

国際化検討会（第 4 回）提出資料

米国通商代表部「外国貿易障壁報告書（2002年）」について

平成 14 年 4 月 11 日
外 務 省

- 1 . 外国貿易障壁報告書は、米国通商代表部（USTR）が、74年通商法に基づき毎年議会に対して提出することとされている米国の貿易相手国の政策、慣行等に関する報告書。本年についても、2日、2002年版同報告書が発表された。
- 2 . 本件報告書に言及される項目は、米国の貿易相手国に対する関心を過去の経緯とともに包括的に示すものであり、我が国に対し何らかの措置をとることを前提としたものではない。
しかしながら、同報告書においては、我が国に関する記述につき事実関係や内容等につき正確ではない点も見られることから、こうした点につき然るべく検討の上、迅速に反論する予定である。
- 3 . 尚、報告書全体は USTR ホームページ www.ustr.gov にて閲覧可能である。

（了）

(仮訳)

2002年外国貿易障壁評価報告書 (抄)

9 . サービス障壁 (p.234)

(2) 自由職業サービス (p.236)

日本では、法令、規制及び商慣行が複雑に絡み合い、外国企業及び個人による専門分野サービスの提供が妨げられている。米国の自由職業サービスは極めて競争力があり、輸出品としてのみならず、日本市場への他のサービスや製品を輸出する米国業界のアクセスを促進する手段としても重要である。加えて、米国の自由職業サービスは国際市場における広い経験から得た貴重な専門知識を提供し、経済革新を刺激する。これらサービスの利用可能性が、米国企業が日本での投資を決定する際の鍵となる要素であり、日本における外国直接投資の環境改善の要である。

(イ) 会計監査サービス . . . 略

(ロ) 法律サービス

米国弁護士は、1970年代以来日本における法律サービス市場へのアクセスの拡大、及び日本弁護士との提携の完全自由化を求めてきた。しかし、日本弁護士連合会の強い反対と日本の官僚が消極的であることが、この目的を妨害している。1987年以来、外国弁護士は「外国法事務弁護士」(以下「外弁」とする)として日本国内において事務所を設立し、自国法に関する助言を与えることが認められているが、「外国弁護士による法律事務の取扱いに関する特別措置法」により制限が加えられている。

日本は、外国弁護士に関する規制のいくつかを自由化しているが、日本における国際的法律サービス分野での構造的欠陥である、日本弁護士と外弁との間に認められる関係についての厳しい制限は依然として残されている。2001年10月に日本政府に提出した規制改革イニシアティブの米側要望書で、米国は、日本と外国の弁護士の提携の自由に対する禁止の撤廃が最優先課題であることを明らかにし、日本政府が、対等の法律専門職としての日本と外国の弁護士に、顧客の必要に最も合致した提携の形式を自ら選択することを認めるように求めた。また米国は、1995年に日本弁護士と外国弁護士に、パートナーシップ形成を認めることの代替として認めた「特定共同事業」が弁護士と外国法事務弁護士との間の効果的なチームワークに必要な枠組みを与えておらず、同制度の更なる修正も日本における法律家のニーズを満たすものではないこと

を強調した。

米国はまた、外国弁護士が、日本弁護士を雇用すること、いわゆる「第三国法」(外国弁護士の出身国以外の国の法律)について日本の弁護士と同じ条件で助言を与えること、及び、専門職法人、LLP(有限責任パートナーシップ)、LLC(有限責任コーポレーション)を設立することを認めるよう日本に対し求めた。さらに、米国は、日本における外国弁護士への規制を改善するとともに、日弁連及び強制加入団体である各単位弁護士会が外弁に影響を与える全ての法律及び規則の改正及び施行に際し、彼らに効果的な参加の機会を与えるよう日本政府に求めた。

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Agency is transformed to a public corporation in 2003. The United States made several recommendations on how this transition should occur in its October 2001 recommendations to Japan under the Regulatory Reform Initiative. These included: increasing transparency in the Japanese Government's plans for the public corporation; prohibiting the postal financial institutions (*kampo* and *yucho*) from underwriting any new insurance products or originating any new non-principal-guaranteed investment products; and subjecting the postal financial institutions to the same standards of regulation as their private sector counterparts. As any modification to this system could have significant impact on competition in the Japanese insurance market, the U.S. Government also strongly urged that any decisions related to the future of the postal financial institutions, including possible privatization, be made and implemented in an open and transparent manner.

Discussions between the United States and Japan under the Regulatory Reform Initiative continue. The next annual consultations under the bilateral insurance agreements will be held in 2002, at which time the United States anticipates a full discussion of a wide range of issues.

Professional Services

The ability of foreign firms and individuals to provide professional services in Japan is hampered by a complex network of legal, regulatory and commercial practice barriers. U.S. professional services providers are highly competitive and their services are important, not only as U.S. exports, but as vehicles to facilitate access for U.S. exporters of other services and goods to the Japanese market. Moreover, U.S. services professionals often can contribute valuable expertise gained from broad experience in international markets and stimulate innovations for the economies they serve. Availability of such services can be a key factor in U.S. firms

making decisions to invest in Japan, and thus is central to improving the environment for FDI in Japan.

Accounting and Auditing Services: U.S. providers of accounting and auditing services face a series of regulatory and market access barriers in Japan which impede their ability to serve this important market. Regulated accounting services may be provided only by individuals qualified as Certified Public Accountants (CPAs) under Japanese law or by an Audit Corporation (composed of five or more partners who are Japanese CPAs). To qualify as a CPA, a foreign accountant must pass a special examination for foreigners in order to obtain a professional certification. This examination was last offered in 1975. CPAs must also be registered as members of the Japanese Institute of Certified Public Accountants and pay membership fees.

Only individuals who are Japanese CPAs can establish, own or serve as directors of Audit Corporations. An Audit Corporation may employ foreign CPAs as staff, but foreign CPAs are not allowed to conduct audit activities. Furthermore, an Audit Corporation may engage in a partnership/association relationship with foreign CPAs only if the partnership/association does not provide audit services. Audit Corporations are prohibited from providing tax-related services, although the same individual may perform both functions as long as totally separate offices are maintained. Establishment is required for Audit Corporations, but not for firms supplying accountancy services other than audits. Branches and subsidiaries of foreign firms are not authorized to provide regulated accounting services. Nor can a foreign firm practice under its internationally recognized name; its official firm name must be in Japanese and is subject to approval by the Japanese Institute of Certified Public Accountants. The

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United States will continue to urge Japan to remove these restrictions.

Legal Services: U.S. lawyers have sought greater access to Japan's legal services market and full freedom of association with Japanese lawyers (*bengoshi*) since the 1970s. However, strong opposition from the Japan Federation of Bar Associations (*Nichibenren*) and a reluctant Japanese bureaucracy have largely thwarted this objective. Since 1987, Japan has allowed foreign lawyers to establish offices and advise on matters concerning the law of their home jurisdictions in Japan as foreign legal consultants (*gaikokuho-jimu-bengoshi* or *gaiben*), subject to restrictions in the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers (Law No. 66 of 1986, as amended, i.e. the Foreign Lawyers Law).

While Japan has liberalized several restrictions on foreign lawyers, the most critical structural deficiency in Japan's international legal services sector remains the severe limitations on the relationships permitted among Japanese lawyers and registered foreign legal consultants. In its October 2001 submission to Japan under the Regulatory Reform Initiative, the United States made the elimination of all prohibitions against freedom of association between Japanese and foreign lawyers a top priority and has urged the Japanese government to allow Japanese and foreign lawyers, as equal legal professionals, to determine their own forms of association that will enable them to best serve their clients' needs. The United States also emphasized that the "specified joint enterprises" (*tokutei kyodo jigyo*) system, which Japan established in 1995 instead of allowing *bengoshi* and foreign lawyers to form partnerships, does not provide the framework needed for effective teamwork between *bengoshi* and *gaiben*; nor will further adjustments of that system meet the needs of lawyers in Japan.

The United States also recommended that Japan allow foreign lawyers to hire Japanese lawyers, to provide advice on so-called "third country" law (that is, the law of a country other than the one that is a foreign lawyer's home jurisdiction) on the same basis as Japanese lawyers, and to establish professional corporations, limited liability partnerships (LLPs) and limited liability corporations. The United States also recommended improvements in Japan's foreign lawyers regulatory system, and specifically asked the Japanese government to ensure that the *Nichibenren* and the mandatory local bar associations provide *gaiben* with effective opportunities to participate in the development and enforcement of all laws and rules that affect them.

INVESTMENT BARRIERS

Despite being the world's second largest economy, Japan continues to have the lowest inward FDI as a proportion of total output of any major OECD nation. In 2000, Japan's total cumulative stock of FDI totaled only 1.1 percent of GDP, compared with 12.5 percent for the United States and 29 percent for the United Kingdom. FDI in Japan has been rising rapidly, albeit from a small base, up 300 percent in JFY 2000 from the previous year's level. In JFY 2000, high growth sectors were banking and insurance, and telecommunications. However, FDI sharply declined in the first half of JFY 2001, down 18.7 percent from the previous year. U.S. direct investment for this period plunged 33.1 percent, but still accounted for 28.7 percent of all FDI in Japan. By contrast, European FDI in Japan increased significantly, and constituted 58.7 percentage of total investment for the period.

Although most direct legal restrictions on FDI have been eliminated, bureaucratic obstacles remain, including the occasional discriminatory use of bureaucratic discretion. While Japan's