

The Congressional Agenda for Japan

Ira Wolf

Follow this and additional works at: <http://scholarship.law.cornell.edu/cilj>

 Part of the [Law Commons](#)

Recommended Citation

Wolf, Ira (1989) "The Congressional Agenda for Japan," *Cornell International Law Journal*: Vol. 22: Iss. 3, Article 11.
Available at: <http://scholarship.law.cornell.edu/cilj/vol22/iss3/11>

This Article is brought to you for free and open access by Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell International Law Journal by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

The Congressional Agenda for Japan

There is a widespread feeling in the United States that its relationship with Japan has changed in recent years. However, there is little real understanding of how that change came about, in what ways the relationship has altered, and whether it is good or bad for Japan, the United States, and the rest of the world. The anticipated congressional agenda for Japan during the first year of the 101st Congress reflects these uncertainties. It will probably address matters on an issue-by-issue basis with relatively little effort to conceptualize the broader bilateral relationship. An exception to this might be congressional oversight of implementation of the 1988 Trade Act. This *ad hoc* approach is paralleled in the Executive Branch, in media reporting and analysis, and in the general public as well. The inability and/or unwillingness of the United States to address the broader relationship puts this country at a distinct disadvantage in relation to the more strategic and comprehensive Japanese policy-making process.

This paper examines the likely congressional agenda for Japan in 1989 so that those observing the U.S.-Japan bilateral relationship will be able to appreciate better the dynamics on Capitol Hill. The discussion that follows does not attempt to deal with the issues in either a comprehensive or a balanced way. Rather, it highlights the issues and the concerns in Congress (which is, of course, not a monolithic entity). In addition, the paper's scope is not exhaustive, although it does reflect most of the major congressional concerns about Japan and mentions a few areas that could develop into problems during the current session. A further caveat: although the discussion is broken down into categories, this is merely for ease of analysis. Many of the categories overlap. Finally, the issues discussed are not organized according to their priority in Congress which would be impossible to measure.

I. Trade Statistics

The U.S. trade deficit with Japan in 1988 was \$55.4 billion dollars,¹ 7.4

* Legislative Assistant, Senator John D. Rockefeller IV.

1. This paragraph uses data from *U.S. Merchandise Trade: November 1988*, U.S. Department of Commerce News, Jan. 18, 1989, Washington, D.C. (CB 89-08, FT900, 88-11).

percent below the 1987 deficit of \$59.8 billion. The U.S. global trade deficit in 1988 was \$137.3 billion, as compared to the calendar year 1987 global trade deficit of \$170.3 billion. This is a \$33 billion reduction, a drop of 19 percent.

Few observers expect the U.S. global deficit to decline in 1989 by a similar amount, and even fewer anticipate that it will reach \$100 billion in the foreseeable future.² On the U.S.-Japan bilateral side, the declining trend of the first nine months of 1988 seems to have reversed in the fourth quarter, and there is concern that the bilateral deficit might begin to rise again in 1989.

According to Japan's customs statistics, in calendar year 1988, Japan's global trade surplus was \$77.4 billion, a decline of 2.9 percent, and its bilateral surplus with the United States fell only 8.8 percent. Ominously, in November and December, the bilateral surplus increased on a year-to-year basis after a decline in each of the previous nine months.³ Japan's global trade surplus in December 1988, reached an all-time record high.⁴ The Organization for Economic Cooperation and Development ("OECD") and the Japan Economic Research Centre both expect that the Japanese Fiscal Year ("JFY") 1989⁵ trade surplus will rise by five percent over JFY 1988,⁶ while Japan's Long Term Credit Bank is predicting an 18 percent increase.⁷

These trade statistics, of course, do not provide an accurate picture of the domestic and external economic conditions in Japan or in the United States, or of the two countries' bilateral economic relationship. Nevertheless, they are significant. As events over the past several years demonstrate, they affect the stock, bond, and foreign exchange markets. They also reflect deeper underlying problems, both domestically in each country and in bilateral and international economic relationships. For the United States, the magnitude of its continuing trade deficits has serious implications for its future standard-of-living. Accordingly, these statistics provide the backdrop for much of the congressional (and public) concern about Japan. They are among the most closely followed numbers on Capitol Hill and will remain so.

II. Trade Act

In 1988, Congress passed, and the President signed, the Omnibus

2. C. Elwell, *The Dollar and the Trade Deficit: An Update on Recent Trends, Forecasts, and Policy Options*, (Congressional Research Service Rep. No. 88693 E, Nov. 2, 1988).

3. Mark, *Japan's Surplus in Trade Grew to \$9.65 Billion*, Wall St. J., Jan. 19, 1989, A-6.

4. Jan. 18, 1989, Kyodo News Service, reported in Foreign Broadcast Information Service Daily Report—East Asia, Jan. 18, 1989, FBIS-EAS-89-011, p. 3.

5. The Japanese Fiscal Year 1989 runs from April 1, 1989 to March 31, 1990.

6. Smith, *Doomed To Success*, Far East Econ. Rev., Jan. 12, 1989, pp. 44-45.

7. Cited in *Mainichi Daily News*, Jan. 14, 1989.

Trade and Competitiveness Act of 1988,⁸ known more commonly as the 1988 Trade Act. Rather than considering major new trade legislation, the 101st Congress will concentrate on oversight of the executive branch's implementation of this law.

Many provisions of the 1988 Trade Act relate to Japan. Some require that specific action be taken toward Japan; some are "Sense of the Congress" statements directed toward Japan but requiring no action; and still others are generic in nature but have significant potential impact on Japan. Among the major provisions of direct relevance to Japan are Section 301 (unfair trade practices),⁹ the so-called "Super 301" (identifying priority practices and priority countries on which to focus trade liberalization negotiations),¹⁰ Section 337 (intellectual property rights),¹¹ Toshiba sanctions,¹² and reciprocity for dealers in primary U.S. Government securities.¹³

Of perhaps greatest interest at present is the so-called "Super 301" provision. By May 30, 1989, the United States Trade Representative ("USTR") must identify and report to Congress those major unfair trade barriers whose elimination would have the greatest potential to increase U.S. exports. The USTR must also identify priority foreign countries with the worst patterns of significant import barriers and market distorting practices. Specific Section 301 investigations must be initiated by June 20 against each barrier or practice.

"Super 301" is extremely important to many members of Congress interested in reversing the trade imbalance. An alternative to the Gephardt Amendment, which called for a yearly ten percent reduction in the bilateral trade deficit with certain countries, the implementation of "Super 301" has become a symbol, for the Congress, of the Administration's commitment to an aggressive trade policy for the United States. Super 301's genesis stems from a belief that the trade problem was exacerbated by the Reagan Administration's unwillingness to protect American interests overseas. Should the Bush Administration not implement this new provision aggressively, a distinct possibility given the hostility it has created among the anticipated "priority country" designees, there would likely be a strong reaction on Capitol Hill.

III. Direct Foreign Investment

The use of the broad term "investment" includes a number of categories, with some overlap among them. These include:

- takeovers: friendly and unfriendly

8. Pub. L. No. 100-418 102 Stat. 1107, portions printed in 28 I.L.M. 37 (Jan. 1989).

9. Pub. L. No. 100-418 §§ 1301, 1305.

10. Pub. L. No. 100-418 § 1302.

11. Pub. L. No. 100-418.

12. Pub. L. No. 100-418 § 2443.

13. Pub. L. No. 100-418 Subtitle F, Title III.

- manufacturing facilities: new ("greenfield") or existing
- government securities: bonds; Treasury bills
- other debt instruments
- services: banking, investment, etc.
- real estate
- stocks
- joint ventures: new or existing projects.

The specific issue of concern, however, is direct foreign investment (that is, investments by foreigners in companies and real estate) in the United States and the appropriate policy, if any, regarding information disclosure, registration, prior approval, or restrictions of such transactions.

Total Japanese investment in the United States is exceeded by both the British and the Dutch. British takeovers are often hostile while those by the Japanese are generally friendly; British interests acquired 400 U.S. companies in 1988 for \$32.5 billion while the Japanese spent only \$12 billion on its acquisition of U.S. companies.¹⁴ Nevertheless, Japan is likely to be the focus of this debate in 1989. Among the reasons for this are: the imbalance in the number of Japanese investments in the U.S. versus American investment in Japan; the relative ease in the former case and the continuing difficulty in the latter; the visibility of Japanese investment, especially in urban real estate; the U.S.-Japan rivalry in high technology and the use of foreign investment to enhance technological capability; and a sense that the huge yen appreciation since 1985 has somehow given the Japanese an improper advantage. Additionally, Americans perceive Japanese investment in the United States as part of the broader economic and trade problems we are experiencing.

The Congress is raising many questions. First, are there industries where foreign control is unacceptable for reasons of national security, the maintenance of the defense industrial base, or nonmilitary economic security? Second, does sufficient information exist about foreign investment to permit intelligent policy-making? Is it desirable to obtain such information? Should the information obtained from foreign investment be different than information required of domestic investors? Should there be public disclosure of such information? Third, how would changes in the way the U.S. regulates foreign investment affect current U.S. policy of encouraging other countries to reduce such regulations? Should the U.S. continue to pursue an open global investment policy where American firms desiring to invest abroad are not constrained by the U.S. government? Or should the U.S. impose foreign investment regulations on the principle of reciprocity?¹⁵

14. *British Investments in U.S. Outpace Japan's, Study Finds*, Wash. Post, January 27, 1989, at B1-B2.

15. The recent publicity over leveraged buyouts ("LBO's") is likely to make the congressional debate over foreign investment even more complicated. Japanese financial institutions, for example, have been providing a significant portion of the funding for LBO's.

Foreign investment is an emotional and complex issue for most Americans, and this has been reflected in congressional expressions of concern. On the one hand, several hundred thousand Americans are employed by Japanese businesses in the United States.¹⁶ States compete against one another with taxpayer dollars for Japanese and other foreign investments. Thirty-nine state governments have established offices in Tokyo, the major objective of which is to attract Japanese investors. On the other hand, according to a recent survey, 89 percent of the public wants foreign investors to register, 78 percent wants to limit foreign investment in the U.S., 75 percent opposes giving tax breaks to foreign investors, and 40 percent wants to prohibit any further foreign investment in this country.¹⁷

There were two main legislative proposals on foreign investment considered by the 100th Congress. One, known as the Exon-Florio provision, was eventually incorporated into the Trade Act.¹⁸ It provides the President with explicit authority to prohibit mergers, acquisitions, and takeovers if these activities by foreign investors, leading to foreign control, could threaten national security. The other, known as the Bryant Amendment,¹⁹ required foreign interests in U.S. businesses and property to register and disclose information about the investors and their American assets. This proposal, passed by the House as part of the Trade Act, was dropped during final deliberations on the bill. Senator Tom Harkin (D-IA) has already reintroduced a modified version of the Bryant Amendment in the House in the current session of Congress.²⁰

IV. Defense Burden Sharing

How should the burden of providing for the defense of the United States, its allies, and its friends be shared?

The debate on this issue will be influenced by the size of the American defense budget, the problem of the overall federal budget deficit, and the feeling (exacerbated by the publication of Paul Kennedy's *The Rise and Fall of the Great Powers*)²¹ that the United States can no longer bear the same proportion of the defense of the Free World that it has in the past. In addition, bilateral trade deficits with major American allies, especially Japan and West Germany, suggest that these allies have been able to channel resources into economically productive areas because of their lower relative expenditures on defense, while the United States has

16. According to a June 1987 survey performed by JETRO (Japan External Trade Organization), 640 Japanese-affiliated manufacturing operations in the United States reported employment of approximately 160,000 Americans. This figure expands significantly when one adds new manufacturing operations purchased or opened since then and employment by Japanese firms in the service sector.

17. *U.S. Attitudes Toward Foreign Investment*, THE Int'l Econ., 29 (May/June, 1988).

18. Pub. L. 100-418 § 5021, tit. V.

19. H.R. 5410, 100th Cong., 2d Sess. (1988).

20. S. 289, 101st Cong., 1st Sess. (1989).

21. P. KENNEDY, *THE RISE AND FALL OF THE GREAT POWERS* (1987).

suffered because of the need to put large sums into non-productive military uses (the so-called "free rider" argument).

Japanese defense expenditures will be closely scrutinized because its contribution to defense as a proportion of gross national product ("GNP") and on a per capita basis is so low when compared to most of America's other major allies (see Tables A and B for these statistics). On January 24, 1989, the Japanese Government announced its fiscal 1989 budget proposal that included a 5.9 percent increase in defense spending to 3.92 trillion yen. This means Japan will have a military budget of over \$30 billion, which is larger than any of our other allies, but still represents just 1.006 percent of Japan's GNP.

While there has been considerable rhetoric on this subject, there has also been a great deal of serious study and examination. For example, in December 1987, the House Armed Services Committee formed a Defense Burdensharing Panel chaired by Rep. Patricia Schroeder (D-CO). In 1988 this panel held 13 hearings and travelled to Japan and Europe. In its August 1988 report²² the panel asked the following questions:

[w]hy do the Japanese—whose drive and ingenuity led them from total devastation to economic superpower status in a mere 40 years—appear unwilling to assume free-world burdens at a level more commensurate with their ability to pay than they currently assume? What new roles and responsibilities should Japan take on in recognition of its economic superpower status, its constitution and its particular history still of significant concern to neighboring states in Asia?

The panel also made the point that power-sharing goes along with burden sharing, and that the United States must be prepared to allow its allies a greater role in decision-making as they pick up more of the costs. Where Japan was concerned, the panel stressed that Japan must act to fulfill its commitments to defend the Japanese Islands and major sea-lanes out to 1,000 miles.

The Defense Department authorization in the 100th Congress contained a number of provisions designed to reduce U.S. military expenditures in Japan and to have many of those costs assumed by the Japanese government. A significant controversy developed over the proposed sale of the Aegis weapons system. Opponents of the sale maintained that Japan should not only purchase the Aegis system but should also purchase from the United States the ships on which it will be carried. Supporters of the sale argued that Japan's purchase of at least two Aegis systems at a price in excess of \$500 million apiece represents a significant contribution to burden sharing, and that trying to force Japan to purchase the ships as well would jeopardize the entire sale. The latter argument prevailed, but the incident served as a precursor to further debate in the 101st Congress.

22. *Report of the Defense Burdensharing Panel of the Committee on Armed Services, House of Representatives*, 100th Cong., 2d Sess., 3 (1988).

Members of Congress who recognize Japan's difficulty in increasing its defense budget as a percentage of GNP to a level equivalent to Western European countries or the United States have focused on what has been called "comprehensive security". According to this concept, Japan can assume its proper share by significantly increasing its foreign assistance to Third World countries—especially strategically key states such as the Philippines, Turkey, Egypt, and Pakistan. It would also include Japanese efforts to help resolve Third World debt issues, opening the Japanese market to manufactured exports from the Third World, and greater contributions to the international financial institutions.

Although Japan has increased its Overseas Development Assistance ("ODA"), the combined total of defense expenditures and ODA as a percentage of GNP remains relatively small. In addition, Japan's use of ODA is mainly commercially oriented, and is not designed as part of a strategic/defense package.

V. FSX

The FSX is Japan's next generation fighter aircraft. After several years of discussion in which the United States urged Japan to purchase fighter models already in the American inventory (the F15, F16, or F18) and Japan wanted to develop a new aircraft indigenously with no foreign technology, the two countries agreed in October 1987 to joint development and production of the FSX. On January 12, 1989, the U.S. and Japan reached agreement to share the \$1.2 billion development work on the new fighter. General Dynamics will be the main American company involved and, reportedly, will have 35-40 percent share of the development work. A memorandum of understanding on actual production is to be negotiated at a later date.

Congress has several concerns about the FSX. First, is cutting-edge technology being sold at rock bottom prices—technology that will allow Japan to become an international competitor in the field of aerospace sooner than would have been possible without this agreement? Second, in light of the significant commercial implications of the arrangement, why were the Commerce Department and other government agencies concerned about U.S. technology developments and competitiveness not consulted by the Defense Department throughout this process? Third, what impact will this agreement have on the defense industrial base in the U.S.? Fourth, will the Japan-sourced technology in this project actually be transferred back to the United States? Does this technology even exist? Fifth, since this joint development and production will cost significantly more than it would have if Japan had purchased an existing fighter "off the shelf," does this mean there will be less money available in Japan to meet its other defense commitments? Finally, what type of agreement is necessary to assure that Japan's defense and security policy moves in tandem with that of the United States?

On February 2, 1989, twelve Senators wrote to the President asking him to initiate an interagency view of the FSX agreement to examine its impact on the health and competitiveness of the American aerospace industry. On February 9, 21 Senators cosponsored a resolution calling on the Executive Branch to delay, for 60 days, formal notification of the Congress of this agreement to allow time for the review.²³ The Executive Branch agreed to carry out an interagency review by March 10.

The only recourse for Congress on the FSX is to pass a resolution disapproving the sale of the technology to Japan. At present, it is unlikely that this will happen. But Congress will probably use this incident as a springboard when evaluating similar arrangements and their impact on US competitiveness in leading-edge technologies.

VI. Foreign Assistance

At the Toronto Economic Summit in June 1988, Prime Minister Takeshita announced that Japan's Official Development Assistance ("ODA") during the five year period from 1988 to 1992 would be \$50 billion, double the total for the previous five years. For the first time, Japan's ODA will this year exceed that of the United States. During most of this decade, ODA and defense expenditures have been the only two items in the Japanese budget receiving real increases. The recently announced JFY 1989 budget provides for an increase in ODA of 5.9 percent.

Although these figures appear to represent enormous increases, the rapid appreciation of the yen is a major explanation for the change. Even aside from currency appreciation, there are other criticisms of Japan's foreign assistance program. First, too much funding is in the form of credits rather than grants. Second, too much is tied and, thus, export-oriented, rather than aimed at developing the Third World countries concerned. Third, Japan mixes foreign aid with normal commercial export credits to win contracts in the Third World. Fourth, even when aid is untied, Japanese firms are integrally involved in the initial planning stages. Thus, specifications for a given project inherently favor Japanese suppliers.

Although Japan has taken measures to deal with these criticisms, the structure of the assistance program still dramatically favors Japanese industry. If the Japanese government tries to promote its foreign assistance program as one element of comprehensive security, then a fundamental realignment from commercial goals to strategic and political ones is necessary. They cannot have it both ways.

Much of the congressional focus on this issue will be in the context of the burden sharing debate.²⁴

23. S. Res. 61, 101st Cong., 1st Sess. (1989).

24. See generally Cover Story in the FAR EAST ECONOMIC REVIEW, March 10, 1988.

VII. Toshiba and Export Controls

The Toshiba Machine Tool Company²⁵ sold the Soviet Union high technology equipment that allowed the latter to reduce significantly the noise made by its submarines, thus making the task of the U.S. Navy to track those submarines much more difficult and expensive. Congress reacted vigorously with sanctions against Toshiba Machine Tool and its parent, Toshiba Corporation, and enacted these sanctions into law as part of the Omnibus Trade Act. This stemmed from a deep concern that Japan, which is such an important ally of the United States, did not have an adequate system in place to prevent the leakage of sensitive technology to the Soviets.

With the sanctions and the Japanese government's effort to tighten up its export control system, this issue appears to be over for the Congress, although there is concern that the Executive Branch did not promptly draft regulations to implement the new provisions of law. Nevertheless, many policy makers remain bitter and find it incredulous that a supposedly responsible company in Japan would be willing to jeopardize Western security in order to make a relatively small sale.

Close scrutiny of Japanese commercial interaction with the Communist bloc and radical Middle East regimes will continue. Should another event similar to the Toshiba case occur, the repercussions might be far more serious. Recent disclosures about chemical weapons factories in Libya have once again heightened interest on Capitol Hill. In that case, however, it appears that Japanese companies were innocent pawns of Libya while West German industry has much to explain.

VIII. Rice

On September 14, 1988, the Rice Millers' Association submitted a petition to the U.S. Trade Representative pursuant to Section 301 of the Trade Act of 1974.²⁶ The Association objected to the virtual ban on rice imports into Japan and requested the USTR to initiate an investigation of Japan's practices and pursue this problem at the Uruguay Round of Multilateral Trade Negotiations. The petition was rejected. USTR Clayton Yeutter explained that the issue could better be solved within the current multilateral trade negotiations.²⁷ He said that if Japan did not permit progress on this issue at the December mid-term review of the Uruguay Round, he would invite the Rice Millers' Association to resubmit the petition immediately.

Agricultural trade issues have been a principal topic of negotiation between the US and Japan for well over a decade, and rice is the remaining unresolved quota item. The December 1988 Uruguay Round mid-

25. Although a Norwegian company was also involved in this incident, this paper will limit itself to a discussion of Toshiba.

26. Trade and Tariff Act of 1974, 88 Stat. 1978, 19 U.S.C. § 2411 *et. seq.*

27. Press release from the Office of the United States Trade Representative, No. 8/66, October 28, 1988.

term review failed because of conflict between the United States and the European Community over the issue of agricultural subsidies. Ambassador Yeutter, however, was sufficiently impressed by Japan's performance that he decided not to ask the Rice Millers' Association to resubmit its petition.

At present, the direction to be followed on the rice question by new USTR Carla Hills is unknown. Opening Japan's rice market remains high on the agenda of congressional members from rice producing states. The issue is also a symbol that Japan still has a long way to go to open its markets to foreign goods.

IX. Japanese Patent System

Increasingly, congressional attention is focusing on intellectual property issues around the world. The 1988 Trade Bill includes a so-called "Special 301" procedure under which USTR must identify countries that fail to protect these rights adequately and must initiate Section 301 investigations against the most egregious offenders. Intellectual property protection is also an important part of the Uruguay Round.

There is growing concern in Congress that practices and procedures in the Japanese patent system result in unacceptable delays in the issuance of patents and, all too often, force foreign companies to enter into undesirable cross-licensing arrangements. There have already been two hearings on this subject in Senator John D. Rockefeller's (D-WV) Foreign Commerce and Tourism Subcommittee.²⁸ The patent issue is part of a broader concern in the Congress over America's ability to compete in high technology areas with Japan, and it involves many of the issues discussed in this paper.

X. Research and Development

Many items on the congressional agenda in 1989 relate to the role the federal government can play in helping industry improve its ability to compete in overseas and domestic markets. Stimulation of research on high definition television ("HDTV") and superconductors, continued efforts on semiconductor research ("SEMATECH"), and encouragement of the development of research consortia whereby private American companies can cooperate at the pre-competitive stage of the research cycle (such as currently is being done by MCC—Microelectronics and Computer Technology Corporation) are all areas of concern in part because of developments in Japan. Although they fit more under the category of domestic policy, Congress has framed and will continue to frame much of the justification for action in terms of the need to confront the competitive threat from Japan.

28. *Effect of the Japanese Patent System on American Business: Hearing before the Subcomm. on Foreign Commerce and Tourism of the Senate Committee on Commerce, Science, and Transportation*, 100th Cong., 2d Sess., June 24, 1988.

XI. Technology Flow

There is increasing concern on Capitol Hill that the flow of technology between the United States and Japan is out of balance. Throughout the post-war period, this flow has been one way, with Japan drawing upon the rest of the world and, predominantly, the United States, for its technology. According to one analyst, between 1951 and 1983, Japan entered into over 40,000 agreements for the importation of virtually all significant technology at a cost of slightly over \$17 billion,²⁹ a tremendous bargain.

There were protracted negotiations in 1987 and 1988 over the renewal of a U.S.-Japan science and technology cooperation agreement.³⁰ An important and highly visible area of contention was the openness of U.S. government laboratories to foreign researchers, compared to the lack of access by foreign scientists to Japanese government sponsored or supported research facilities and activities. The new agreement provides some access to these latter facilities, but it is too early to tell whether the Japanese will really honor their commitment and whether the United States will take advantage of these opportunities.

How this agreement is implemented and how other technology flow questions are answered will be on the agenda of the 101st Congress.

XII. Construction

A prominent Japan-related topic over the past two years was the inability of foreign companies to bid for contracts on public works—projects of the Japanese government or quasi-governmental entities. Despite the clear international competitiveness of American construction and engineering firms, they have been allowed virtually no participation in the public works sector in Japan.

Following sustained pressure from the United States, including legislation, the two countries reached an agreement providing U.S. firms access to seven major public works projects. Thus far, several American construction and engineering firms have signed relatively small contracts. Most of these were awarded only after the U.S. firms entered joint ventures with Japanese counterparts.

There are many complaints that the agreement is already a failure. Critics assert that the agreement failed to address major barriers such as the “dango”, or bid-rigging, system practiced in the Japanese construction industry. They also claim that the Japanese government appears reluctant to enforce its own antitrust laws.

Others contend that the failure of the agreement to result in more contracts is due to the lack of adequate initiative on the part of American

29. J. ABEGGLEN AND G. STALK, JR., *KAISHA—THE JAPANESE CORPORATION* 126 (1985).

30. Agreement on Cooperation in Research and Development in Science and Technology, June 20, 1988.

construction and engineering firms. To the extent that the Congress attributes the failure to problems in Japan, the construction issue will continue as a source of friction. In that event, the reaction in Congress this year will probably be even stronger, given the likely feeling that an agreement was made between the two countries but not implemented properly. There is considerable potential for acrimony.

XIII. The Japan Lobby

There is little doubt that the Japan Lobby in the United States is the largest and most effective foreign effort to influence legislation, policymaking, and public attitudes in this country.³¹ Given the open decision-making process in Washington and the presence of over 100 foreign embassies, along with representatives of thousands of foreign companies, lobbying the federal government by foreign entities has become a way of life in the nation's capital.

The massive size of the Japan Lobby,³² however, has stimulated considerable concern. Two prominent recent examples of these activities were the alleged effort, never substantiated, to influence the selection of the Undersecretary of Commerce for International Trade in early 1988³³ and the successful attempt to minimize the sanctions taken against the Toshiba Corporation. In response to these activities, the Senate Finance Committee scheduled hearings (cancelled for scheduling reasons) late in 1988 to examine lobbying efforts by Japan and other foreign governments.

Concern about the activities of the Japan Lobby was one of the reasons that the 100th Congress passed legislation to regulate post-governmental employment. Although this bill was vetoed by President Reagan, its sponsors and supporters will renew their efforts in the 101st Congress. There is little inclination to change the historically open American system. On the other hand, there is a growing concern that Japanese interests are taking improper advantage of this system.

XIV. Free Trade Agreement

Free trade agreements ("FTA") are now in place with Canada and Israel. Congress has also discussed the possibility of additional FTAs with Japan, Korea, Taiwan, and the ASEAN countries (Association of Southeast Asian Nations: Philippines, Malaysia, Thailand, Singapore, Indonesia, Brunei), as well as the concept of a North American market to include Canada and Mexico. At the request of the Senate Finance

31. See Borrus, Treece & Ehrlich, *Japan's Clout in the U.S.*, BUS. WK., July 11, 1988, at 64.

32. It must be pointed out that the Japan Lobby is not a monolithic institution but rather consists of hundreds of private companies, trade associations, and government agencies.

33. Rockwell, *Power of Japan's Trade Lobbies Raises Eyebrows in Washington*, JOURNAL OF COMM. March 4, 1988, at 1.

Committee, the U.S. International Trade Commission ("ITC") prepared a study of the possibilities of an FTA with Japan.³⁴ The ITC report did not comment on the desirability of such an arrangement, but clearly described the difficulties and complexities arising from any such accord.

It is generally recognized that an FTA similar to the U.S.-Canada FTA—that is, one focusing on tariffs and the more traditional non-tariff barriers—would not be appropriate to solve this country's trade problems with Japan. Thus, use of the term FTA in the context of Japan has become a shorthand way of expressing frustration that Japan is not taking sufficient action on trade issues, concern that present U.S. trade policy toward Japan is accomplishing little and engendering a new bitterness in the bilateral relationship, and fear that the U.S. government is simply uncoordinated in its overall approach to Japan.

Two examples of proposals pertaining to FTAs in the 100th Congress were an amendment introduced by Senator Robert C. Byrd (D-WV) for a study of possible frameworks for enhanced bilateral cooperation in the form of extensive economic and security arrangements,³⁵ and a bill introduced by Senator Max Baucus (D-MT)³⁶ relating to a series of economic and trade agreements.

There are several studies underway in Japan considering broader trade arrangements with the United States, with the Ministry of Foreign Affairs ("MOFA"), the Ministry of International Trade and Industry ("MITI"), and the Ministry of Finance ("MOF") all pursuing different directions. During Prime Minister Takeshita's January visit to Washington, Foreign Minister Uno mentioned to Secretary of State Baker the idea of a new subcabinet level committee to deal with coordination of bilateral trade policy. This would, apparently, include a mechanism for dispute settlement.

XV. Japanese View of Minority Groups

There is a perception in the United States that Japan is insensitive to minority groups, especially blacks. Widely publicized statements by former Prime Minister Nakasone and Michio Watanabe, Chairman of the Liberal Democratic Party's Policy Affairs Research Council, have served to enhance this image. There has been increasing criticism that Japanese companies locating manufacturing facilities in the United States tend to establish their plants in areas where few workers are members of minority groups. On February 10, Nissan Motor Company agreed to settle, for over \$600,000, a complaint that it was discriminating in its employment practices against minorities, women, and people over the age of forty.

34. U.S. Int'l Trade Comm., *Pros and Cons of Initiating Negotiations with Japan to Explore the Possibility of a U.S.-Japan Free Trade Area Agreement*, USITC PUB. No. 2120, Sept. 1988.

35. 134 CONG. REC. S15486-15487 (daily ed. Oct. 11, 1988).

36. S. 2692, 100th Cong., 2d Sess. Introduced Aug. 5, 1988.

The Congressional Black Caucus has expressed considerable concern about such Japanese insensitivity. Caucus Chairman Mervyn Dymally (D-CA), on October 26, 1988, proposed a code of conduct for Japanese behavior in international interracial relations. Among his eleven points are calls for Japanese firms in the United States to develop strong affirmative action programs and to increase their efforts in setting up minority-owned dealerships and franchises.³⁷

Japanese government and industry officials are increasingly concerned about this image as well as the general problem of how Japanese companies can better fit into American society. In 1988, Keidanren (the Japanese Federation of Economic Associations) established a special committee, the Council for Better Investment in the United States, chaired by Sony Corporation President Akio Morita, to address this broader question.

XVI. South Africa

There has been growing concern in Congress over the last few years about the level of Japan's trade with South Africa. In 1986, Japan replaced the United States as South Africa's largest trading partner, although recent statistics indicate that West Germany may have had the questionable honor of being number one in 1988.

Individual members of Congress as well as the Black Caucus have criticized Japan for undermining American efforts to change South Africa's apartheid policy through economic sanctions. Should new anti-apartheid legislation be introduced in the 101st Congress, it might include measures for punitive action to be taken against countries whose companies have benefited from the American sanctions by stepping up their trade with South Africa.

The Japanese government is embarrassed by its increased trade with South Africa, and has called for self-restraint by Japanese industries and corporations. Although the 1988 statistics indicate that this might have had some effect, congressional concern is likely to continue.

XVII. Arab Embargo

The anti-boycott provisions of the Export Administration Act prohibit U.S. individuals and companies from refusing to do business with others because of foreign boycotts.³⁸ Americans are required to report receipt of restrictive trade practice or boycott requests. On the other hand, Japanese industries and corporations, for the most part, have honored the Arab trade embargo of Israel, while using indirect means of exporting to Israel.³⁹ Although there has been little mention of this issue in

37. Green, *Congressman Proposes Code of Conduct for Japan*, JAPAN ECON. INST. REP. No. 42B, 7-9 (Nov. 4, 1988).

38. Export Administration Act, 50 U.S.C. app., § 2401 *et seq.* (1982).

39. Stern, *Israeli Trade Ban Gets Airing But Little Action*, Japan Econ. J., Jan. 2 & 9, 1988, at 14.

the Congress, it is a matter that could, under certain circumstances, become a problem.

XVIII. Wild Card

Two years ago, no one could have predicted that a major issue in the 100th Congress would be the Toshiba case. The U.S.-Japan relationship is so broad and complex that a similarly unforeseeable issue could become a major focus.

Table A Per Capita Defense Expenditures, 1986 (In U.S. Dollars)

Country	Per Capita Defense Expenditures
United States	1,155
NATO Allies	318
Belgium	346
Canada	308
Denmark	322
France	511
Germany	453
Greece	232
Italy	235
Luxembourg	145
Netherlands	365
Norway	519
Portugal	90
Spain	113
Turkey	53
United Kingdom	488
Other Allies	137
Australia	673
Japan	163
New Zealand	610
Philippines	9
South Korea	121
Thailand	30

SOURCES: NATO Press Service, *Financial and Economic Data Related to NATO Defense* (Dec. 1987), and INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES, *THE MILITARY BALANCE 1987-1988* (1987) (for defense expenditures); INTERNATIONAL MONETARY FUND, *INTERNATIONAL FINANCIAL STATISTICS YEARBOOK* (1987) (for exchange rates and population).

Table B Defense and Economic Assistance Combined, in Percentages of Gross Domestic Product, 1986

Country	Defense Expenditures	Economic Assistance	Combined Expenditures	Index of Effort (U.S. - 100)
United States	6.7	0.2	6.9	100
NATO Allies				
Belgium	3.0	0.5	3.4	50
Canada	2.2	0.5	2.6	38
Denmark	2.0	0.8	2.9	41
France	3.9	0.7	4.6	67
Germany	3.1	0.4	3.5	51
Greece	6.1	—	6.1	88
Italy	2.2	0.4	2.6	38
Luxembourg	0.9	—	0.9	14
Netherlands	3.0	1.0	4.0	58
Norway	3.1	1.1	4.3	62
Portugal	3.2	—	3.2	47
Spain ^a	2.0	—	2.0	28
Turkey	4.8	—	4.8	69
United Kingdom	5.0	0.3	5.3	77
Non-U.S. NATO				
Weighted Avg. ^b	3.3	0.5	3.7	54
Japan ^a	1.0	0.3	1.3	19

SOURCES: Congressional Budget Office computations using data from NATO Press Service, Financial and Economic Data Related to NATO Defense (Dec. 1987) (for defense expenditures); data for gross domestic product from INTERNATIONAL MONETARY FUND, INTERNATIONAL FINANCIAL STATISTICS (Jan. 1988) and ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, DEVELOPMENT ASSISTANCE (Dec. 1987).

NOTES: Detail may not add to totals because of rounding. Dashes indicate that country does not provide economic assistance.

a. Defense expenditures for Spain and Japan use the national, not NATO, definition as reported in INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES, THE MILITARY BALANCE 1987-1988 (London: IISS, 1987).

b. Using 1986 gross domestic product shares.

