

5-1-1989

## Presentation Made at the Trade Bill Conference Brigham University Law School on January 14, 1989

Shunji Yanai

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>



Part of the [International Law Commons](#), and the [International Trade Law Commons](#)

---

### Recommended Citation

Shunji Yanai, *Presentation Made at the Trade Bill Conference Brigham University Law School on January 14, 1989*, 1989 BYU L. Rev. 507 (1989).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol1989/iss2/10>

This Article is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

Presentation Made at the Trade Bill Conference  
Brigham Young University Law School  
on January 14, 1989

*Consul General Shunji Yanai\**

I. INTRODUCTION

In this article, I would like to express my candid views on the Omnibus Trade and Competitive Act of 1988 (Trade Act), reflecting the Japanese perspective. Before attacking specifics, however, I wish to make a few general observations concerning three important points: (1) the present state of the bilateral trade relations between Japan and the United States; (2) the approach taken by the authors of the 1988 Trade Act to address the current U.S. trade deficit, and (3) the future implementation of this law.

A. *Present State of Trade Relations Between Japan and the United States*

Of all the various aspects of the present Japan-U.S. relations, the trade imbalance still casts a continuing shadow over our bilateral relations. The United States ran a \$60 billion trade deficit with Japan in 1987, while its total trade deficit was \$170 billion. I can well understand the frustrations felt by many Americans over this huge deficit.

We should, however, take into consideration a few basic facts when we talk about the trade imbalance between our two countries. While Japan is known to be a major exporter, it is also a large importer. In 1988, Japan imported a total of approximately \$187 billion in goods from throughout the world, of which 22% came from the United States. For many years, Japan has been the largest importer in the world of American agricultural products. In fiscal year 1987, for example, Japan purchased 20% of all the agricultural products exported from the United States.

---

\* Consul General, Consulate General of Japan, San Francisco, California.

As to the causes of both the U.S. trade deficit with its major trade partners and Japan's surpluses, certain myths should be dispelled so that we have an objective picture of the present situation. In this connection, I have read several interesting analyses. One is a report published by U.S. General Accounting Office in April, 1987. This report says, in part, the following:

Changes in the macro-economic policies of the United States led to the increase in the U.S. trade deficit . . . . The strong dollar accounted for between 50% and 60% of the increase in the U.S. trade deficit since 1980, the relatively strong U.S. economy for between 15% and 25%, the Latin American debt problem for between 10% and 20%, and other factors for about 5% . . . . Because most foreign barriers have been in place for many years, they cannot account for the staggering increase in the U.S. trade deficit since 1980.

Allow me to make a few comments on this analysis. I understand that "the Latin American debt problem" means, in the trade context, the loss of traditional U.S. export markets in Latin America due to debt problems in that hemisphere. This analysis considers "foreign barriers," which are often alleged as the "major cause," to be one of the other "factors accounting" in total for only 5%. Among such "other factors," I would add the following factor as a strong structural aspect in the U.S. trade deficit: When the dollar was strong, many American manufacturers relocated their factories abroad. As a result, these American manufacturers are now forced to import their own products from their overseas factories.

Another analysis I would like to refer to is the Weekly Letter dated September 23, 1988 of the Federal Reserve Bank of San Francisco which deals with "Japan's Trade Surpluses." With respect to Japan's remaining trade barriers and the trade imbalance, it says as follows:

[C]ontrary to popular opinion, the level of protectionism in Japan actually has decreased in the last several years even as Japan's surpluses have risen. Thus, although further reductions in Japan's barriers to U.S. exports may be desirable, the explanation for the emergence of Japan's surplus lies elsewhere. This Letter suggests that Japan's trade surpluses are a reflection of macro-economic imbalances in saving and investment between Japan and its trading partners. Therefore, the reduction of Japan's trade surpluses hinges on adjustment of domes-

tic and foreign saving and investment behavior rather than on reductions in bilateral trade barriers.

This letter puts more importance on the imbalances in saving and investment between Japan and its trading partners, including the United States, and concludes that "in fact, there are signs that such adjustments [of saving and investment behavior] already are occurring" both in Japan and the United States.

I have dwelt at some length on various causes of U.S.-Japan trade imbalances, or America's global deficit and Japan's global surplus, in order to illustrate that such causes are multifarious. The remaining import restrictions of the trade partners of the United States, which seem to be the main subject of the Trade Act, are not the major cause of the trade deficit of the United States. It is not my intention to challenge the legitimacy of the United States' efforts to bring down the import barriers of its trade partners, or to deny the necessity for Japan to make further efforts to reduce its trade restrictions that remain.<sup>1</sup>

*B. Approach Taken by the 1988 Trade Act to Address the Current U.S. Trade Deficit*

As far as trade barriers are concerned, the question arises as to whether or not the making of an elaborate and mandatory legal framework is the best way for the United States to reduce the trade restrictions of its partners. Clearly, the positive side of the Act is that it authorizes the executive branch to enter into bilateral and multilateral trade negotiations, including the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), aimed at reducing tariff and non-tariff barriers. An-

---

1. Regarding the stereotyped image that Japan uses high tariffs and quotas as barriers to imports, the following information should be understood.

As a result of several multilateral and bilateral trade negotiations, as well as unilateral liberalization measures Japan has taken of its own accord, Japan has reduced tariff and non-tariff barriers to a minimum. As far as residual import quota items are concerned, 23 items are still subject to such restrictions—22 of them being agricultural products and one being a mining product, coal.

As to the agricultural quotas, I have already suggested that liberalization schedules have been agreed upon with respect to some of these agricultural products through bilateral or multilateral negotiations. This will reduce the number of agricultural products under residual import restrictions to 13 by 1992.

In terms of the ratio of tariff revenue to total imports, Japan's average ratio was the lowest among those of the industrialized nations in 1986. Japan's 2.6 percent ratio must be contrasted with the 3.7 percent ratio of Canada, the 3.3 percent ratio of the United States, and the 2.7 percent ratio of the European Common Market.

other positive aspect of the Act is its provisions aimed at strengthening America's long-term competitiveness. But, on the other hand, the Act contains a number of provisions which seem to be inflexible and sometimes punitive and retaliatory. From my twenty-eight years experience in the foreign service, I firmly believe that trade negotiators should be given ample discretion rather than rigid and mandatory instructions in order for them to cope with varied realities and changing circumstances. It should also be added that retaliations often invite retaliations from trade partners and thereby constrict the scope of economic exchanges.

### *C. Future Implementation of the 1988 Trade Act*

Now that the Omnibus Trade Act is enacted, the manner in which it will be implemented becomes extremely important. The Trade Act should be implemented on the basis of the objective, accurate and updated assessment of trade realities and issues. In the case of U.S.-Japan trade relations, I earnestly hope that the United States will fully take into account the recent development made while the Trade Bill was discussed.

It is gratifying to note that some very important difficulties in the area of market access were settled last year. In February 1988, for instance, Japan accepted a GATT recommendation that it remove import quotas on eight agricultural products. This recommendation was accepted in the face of serious opposition from Japanese agriculture. In March, Japan and the United States found an amicable solution to the construction issue. In this connection, I am glad to note that last November a nine-company consortium including Schal Associates Inc. of Chicago won a \$150 million contract to build a six story international convention center and a thirty-two story hotel in Yokohama as part of a city sponsored development project. In late June 1988, the two governments reached agreement on a liberalized schedule of beef and citrus imports from the United States to Japan. Each of these agreements constitutes important breakthroughs and represents hopeful signs for the future.

We are glad to note that such measures as currency realignment, the restructuring of the Japanese economy, and the improvement of market access have already produced positive results. In 1987 the total amount of imports into Japan from the world increased by 18.3%. We had more encouraging figures in 1988, as Japan's total imports increased by 25.4%. In 1988, Ja-

pan increased its imports from the U.S. by an astonishing 33%. In addition, imports into Japan of manufactured products from the United States showed a sharp increase by 33% in 1988. The high appreciation of Yen is the most important cause of this import boom, but this boom has also been encouraged by such developments as the expansion of domestic demand in Japan and the promotion of imports to the country. These up-to-date developments and statistics speak for themselves regarding the opportunities that await American companies in the Japanese market.

## II. SPECIFIC PROVISIONS IN THE TRADE ACT

Let me turn to some specific provisions contained in the Trade Act. It must be admitted that improvements were made by deleting or modifying outrightly protectionist provisions from earlier drafts, but the Act as enacted still contains a number of problematic provisions. Our major concerns relate to the following three areas.

### A. *Super "301"*

The first area of concern is the "Super 301" provision which provides for the unilateral identification of "priority practices" in a "priority country." The utmost caution is called for in implementing this provision in order to avoid the danger of treating a foreign country as if it were inherently "unfair." No country should be considered "unfair" based on the unilateral judgment of the United States without first taking into account such relevant causes of trade imbalance as the macro-economic policies of both the United States and the foreign country concerned, exchange rates, the balance between saving and spending, world market conditions, and so forth. In judging the trade practices of foreign countries, very careful attention should be given to the liberalization measures they have taken, and to international efforts for the elimination of tariff and non-tariff barriers, particularly the progress of the ongoing Uruguay Round of trade negotiations. If a unilateral and confrontational approach were to be taken under this provision, international efforts for liberalization would be discouraged, and in the worst case, this would invite retaliation from other countries. We therefore strongly urge the U.S. Government to apply this provi-

sion with the maximum caution and in accordance with international agreements, particularly the GATT.

I understand that the USTR is now preparing the "National Trade Estimate Report on Foreign Trade Barriers" to be issued by April 1989. Since this report will form a crucial basis for the implementation of "Super 301," we earnestly hope that it will fully reflect the positive developments in the Japan-U.S. economic relations.

### B. *Objectionable Sanctions*

We also find the provision on "sanctions" against Toshiba and other foreign companies objectionable. We deeply regret that these provisions were retained in the final text of the Trade Act, despite our repeated objections and the efforts made by the U.S. Administration. We object to these provisions for the following reasons.

First, these provisions run counter to the established COCOM principle that each member country has the responsibility to enforce its own export control.

The provisions also impose "sanctions" against Toshiba Corporation which is the parent company of Toshiba Machine Company. It was Toshiba Machine Company that was implicated in the diversion case against COCOM with Kongsberg of Norway, and not the parent company, Toshiba Corporation, which is an independent entity. The provisions punish the innocent parent company that did not violate export control regulations.

Furthermore, the "sanctions" provided for in the Trade Act are imposed on Toshiba Machine Company and Toshiba Corporation, *ex post facto*, or retroactively, which is in contravention of the established principles of law.

Moreover, immediately after the diversion incident was uncovered, both the Government and the private sector of Japan took various measures to strengthen the export control systems. For example, in 1987, Japan amended its "Foreign Exchange and Foreign Trade Control Law" to explicitly stipulate "international peace and security" as a rationale for export control, as well as to impose tougher penalties for better deterrence (for example, maximum prison terms are increased from 3 to 5 years), and to provide for better enforcement. In addition, the Government of Japan took various administration measures to

strengthen the export control, and the private sector also improved its own control procedures.

The U.S. Government appreciated such efforts made by the Japanese, but regrettably the above-mentioned problematic provisions were retained in the Trade Act. It is tantamount to rewarding such efforts with punishment. We earnestly hope that the U.S. Government fully takes into consideration our concerns referred to above when it applies these provisions.

### *C. Section 337*

Section 337 of the Tariff Act of 1930 contains problematic provisions, because it does not provide ample opportunities for counter argument by foreign defendants. Under the Trade Act, the elimination of the injury test and the shortening of the time period for the determination of a temporary exclusion order by the ITC will accelerate Section 337 petitions more than ever. Adding these factors to the existing problems under the old Section 337, we believe that imported goods will be treated in a discriminatory and unfavorable manner compared to U.S. products. Therefore, our Government strongly hopes that the Act will be applied in a prudent manner so that foreign defendants will be granted relief measures in cases where no violation is found in the investigation.

We are also concerned about a number of other provisions. Among them are the shipping provisions, the investment provisions, the revised Section 201, the introduction of import fee to help trade adjustment, the telecommunications provisions, the steel imports provision, and the modification of the anti-dumping and countervailing duties provision. With respect to the liberalization of financial and capital market, progress has been made through consultations between our two governments, and the primary dealer provision of the Act should not discourage such efforts.

We are not the only one concerned about certain provisions in the Act. President Reagan himself referred to some problematic provisions in the Bill when he signed it into law. He stated in his remarks to the Port of Long Beach Harbor employees and guests as follows:

Let me be plain—that there are some things in this bill I don't like. It is possible this bill could lead to an import fee that would be illegal according to international law and inconsistent with our goal of moving toward free world trade. Its language



claims to require the Executive Branch to negotiate with foreign countries on certain specified trade topics. And that's inconsistent with our constitutional principles.

I strongly hope that the U.S. Government will implement the Act with due consideration to our concerns on these provisions.

### III. PROGRESS IN WORLD ECONOMIC EXPANSION AND JAPAN-U.S. ECONOMIC RELATIONS

I would like to say a few more words about the progress made in several areas for the sustained world economic expansion and the better balance of international economic exchanges including Japan-U.S. economic relations. We are aware of the growing concern of the Americans over the United States' global trade deficit and bilateral trade imbalance with Japan. We are equally concerned about this problem.

As I said earlier, we resolved last year a number of major economic and trade issues between the United States and Japan including improved U.S. access to the Japanese market in such areas as imports of beef, citrus, and other agricultural products, and the participation of American construction companies in public works projects in Japan.

In addition, we have been successfully pursuing macro-economic policies for bringing about the structural change of the Japanese economy so that its growth depends on the expansion of domestic demand instead of exports. As a result, in fiscal year 1988, which will end in March 1989, the Japanese GNP is estimated to expand by 4.9%. Domestic demand should increase at a rate of 6.6%, and this should offset a 1.6% decline in exports. This economic expansion, led by strong domestic demand, reduced Japan's global trade surplus by 10% in the January-September period in 1988 as compared to the same period in 1987. We expect that this pattern of growth will continue in 1989.

Furthermore, it should be noted that Japan has been participating very actively in currency realignment. Since the "Plaza Accord" three years ago, the Japanese Yen has been reevaluated to reach the level of 125 Yen to the dollar from about 240 Yen to the dollar. If you go to Japan you will quickly discover how expensive the Yen has become. This is a painful realignment for us, since the revaluation of the Yen has the effect of reducing the price competitiveness of Japanese products in the world

markets. It also means that American products have become more competitive in the Japanese market since the Yen appreciation of nearly 50% has the equivalent effect of a 50% tariff reduction.

Let me make a few comments on the mid-term review conference of the Uruguay Round which was held last December in Montreal. Although agreement was not reached on four issues—namely agriculture, intellectual property, textile and safeguard—significant progress was made in eleven areas including tropical products, dispute settlement procedure, the strengthening of the GATT, tariff reduction, as well as the framework for future negotiations on service and trade related investment which are the new areas of negotiations. The present round of multilateral negotiations deals with important issues such as agriculture, service, and intellectual property which have been hitherto left outside the arena of multilateral negotiations, in addition to the traditional areas of tariff and non-tariff barriers. Therefore the road of the Uruguay Round will not be smooth, but what we will be able to gain from this ambitious round of negotiations will be all the greater. We should not spare our efforts for the success of the Uruguay Round, which is indispensable to prevent protectionism, and to maintain and strengthen the multilateral free trading system as we approach the Twenty-first Century.

Finally, I would like to touch briefly upon the expansion of Japan's official development assistance (ODA) which is one of the three pillars of Japan's International Cooperation Initiative announced by Prime Minister Takeshita last year. Responding to the high expectations of the world for Japan, and despite serious budgetary constraints, Japan has rapidly increased its ODA in recent years. As a result of such increases, we can be expected to match or even surpass the United States and thus to eventually become the world's largest donor of ODA. Our new medium-term targets call for a total of \$50 billion in ODA over the five years from 1988 to 1992.<sup>2</sup> This mobilization of Japanese surpluses will contribute to world economic growth, particularly in

---

2. In January 1989, the Government of Japan prepared Fiscal Year 1989 ODA budget amounting to 755.7 billion Yen (approximately \$6 billion) which is 7.8 percent larger than that of Fiscal Year 1988 (April 1988—March 1989). This will be presented to the Diet (parliament) for its approval. Japanese economic assistance to developing countries is extended in the forms of grant capital assistance, technical cooperation and concessional loans.

developing countries and also to the striking of a better balance in the world economy.

#### IV. CONCLUSION

In conclusion, I would like to express my sincere hope once again that the United States will implement the Trade Act with utmost caution, and in accordance with international law, bearing in mind the various causes of trade imbalance I have briefly cited and the progress being made in bilateral and multilateral economic relations. I hope that the United States uses caution so that the potentially protectionist provisions of the Trade Act will not frustrate the positive developments of international economic relations. Our economies are faced with difficult challenges, but protectionism is not the answer.