduate level. In November 2003, the Ministry of Education approved 66 universities to start law school programs in April 2004.

At this stage, it is still too early to tell whether the reform will be successful.⁶¹ Inevitably, this was a product of compromise. Because of opposition from vested interests – bar associations, the Supreme Court, law professors – the new system maintains features of the current system. The Judicial Training Institute, whose capacity is the constraining factor in the bar exam passage under the current system, will be maintained as a forum for “apprenticeship

⁶¹ For the general discussion of legal education reform in Japan, see Masahiro Murakami, *Hoka daigakuin: Bengoshi ga fueru, shakai ga kawaru* (“Law Schools: With More Lawyers, Social Changes Are Inevitable”), Chuo Koron Shinsha (2003).

training.” Furthermore, there will be no radical changes to the system of existing undergraduate legal education provided by Japanese universities.

Because of these shortcomings, some observers have concluded that “the proposals to reform Japan’s legal education system centering on the creation of postgraduate law schools reflect lack of vision and the power of certain vested interests. They are therefore unlikely to be enough, and more radical surgery on Japan’s legal education system will probably need to be undertaken by the end of the decade.”⁶²

However, it is clear that Japan has taken a crucial step toward the reform in its judicial system. Increasing the number of lawyers may have enough impact on the operation of the system. In a recent empirical study, some observers have pointed out that even prior to the implementation of judicial reform, there is a marked shift in the employment patterns of Japan’s most elite university graduates over the past decade. They are forsaking the bureaucracy for legal practice.⁶³ If this is the case, the reform in Japanese legal education—which in essence makes the bar exam easier to pass—will certainly accelerate this trend.

With luck, then, METI and MOFA may no longer lament the shortage of WTO legal experts in Japan in the near future. They may still suffer from the shortage of in-house experts, but at least they would be able to find experts amongst the Japanese lawyers. However, there is one important precondition for this to be realized: The Japanese legal community will have to discover the importance of international trade as an area of their practice. Currently, there are few international lawyers in Japan who find interest in international trade (except those who are hand-picked by METI’s WTO department) because there are so few trade cases at home involving Japanese firms. The situation may change if more and more trade remedy cases are initiated by the Japanese authorities. It would also help if, as a result of “persistent demands and strong pressures exerted by the business circles and the legislators”⁶⁴ a national complaint procedure similar to Section 301 of the United States and the Trade Barriers Regulation of the EC is established.

⁶² Luke Nottage “Japan’s Impending Reform of the Administration of Justice: Far from Final,” 48 *CCH Asiawatch Newsletter*, August 2001, (available at <http://www.law.usyd.edu.au/~luken/asiawatch48.htm>).

⁶³ Curtis J. Milhaupt and Mark D. West, “Law’s Dominion and the Market for Legal Elites in Japan,” *Columbia Law School Center for Law and Economic Studies Working Paper* No. 206, June 2002.

⁶⁴ Iwasawa, *supra* note 6, at 485. See also, Yamane, *supra* note 8, at 688.

V. Concluding Remarks

There is no doubt that Japan's aggressive legalism is here to stay.⁶⁵ This is so despite the recent enthusiasm shown by Japan for regional trade agreements. Unlike the earlier attempts in the Asia-Pacific Economic Cooperation (APEC) forum, which at times emphasized the importance of non-legalistic, "Asian" values, recent regional trade agreements Japan has entered into or is negotiating are full-fledged economic partnership agreements having free trade areas under GATT Article XXIV and regional integration agreements under GATS Article V at their cores. For instance, the Japan-Singapore Economic Partnership Agreement contains a chapter setting out very detailed dispute settlement provisions.⁶⁶ It is no less legalistic than the DSU.

The more interesting question is what lies ahead. It appears that aggressive legalism is steadily spreading into the rest of East Asia. According to Professor Ahn, Korea has become more active in asserting its rights under WTO agreements although it initially showed a strong tendency to avoid legal confrontation with its major trading partners.⁶⁷ As we have seen above, this is an experience shared by Japan. Professor Jung considers that even China has embraced the strategy of aggressive legalism.⁶⁸

Will these paths cross at some point in the future? That seems inevitable. The author would not be surprised if one day Japan files a WTO complaint against China, or Korea files a WTO complaint against Japan. If trade officials of these countries could go through the full WTO procedure without excessive politicization—just as the EC and the United States handle their transatlantic disputes in the WTO—it would indeed be a sign of the maturity of East Asia in accepting the rules-based approach to the multilateral trading system.

⁶⁵ Pekkanen, *supra* note 1, at 732.

⁶⁶ Chapter 21, *Japan-Singapore Economic Partnership Agreement*, Treaty No.14 of 2002, approved by the Diet on 8 May 2002, promulgated on 12 November 2002, entry into force 30 November 2002.

⁶⁷ Dukgeun Ahn, "Korea in the GATT/WTO Dispute Settlement System: Legal Battle for Economic Development," 6 *Journal of International Economic Law* 3 (2003) 597-631, at 630.

⁶⁸ Youngjin Jung, "China's Aggressive Legalism," 36 *Journal of World Trade* 6 (2002) 1037-1060.

Table 1. GATT cases brought against Japan⁶⁹

(28 cases on 23 distinct matters; panels were established regarding the 13 cases marked with asterisks.)

<i>Date</i>	<i>Case</i>	<i>Complainant</i>
Nov. 1961	Uruguayan Recourse to GATT Article XXIII*	Uruguay
Jan. 1964	Japan – Tariff Treatment of Sea Water Magnesite	United States
Nov. 1974	Japan – Restrictions on Imports of Beef and Veal	Australia
Jul. 1978	Japan – Measures on Imports of Thrown Silk Yarn*	United States
Jul. 1978	Japanese Measures on Imports of Leather*	United States
Oct. 1979	Japan’s Measures on Imports of Leather*	Canada
Nov. 1979	Japan – Restraints on Imports of Manufactured Tobacco from the United States*	United States
Apr. 1980	Japan – Measures on Imports of Leather	India
Oct. 1980	Japanese Measures on Edible Fats	New Zealand
Sep. 1982	Japan – Certification Procedures for Metal Softball Bats (under the Standards Code)	United States
Jan. 1983	Panel on Japanese Measures on Import of Leather*	United States
Apr. 1983	Japan – Nullification and Impairment of Benefits And Impediment to the Attainment of GATT Objectives	EC
Mar. 1984	Japan – Measures Affecting the World Market for Copper Ores and Concentrates	EC
Nov. 1984	Japan – Single Tendering Procedures (under the Government Procurement Code)	United States
Nov. 1984	Japan – Quantitative Restrictions or Measures Having Equivalent Effect Applied on Imports of Various Products	Chile
Mar. 1985	Japan – Quantitative Restrictions on Imports of Leather Footwear*	United States
Jul. 1986	Japan – Restrictions on Imports of Certain Agricultural Products*	United States

⁶⁹ These tables are reproduced from Iwasawa, *supra* note 6, at 486-487, with updates on WTO cases. Although GATT Analytical Index supposedly lists the entire cases under the GATT, actually it does not cover disputes under Tokyo Round codes. Professor Iwasawa compiled his own list based on an elaborate research of GATT documents. METI’s *Fukousei Boeki Hokokusho* (2003) contains similar lists, but it is not very helpful because it has a note saying “not exhaustive.”

Table 1 (continued)

Jul. 1986	Japan – Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*	EC
Oct. 1986	Japan – Restrictions on Imports of Herring, Pollack and Surimi	United States
Feb. 1987	Japan – Trade in Semi-Conductors*	EC
Nov. 1987	Japan – Tariff on Imports of Spruce, Pine, Fir (SPF) Dimension Lumber*	Canada
Mar. 1988	Japan – Restrictions on Imports of Beef and Citrus Products*	United States
Apr. 1988	Japan – Restrictions on Imports of Beef*	Australia
May 1988	Japan – Restrictions on Imports of Beef	New Zealand
Feb. 1991	Japan – Restrictions on Imports of Certain Agricultural Products	United States
Apr. 1991	Japan – Restrictions on Imports of Certain Agricultural Products	Australia
Aug. 1991	Japan – Restrictions on Imports of Certain Agricultural Products	New Zealand
Oct. 1994	Japan – Measures Affecting Imports of Certain Telecommunications Equipment	EC

Table 2 GATT cases initiated by Japan

(12 cases on 11 distinct matters; panels were established regarding the two cases marked with asterisks.)

<i>Date</i>	<i>Case</i>
Jul. 1960	Italian Import Restrictions
May 1977	United States – Suspension of Customs Liquidation (Zenith Case)
May 1980	United States – Tariff Measures on Light Truck Cab Chassis
Feb. 1981	Austria – Quantitative Restrictions on Imports of Japanese Video Tape Recorders
Dec. 1982	EC – Import Restrictive Measure on Video Tape Recorders
Apr. 1987	United States – Unilateral Measures on Imports of Certain Japanese Products
Jul. 1988	EC – Regulation on Imports of Parts and Components (under the Anti-Dumping Code)
Aug. 1988	EC – Regulation on Imports of Parts and Components*
Sep. 1991	Korea – Imposition of Anti-Dumping Duties on Imports of Polyacetal Resins (under the Anti-Dumping Code)
Apr. 1992	EC – Treatment of Anti-Dumping Duties as a Cost in Refund Proceedings
May 1992	EC – Anti-Dumping Proceedings in the European Community on Audio Tapes and Cassettes Originating in Japan (under the Anti-Dumping Code)*
Jun. 1993	United States – Provisional Anti-Dumping Measures against Imports of Certain Steel Flat Products (under the Anti-Dumping Code)

Table 3 WTO cases brought against Japan
 (13 cases on 10 distinct matters; panels were established regarding the four cases marked with asterisks.)

<i>Date</i>	<i>Case</i>	<i>Complainant</i>
Jun. 1995	Japan – Taxes on Alcoholic Beverages (WT/DS8)*	EC
Jul. 1995	Japan – Taxes on Alcoholic Beverages (WT/DS10)*	Canada
Jul. 1995	Japan – Taxes on Alcoholic Beverages (WT/DS11)*	United States
Aug. 1995	Japan – Measures Affecting the Purchase of Telecommunications Equipment (WT/DS15)	EC
Feb. 1996	Japan – Measures Concerning Sound Recordings (WT/DS28)	United States
May 1996	Japan – Measures Concerning Sound Recordings (WT/DS42)	EC
Jun. 1996	Japan – Measures Affecting Consumer Photographic Film and Paper (WT/DS44)*	United States
Jun. 1996	Japan – Measures Affecting Distribution Services (WT/DS45)	United States
Jan. 1997	Japan – Measures Affecting Imports of Pork (WT/DS66)	EC
Mar. 1997	Japan – Procurement of a Navigation Satellite (WT/DS73)	EC
Apr. 1997	Japan – Measures Affecting Agricultural Products (WT/DS76)*	United States
Oct. 1998	Japan – Tariff Quotas and Subsidies Affecting Leather (WT/DS147)	EC
Mar. 2002	Japan – Measures Affecting the Importation of Apples (WT/DS245)*	United States

Table 4 WTO cases initiated by Japan
 (11 cases on 10 distinct matters; panels were established regarding the eight cases marked with asterisks.)

<i>Date</i>	<i>Case</i>
May 1995	United States – Imposition of Import Duties on Automobiles from Japan under Sections 301 and 304 of the Trade Act of 1974 (WT/DS6)
Jul. 1996	Brazil – Certain Automotive Investment Measures (WT/DS51)
Oct. 1996	Indonesia – Certain Measures Affecting the Automobile Industry (WT/DS55)*
Nov. 1996	Indonesia – Certain Measures Affecting the Automobile Industry (WT/DS64)*
Jul. 1997	United States – Measure Affecting Government Procurement (WT/DS95)*
Jul. 1998	Canada – Certain Measures Affecting the Automobile Industry (WT/DS139)*
Feb. 1999	United States – Anti-Dumping Act of 1916 (WT/DS162)*
Nov. 1999	United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan (WT/DS184)*
Dec. 2000	United States – Continued Dumping and Subsidy Offset Act of 2000 (WT/DS217)*
Jan. 2002	United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan (WT/DS244)*
Mar. 2002	United States – Definitive Safeguard Measures on Imports of Certain Steel Products (WT/DS249)*