

## Santa Clara Law School Summer Program

### Public Regulation of International Trade in Japan (Revised Version: 2018)

Mitsuo Matsushita

#### 1. Constitutional framework of international trade regulation

- Articles 22 and 29 of the Constitution
- The COCOM Case

[Exhibit 1] Mitsuo Matsushita, “The Constitution and the Freedom of Business Activities”, in Mitsuo Matsushita: *International Trade and Competition Law in Japan* (Oxford University Press, 1993), pp. 14-27

#### 2. International trade agreements and domestic economic regulations

- Treaty-making powers
- Article 98-2 of the Constitution
- The Nishijin Necktie Case
- The Pork Tariff Case

[Exhibit 2] Mitsuo Matsushita, “International Trade Agreements”, in Mitsuo Matsushita: *International Trade and Competition Law in Japan* (Oxford University Press, 1993), pp. 27-43

[Exhibit 2-1] Decision of Tokyo High Court (Prosecutor v. X), November 27, 2013, *Japanese Year Book of International Law*, Vol. 58, 2015, pp. 437-440; Pork Tariff in Japan

#### 3. Forms of regulatory systems

- Basic laws
- Master plan by the government
- Utilization of private associations
- Licensing of business activities
- Administrative guidance

[Exhibit 3] Mitsuo Matsushita, “Different Regulatory Methods”, “Administrative Guidance”, in Mitsuo Matsushita: *International Trade and Competition Law in Japan* (Oxford University Press, 1993), pp. 43-73

[Exhibit 3-1] Mitsuo Matsushita, “Re: ANA Antitrust Issues” (an affidavit)

#### 4. Major laws relating to international trade regulation

- Export control laws
- Import control laws
- Foreign exchange and investment laws
- Antitrust laws
- Government procurement laws

[Exhibit 4] Mitsuo Matsushita, “Customs, trade regulations and trade remedies in Japan”, pp. 1-11

[Exhibit 4-1] Nobuo Nakata and Koki Yamada”, Japan, *Foreign Investment Review* 2014, pp. 60-63

[Exhibit 5] Noboru Kashiwagi, “Foreign direct investment, public order and national security: Lessons from the case of J Power”, University of Tokyo Journal of Law and Politics, Vol. 6 (Spring 2009), pp. 45-55

[Exhibit 6] Mitsuo Matsushita, “An Overview of the Antimonopoly Law”, in Mitsuo Matsushita, *International Trade and Competition Law in Japan* (Oxford University Press, 1993), pp. 86-99

[Exhibit 7] Tokyo District Court Judgment, 22 March 1988 (Japan v. Toshiba Machinery Co.), in *The Japanese Annual of International Law*, No. 31, 1988, pp. 206-211

[Exhibit 8] Akinori Uesugi & Kaori Yamada, Japan, *Merger Control 2016*, pp. 236-241 (merger filing and control)

[Exhibit 9] Mitsuo Matsushita, “Major WTO Dispute Cases Concerning Government Procurement, *AJWH*, Vol. 1, pp. 299-315.

## 5. Intellectual property rights and international trade

- Parallel importation of genuine trademarked goods
- The Parker Fountain Pen Case (trademark)
- The Fred Perry Case (trademark)
- The BBS Case (patent)
- The CONVERSE Trademark Infringement Case
- Antitrust implications of blocking parallel importation
- Patent and territorial principle

[Exhibit 10] Mitsuo Matsushita, “Issues Regarding Parallel Importation of Trademarked and patented Products and Competition Policy in Japan”, in Petros Mavriodis & Thomas Cottier (ed): *Intellectual Property, Trade, Competition and Sustainable Development* (University of Michigan Press, 2003), pp. 189-198

[Exhibit 11] Judgment of February 27, 1970, Osaka District Court, in *The Japanese Annual of International Law*, No. 16, 1972, pp. 113-135

[Exhibit 12] Judgment of February 27, 2003, Supreme Court, in *The Japanese Annual of International Law*, No. 47, 2004, pp. 209-211

[Exhibit 13] Judgment of July 7, 1997, Supreme Court, (BBS, Inc. v. Racim Japan), in *The Japanese Annual of International Law*, No. 41, 1998, pp. 100-103

[Exhibit 13-1] Supplemental Teaching Materials (1), pp. 1-3

[Exhibit 13-2] Supplemental Teaching Materials (2), pp. 4-12

## 6. Interplay and conflict of U.S. and Japanese regulations

- Recognition and enforcement of U.S. decisions awarding multiple damage in Japanese courts
- The U.S. 1916 Antidumping Act and Japanese blocking and clawback law
- Applicable law on employment contract

[Exhibit 14] Judgment of July 11, 1997, Supreme Court (Northcon v. Mansei Kogyo Co.), in *The Japanese Annual of International Law*, No. 41, 1998, pp. 104-109

[Exhibit 15] Mitsuo Matsushita and Aya Iino, “The Blocking Legislation as a Countermeasure to the U.S. Anti-Dumping Act of 1916. A Comparative Analysis of the EC and Japanese damage Recovery Legislation”, *Journal of World Trade*, Vol. 40, No. 4, August 2006, pp. 753-776

[Exhibit 15-1] Private International Law-Labor Contract-Although personal services agreement between American pilot and American Air Service Company stipulates U.S. law, where services were rendered by employees in and employee was dismissed in Japan, as a matter of public policy the contract and the effect of dismissal will be interpreted according to Japanese law, *The Japanese Annual of International Law*, No. 10 (1966), pp. 1889-196

## **7. U.S./Japan antitrust disputes**

- Matsushita Electric Industrial Company et al v. Zenith Radio Corp.
- The Tanner Crab Case
- The Daishowa Case
- The Fax Paper Case
- The TV Tubes Case
- The Empagran Case

[Exhibit 16] *Matsushita Electric Industrial Co., Ltd., et al v. Zenith Radio Corporation et al*, 1986 Trade Cases P67, 004 See also *Zenith Radio Corp. v. Matsushita Elec. Ind. Co.*, 505 F. Supp. 1125 (ED. Pa. 1980)

[Exhibit 17] *United States v. C. Itoh & Co., Ltd. et al*, 1982-83 Trade Cases P 65-10 (U.S./D./C., WD. Washington (Oct. 20, 1982); Yusaf H. Akabar: *Global Antitrust-Trade and Competition Linkages* (Ashgate Publishing Co., 2003), pp. 39-74

[Exhibit 17-1] Mitsuo Matsushita, “Alaskan Tanner Crab Investigation” (An affidavit)

[Exhibit 18] Cheryl R. Adler, “Daishowa International v. North Coast Export: An

Alternative Approach in the Judicial Balancing of International Comity Considerations”, *Law and Policy in International Business*, Vol. 15, p. 613 et seq (1983)

[Exhibit 19] Abbe Gluck “Preserving Per Se”, *Yale Law Journal*, Vol. 108, p. 915 et seq (1998-99).

[Exhibit 19-1] Supplemental Teaching Materials (3), pp. 13-15 The Samsung Case (JFTC), the Motorola Case (US), the Innolux Case (EU) and Diagram of the cases

[Exhibit 19-2] Supplemental Teaching materials (4), pp. 16-29

[Exhibit 19-3] CR Tube Case: JFTC Decision

[Exhibit 19-4] Tadashi Shiraishi, “Customer Location and the International Reach of National Competition Laws”, *Japanese Yearbook of International Law*, Vol. 59 2016, 202-215

## **8. U.S./Japan disputes at the WTO**

- An overview of the WTO and its dispute settlement procedures
- Japan/Alcohol
- Japan/Film
- Japan/Apple I
- Japan/Apple II
- U.S./ 1916 Act
- U.S./ Byrd Amendment
- U.S./Facts Available: Arm’s Length Transactions
- U.S./Steel Safeguards
- U.S./Zeroing

[Exhibit 20] Industrial Structure Council, METI, Japan: *2007 Report on Compliance by Major Trading Partners with Trade Agreements-WTO, FTA/EPA and BIT*, pp. 247-258

[Exhibit 21] *Japan-Taxes on Alcoholic Beverages*

[Exhibit 22] *Japan-Measures Affecting Consumer Photographic Film and Paper*

[Exhibit 23] *Japan-Measures Affecting Agricultural Products*

[Exhibit 24] *Japan-Measures Affecting the Importation of Apples*

[Exhibit 25] *United States-Anti-Dumping Act of 1916*

[Exhibit 26] *United States-Continued Dumping and Subsidy Offset Act of 2000*

[Exhibit 27] *United States-Anti-Dumping Measures on Certain Hot-Rolled Steel  
Products from Japan*

[Exhibit 28] *United States-Definitive Safeguard Measures on Imports of Certain  
Steel Products*

[Exhibit 29] *United States-Measures Relating to Zeroing and Sunset Reviews*