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The Fairness Debate in U.S.-Japan Economic Relations

日米経済関係に 於ける公平論争

Roger Benjamin, Loren Yager,
Michael Shires, Mark Peterson

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The research described in this report was conducted in RAND's Center for U.S.-Japan Relations. The Center's research is supported by Boeing Commercial Airplane Group, Citicorp, The Ford Foundation, Hitachi, IBM-Japan, C. Itoh, Kawasaki Heavy Industries, Kobe Steel, John and Mary Markle Foundation, Minebea, Motorola, Nomura Research Institute, Toshiba, United Airlines, and Xerox.

Library of Congress Cataloging in Publication Data

The fairness debate in U.S.-Japan economic relations / Roger Benjamin . . .
[et al.].

p. cm.

"Prepared for the Center for U.S.-Japan Relations."

"R-4100-CUSJR."

ISBN 0-8330-1178-2

1. United States—Foreign economic relations—Japan. 2. Japan—
Foreign economic relations—United States. I. Benjamin, Roger W.
II. Kokusai Daigaku (Yamato-machi, Niigata-ken, Japan). Nichi-Bei
Kankei Kenkyūjo.

HF1456.5.J3F34 1991

337.73052—dc20

91-29314

CIP

The RAND Publication Series: The Report is the principal publication documenting and transmitting RAND's major research findings and final research results. The RAND Note reports other outputs of sponsored research for general distribution. Publications of RAND do not necessarily reflect the opinions or policies of the sponsors of RAND research.

R-4100-CUSJR

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Accession For	
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DTIC TAB	<input type="checkbox"/>
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92 7 27 254

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- Foster increased understanding in government, business, the media, and among the larger publics of key issues and problems affecting U.S.-Japan relations.
- Provide "early warning" of potential conflicts and misunderstandings, and thereby forestall or alleviate them.
- Provide U.S. and Japanese policymakers in both the public and private sectors with research findings that will help formulate policies to guide the relationship between the two countries.

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Funding support for the Center is provided by Boeing Commercial Airplane Group, Citicorp, The Ford Foundation, Hitachi, IBM-Japan, C. Itoh, Kawasaki Heavy Industries, Kobe Steel, John and Mary Markle Foundation, Minebea, Motorola, Nomura Research Institute, Toshiba, United Airlines, and Xerox.

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PREFACE

This report examines the charges and countercharges in the debate over fairness and equity in U.S.-Japan relations. The study assesses various dimensions of the "fairness issue" and the degree to which economic factors are responsible for the controversies. The report also summarizes efforts to resolve specific disputes. The study is part of a project on Fairness and Equity in U.S.-Japan Business and Government Relations, sponsored by the RAND Center for U.S.-Japan Relations.

The study is designed to stimulate dialogue on an important public policy issue facing Japan and the United States. The report should be of interest to public and private groups in Japan and the United States concerned with the U.S.-Japan relationship.

SUMMARY

The increasing economic interdependence between Japan and the United States constitutes an important and generally positive development in the global economic system. The greater availability of investment capital, joint ventures between Japanese and American corporations, and higher quality goods and services have benefited citizens of both societies. Nevertheless, charges and countercharges about unfairness in bilateral economic relations appear to be a growing threat to the U.S.—Japan relationship. The stakes cannot be overstated. The two countries account for nearly two-fifths of the world's gross national product. The NichiBei (Japan/American) economy will remain one of the main engines of global economic growth for the foreseeable future; any developments that threaten to undermine it would have enormous consequences for the future of the international economy.

There is substantial confusion and misunderstanding about what Japanese and Americans mean by "fairness." Fairness disputes between Americans and Japanese involve one or more of three common elements: equality of treatment, respect of individual rights, and due process. Japanese and Americans, living in radically different social and cultural contexts, interpret these common elements differently; the result is confusion and conflict. Americans frequently argue for a form of equal treatment called reciprocal treatment—that they should be treated in Japan the same way the Japanese are treated in the United States. The Japanese typically respond that American businessmen in Japan are treated the same way Japanese businessmen in Japan are treated. This is a form of equal treatment labeled national treatment. There also appear to be differences in the way most Japanese and Americans treat the concept of rights and the concept of procedural fairness.

This report uses comparative material collected in Japan and the United States to assess the extent of fairness grievances, the relationship of these concerns to economic factors, and the ways in which the concerns are being addressed. The report also summarizes the main Japanese and American fairness concerns and arguments. We employ four sources of information: a content analysis of major newspapers in Japan and the United States, litigation involving Japanese and American corporations, histories of disputes, and evidence on the most prevalent arguments of both sides.

The newspaper content and litigation analyses indicate that unfairness grievances increased substantially throughout the 1980s. U.S. fairness grievances, as measured by the content analysis, appear to correlate with the U.S. bilateral trade deficit with Japan. However, grievances at the industry level do not appear to be simply a function of the size or the change in the bilateral deficit in those industries. Other factors—such as a trend toward disputes in high-technology industries and issues relating to foreign investment—appear to be increasing in importance.

U.S. fairness grievances tend to be expressed as specific claims about economic matters, whereas Japanese fairness grievances emphasize American interference in their domestic politics and economy. Neither side agrees on the nature—and therefore the cause—of the problem. The United States argues that Japan is not an open economy, that Japan accords neither reciprocal nor national treatment to foreign businesses. The Japanese view U.S. macroeconomic policy failure as the principal cause of the fairness dispute. There is reputable economic evidence for both positions. This lack of agreement between the parties in the dispute has led to the current impasse.

This report offers various possible implications and suggests that the situation is urgent and requires attention by policymakers in both countries. Given the intractability of the dispute documented in this study, we join policy analysts who predict a negative policy spiral in both countries. The probable policy direction is what might be called patchwork protectionism—an increase in VRAs (voluntary restraint agreements) and more formal trade and investment barriers. The fairness issue is serious and enduring; the question is not whether the issue will soon decline but how leaders will deal with it.

概 要

日米間に日々増大しつつある経済的相互依存が世界的経済機構の発展に重要な役割を担って積極的な貢献をしている。より多額の投資資本の有効性、日米企業間のジョイント・ベンチャー、及びより高品質の物資とサービスにより、両国市民は恩恵を受けて来ている。それにもかかわらず、両者間の経済関係の不公平さに関する非難・反撃があとを断たず、日米関係を脅かす重大なガンになりつつある。その危険性は、誇張しすぎることはない。全世界の国民総生産の殆ど5分の2までが、この2国によって占められており、日米経済は、子見可能な将来に於いて、世界経済成長の主要な源動力の一つとなり続けるであろう。それを阻害しかねないいかなる事態の進展も、国際経済の将来にとって、重大な結果をもたらすであろう。「公平な扱い」という表現のもつ意味が日本人・米国人の間で大きく混乱し、誤解を招いている。日米間の公平論争は、平等待遇、個人の権利尊重、及び正当な手続きという三つの共通要素のうち、一つ又はそれ以上のものに関係している。根本的に異なった社会的・文化的状況下で生活している日本人と米国人は、これらの共通要素を異なったレベルで解釈する。その結果が混乱、又論争となって現われているのである。米国人は、しばしば、相互的（互惠的）待遇と称される平等待遇の形態を問題にする。すなわち、自分達は、日本人が、米国で享受しているのと同様の取り扱いを受けるべきであると。それに対する日本人の典型的な反応は、日本にいる米国人のビジネスマンは、日本にいる日本人のビジネスマンが受けるのと同じ取り扱いを享受しているというものだ。これは、国家待遇と言われる平等待遇の形態である。更に、大多数の日本人と米国人の間では権利の概念と手続き上の公平性という概念の取り扱い方に相違があるように見受けられる。

本紙では、日本と米国で収集された比較資料を用いて、公平性に関する苦情の範囲、これら苦情と経済的要素との関係、及び当苦情の処理方法を評価する。又同時に、日米それぞれの主な苦情とそれらに対する論議も概略して検討する。その情報出典となっているのは次の4点である：(1)日米で発行されている主要新聞記事の内容分析、(2)日米企業が関与している訴訟、(3)紛争の経緯、及び(4)両国で最も広く用いられている論議の証拠。

新聞記事の内容と訴訟例を分析した結果から、不公平苦情が1980年代を通じて著しく増加した事実が明らかになった。内容分析により判断されているように、米国側の公平性苦情は、米国の対日貿易赤字の額と関連しているように思われる。しかしながら、産業レベルでの苦情は、それら産業に於ける両者間の貿易赤字のサイズ、又は変化に起因すると簡単に片付けられないものがあるようだ。すなわち、ハイテク産業間での論争傾向や外国投資に関する問題等の他の要素がその重要性を増しているように思われる。

米国側の公平性苦情が、経済問題上の特定のクレームとして表明される傾向にあるのに反して、日本側の公平性苦情は、米国が日本国内の政治経済に干渉しているという見方に重点を置いている。いずれの側も、問題の本質、従って原因に関して、意見が一致していない。米国側は、日本が、解放経済を実行しておらず、外国企業に、互恵的待遇も国家的待遇も許していないと主張する。日本側は、米国のマクロ経済政策の失敗が公平性論争の第一原因であるという見方を固持している。これら両者の立場は、定評のある経済的証拠で裏付けられる。このように、両者の言い分に合意点が得られないことが現在の行き詰まりの原因となっている。

本紙は、現状から考察し得るいくつかの裏面に漂っている含蓄を提唱し、又、事態の緊急性ならびに両国の政策担当者による配慮の必要性を示唆する。本研究で実証づけられている論争の相互作用性を前提とすれば、否定的な政策が両国で螺旋状に進行して行くことを予測する政策分析家に同意せざるを得ない。政策が、いわゆる寄せ集めの保護貿易主義、V R A（自主的通商制限合意）の増大、及びより形式的な貿易（通商）と投資障壁という方向に向かう蓋然性が多分にある。公平性問題は重大かつ恒久的性格をもつ課題であり、要は、この問題がすぐ減退するかどうかではなく、国家のリーダー達がいかにそれに対処するかである。

ACKNOWLEDGMENTS

Many people assisted in the preparation of this report. Numerous colleagues contributed during the early stages of the project. Deborah Hensler, Leland Johnson, and Jonathan Pollack provided valuable comments on an earlier draft. Terence Dunworth and Nicholas Pace assisted in the analysis of the RAND Federal District Court Database. Kevin Terpstra completed the review of U.S. newspapers and other scholarly sources used in preparation of the content analysis. We would like to thank Joan Schlimgen for conducting the computer-based content analysis of American newspapers.

We also thank our Japanese colleagues, Professor Hidetake Aizawa, Tsukuba University, and Professor Minoru Nakazato, Hitsubashi University, for undertaking the computer-based content analysis of Japanese newspapers and reviewing Japanese data sources.

Charles Wolf and David Lyon gave support and encouragement throughout the project.

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1. INTRODUCTION

BACKGROUND

Fairness and equity in U.S.–Japan relations is the label frequently used in the policy debate over economic tensions between the United States and Japan. The policy debate emerged in the late 1970s when the long-established American steel and automobile firms first faced formidable economic challenges from Japanese competitors. Japanese success in these industries was followed in the 1980s by increasing Japanese success in the U.S. market for semiconductors to go along with earlier comparable successes in consumer electronics. By the end of the 1980s, Japan appeared ready to challenge U.S. dominance of supercomputers and related high-technology areas such as telecommunications. Did the Japanese possess superior organization, technology, or lower-cost capital? Or did the success result from government aid to industries or unfair business practices?

The discourse itself is not an academic debate. The charges and countercharges over economic unfairness are rooted in conditions of real as well as imagined injury. However, perhaps because Japanese and Americans live in such different social and cultural contexts, there is substantial confusion and conflict over the meaning and principal explanation of the fairness debate. Indeed, the 1988 seminal Japanese work on the subject, *Kokusai Seisaku Chosakai* (Cultural Confusion in the NichiBei Economy—Differences in National Perceptions of “Fairness”),¹ emphasizes the cultural underpinnings of the disputes. In contrast, this report focuses on the economic conflicts between the two countries. We investigate whether unfairness grievances are largely a function of growing economic interdependence between the two countries. With increased economic interdependence—U.S.–Japan total trade grew, in nominal terms, from \$45 billion to \$145 billion between 1980 and 1989—come new constraints and opportunities. The opportunities are, of course, considerable. The large number of joint ventures attest to the potential benefits of Japanese and American corporations working together—sharing capital, organization and marketing strategies, and markets.

¹The authors of the work equate equity with fairness, as do other studies on the subject. Hence, we shall use fairness and unfairness to mean equity. We will also use grievance as a generic category for terms such as concerns, disputes, claims, and complaints.

Consumers also benefit from a greater choice of products. However, with the benefits of increased economic interdependence come increased costs, and rarely are the costs and benefits distributed equally. Although there are new opportunities for some U.S. corporations and industries, other firms and industries suffer decline and dislocation. Workers in declining industries, which may be concentrated in particular regions, may see their jobs and opportunities disappear. These changes in turn disturb political and cultural interests; as a result, domestic interests voice fairness grievances. The focus of this study is on domestic reactions to the effects of increasing international interdependence.

A DEFINITION OF FAIRNESS

The definition of fairness is crucial to understanding and addressing the issues. Are Japanese and Americans talking about the same concept when they raise issues of fairness? Does fairness have a special meaning when it is applied to commercial and economic relations, particularly in the context of multinational commerce? Are complaints about fairness that appear in the media or that are raised by political leaders the same as grievances by parties to specific disputes about fairness?

The U.S.—Japan debate over fairness in economic relations does not take place in a vacuum. Historically, the concept of fairness has assumed pride of place in all of the world's religions and ethical codes. Aristotle's *Nicomachean Ethics* emphasizes that "right conduct is to be equated with behaving toward others as you would have them behave toward you." The familiar Christian rendering is "to do unto others as you would have them do unto you" (Matthew 5, 43). The *Analects of Confucius*, the *Koran*, and the teachings of Buddha feature similar imperatives for humans to act fairly toward fellow human beings, friends or strangers.²

In this report we concentrate largely on fairness in *economic* relations because it is clear that the U.S.—Japan fairness debate is related to the increased economic interdependence of the 1980s. This does not mean that we are uninterested in fairness grievances in other domains. For example, the debate over defense burden sharing presents a number of comparable political problems. Stereotyping of the other

²The reason for the dramatic growth of fairness grievances in advanced industrial societies in recent decades is outside the scope of this study. See Inglehart (1990). For a political economy interpretation of this increased emphasis on equality of treatment, see Benjamin (1980).

country or racist characterizations of the other country's conduct also find their way into the fairness discourse. Such non-economic fairness grievances, although highly important, warrant independent treatment in separate studies.

A definition of fairness in U.S.-Japan economic relations consists of three fundamental elements: (1) equal treatment, (2) respect of rights (i.e., legitimate expectations), and (3) due process. Actual disputes usually involve one or more of these three elements. Americans, for example, assert that intellectual property rights should be protected according to proprietary controls, and that these rights are not respected by Japanese competitors. Japanese argue that the American designation of Japan as a violator of the Super 301 clause of the Omnibus Trade and Competitiveness Act for unfair trading practices violates any reasonable interpretation of due process requirements. Implicit in each of these disputes is the notion that equal treatment is also being violated. In the first case, the complaint is based on the idea that U.S. firms offer such protections, and these protections are not offered in Japan. In the Japanese complaint, the dispute implies that the Japanese would not have such a designation if they had been accorded due process.

Therefore, disputes and statements of grievances about fairness by Japanese or Americans are most often couched in terms of equal treatment, the first of the three elements. However, there are varying interpretations of equal treatment. Americans most often argue for *reciprocal treatment*, that is, Americans should be able to operate by the same rules in Japan that Japanese are granted in the United States. The Japanese frequently respond that American businessmen in Japan are treated the same way as Japanese businessmen. This form of equal treatment is labeled *national treatment*. Under such conditions, it should not be surprising that both sides argue past each other; they use different definitions of fairness.³

³Reciprocal and national versions of equal treatment are subcategories of the concept of equality, from which equal treatment is derived. John Rawls, for example, asserts that individuals or agents who benefit from a common good, and who have the capacity to contribute, should help pay for the good; they are obligated to contribute to the provision of goods from which they benefit. Individuals who fail to pay their fair share are commonly censured. The problem is that there is always room for interpretation over what a fair share comprises. See Rawls (1971), p. 79. Rawls, among other writers, also distinguishes between a number of types of proportional equality. For example, if taxes are to be raised, most people would agree that it is fair that those individuals with the greatest resources should be assessed a higher share of the tax burden than those individuals with fewer resources. These and a variety of related issues dealing with compensatory versions of fairness will not be addressed here because they do not bear centrally on fairness concerns in U.S.-Japan economic relations.

Japanese and Americans also challenge each other's assertion about the extent of unfairness under its own "standard" (reciprocal vs. national) of fairness. For example, the president of a major Japanese computer firm decries the American emphasis on reciprocity as hypocritical: "Japan may seem to be closed to foreign countries from outside, but the United States also seems to be closed for Japan. In the case of the supercomputer, Japan cannot put Japanese-made supercomputers into the official government organizations of the United States at all."⁴ Conversely, a vice president of an American firm observes, "It's true that Japanese manufacturers tell us not to hesitate to sell products. But it's difficult for foreign manufacturers to succeed in Japanese markets because in Japan designers of semi-finished products have to be involved in the product development teams."⁵ This allegation, if verified, is an example of a nontariff barrier that prevents foreigners from receiving national treatment.

Additional contradictions producing further confusion and conflict can develop. The United States recently deviated from its emphasis on reciprocal treatment when the Department of the Treasury asked the Japanese government to allow American banks to operate in Japan on the same basis as their Japanese counterparts. This is a request for national treatment so that U.S. banks in Japan would be able to operate as national banks without regard to prefectural boundaries. However, the Department of Treasury request makes no mention of changing rules regarding the way Japanese banks can operate in the United States. Japanese banks, as is true for their American counterparts, are restricted from operating freely across all 50 states. Japanese banks would continue to receive national treatment in the United States rather than be allowed reciprocal treatment.⁶

STUDY OBJECTIVES

The debate over fairness may have effects on the long-term viability of the U.S.-Japan relationship. Government and business leaders in Japan and the United States are concerned that the charges and countercharges over economic tensions appear to be growing in volume and intensity. This growth may lead to a negative climate in which miscalculations by leaders on either side of the Pacific would result in unfortunate consequences for the two nations. Potential negative consequences range from implementation of the Super 301

⁴*Asahi Shimbun*, June 10, 1988.

⁵*Asahi Shimbun*, May 10, 1989.

⁶U.S. Department of the Treasury (1990), pp. 207-224.

clause in the 1988 Omnibus Trade and Competitiveness Act that specific industries be targeted for bilateral trade restrictions to worry over possible congressional calls for revision or dissolution of the U.S.-Japan Security Treaty. The underlying fear is that economic tensions, exacerbated by the fairness debate, will lead to political disengagement of the two countries and the problems that would produce. Such potentially serious consequences make the issue of fairness a high priority for policy research. It is essential to establish the nature and extent of the fairness debate. For that purpose, this report will address five key questions:

- How extensive is bilateral concern about unfairness?
 - as indicated by media articles
 - as indicated by litigation rates
- Are fairness grievances a result of the U.S. trade deficit with Japan?
- Is the locus of grievances changing?
- Do grounds of the fairness debate differ by country?
- Is there evidence to support both sides?

To answer these questions, we assembled a variety of data about economic relations between the United States and Japan. To address the first question, we undertook a newspaper content analysis to determine the prominence of these issues in the print media. Litigation rates between American and Japanese firms in U.S. federal courts provide insight into the role of one particular institution in addressing fairness grievances. The newspaper content analysis was also used to address the possible linkage between the U.S. trade deficit and perceptions of unfairness. Studies of industry-level disputes are used to address the remaining questions.

The fairness debate is an extremely complex problem. Because there has been virtually no research on the topic, the purpose of our research is to describe the extent and nature of economic fairness grievances. We have assembled a combination of quantitative and qualitative evidence that is relevant to the issue and made some observations based on this evidence. However, this set of evidence is only one "slice" at the topic, and other information might provide a different perspective. We are also aware of the comparative social, political, and cultural dimensions of the issue.

The next section of the report describes the information sources and methods used to address the research questions. Section 3 presents our research findings for the five research questions. Section 4 presents the conclusions of the study and their implications.

2. METHODOLOGY, MEASUREMENT, AND DATA ANALYSIS

It has been clear for some time that the U.S.-Japan economic relationship is undergoing fundamental transformation. As one author states,

To survive the transition both sides must endeavor to manage the real conflicts of interests, exorcise the imaginary ones, and abandon "bashing" and brooding in favor of more constructive forms of pressure and persuasion.¹

Unfortunately, it is not easy to distinguish between real and imaginary conflicts of interest. Conflicts might be considered "real" as a result of frequent mention in the media. Corporate and political institutions define a conflict as real on the basis of a variety of understandings of what constitutes a legitimate conflict. As a result, a number of sources can be used to assess the meaning and import of the fairness debate. U.S. and Japanese opinion polls about trade-related problems are useful since they represent the broadest possible reflection of views on the fairness debate. The polls indicate an increasing concern in the United States over the economic relations between the two countries, with a significant decline in favorable ratings of Japan by Americans and vice versa.² When leaders from government, academia, labor, and the media were interviewed, a strong majority (79.5 percent) thought Japan had an unfair trade policy. A majority also thought the economic power of Japan was a greater threat to the United States than the military power of the Soviet Union.³ However, these opinion polls provide merely a backdrop to more focused concerns about economic fairness grievances.

Through their actions or statements, a number of institutions indicate the number of fairness conflicts. Legislation in the Diet and Congress on trade matters is a measure of fairness disputes, as is the number of antidumping petitions to the International Trade Commission or complaints to the General Agreement on Tariffs and Trade (GATT). Presidential and prime ministerial statements and

¹Frost (1987), p. 153.

²A recent CBS (Columbia Broadcasting System)-TBS (Tokyo Broadcasting System) poll documents the decline in good will in the United States toward Japan from 87 percent in 1985 to 67 percent in 1990. In comparison, in Japan a favorable rating of the United States declined from 86 percent in 1985 to 58 percent in 1990.

³The survey findings are from the Louis Harris Poll (1990).

discussions provide a different indication of the level of "real" fairness complaints. However, these measures do not allow explicit comparison between Japanese and American data sources.

To study the fairness debate comparatively and systematically, we have developed three sources of data. The first is a content analysis of U.S. and Japanese media for the period from 1980 through 1990. This provides a broad measure of the debate based on the idea that the debate is real if there is a high level of concern. The second is based on the litigation rates of U.S. and Japanese businesses in U.S. courts for the last 15 years. In this case, these disputes were defined as real within the context of a particular institution. Finally, we have assembled media articles regarding disputes between the United States and Japan and attempted to identify the underlying issues.

We have also incorporated other sources of data, including economic statistics regarding trade and investment between the two countries. In addition, we collected data regarding prices in the two countries, since these are commonly used in U.S. fairness grievances. Similarly, we gathered data regarding the macroeconomic situation in the United States, since these often are used in support of Japanese responses. Each of these sources of data and how the data are used in this analysis are described below.

We incorporated a variety of data sources because there are strengths and weaknesses attached to each data source. Content analysis of newspapers generates quantitative information about media reports of allegations or perceptions of unfairness, but not the phenomenon itself. Litigation involving U.S. and Japanese firms may reflect narrow economic fairness questions. Neither the content analysis nor litigation trends reflect the complexity of fairness disputes. Analysis of particular disputes, captured by the media, permit a deeper understanding of fairness grievances in the two countries, but generalizations based on information about particular disputes are suspect.

The outside data sources are incomplete. The results of the U.S.-Japan price survey must be interpreted cautiously. Assumptions about the relationship between bilateral trade patterns and the volume of fairness references must be examined. Finally, these data sources are used to study the dimensions of the fairness debate in the U.S.-Japan economic relationship. Confidence in the findings will be strengthened by comparisons including other advanced industrial countries.

NEWSPAPER CONTENT ANALYSIS

The content analysis involved an on-line, full-text search of Japanese and American newspapers for articles relating to the issue of fairness in the U.S.–Japan relationship to ascertain the magnitude of the U.S.–Japan fairness debate in the public arena. A brief description of the methodology for the media content analysis is given below. For a more detailed description of the methodology, see App. A.

Development of Keywords

The content analysis was based on keywords that indicate grievances about fairness. The list of keywords was developed in a two-stage process. First, a large number of newspaper, magazine, and other primary sources were assembled over a six-month period. The articles were then reviewed to determine both the nature of the arguments involved and the types of wording used in the discussions. The articles included both American and Japanese publications. This informal analysis indicated that the focus of most of the articles was on the U.S.–Japan economic relationship—especially the trade component. This finding led us to focus on the economic aspects of the fairness dispute.

The second stage of the keyword selection process was to review the findings of the general literature search and to prepare a list of keywords that could be used for the systematic analysis of the newspapers. The keywords used in the media content analysis were culled from those identified in the first stage on the basis of their clarity in capturing a dimension of the fairness debate. The list of keywords generated is presented in Table 2.1.

The word list for the Japanese media search was developed in collaboration with Japanese colleagues.⁴ They found that the Japanese media typically used a vocabulary comparable with that of the Americans in their treatment of the fairness debate. The Japanese use the same vocabulary primarily because the fairness debate and the language describing it was initiated in the United States. The vocabulary has no Japanese counterpart so the Japanese use it for purposes of rebuttal. The word list used in the Japanese newspaper search is shown in Table 2.2.

⁴Professor Hidetake Aizawa, Tsukuba University, and Professor Minoru Nakazato, Hitotsubashi University, conducted the content analysis of the Japanese newspapers. They did not participate in the writing of the results and are not responsible for the interpretations offered here.

Table 2.1**Content Analysis: Keywords**

unfairness	fair
inequitable	equity
unequal	balanced
violate	two-way street
infringement	level playing field
threat	openness
intrude	access
intrusion	sanctions
collusion	preference
high-handed	protectionist
arrogance	barrier
predatory	dump
meddle	quotas
scapegoat	unilateral
interference	subsidize
unbalance	subsidy
friction	subsidies
free ride	nationalist
dictate	closed
racist	exclusion
domestic	exclude

Table 2.2**Content Analysis:
Japanese Keywords**

kosei	sogo-shugi
kohei	byodo
fukohei	seisai
fukosei	tokkei-kansei
fubyodo	hogo-shugi
ihan	hogo-boeki
shingai	shoheki
kyoi	danpingu
shinnyu	wariate
kyobo	ippo-teki
koatsu-teki	hojo
go man	hojokin
ryakudatsu	kokka-shugi
kansho	heisa-teki
sukeipugo to	hajjo
fukinko	naisei-kansho
masatsu	haiseki
furi raida	shijo-kaiho
meirei	akusesu
jinshu-sabetsu	jiyu-boeki

Article Selection

Two newspapers, the *Nihon Keizai Shimbun* and the *New York Times*, were available on computer data bases for a 10-year period from 1980 to 1989, so we used these papers for the 10-year comparisons.

The search was performed using on-line searches of the full-text versions of the newspapers for each year they were available. An article had to meet three criteria to be identified as relating to fairness. These criteria were:

- The article included a national reference to either Japan (American analysis) or the United States (Japanese analysis)
- The article contained a reference to trade or investment
- The article contained at least one word from the keyword lists.⁵

A additional review of primary sources enabled selection of articles according to certain broad groupings of industries.

LITIGATION RATES

Litigation rates between U.S. and Japanese firms represent our second measure of unfairness. Litigation offers a means to redress advantages that are seen as unfairly gained. Lawsuits are legal attempts to address fairness complaints.⁶ This is true even though some proportion of litigation between U.S. and Japanese corporations may be used as a strategic business tool and thus should be seen as part of the corporate environment. Since the Japanese have not historically held written contracts as important as have their American counterparts, this may be a source of litigation as well. Nonetheless, the fact that these actions are being taken is a measure of fairness

⁵An article was counted only once in the tallies, no matter how many of the keywords it contained.

⁶It would be useful to demonstrate increased or decreased rates of change in our litigation measures. It would also be useful to compare litigation rates with trade and investment trends at both the macro and industry levels. In this report, we compare civil and criminal litigation changes over time and U.S. and Japanese civil litigation rates. Both litigation involving U.S. and Japanese firms and Fortune 500 firms are part of a sharp overall increase in U.S. federal district court civil litigation from 1950 to 1986. Over this 36-year period, civil cases increased by 367 percent (54,622 to 254,828), while criminal filings increased only 7 percent (37,720 to 40,427) over the same period. See Dungworth and Pace (1990). Although the question of why civil litigation has increased is outside the scope of this report, the subject is germane to our topic. Litigation appears to increasingly be a primary policy instrument used to address a variety of fairness issues in the contemporary American state. For a survey of the issues involved, see the essays in Caporaso (ed.) (1989) and Krasner (1984).

disputes.⁷ Our litigation data are from the RAND Federal Court Data Base.⁸

The U.S. federal trial courts have original jurisdiction involving all cases where the U.S. government is a party, where questions involving federal law arise, and in all cases involving "diversity of citizenship," by which is meant cases involving parties in two or more states and in disputes involving Americans and foreign individuals, corporations, and governments. In contrast to state and local courts, federal courts are generally considered less parochial as well as better equipped to handle complex issues and higher stakes. We therefore believe that most litigation concerning foreign business entities takes place in the federal courts. Trends regarding disputes between U.S. and Japanese corporations can be best observed and measured in this context.

DISPUTE ANALYSIS

To examine fairness grievances in greater depth, we studied a small number of actual disputes. Disputes are economic conflicts between U.S. and Japanese corporations, industries, or the two governments in which allegations of unfairness are raised. Analysis of these disputes provides an understanding of perceptions of fairness grievances in both countries. Moreover, the disputes give a clearer sense of the circumstances that lead to fairness grievances.

We examined newspapers from both countries to identify American unfairness charges, Japanese responses, and Japanese-initiated grievances. Japanese material was drawn from the *Yomiuri Shimbun*, *Asahi Shimbun*, and *Nihon Keizai Shimbun*. On the American side, we surveyed a larger set of newspapers over a longer time period, and primarily used the *New York Times*, the *Wall Street Journal*, and the *Los Angeles Times*. We then selected prominent disputes and analyzed a wide range of concurrent newspaper articles from these Japanese and American publications in addition to discussions in other newspapers and in scholarly journals. For each dispute, we organized the information into the categories shown in Table 2.3.

⁷Litigation may produce negative effects, such as defensive reactions. Parties to litigation may harden their positions, making resolution more difficult. Moreover, litigation risks permanent rupture of business relationships.

⁸See Dunworth, Galanter, and Rogers, 1990. For a description of the RAND Federal Court Data Base, see Dunworth and Pace (1990). See App. B for a more complete description of the data base and methodology used here.

Table 2.3
Information Collected
for Each Dispute

-
- Who complained
 - About whom
 - How unfair/in what way
 - Victim's interests
 - Justification by parties involved
 - Responses by aggrieved party
 - Reactions to victim's responses
 - Involved agencies
 - Resolution
-

The disputes were also set in a larger context. For example, we noted the characteristics of the industry, such as its size, health, strategic importance, degree of concentration, and pattern of growth, as well as the political and cultural significance of the dispute.⁹

OTHER DATA SOURCES

A number of other data sources were used to supplement our basic sources. For example, trade statistics were assembled for the United States and Japan from United Nations data.¹⁰ Data on foreign direct investment in the United States were collected from the Bureau of Economic Analysis, U.S. Department of Commerce.¹¹ These data are useful in providing an indication of the growth in the bilateral economic relationship. Data from a recent survey of prices in the United States and Japan from Japan's Ministry of Trade and Industry and the U.S. Department of Commerce survey were also incorporated into the analysis.¹² Data on macroeconomic conditions in the United States collected from *The Economic Report of the President* as well as other sources were an important part of the discussions on the U.S.-Japan economic relationship.

⁹Dispute descriptions are on file at the RAND Center for U.S.-Japan Relations. The Japanese disputes were developed with the help of a group of graduate students at Tokyo University for Foreign Studies: Richard Cohen, Yukiko Fujisaki, Hiroko Nishibe, and Naoko Kawakita. The disputes were reviewed by Professor Minoru Nakazato, Hitsuhashi University, and Professor Hidetake Aizawa, Tsukuba University.

¹⁰United Nations Statistical Office.

¹¹Economic and Statistical Analysis, Bureau of Economic Analysis, and the *Survey of Current Business*, various issues.

¹²Department of Commerce/MITI Price Survey, November 1989. See also Yager (forthcoming).

3. RESEARCH FINDINGS

QUESTION ONE: HOW EXTENSIVE IS BILATERAL CONCERN ABOUT FAIRNESS?

Although a number of studies have been published that reflect the increasing politicization and public concern about bilateral economic fairness questions,¹ a basic question that remains is the extent of the problem. Much of the evidence we have assembled addresses this question. Is this an issue of low salience in public consciousness or of substantial magnitude warranting the attention of policymakers? To assess the extent of conflicts over fairness, we examined both perceptual and behavioral measures. We used the media content analysis as an indicator of the volume of unfairness perceptions. Litigation rates were used as an indication of the behavior of firms in fairness disputes.

Perceptions of Unfairness: Media Content Analysis

Figures 3.1 and 3.2 present results of the content analysis of keyword trends in the *New York Times* and the *Nihon Keizai Shimbun*. The content analysis provides evidence that the volume of media reports signaling unfairness has grown. Over the 10-year period, discussions of economic unfairness rose substantially in both newspapers.²

There are more specific points to be drawn from the two figures. The upward trend in media reports of unfairness grievances peaks in 1987 in both countries. While the volume of reported grievances has declined somewhat since 1987 in Japan, the trend in media-reported grievances in the United States rose again over the past three years. Finally, there are pronounced year-to-year fluctuations in the data from both newspapers, which may be related to domestic politics in

¹A representative list includes Prestowitz (1988), Saxonhouse and Yamamura (1986), Lincoln (1988), and Inoguchi (1990), pp. 419-437.

²This increase in the volume of media reports about fairness is not only a result of the increased attention to Japan in the media. The percentage of articles about Japan that deal with the fairness issue has also increased over the last decade. For example, in the *New York Times*, the percentage of articles about Japan that mentioned fairness in 1980 was 24 percent; by 1990 it had increased to 41 percent. See App. A, Table A.5.

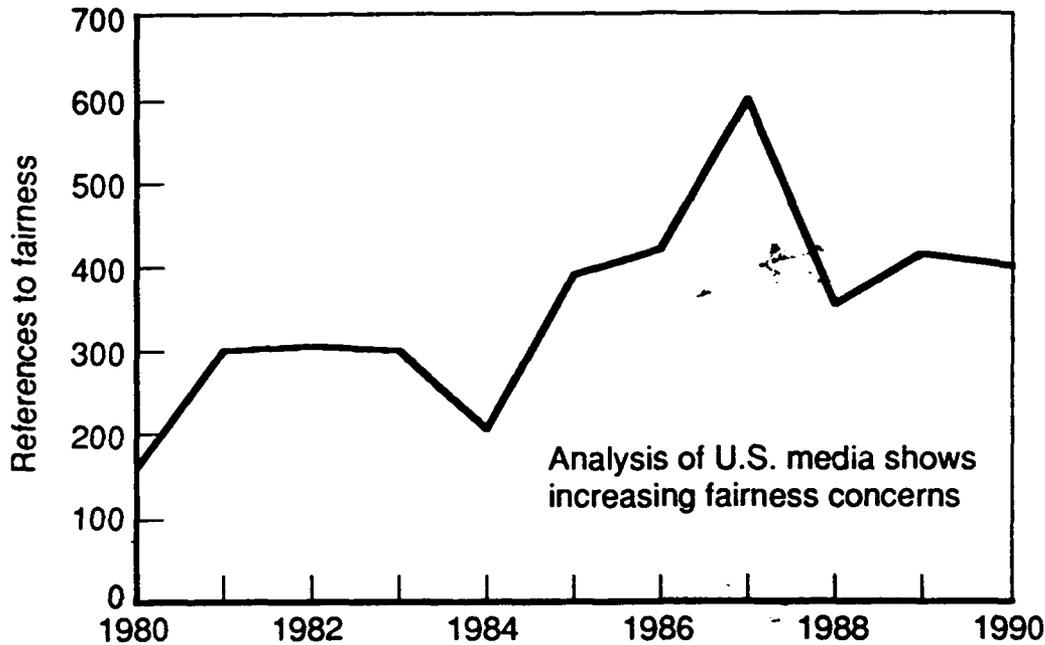


Fig. 3.1—Fairness references in the *New York Times*

both countries and to the American presidential campaign cycle in particular.³

Acting on Unfairness Grievances: Litigation

Litigation rates between Japanese and U.S. corporations provide a measure of action on unfairness claims. The United States is considered a litigious society, whereas the Japanese are considered nonlitigious. For example, the rate of Japanese civil litigation was 37.3 per 10,000 in district courts whereas the rate for civil litigation was 236 per 10,000 in comparable California courts in 1986.⁴ Because our focus is on U.S. litigation involving American and Japanese corpora-

³One incidence where these fluctuations are particularly large is between 1986 and 1987 in the *Nihon Keizai Shimbun*. There is a five-fold increase in the number of references identified in the media content analysis. Subsequent years show decreases from this level. Follow-up investigation of this trend by our Japanese colleagues attributes the increase to the Japanese response to American charges initiated during the 1987–1988 U.S. presidential and senatorial political campaigns. The only other Japanese newspaper (*Asahi Shimbun*) available on-line during this period also showed an increase, although not of the same magnitude as that reflected in the *Nihon Keizai Shimbun*.

⁴Tanase, 1990.

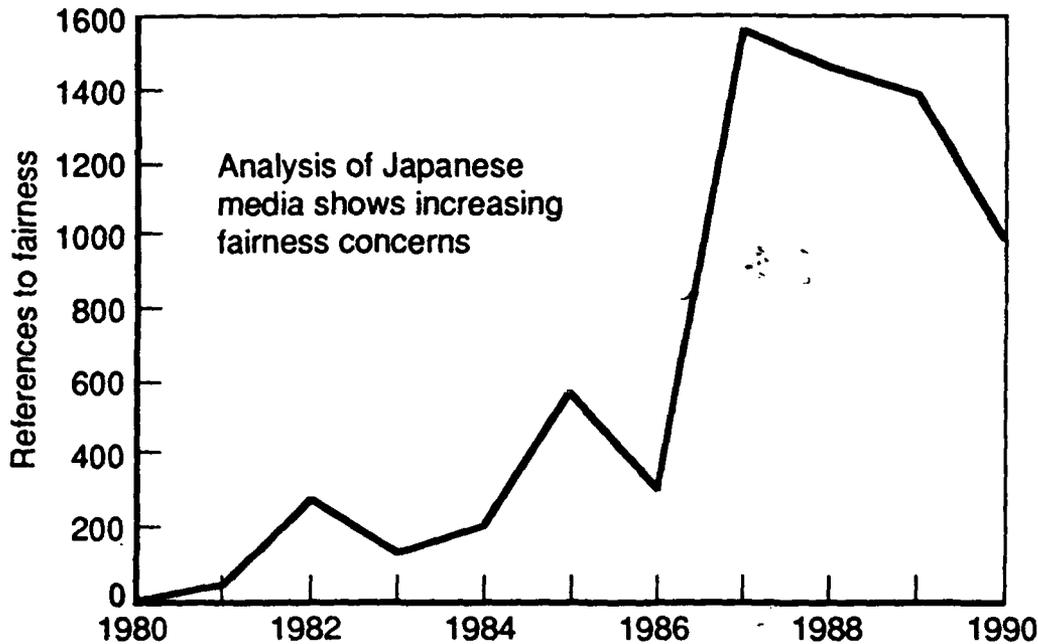


Fig. 3.2—Fairness references in the *Nihon Keizai Shimbun*

tions, it is not surprising to observe litigation rates more like U.S. domestic rates than Japanese rates of litigation. However, since litigation is much less common to Japanese than Americans, it may be more of a shock to the Japanese.

To determine the extent to which Japanese corporations are litigants either as plaintiff or defendant, we determined the number of lawsuits in which a Japanese firm was a named party for each of four years. Figure 3.3 shows cases involving U.S.–Japanese corporations compared with the filings of U.S. “Fortune 500” firms, corporations that may be considered reasonably similar in size to the Japanese firms listed.

For this examination, we chose to look at rates of growth (App. B discusses the sample size and its development). In the first five years studied, litigation involving Japanese businesses declined.⁵ However, over the most recent 10-year period for which data are available (1977 to 1987), civil cases involving Japanese firms increased 77 percent. By comparison, civil cases involving U.S. domestic Fortune 500 companies increased 82 percent over the same time period (see Fig.

⁵These findings are based on a subset of all Japanese firms doing business in the United States; see App. B.

3.3). Increased litigation for Japanese firms may simply be a part of doing business with Americans.

Figure 3.4 shows a substantial difference in the types of litigation involving Japanese and Fortune 500 corporations. About three-quarters of all litigation involving Japanese corporations was either "contracts" (usually commercial disputes) or "other" (patent infringements, intellectual property rights, trademarks, and unfair competition). Only about one-half of the litigation involving Fortune 500 companies involved these types of litigation, suggesting that Japanese businesses have been involved in litigation over a particular set of economic fairness issues, whereas Fortune 500 companies are being drawn into litigation over broader matters including torts and civil rights.⁶

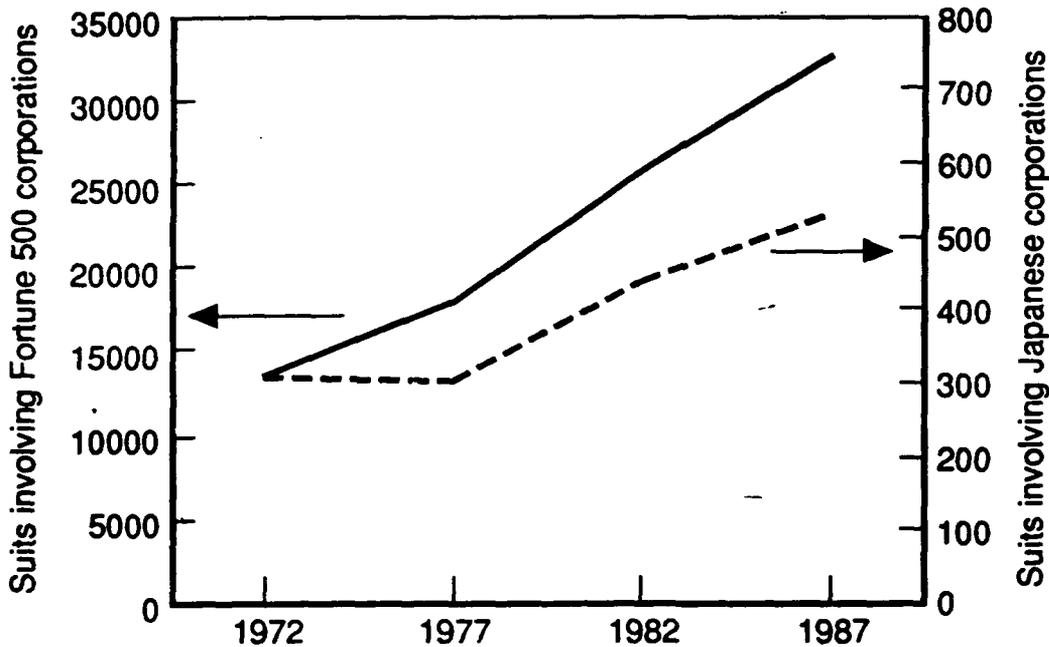


Fig. 3.3—U.S. and Japanese civil filings, 1972–1987

⁶There are interpretative issues here also. For example, do Japanese firms have the same likelihood of being targeted for tort suits, civil rights, etc.? We asked simply whether litigation between U.S. and Japanese firms involved particular economic fairness issues. Whether (and how) Japanese-owned U.S.-based firms are similar or different from their U.S. counterparts is not examined because of the difficulty of assessing the nature of ownership, control, and behavior of U.S. subsidiaries of Japanese firms.

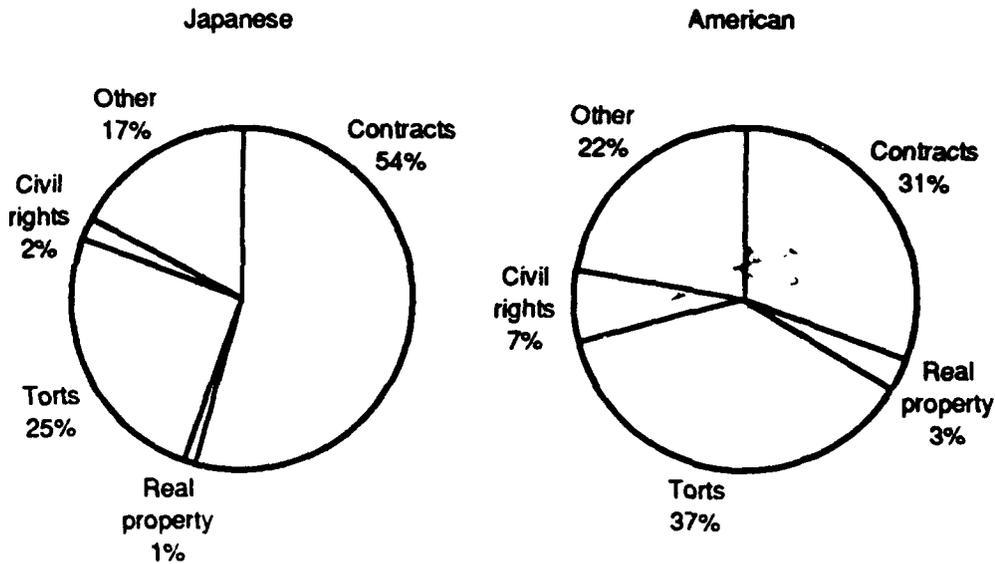


Fig. 3.4—Types of lawsuits involving Japanese and U.S. corporations

QUESTION TWO: ARE FAIRNESS GRIEVANCES A RESULT OF THE U.S. TRADE DEFICIT WITH JAPAN?

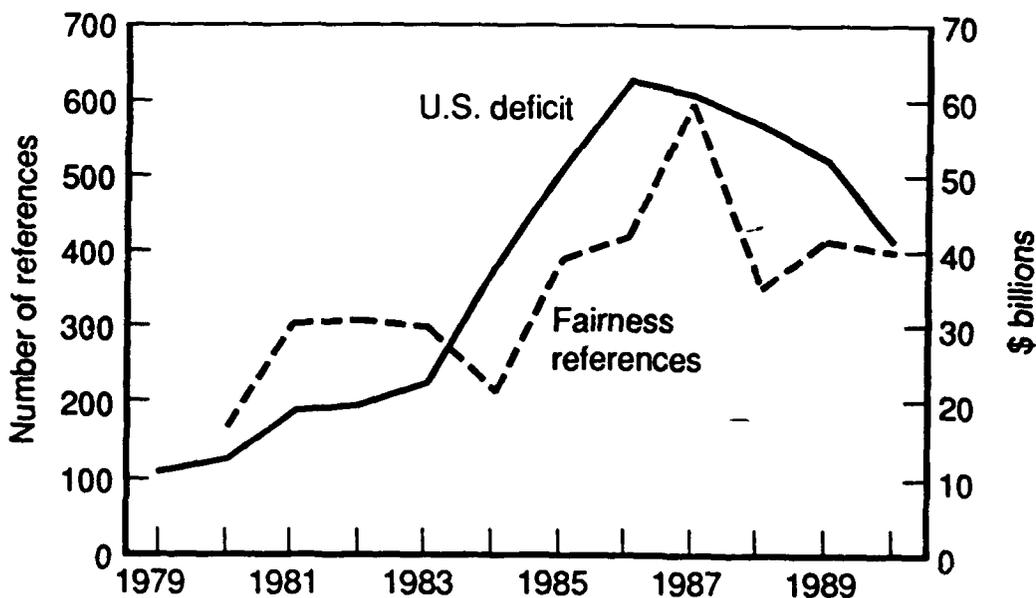
If there is systematic evidence of perceptions and actions involving unfairness, we are then faced with the question of what explains it. The explanation most frequently cited by Japanese and American analysts, is that fairness grievances are related to the size of the U.S. trade deficit with Japan.⁷ The fairness grievances could either be related to the absolute size of the deficit or to the change in the deficit from one year to the next. Using the results from the media content analysis and data on the trade deficit, we can test whether this relationship exists.⁸

⁷The argument that the U.S. trade deficit with Japan is the principal cause of unfairness claims appears in numerous publications. See, for example, Advisory Committee for Trade Policy and Negotiations (1989), Prestowitz (1988), Bergsten and Cline (1985), Cohen (1990), Komiya (1983), and Shinohara (1991).

⁸There is a potential autocorrelation problem with using trade as a selection criterion for the articles and then comparing the number of articles with the trade deficit. To test for this, we also searched the newspapers for articles containing a reference to Japan. We then looked at the proportion of articles that address fairness to the number of articles addressing Japan. The trends exhibited by these proportions follow closely the trends in the absolute number of references that were used in the comparisons. The proportions are given in App. A, Table A.5.

The Trade Deficit and Fairness Grievances

Figure 3.5 shows the trend in media references to fairness and its relationship to the U.S. trade deficit with Japan since 1980.⁹ Both the deficit and the number of fairness references have increased substantially over the period. The deficit peaked in 1986, whereas the fairness references peaked in 1987. After a decrease in 1988, discussions of unfairness rose again, even as the U.S. trade deficit with Japan declined sharply. During these years, issues other than the bilateral trade deficit appeared to contribute to U.S. perceptions of unfairness. For example, Japanese investment in the United States has grown rapidly during the last five years, with the stock of Japanese foreign investment in the United States increasing from \$19 billion in 1985 to \$70 billion in 1989.¹⁰ Grievances generated by this increase in Japanese foreign investment in the United States very likely account for some of the increase in litigation. The media attention generated by purchases of New York real estate and Hollywood entertainment firms was part of the growth in fairness references.



SOURCES: *New York Times*; U.S. deficit data are from United Nations Statistical Office, *Commodity Trade Statistics*, and U.S. Department of Commerce, January 1991 (for 1990 only).

Fig. 3.5—Fairness grievances and the bilateral trade deficit

⁹United Nations Statistical Office, *Commodity Trade Statistics*, 1979–1989.

¹⁰Bureau of Economic Analysis, *Survey of Current Business*, various issues.

A second test of the relationship between the deficit and the number of fairness complaints is to compare changes in the series over the period of the analysis. For example, we might expect increases in the deficit to lead to an increase in the number of fairness references, and decreases in the deficit to lead to decreases in the number of fairness references. However, the comparison is made more difficult by the generally increasing trend in both the deficit and in the number of references. Because of this common trend, correlations between the deficit and the number of references are high regardless of whether a lag is introduced into the data. A more informative test compares the fluctuations in the two series with the trends in the data removed.¹¹ Using these adjusted data, there does appear to be a relationship between the fluctuations in the deficit and the fluctuations in the fairness references in the same year.¹² This suggests that an increase or a decrease in the trade deficit in a given year is associated with an increase or decrease, respectively, in the number of fairness claims observed in that same year.

Industry-Specific Deficits and Fairness Grievances

To further examine the relationship between perceptions of unfairness and the trade deficit, it is useful to compare data at the industry level. If unfairness grievances are largely a function of the size or growth of the trade deficit, we should observe this relationship primarily in industries where there are large or rapidly growing deficits. Therefore, fairness references were counted within broad industry groupings by incorporating additional keywords into the searches. The groupings were manufacturing industries, high-technology industries, agriculture, and services. For example, concerns related to agriculture were selected on the basis of the following criteria:¹³

- A reference to Japan
- A reference to economic terms
- A reference to fairness terms
- A reference to agriculture (citrus, rice, etc.)

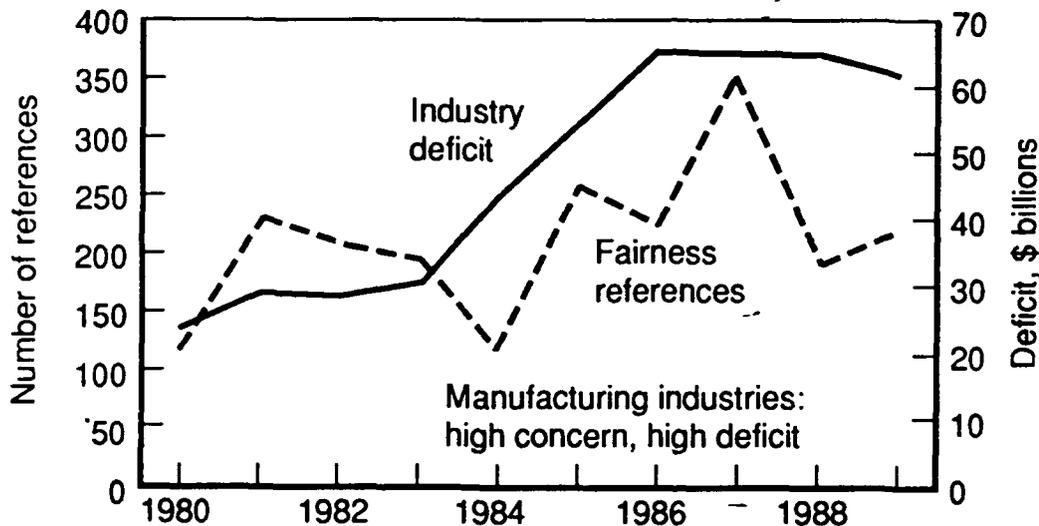
¹¹We estimated the trend line and computed the residuals from that line for each year; see App. C.

¹²The correlation is .40 but is not statistically significant.

¹³Additional information on the industry groupings is provided in App. A.

Similarly, the fairness references related to manufacturing or high-technology industries contained references to specific products typically associated with manufacturing or high technology.¹⁴

Figure 3.6 shows the trend of fairness references and the industry deficit within the manufacturing industries group. Within this group, fairness references and the bilateral deficit are related, both in terms of the level of grievances and change over time. For example, the average bilateral deficit of \$44 billion over the 10-year period is a substantial share of the total bilateral trade (U.S. exports + U.S. imports) in manufacturing industries, which averaged \$62 billion per year. Fluctuations in the fairness references appear to be somewhat correlated with the fluctuations in the deficit. Using the same methods as described above to eliminate the trend in the deficit and in the fairness grievances, there remains a correlation of .33 between the two



SOURCE: United Nations Statistical Office Commodity Trade Statistics; includes Standard International Trade Classification (SITC) codes 5, 6, 71-74, 751, 759, 761-763, 775, 778, 78, 791, 793, 81-85, 88, 893-895, 897-899 (Revision 2).

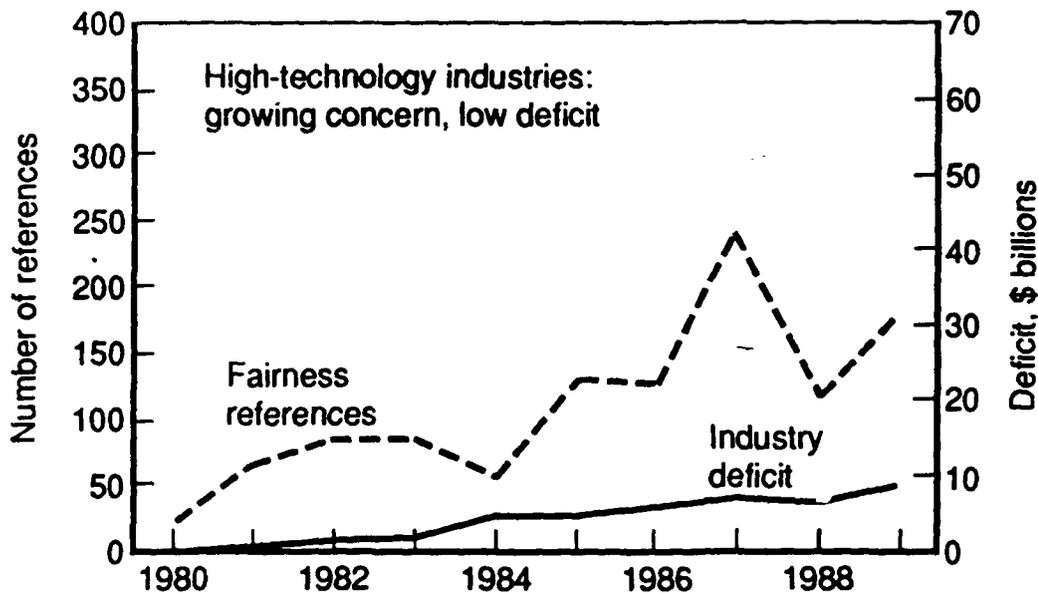
Fig. 3.6—Fairness grievances and the manufacturing deficit

¹⁴The industry references in the content analysis can be considered only suggestive of the trends within industry groupings. It was not possible to specify all the products within an industry group, and in some cases there is overlap between industry groupings, especially those of manufacturing and high-technology. A fourth industry grouping ("services") is not included in this analysis because appropriate trade data on services are not available.

data series.¹⁵ As in the case of the economywide deficit and fairness references, an increase or a decrease in the trade deficit in a given year is associated with an increase or decrease, respectively, in the number of fairness claims observed in that same year.

The relationship within the high-technology industries group is different. The fairness concerns and the industry deficit are shown in Fig. 3.7. The level of the deficit remains relatively low within this grouping, averaging only \$4 billion over the period. The deficits also represent a modest percentage of the trade in this area (U.S. exports + U.S. imports), which grew rapidly over the period and averaged \$12 billion. Therefore, the fairness references, although not as large as in the manufacturing industries group, were much more numerous in relation to the size of the deficit. In comparison to economywide and manufacturing industry data, fluctuations in the high-technology deficit appear to be unrelated to the fluctuations in the fairness references in high-technology industries.

The relationship between fairness grievances and the deficit in agriculture is completely reversed, as shown in Fig. 3.8. Despite the fact



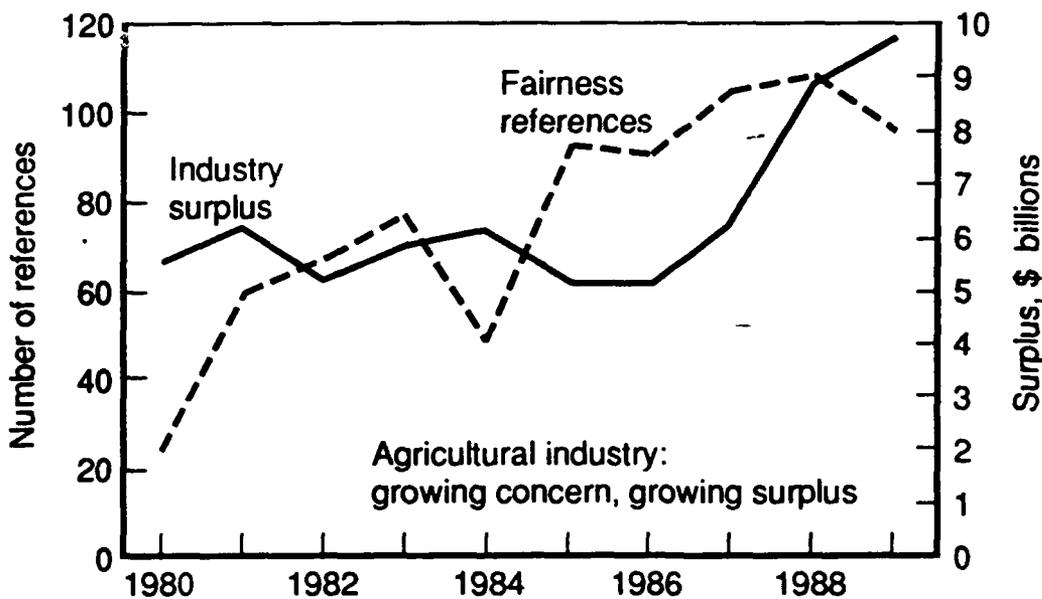
SOURCE: United Nations Statistical Office, Commodity Trade Statistics; includes SITC codes 752, 764, 771-774, 792, 87 (Revision 2).

Fig. 3.7—Fairness grievances and the high-technology deficit

¹⁵The relationship between the two variables is not statistically significant; see App. D.

that the United States has a surplus rather than a deficit in bilateral agricultural trade with Japan, there are many references to fairness in the agriculture data. The absolute number of references is lower, but compared with the total amount of bilateral agricultural trade, the number of references is relatively high. For example, over the 10-year period, the average surplus was \$6 billion out of a total amount of exports and imports of \$7 billion. Moreover, fairness grievances about agriculture increased over the period even though the U.S. trade *surplus* increased. However, using the same methods to remove the trend in the data, fairness grievances appear negatively related to the size of the surplus. This suggests, not surprisingly, that increases in the U.S. surplus in any given year are associated with fewer fairness references.¹⁶

Based on the data from the three industry groups, U.S. fairness grievances are not consistently related to the size of the bilateral trade deficit. Fairness grievances are evident in industries with large deficits (manufacturing), relative balance (high technology), and in surplus (agriculture). The differences are not explained by "normalizing" the deficit for the trade volume. Normalizing sharply



SOURCE: United Nations Statistical Office, Commodity Trade Statistics; includes SITC codes 0, 1, 21, 22 (Revision 2).

Fig. 3.8—Fairness grievances and the deficit in agriculture

¹⁶The correlation in this case was .35, which is not statistically significant.

increases the relative number of concerns in the agriculture and high-technology industry groups.

Changes in the deficit might also be expected to be related to the number of fairness complaints. In fact, fluctuations in the deficit appear positively related to increases in the overall deficit and manufacturing industry deficit, and negatively related to the U.S. surplus in agriculture. In all cases, the relationship is relatively weak. This may be due to other influences on media activity regarding the U.S.-Japan relationship, but suggests that factors unrelated to the deficit are important in the level of fairness concerns.

QUESTION THREE: IS THE LOCUS OF GRIEVANCES CHANGING?

At the industry level, U.S. unfairness complaints appear independent of a U.S. trade deficit or surplus with Japan. An examination of U.S. unfairness grievances at the industry level over time addresses the changing dimensions of this issue. Figure 3.9 compares the frequency of U.S. unfairness references at the industry level in 1980-1983 and 1987-1990.

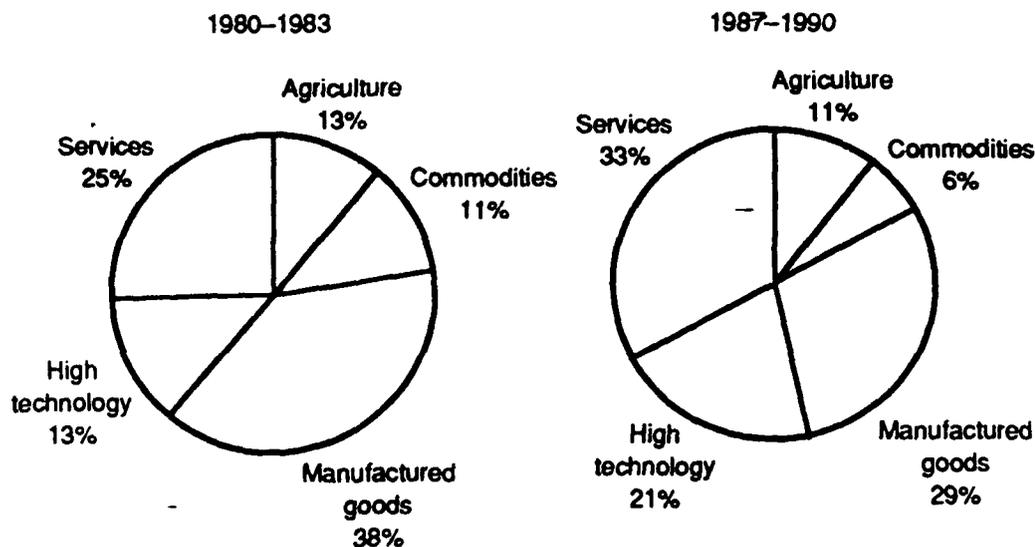


Fig. 3.9—U.S. grievances are growing most in services and high technology

Fairness complaints remain high in manufacturing over the second four-year period, but there is a shift toward high technology and the service industries (financial services, banking, and foreign investment). Disputes in high-technology industries are likely to be over patent infringement issues, intellectual property rights, and technology transfer controls, and may be of greater interest in the future. U.S. grievances over Japanese direct investment in the United States have grown significantly, perhaps related to the sharp increase in Japanese investment in the United States over the past five years. Foreign investment in either country brings a new set of problems for firms to deal with, including management-employee relations and new "citizenship" requirements on the part of the foreign firm as it adjusts to the local environment. If Japanese foreign investment in the United States continues to increase, we might expect the pattern of Japanese corporation fairness concerns to become more similar to those of domestic corporations.

QUESTION FOUR: DO THE GROUNDS OF THE DISPUTE DIFFER BY COUNTRY?

Because the size of the U.S. deficit is not the only factor causing fairness grievances, and because of the confusion over the nature and specification of the fairness concept, it is useful to characterize the principal arguments from each country. We examined actual disputes between Japan and the United States in order to clarify the grounds of the fairness dispute and to establish whether and how the arguments differ in Japan and the United States. The information about disputes was categorized by the list in Table 2.3.¹⁷

Principal Concerns

Most of the U.S. fairness grievances tend to be specific to individual industries and couched in trade-related language. For example, U.S.-initiated trade discussions shifted from steel and automobiles in the late 1970s and early 1980s to citrus and beef trade in the mid-1980s. Over the past decade, there has been increasing attention on high technology and services, as these industries grow in size and impor-

¹⁷These generalizations are based on media reporting of American fairness disputes, Japanese responses, and Japanese-initiated complaints over an 18-month period beginning in January 1988. The newspaper sources were the *New York Times*, *Wall Street Journal*, *Los Angeles Times*, *Yomiuri Shimbun*, *Nihon Keizai Shimbun*, and *Asahi Shimbun*.

tance. The problem is reflected in U.S. complaints of dumping in the case of semiconductors and subsidies in the supercomputer industry.

By comparison, the Japanese complaints tend to be more general and focus on procedural matters. Reports discuss U.S. interference in Japanese domestic affairs or U.S. macroeconomic policy problems. For many Japanese, U.S. unfairness charges are simply a manifestation of U.S. economic ills. For example, Japanese commentators view the designation of Japan as violating fair trading practices under the Super 301 legislation passed by Congress as scapegoating for American economic shortcomings. The two types of concerns are illustrated in Table 3.1.

There are also instances of Japanese concerns about specific industries. For instance, American pressure to liberalize rice imports conflicts with the Japanese argument that rice is fundamental to food security requirements and is of primary cultural significance. At the same time, some American concerns are general, for example, that Japanese lobbying is interference in American domestic affairs.

Although the focus of grievances differs in the two countries, there are a number of issues common to both sides. Both are deeply concerned about their own priorities in matters of high technology, which each sees as crucial to its future. Both seek to protect their intellectual property rights in this area, but each side has a different definition of intellectual property rights and different patent procedures. The Japanese prefer an open patent system in which individuals do not hold proprietary rights—the basis for the U.S. patent system. Similarly, both agree on the importance of equitable defense burden sharing, but the two sides start from radically different assumptions about what a fair share would mean and for what purpose.

Table 3.1

Focus of Grievances by Country

U.S. Grievances, Industry-Specific	Japanese Grievances, General
Semiconductors: dumping Supercomputers: government subsidies Construction: U.S. firms blocked	U.S. interference in domestic affairs U.S. macroeconomic policy problems Unilateral dispute resolution processes (Super 301)

Examples

The development of the major Japanese and American arguments can be illustrated by presenting summaries of disputes that suggest the complexity of arguments and the importance of social and cultural context in understanding the fairness debate. Our four illustrative cases are shown in Table 3.2.

The first case is the IBM/Hitachi intellectual property rights dispute and fallout over the sting operation conducted against Hitachi. IBM's position was that Hitachi agents were engaging in criminal acts by gaining inappropriate and illegal access to proprietary trade secrets. For IBM the issue was clear-cut—Hitachi was in effect stealing intellectual property that IBM was counting on to maintain its competitiveness and justified the sting operation that IBM helped law enforcement officials engage in. Hitachi personnel were entrapped and Hitachi had little choice but to negotiate a settlement on IBM's terms. At the same time, the sting operation generated a strong negative reaction in Japan. There was no precedent for such entrapment in Japan and some observers alleged that Hitachi was treated differently in the United States than it would have been treated in Japan—a case of nonreciprocal treatment. Moreover, Japanese commentators stressed the biased and arbitrary nature of the sting operation. Hitachi was not, in their view, accorded due process. Thus, one set of unfairness concerns on the U.S. side resulted in the initiation of an entirely different set of concerns in Japan.

Second, consider the contrasting claims in the still unresolved supercomputer dispute. In Japan's designation under the Super 301 clause of the Omnibus Trade and Competitiveness Act of 1988 for unfair trading practices, U.S. supercomputers were listed as a key product that was effectively kept out of Japan. The specific charge was that the Japanese government subsidized the purchase of Japanese

Table 3.2
Specific Disputes

The Case	Fairness Issue
IBM/Hitachi	Property rights, due process, and reciprocal treatment
Supercomputers	Reciprocal and national treatment
Construction industry	Reciprocal treatment
Automobile industry	Reciprocal and national treatment

supercomputers but that American supercomputer manufacturers were not eligible for equivalent Japanese government subsidies. This case is an example of the Japanese not giving foreign competitors the same national treatment given to Japanese supercomputer firms. Moreover, the U.S. supercomputer firms argued that Japanese supercomputer companies and software scientists operate freely in the U.S. business and scientific context. The Japanese are thus given the same treatment U.S. supercomputer interests are accorded in the United States, but American supercomputer firms are not accorded equivalent reciprocal treatment in Japan. As a result, according to Cray Research and other companies, the United States is in danger of losing critical scientific knowledge to Japanese competitors with no reciprocal possibility for American supercomputer interests to operate in Japan.

Following negotiations, the Japanese government agreed to support the purchase of American (mainly Cray) supercomputers. By the end of 1990, Cray Research had sold several supercomputers to Japanese firms and government agencies. However, the Japanese supercomputer firms have a fairness grievance of their own. No Japanese supercomputer has ever been purchased by a U.S. government agency. Japanese supercomputer firm spokesmen charge that preferential purchasing and collusion exist in the United States.

The third case, the construction industry, is an important foreign exchange earner for both countries, and the economic stakes are high. The industry may account for as much as \$400 billion per year in the United States and Japan. The Japanese government responded to the U.S. criticism by telling the United States to pursue complaints about the Japanese bidding system through GATT; Japan would not change its practices merely because of American complaints. The case also reveals cultural dimensions associated with the fairness dispute. The Japanese Dango (group-based Keiretsu) system of bidding may be collusive, but its elimination would cause small construction firms to go out of business. However, in early 1989 Japan's Fair Trade Commission invoked Japan's antimonopoly law over construction projects at the Yokosuka U.S. Navy Base against the Dango bidding system to ensure that U.S. construction firms were invited to bid. U.S. and Japanese media interest in the construction case declined after the Fair Trade Commission ruling until December 1990 when Westinghouse-A.E.G., a joint U.S.-German venture, recorded an unfairness complaint after not being awarded the people-mover contract for the Kansai airport. The complaint alleges that the Dango bidding system of small contractors prevailed despite Westinghouse-A.E.G.'s superior experience and cost-effectiveness in previous airport

construction contracts. The Kansai airport's spokesman made a cogent defense of the award to Niigata Engineering Co., citing cost and experience factors. Nonetheless, Japanese construction industry spokesmen fear that Japan's construction firms will be frozen out of the American market as a consequence of the Westinghouse-A.E.G. complaint.¹⁸

Japanese and American policymakers might consider the implications of the case. Should not U.S. policymakers be concerned about a possible managed-trade precedent being set if the Super 301 provision is triggered? Are Japanese concerns about the effects on the traditional Dango system sufficiently important to warrant absorption of such a U.S. reaction? The main problem may be that the issue never seems to be resolved and thus becomes a corrosive agent affecting other areas of U.S.-Japan relations. Is the likely impasse the best that Japanese and U.S. business and government leaders can do? If not, how might changes be made?

Finally, we chose the automobile industry because of its continued importance in the bilateral trade relationship. The automobile industry accounts for over \$100 billion in production in each country and accounts for 22 percent of total trade between the two countries. The U.S. deficit in automobile trade with Japan began to rise significantly in the late 1970s. The first voluntary restraint agreement (VRA) was negotiated in 1980. Although the VRA agreement has remained in effect, U.S. critics argue that Japanese-owned factories in the United States have made the export limit of 2.3 million Japanese passenger cars to the United States meaningless. Last year, Japan exported 1.9 million cars to the United States. From 1979 to 1990, including Japanese-owned plants in the United States, Japanese automobile companies increased their total sales to 3.4 million passenger cars and their market share increased from 12 percent to 31 percent of the American automobile market.¹⁹

This example shows how differences over the meaning and relevance of interpretations of reciprocal versus national treatment contribute to national differences of opinion in this industry. U.S. proponents argue that the Japanese have accorded the U.S. automobile industry neither reciprocal nor national treatment. They argue that Japan protected the Japanese automobile industry during the 1960s and 1970s and has not allowed foreign automobile firms to compete in Japan on a reciprocal or national treatment basis. Therefore,

¹⁸*Yomiuri Shimbun*, December 20, 1990.

¹⁹U.S. Department of Commerce, January 18, 1991.

Japanese automobile firms gained an unfair advantage over U.S. automobile firms.

Japanese counter-arguments typically concentrate on different issues. First, the Japanese assert that an overvalued dollar, itself a function of macroeconomic policy failure, made American automobiles uncompetitive throughout the 1970s and 1980s. Second, Japanese argue that the U.S. automobile industry lost market share to the Japanese automobile companies because of poor U.S. product quality. According to these arguments, the Japanese advantage has nothing to do with nonreciprocal or nonnational treatment.

In sum, in each of the four cases each side appeals to reasonable arguments. They might be property rights vs. due process, or reciprocal vs. national treatment. Since there is no clear order of precedence among the components of the definition of fairness, each of these disputes must be examined individually.

QUESTION FIVE: IS THERE EVIDENCE TO SUPPORT BOTH SIDES?

As a result of the high level of U.S. economic grievances with Japan, there have been a number of efforts to determine whether the economic—and especially the trade—relationship conforms to certain objective standards. For example, Japanese tariffs and other formal barriers to trade were examined, since these would clearly signify an unfair form of behavior. However, in this decade, Japanese tariffs appear as low or lower than those of any other developed country, including the United States.²⁰

Although these earlier findings suggested that Japan had no formal barriers to trade, later studies based on comparisons of import/gross domestic product (GDP) ratios, manufactured import/GDP ratios, or levels of intra-industry trade suggested that Japan's trade pattern is quite different from that of other developed countries. In general, the studies showed that Japan imported fewer manufactured products than might be expected.²¹ However, the authors generally fail to show that the patterns are explicit evidence of unfairness or that they result from some form of objectively unfair activity.²²

²⁰See for example, Balassa and Balassa 1984.

²¹This was not a universal finding. See Saxonhouse, 1983.

²²A few of the authors who have contributed to this debate include Lawrence (1987), and Lincoln (1990).

An Example of U.S. Evidence

Inferences based on comparative prices have recently become part of the debate. These comparisons have generally shown that prices for a wide range of goods in Japan are higher than in the United States.²³ However, based on our analysis we find that the same data also support the U.S. charges that the Japanese accord neither reciprocal nor national treatment to American firms. Based on the data from a recent survey conducted by the U.S. and Japanese governments, there is support for the charge of lack of reciprocal treatment.²⁴

Products made by U.S. firms are not treated in Japan like Japanese products in the United States. Products of U.S. firms were 65 percent more expensive in Japan than in the United States (n = 42). In comparison, products of Japanese firms were 2 percent less expensive in the United States than in Japan (n = 48).

There is also support for the U.S. position that Japan does not accord foreign firms national treatment. Based on the same survey, only products made by foreign firms are priced higher in Japan than in the United States. Japanese products were 2 percent more expensive in Japan than the same products in the United States, whereas products made by European firms were priced 76 percent higher in Japan than in the United States (n = 23). This price comparison is open to a number of questions but does provide reasonable support for the most frequent American charge.²⁵

²³See, for example, "U.S.-Japanese Survey Shows Prices Higher There Than Here," *Business America*, February 12, 1990, p. 35.

²⁴Data are from the price survey conducted in 1987 by the U.S. Department of Commerce and Ministry of International Trade and Industry. Prices were collected for products produced in Japan, the United States, and third countries, and sold in Japan and the United States in similar types of outlets, for example, the same U.S. auto part or Japanese VCR sold in both the United States and Japan. Products were divided into major groups such as autos, auto parts, consumer products, food products, capital goods, and miscellaneous. Prices were collected on 121 products, of which 42 were made by U.S. firms, 48 by Japanese firms, 23 by European firms, and the remaining products were jointly produced. The latter group was not included in the calculations. The averages stated are a simple average of the percent price differences between the two groups. For example, one U.S. automobile was 88 percent more expensive in Japan than in the United States; a shaver was 100 percent more expensive; film was 13 percent less expensive; and the average of all these and other differences was 73 percent more expensive. A detailed examination and discussion of these data will appear in Yager (forthcoming).

²⁵Market structure in the various groups may have an effect on the price differences. Many of the Japanese products are in the consumer products area, which may have special characteristics. It is logically possible that American firms simply charge higher prices in Japan for their products. Evidence from a third country would be useful to assess whether it is the United States or Japan that is different. It is also impor-

The Japanese Response

In response, Japanese economists argue that even if the Japanese economy were "opened" more fully, it would have a relatively small effect on the U.S. trade deficit with Japan. Miyoei Shinohara sums up this argument:²⁶

if the U.S. believes that its current-account deficit cannot be drastically cut without reforms on the Japanese side, it is suffering from illusions. As the American side admits, 80 percent of the twin deficits are attributable to its domestic problems. The current account deficit will be substantially reduced by cutting down on the federal deficit and raising the savings rates. The reduction that could be made in U.S. current-account deficit by correcting so-called unfair trade with Japan would not be very large.

In addition, other scholars argue barriers to trade could not be the reason for the trade imbalance in the 1980s because, if anything, Japanese markets became more open rather than more closed during this period.²⁷

Japanese critics of U.S. policy also argue that U.S. macroeconomic failures have led to the trade imbalance and hence to American complaints about fairness. The U.S. government deficit, low savings rates, and an overvalued dollar are all cited to support this argument. The U.S. government deficit nearly tripled between 1981 and 1986 (\$79 billion to \$221 billion), and may exceed \$350 billion in fiscal year 1991. Savings as a percent of gross national product declined from 20 percent in 1978 to 15 percent in 1988. By comparison, the savings rate in Japan (as percent of gross domestic product) remained approximately at 32 percent from 1978 to 1988.²⁸ In the view of Japanese economists, overvaluation of the dollar (about 35 percent from 1980 to 1985) was left uncorrected too long.

There is merit in both arguments, although they deal with completely different issues. Both sides may be right and as part of their position dismiss the case of the other side. The principal argument of the Japanese—failure of U.S. macroeconomic policy—is undisputed, but it requires acceptance of the linkage between U.S. domestic macroeco-

tant to note that Japanese economists have criticized the American charge that Japan is not an open economy. See, for example, Komiya (1988).

²⁶Shinohara (1991), p. 24. The most favored Japanese arguments, summarized here, are taken from Komiya (1988) and Shinohara (1991).

²⁷Bergsten and Cline (1985) make a similar argument.

²⁸Economic Report of the President (1989), Bank of Japan (1989). The U.S. government pledged to correct these problems in the Structural Impediments Initiative round completed in June 1990.

conomic ills and the bilateral fairness question. The main American argument—the Japanese accord neither reciprocal nor national treatment to foreign business and is therefore not an open economy—requires more empirical verification but cannot be dismissed.

4. CONCLUSIONS AND IMPLICATIONS

CONCLUSIONS

The goal of this study was to understand the complex phenomena of fairness grievances in U.S.–Japan economic relations. By the start of the 1990s, the fairness debate had become a bilateral policy problem of considerable importance. Informed political and economic leaders on both sides of the Pacific are increasingly alarmed about the possibility of various serious negative policy consequences that may be triggered by fairness grievances. Because of the absence of research on the fairness issue, we sought to describe the extent and nature of economic fairness grievances.

Our work suggests several conclusions. First, as measured by our media content analysis and litigation rate comparisons, disputes over unfairness are serious and growing in both countries. The increase in unfairness grievances between Japanese and Americans appears related to the nature of the economic relationship itself. The increased rate of interaction in the U.S.–Japan economy appears to indeed create more opportunities for misunderstanding and conflicts of interest. This is borne out by litigation trends.

Second, the trends in perceptions of unfairness grievances are associated generally with the U.S. trade deficit with Japan at the macro level. But economic factors themselves are not a sufficient explanation of the rise in unfairness grievances. Based on analysis of the number of references within particular industries, factors other than the level or the change in the trade deficit play an important role in the number and intensity of disputes. For example, there is an increase in American unfairness complaints in high-technology industries, despite the modest U.S. deficit with Japan, and in agriculture even though there is an increasing U.S. surplus with Japan. A second area of increase is related to foreign investment. Foreign investment in the United States has more potential to introduce problems in labor relations, treatment of minorities, allegations of tax underpayments, environmental challenges, and so forth.

The fairness debate may thus be shifting toward economic activities that are less directly related to the trade deficit and toward economic issues that trigger concerns over economic sovereignty (foreign investment in the United States) and national economic security and future economic growth (high technology). The questions these

emerging issues generate are even more complicated than the problems associated with current problems of reciprocal vs. national treatment. In fact, they touch directly on the issue of the sovereignty of the nation-state itself. These issues may gradually supplant the bilateral trade-related issues and become the more prominent policy concerns for Japanese and American policymakers.

To gain more insight into the scope and specific dynamics of these emerging issues, we studied actual disputes. We found that there was little agreement between the U.S. and Japanese parties about the nature of the problem. Americans tend to state specific grievances at the industry level whereas the Japanese express general grievances at the national level. The Japanese emphasize that U.S. macroeconomic policy failure is the main problem. Moreover, some Japanese claim that the United States interferes improperly in Japan's domestic politics and economy, an economy many Japanese insist is open. The American argument is that the Japanese economy is closed, according neither reciprocal nor national treatment to U.S. firms. Given such disagreement, policy recommendations become problematic since there appears to be no common ground between the parties.

Therefore, the outlook for the discourse over these fairness grievances appears to be bleak. However, juxtaposed with the fairness debate is increasing evidence of positive developments in the U.S.-Japan economic relationship. The economic relationship continues to grow and many of the same Japanese and American companies embroiled in the fairness grievances discussed here are involved in trade, joint ventures, or other types of economic relationships. The question is whether the growing number of fairness disputes will lead to a slowing or reversal in the movement toward economic cooperation.

IMPLICATIONS AND LIKELY POLICY DIRECTIONS

There will always be grievances over fairness in the U.S.-Japan economic relationship, and there will thus be a continuing need to understand, and where appropriate, to redress these grievances. The problematic status of the current GATT negotiations and the slow progress of the current bilateral Japanese-U.S. negotiations give little promise that economic fairness grievances are being addressed. Japanese and American businesses have turned to American courts to redress their differences, but this is not a completely satisfactory solution. Courts can deal successfully only with specific problems. They cannot promote broad policy changes that would lead to a longer-term approach to resolve grievances. Japan and the United

States may need to develop additional institutional means, perhaps joint economic councils, trade arbitration courts, and other alternative dispute resolution mechanisms, to address broader issues and to facilitate mutual solutions.

The need seems particularly acute now, with the high level of agitation in both societies about fairness. The mutual recrimination appears in part a response to the rapid growth in economic interdependence that has disturbed particular industries and regions within each country. Eventually Japanese and U.S. businesses and citizens will have to adapt to changes that are inevitable and permanent. As one scholar states,

Over the long run national political institutions may crumble or shift in response to market conditions, new ideas, or international structural change—but the long run may take quite some time.¹

Given the intractability of the dispute documented in this study, we join the policy analysts and commentators who project a negative policy spiral between the two countries. On the U.S. side, observers argue that the United States cannot continue to tolerate the combination of continued market penetration by Japanese interests through trade or investment and the Japanese pattern of not granting reciprocal or national treatment to American business. According to these analysts, Japan will not change its *de facto* exclusionary policies, or will change but at an unacceptable, glacial pace. The observers thus argue for the development of a new managed (sometimes called strategic or fair) trade arrangement with Japan.² The practical meaning of the concept of managed trade varies from author to author. The concept of managed trade itself refers to a variety of trade and investment restrictions ranging from trade limitations placed on particular industries (based on criteria developed to protect specific industries) to a cap placed on the absolute level of deficit in trade or foreign investment. However, the policy instruments available for a managed bilateral trade policy are problematic.³ In all likelihood, Japan would retaliate against any American government trade and investment policy changes. Therefore, the probable policy direction most often discussed is what might be called patchwork protectionism—an increase in VRAs and more formal trade and investment barriers. The question becomes one of limiting damage to the bilateral relationship from the negative momentum created by the fairness

¹Odell (1990), p. 153.

²Representative statements may be found in Krugman (1987) and Porter (1990).

³For a summary of the problems, see Bhagwati (1990).

issue. To prevent this damage, leaders must recognize that serious problems exist, and that these problems require a more extensive set of bilateral institutions in which fairness issues can be addressed without endangering the entire relationship.

Any and all of the negative possibilities noted will lead to a reduction of the volume of trade and investment between the two countries and subsequently to a reduction of the standard of living in both countries. However, the resolution of the dispute may have even broader implications. For example, the fairness debate could have spillover effects on political and security dimensions of the U.S.-Japan relationship. In addition, the way in which Japan and the United States work out these policy issues will provide a precedent that is likely to be followed elsewhere. If unsuccessful, this will not provide encouragement for other countries involved in economic fairness disputes.

These likely policy directions are not our preferences; indeed, we have intentionally stated them starkly in hopes of increasing awareness of the high stakes involved in the fairness debate. Additionally, the idea that the fairness debate will be frozen until some policy intervention takes place is based on the assumption that no major changes will occur that could suddenly alter the nature of the debate. Given the types of economic and political events that have jolted the world in the past few years, this may be the most unlikely outcome.

Appendix A

NEWSPAPER CONTENT ANALYSIS

The objective of the content analysis in this study is to provide a measure of the magnitude of the U.S.-Japan fairness debate in the public arena. By doing so, we can obtain a barometer of the rising level of concern in both societies related to the increasing interdependence in our joint NichiBei economy.

Our sources were major newspapers in both countries. Newspapers were selected over nonprint and other print media for a variety of reasons, including the difficulty in systematically analyzing the content of a nonprint medium. The volume of information and the lack of adequate technology to mechanically assess the content of radio and television broadcasts make this approach almost impossible. It is also true that the printed media, unlike television and radio, are not as constrained in their length and cover a more comprehensive set of issues.

The first step in our analysis was to determine which newspapers were to be examined. The objective was to identify newspapers in both countries that served as national newspapers reflecting the debate at a national rather than a regional or local level. The U.S. newspapers selected were the *New York Times*, *Washington Post*, and *Los Angeles Times*. The Japanese newspapers were the *Nihon Keizai Shimbun*, *Asahi Shimbun*, *Mainichi Shimbun*, and *Yomiuri Shimbun*. The newspapers were selected in conjunction with Dr. Minoru Nakazato, Hitsubashi University, and Dr. Hidetaka Aizawa, Tsukuba University, who analyzed the Japanese newspapers.

After identifying the newspapers, a keyword search strategy was developed to identify the relevant articles. The selection strategy involved two steps. First, a wide range of articles was collected from all types of print media in both the United States and Japan. Based on a systematic reading of the articles, a preliminary list of words related to the fairness debate was assembled. The list was then screened to omit words not indicative of a fairness discussion. Words which could not be used in a search for technical reasons were also omitted. The resulting list is provided in Table A.1.

Table A.1
Original Search Criteria

A.	JAPAN* in title or descriptor fields	
B.	TRADE or IMPORT* or EXPORT* or INVEST*	
C.	One of the following list of words	
	unfair*	fair*
	inequit*	equity
	unequal*	balanced
	violat*	two-way street
	infring*	level playing field
	threat*	openness
	intrud*	access
	intrusion	sanctions
	collusion	preferen*
	high-handed*	protectionis*
	arrogan*	barrier*
	predatory	dump*
	meddl*	quotas
	scapegoat*	unilateral
	interference	subsidiz*
	unbalance*	subsidy
	friction	subsidies
	free ride*	nationalis*
	dictat*	closed
	racis*	exclusion*
	domestic	exclud*

NOTE: An article must have A, B, and C to qualify as a fairness reference. * indicates a truncation: computer will include all words including root letters and all endings.

In collaboration with our Japanese colleagues, a similar approach was taken to determine the keywords for the Japanese media analysis. Their review of Japanese articles on the fairness issue indicated that the vocabulary in the Japanese articles closely paralleled the vocabulary in the American analysis. This is partly because many of the discussions are in response to issues raised in the United States. The Japanese keyword list is provided in Table A.2.

This search approach was based upon a full-text review of the articles. In this type of review, the full text of the articles is searched using an on-line editor for the occurrence of a selected list of words. The editor uses Boolean search methods such that any single word on the selection list would trigger the identification of the article as meeting the search criteria. In developing the list, an effort was made to in-

Table A.2
Content Analysis:
Japanese Keywords

kosei	sogo-shugi
kohei	byodo
fukohei	seisai
fukosei	tokkei-kansei
fubyodo	hogo-shugi
ihan	hogo-boeki
shingai	shoheki
kyoi	danpingu
shinnyu	wariate
kyobo	ippo-teki
koatsu-teki	hojo
go man	hojokin
ryakudatsu	kokka-shugi
kansho	heisa-teki
sukeipugo to	haijo
fukinko	naisei-kansho
masatsu	haiseki
furi raida	shijo-kaiho
meirei	akusesu
jinshu-sabetsu	jiyu-boeki

clude words that reflected all sides of the debate. The basic search criteria are given in Table A.1. The article must contain a reference to Japan in the title or descriptor fields, and must also have a reference to trade, import, export, or investment. Articles that met these criteria were then subjected to the additional keyword search. A sample of the articles selected under the criteria were reviewed to verify that the search criteria were successfully identifying appropriate articles. These criteria were translated into Japanese and a comparable analysis performed on the Japanese newspapers. The selected newspapers were analyzed for all years for which on-line full text was available (thus limiting the time for which data are available for many of the newspapers). The results from the analysis are given in Table A.3.

A second level of analysis was made for the *New York Times* to further refine the general industry categories in which the concerns were arising. A second series of searches was made of the newspaper using an additional industry word list to further categorize the articles. Each newspaper was searched five additional times using the original search list and one of the individual industry lists shown in Table A.4. The results from these analyses are shown in Table A.5.

Table A.3
Newspaper Content Analysis Results

U.S. Newspaper Content Analysis Results by Year Searched				
Year	<i>NY Times</i>	<i>LA Times</i>	<i>Wash Post</i>	
1980	162			
1981	302			
1982	308			
1983	301			
1984	209			84
1985	389	198		187
1986	418	201		113
1987	597	384		151
1988	353	378		121
1989	413	483		162
1990	402	591		156

Japanese Newspaper Content Analysis Results by Year Searched				
Year	<i>Nihon Keizai</i>	<i>Asahi</i>	<i>Mainichi</i>	<i>Yomiuri</i>
1980	4			
1981	40			
1982	275			
1983	134			
1984	208			
1985	570	857		
1986	306	356		
1987	1559	593	118	1236
1988	1458	333	185	888
1989	1380	453	200	818
1990	995	400	198	806

There are some interesting differences between the newspapers. For example, the growth in the frequency of articles addressing this set of issues is substantially greater in the *Los Angeles Times* than for the *New York Times*, whereas the growth for the *Washington Post* was less over the period. Among the Japanese newspapers, there are also differences, although the limited on-line availability of these papers makes comparisons difficult. There were also some similarities among the papers. The most obvious is that 1987 was a year of sharply increased newspaper coverage of fairness and equity issues in both Japanese and U.S. papers. For many of the papers, this was the peak year in terms of the number of articles. A second similarity is that the issue coverage appears to be substantially greater during the second half of the decade than during the first.

Table A.4
Industry Identification Criteria:
Economic Data

Agriculture	Manufactured Goods	High Technology
agri*	ship	computer*
beef	shipbuilding	semiconductor*
citrus	steel*	chip*
orange*	ferrous	microchip*
melon*	machin*	supercomputer*
grapefruit	tool*	software
fruit	chemical*	satellite*
rice	metal*	biotech*
lumber	cloth*	superconduct*
fish*	texti*	FSX
wheat	appliance*	aircr*
food	video	airpl*
	television	fighter
	electron*	robot*
	stereo*	
	auto	
	automo*	
	truck*	
	HDTV	
Commodities/Raw Materials	Services	
electricity	construct*	
oil	air carrier*	
petro*	airlin*	
coal	landing right*	
ore	air trans*	
	air deliv*	
	air express*	
	retail	
	store	
	franch*	
	service*	
	insur*	
	credit card	
	finance	
	banking	
	legal ser*	
	law firm*	

Although there is room for error in using these indicators as absolute measures of public concern over fairness disputes, they are useful for comparison. Since the methodology was systematic in the way it se-

Table A.5

Industry Identification Criteria: U.S. Newspaper Content Analysis

<i>New York Times</i>					
Year	Agricultural	Commodity	Manufacturing	High Tech	Services
1980	24	46	116	24	82
1981	60	68	229	67	126
1982	67	60	208	84	153
1983	77	46	197	84	140
1984	49	46	116	55	110
1985	93	42	258	130	255
1986	90	109	225	125	253
1987	105	73	356	243	338
1988	109	37	192	115	219
1989	96	41	217	177	271
1990	58	71	243	182	299

<i>Los Angeles Times</i>					
Year	Agricultural	Commodity	Manufacturing	High Tech	Services
1985	39	26	28	72	126
1986	33	29	115	68	116
1987	91	55	243	184	198
1988	132	52	204	87	212
1989	141	35	236	166	272
1990	194	80	293	207	384

<i>Washington Post</i>					
Year	Agricultural	Commodity	Manufacturing	High Tech	Services
1984	26	11	49	31	53
1985	47	37	127	82	139
1986	23	16	72	40	78
1987	31	20	104	85	110
1988	33	10	63	35	97
1989	34	13	84	60	131
1990	44	21	89	74	138

lected the articles relevant to the fairness dispute, one can compare the results of any given two years within the context of the study and ascertain if, in general, levels of concern were rising or declining over time.

It is important not to concentrate too closely on the data or to attribute too much to year-to-year variations in the individual data series. The story content of newspapers is subject to biases related to political, social, and economic concerns, as well as editorial changes at the newspapers. An election year in which trade policy is a major issue, for example, will see an increase in the number of relevant arti-

cles in one year. This effect would appear as a spike in the data. Other factors such as competing news stories (e.g., the Persian Gulf conflict) will also have an effect.

Another question is whether the number of articles regarding fairness as a proportion of all articles on Japan has changed. These results are presented in Table A.6. As can be seen, the proportion of articles has approximately the same trends and magnitude as the raw numbers.

Table A.6:
Percentage of Articles About Japan
Dealing with Fairness

Year	<i>New York Times</i>	<i>LA Times</i>	<i>Wash Post</i>
1980	23.5		
1981	29.6		
1982	34.0		
1983	35.5		
1984	30.9		44.8
1985	42.5	42.6	54.2
1986	41.4	33.0	40.6
1987	48.4	41.2	56.0
1988	36.5	32.8	49.2
1989	39.9	31.1	50.3
1990	40.9	38.3	46.1

Appendix B

THE RAND FEDERAL COURT DATA BASE AND U.S.-JAPAN CORPORATE LITIGATION SAMPLE CONSTRUCTION AND ANALYSIS

Information regarding every civil case litigated in the federal district courts is reported to the Administrative Office of the U.S. Courts in Washington, D.C. Standardized forms filled out by clerks at the time of filing and at final disposition are used by the Administrative Office to create a central data base with a single record for each case. Since 1970, the data have been maintained in a machine-readable format; in the spring of 1986, it was placed into the public domain as the Integrated Federal Court Data Base (IFCDB)(with yearly updates).

Each record in the IFCDB contains information regarding the nature of the dispute, the type of jurisdiction allowing the action to be heard in a federal district court, the amount in controversy, the title and docket number of the case, and other descriptive filing information. If the action has been ended by trial, settlement, dismissal, or other reason, additional data regarding the method, timing, and results of termination are also included. The end product is a rich research resource.

SELECTION OF YEARS AND TYPES OF CASES

To determine the extent to which Japanese corporations are litigants either as plaintiff or defendant, we examined four years in the IFCDB—1972, 1977, 1982, and 1987. We included every case filed in the federal district courts in those years that may have involved businesses. The cases excluded were the following types:

- Actions regarding repayment of student loans or veterans' benefits
- Deportations
- Prisoners' rights
- Tort suits where the United States is the defendant
- Actions regarding Social Security where the United States is the defendant

- Local jurisdiction actions (i.e., suits initiated on Guam, Wake Island, and other U.S. territories).

These restrictions had little effect on the number of cases with corporate defendants but they greatly reduced the count of names of plaintiffs and defendants to be searched. Still, we were left with 469,594 actions.

SELECTION OF COMPANIES

For the pilot analysis, we employed a set of criteria that would produce conservative results—that would, if anything, understate the number of such suits. The list of Japanese firms included only those firms listed on the Tokyo and major regional Japanese stock exchanges. The Japanese firms listed are from the the following stock exchanges: the Tokyo 1st and Tokyo 2nd, the Osaka 1st and Osaka 2nd, the OTC (over the counter), the Nagoya 1st, the Niigata, and the Sapporo. Japanese-owned firms in the United States were not included. Our target period included the years 1972, 1977, 1982, and 1987. We looked at every case filed in the federal district courts in those years that may have involved businesses.

The case title in the IFCDB record was then processed to extract the first-named plaintiff and the first-named defendant, thus increasing the search parameters to over 900,000 names. Software was developed to automate inspection of each name. Individual words in a company title were identified—Kawasaki Kisen Kaisha, Ltd., for example—and compared, character to character, to the names in the file. To allow for data entry errors on the part of the district court clerks who entered the data (and for misspellings upon the part of the filing attorney), substrings were made part of the search process (Kawa and Saki in the previous example). This yielded about 15,000 potential “hits” that were then scanned manually against our target company list. When it was determined that a match had occurred, a unique company number and its industry type were appended to the case record.

Approximately 250 Japanese corporations were found in the IFCDB out of the 2100 firms on our stock exchange lists. They accounted for 1568 cases in the sample years.

Appendix C

FAIRNESS REFERENCES AND THE DEFICIT

CORRELATIONS BETWEEN THE DEFICIT AND FAIRNESS REFERENCES

Efforts to determine whether the trade deficit and the number of fairness references are related are made more difficult by the presence of a strong upward trend in all the data series. The resulting correlations between the deficit and the number of references appearing in the same year, with a one-year lag, or with a two-year lag all tend to produce high correlations and are therefore not informative. The correlations between the number of fairness references and the industry deficits are shown in Tables C.1 through C.4.

Table C.1

Correlation of Economic Deficit and Fairness References

	Correlation with the Economic Deficit
No. of references (same year)	.754
No. of references (one-year lag)	.599
No. of references (two-year lag)	.417

Table C.2

Correlation of Manufacturing Deficit and Manufacturing Fairness References

	Correlation with the Manufacturing Deficit
No. of references (same year)	.507
No. of references (one-year lag)	.442
No. of references (two-year lag)	.344

Table C.3**Correlation of High-Technology Deficit and High-Technology Fairness References**

	Correlation with the High-Technology Deficit
No. of references (same year)	.770
No. of references (one-year lag)	.642
No. of references (two-year lag)	.810

Table C.4**Correlation of Agricultural Surplus and Fairness References**

	Correlation with the Agricultural Deficit
No. of references (same year)	.367
No. of references (one-year lag)	.619
No. of references (two-year lag)	.723

ELIMINATING THE TREND IN THE SERIES

One way to deal with the problem is to eliminate the trend in the various series. This was accomplished by estimating the trend line for each of the series and computing the residuals for each of the annual observations from the trend line (See Fig. C.1). For example, if the number of fairness references showed a sharp increase in a particular industry in a year and we believed that the deficit was related to the number of references, then we would expect to observe an increase in the trade deficit either in that year or in a prior year.

The following tables report correlations between the residuals from the number of fairness references and from the deficit for the economywide data and for each of the three industry groupings for which data were available. If there is a strong relationship between two variables that goes beyond the simple rising trend in the data, the correlations would be positive. In general, we are most likely to observe a correlation between the deficit and the references in the same year or in the following year. Tables C.5 through C.8 report the results for the four sets of data.

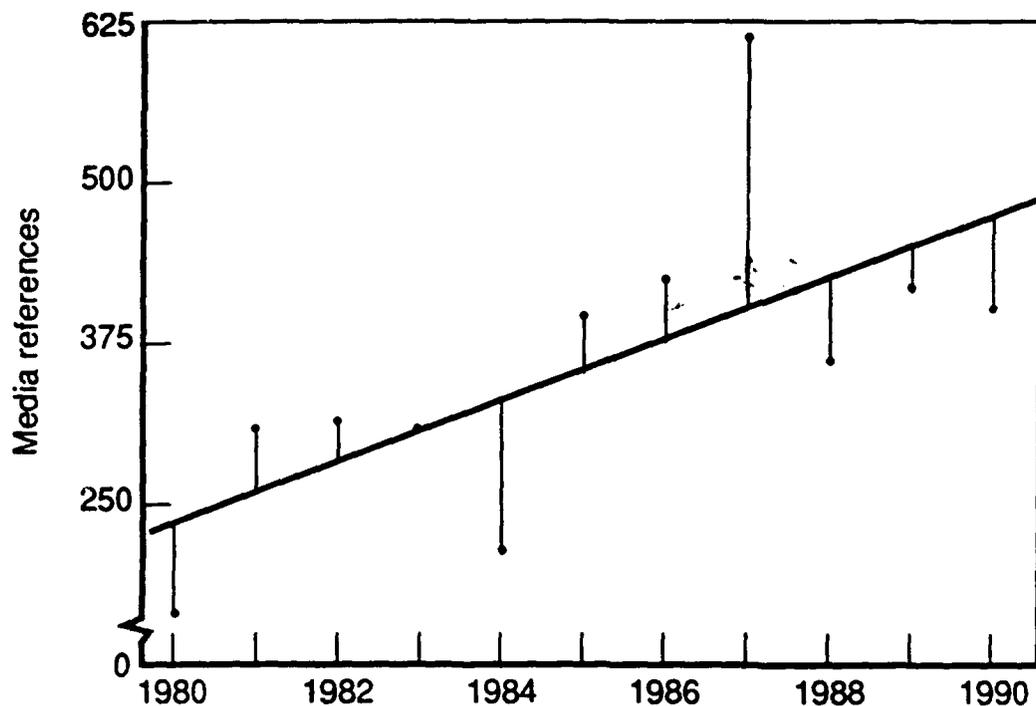


Fig. C.1—Measuring the residuals

In the case of the aggregate data, there does appear to be a weak positive correlation between the residuals of the deficit and the residuals of the references in the same year. This relationship is also evident in the data in Fig. 3.5 in the text. A similar correlation is evident in the manufacturing table for the same-year data. There does not appear to be any effect in the first year in the high-technology data, but a similar weak correlation exists in the agriculture data. In this case, the correlation is negative—an increase in the U.S. surplus in any given year tends to be associated with a decrease in fairness references in that same year.

Table C.5

**Correlation of Residuals Between the
Economic Deficit and Fairness References**

	Correlation with the Economic Deficit
No. of references (same year)	.403
No. of references (one-year lag)	-.072
No. of references (two-year lag)	-.678

Table C.6

**Correlation of Residuals Between the
Manufacturing Deficit and
Fairness References**

	Correlation with the Manufacturing Deficit
No. of references (same year)	.329
No. of references (one-year lag)	-.029
No. of references (two-year lag)	-.682

Table C.7

**Correlation of Residuals Between the
High-Technology Deficit and
Fairness References**

	Correlation with the High-Technology Deficit
No. of references (same year)	.048
No. of references (one-year lag)	-.521
No. of references (two-year lag)	.000

Table C.8

**Correlation of Residuals Between
the Agricultural Surplus and
Fairness References**

	Correlation with the Agricultural Surplus
No. of references (same year)	-.352
No. of references (one-year lag)	-.042
No. of references (two-year lag)	.190

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