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Title: Why did they cross the Pacific? Extradition: A Real Threat to Cartelists?

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Abstract: On January 31, 2014, the DOJ added trophies to its list of achievements from the more than three-year long investigation into the auto parts cartels. A former president and a vice president of a Japan-based corporation agreed to plead guilty for their participation in a conspiracy to fix the price of auto parts. Including these two individuals, the DOJ has already brought charges against twenty six corporations and twenty nine individuals, most of whom are Japanese nationals. For reasons described in this paper, some Japanese antitrust practitioners are puzzled by this U.S. enforcement against Japanese nationals. Extradition to the U.S. may not have been a real threat. Nonetheless, more than twenty Japanese executives and employees decided to leave Japan to serve prison terms in the U.S. Why did they choose to cross the Pacific? How functional is the DOJ's extradition tool? This Working Paper focuses on a relatively unfamiliar area for the antitrust community: the usefulness of extradition in the context of cartel enforcement against Japanese nationals who have not voluntarily surrendered to the U.S. jurisdiction.

Keywords: Cartel Enforcement, International, Extradition, Criminal Sanction, Japan.

Why did they cross the Pacific?
Extradition: A Real Threat to Cartelists?

Yoshiya Usami[1]

Introduction

On January 31, 2014, the Antitrust Division of the Department of Justice (DOJ) added trophies to its achievements from the more than three-year long investigation into the auto parts cartels. A former president and a vice president of a Japan-based corporation agreed to plead guilty for their participation in a conspiracy to fix the price of auto parts.[2] Including these two individuals, "the largest criminal investigation the Antitrust Division has ever pursued"[3] has already brought charges against twenty six corporations[4] and twenty nine individuals,[5] most of whom are Japanese nationals.[6] Antitrust authorities around the world have also been targeting more than eighty auto parts companies.[7]

Until late 1990's, the DOJ commonly recommended against prison sentences ("No-jail" recommendation) for foreign nationals who surrendered to the U.S.[8] One of the reasons for the "No-jail" recommendation was to obtain valuable cooperation from non-U.S. citizens for pursuing international cartels.[9] In 2000's, however, the DOJ strengthened its criminal cartel enforcement against foreign nationals, and the "No-jail" recommendation was virtually eliminated.[10] In addition, the DOJ indicated that it would request extradition of the fugitives who refused to cooperate and stayed outside the U.S.[11]

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[2] Press Release, U.S. Dep't of Justice, Former President and Vice President of Diamond Electric Agree to Plead Guilty to Participating in Auto Parts Price-Fixing Conspiracy, *available at* http://www.justice.gov/atr/public/press_releases/2014/303331.pdf.

[3] Sharis A. Pozen, Acting Assistant Att'y Gen., U.S. Dep't of Justice, Antitrust Div., remarks at the briefing on department's enforcement action in auto parts industry (Jan. 30, 2012), *available at* http://www.justice.gov/atr/public/press_releases/2012/279740.pdf.

[4] *See* Table 1.

[5] *See* Table 2.

[6] *Id*; Twenty eight individuals are Japanese citizens.

[7] For an overview of the multinational investigations against the auto parts industries, *see* John M. Connor, *Is Auto Parts Evolving into a Supercartel?* (Am. Antitrust Inst. Working Paper No. 13-06, Nov. 7, 2013), *available at* http://www.antitrustinstitute.org/sites/default/files/AAI%20Working%20Paper%2013-06.pdf.

[8] Donald C. Klawiter & Jennifer M. Driscoll, *Sentencing Individuals in Antitrust Cases: The Proper Balance*, 23-2 ANTITRUST 75, 78 (2009).

[9] *Id*.

[10] *See* Scott Hammond, Deputy Assistant Att'y Gen. for Criminal Enforcement, U.S. Dep't of Justice, Antitrust

In the auto parts cartel investigations by the DOJ, twenty two Japanese citizens have already agreed to plead guilty to serve prison terms in the U.S.[12] The fact that Japanese executives and employees voluntarily surrendered to the U.S. jurisdiction to serve prison terms was a stunning development not only for the Japanese business community but also for many Japanese antitrust practitioners. To be sure, it was not an unprecedented for Japanese nationals to serve prison term in the U.S.,[13] but the enforcement against auto parts cartels is astounding for its severity and breadth. It is said that the DOJ has been investigating more than 150 auto parts, whereas it has charged only a part of them until now. The ongoing investigations still make it hard to predict their end.

In the meantime, some Japanese antitrust practitioners showed their puzzlement over U.S. enforcement against Japanese nationals.[14] Even one of the former commissioners of the Japan Fair Trade Commission (JFTC) raised questions about enforcement decisions by the DOJ, especially about the cases where cartels had been formed in Japan for auto parts installed in vehicles manufactured in Japan for export to the U.S.[15]

Nonetheless, more than twenty Japanese executives and employees decided to leave Japan to serve prison terms in the U.S.[16] Why did they choose to cross the Pacific? One might think that even if they had chosen to stay in Japan, they would have been extradited and imprisoned in the U.S. But, was extradition a real threat to them? Is extradition truly a useful tool for the DOJ? This working paper focuses on a relatively unfamiliar area for the antitrust community: the value of the extradition statute, especially with respect to Japan, in the context of cartel enforcement. What hurdles would the DOJ face when it seeks extradition for Japanese

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Div., speech before the ABA Criminal Justice Section's Twentieth Annual National Institute on White Collar Crime: Charting New Waters in International Cartel Prosecutions (Mar. 2, 2006), *available at* http://www.justice.gov/atr/public/speeches/214861.pdf ("We will not agree to a "no-jail" sentence for any defendant.").

[11] *See* Scott Hammond, Deputy Assistant Att'y Gen. for Criminal Enforcement, U.S. Dep't of Justice, Antitrust Div., speech before the ABA Antitrust Law Section's 56th Annual Spring Meeting: Recent Developments, Trends, and Milestones in the Antitrust Division's Criminal Enforcement Program (Mar. 26, 2008), *available at* http://www.justice.gov/atr/public/speeches/232716.pdf ("In order to track down and prosecute foreign nationals who participate in cartels affecting the United States, the Division will utilize INTERPOL Red Notices, border watches and extradition.").

[12] *See* Table 2.

[13] *See*, *e.g.*, Press Release, U.S. Dep't of Justice, Japanese Executive Agrees to Plead Guilty to Participating in an International Antitrust Conspiracy (Aug. 5, 2004), *available at* http://www.justice.gov/atr/public/press_releases/2004/204910.pdf; *See also*, *e.g.*, Press Release, U.S. Dep't of Justice, Japanese Executive Pleads Guilty, Sentenced to Two Years in Jail for Participating in Conspiracies to Rig Bids and Bribe Foreign Officials to Purchase Marine Hose and Related Products (Dec. 10, 2008), *available at* http://www.justice.gov/atr/public/press_releases/2008/240307.pdf.

[14] Kei Umebayashi, *Karuteru Jian ni okeru Beikoku no Keiji Shobatsu – Nihonjin ga Beikoku de Fukueki suru koto eno Iwakan wo Fumaete* [*Criminal Punishments for Cartel Cases in the U.S. – Based on a sense of incongruity to the fact that Japanese nationals serve prison terms in the U.S.*] 999 NEW BUSINESS LAW [NBL] 50 (Apr. 15, 2013)(Japan); Hiroshi Kimeda & Kaku Hirao, *Kokusai Karuteru Jian ni okeru Tōbō Hanzainin Hikiwatashi Tetsuduki wo meguru Mondaiten* [*Issues Regarding the Extradition Procedure for International Cartel Cases*] 749 KŌSEI TORIHIKI [FAIR TRADE] 35, 36 (Mar. 2013)(Japan).

[15] Akio Yamada, *Hot/Cool Player: Han Torasutohō no Ikigai Tekiyō ni Kansuru Gimon* [*Hot/Cool Player: Questions to the Extraterritorial Application of the Antitrust Law*], 1001 NBL 1 (May 15, 2013)(Japan).

[16] *See* Table 2.

nationals who have not voluntarily surrendered to the U.S. jurisdiction? To make it simple, the following analyses are based on a fact pattern, unless otherwise noted, where a cartel was formed in Japan for auto parts installed in vehicles manufactured in Japan for export to the U.S. or elsewhere. Most of the conduct challenged by the DOJ in auto parts involves this type of fact pattern.[17]

Procedure for Extradition

The procedures within Japan for an extradition from Japan to the U.S. are governed by Japanese domestic law for extradition[18] and a treaty between Japan and the U.S.[19] First of all, an extradition request from the U.S. to Japan "shall be made through the diplomatic channel."[20] Then, when the Minister of Foreign Affairs of Japan (MOFA) receives the request, he or she forwards it to the Minister of Justice of Japan (MOJ) with the related documents.[21] When the MOJ receives the documents from the MOFA, he or she, where any of designated exceptions does not apply, and when it is deemed appropriate, forwards the related documents to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office (SPTHPPO) and orders an application to be made to the Tokyo High Court for examination as to whether the case is one in which the fugitive can be extradited.[22] If the Tokyo High Court finds that the fugitive can be extradited,[23] the MOJ, when he or she finds it appropriate to extradite the fugitive, orders the SPTHPPO to surrender the fugitive.[24] Then, the MOFA forwards the permit of custody to the requesting country.[25]

A decision made by the Tokyo High Court on whether the fugitive can be extradited is final and cannot be appealed. Therefore, even if the DOJ negotiates with the MOJ, and probably with the JFTC, and manages to persuade them to extradite a fugitive, the success of the extradition will depend on the Tokyo High Court's decision. In addition, even if the Tokyo High Court decides that the case *is* one in which the fugitive can be extradited, the MOJ has broad discretion as to whether the extradition is appropriate,[26] though it is unlikely that the MOJ deems it inappropriate to extradite once the Tokyo High Court decided that the fugitive can be extradited.[27]

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[17] *See, e.g.*, Information at 2, United States v. Furukawa Electric Co., Ltd., No. 2:11-cr-20612 (D. E.D. Mich. Sep. 29, 2011), *available at* http://www.justice.gov/atr/cases/f275900/275923.pdf; However, K. F. of Denso was only charged with obstruction of justice. Hence, some arguments in this paper may not be applicable to him.

[18] Tōbō Hanzainin Hikiwatashi Hō [Act of Extradition], Act No. 68 of July 21, 1953, *available at* http://www.japaneselawtranslation.go.jp/law/detail/?id=1879&vm=04&re=01&new=1.

[19] Treaty on Extradition between Japan and the United States of America, Mar. 3, 1978, 31 U.S.T. 892 [hereinafter *Extradition Treaty*].

[20] 31 U.S.T. 892, art. 8; *See* Act of Extradition, art. 3.

[21] Act of Extradition, art. 3.

[22] *Id* at art. 4.

[23] *Id* at art. 10.

[24] *Id* at art. 14.

[25] *Id* at art. 19.

[26] *Id* at art. 14; *See also* Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] July 27, 1994, Hei 6 (Gyō Ku) no. 38, 1521 HANREI JIHŌ [HANJI] 33 (Japan).

[27] Kimeda & Hirao, *supra* note 14, at 40.

Substantive Elements – Restrictions on Extradition

The substantive elements for extradition are also governed by the Act of Extradition and the Extradition Treaty. The Act of Extradition enumerates the restrictions on extradition as follows:

(1) a "political offense,"[28]
(2) when the requested offense is not punishable for three years or more according to the requesting country's laws (minimum prison term),[29]
(3) when there is no double criminality,[30]
(4) lack of "probable cause," except in a case where a fugitive was convicted in the requesting country for the requested offense,[31]
(5) when there is a pending criminal prosecution based on the act constituting the requested offense, or when there is the final judgment in such case,[32]
(6) when there is a pending criminal prosecution for an offense committed by the fugitive other than the requested offense, or when there is an enforceable sentence against him,[33] and
(7) extradite Japanese nationals.[34]

However, when an extradition treaty provides otherwise regarding item (2), (3), (6) or (7), the extradition treaty supersedes the restrictions in the Act of Extradition.[35] The Extradition Treaty modifies some restrictions enumerated in the Act of Extradition. For example, among other things, the Treaty reduces the minimum term of imprisonment for extraditable offences from three years to one year,[36] and it grants the requested country discretionary power to extradite its own nationals.[37] The Extradition Treaty also provides that (8) "[w]hen the offense for which extradition is requested has been committed outside the territory of the requesting [country], the requested [country] shall grant extradition if the laws of that [country] provide for the punishment of such an offense committed outside its territory, or if the offense has been committed by a national of the requested [country].[38]

In these restrictions, (3) double criminality, (4) probable cause, (5) pending procedure or the final judgment, (7) the principle that limits extradition of requested country's own citizens, and (8) offense committed outside the territory of the requesting country are, among other things, especially relevant to extradite an antitrust violator from Japan to the U.S.

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[28] Act of Extradition, art. 2, item. 1 and 2.
[29] *Id* at art. 2, item. 3.
[30] *Id* at art. 2, item. 4 and 5.
[31] *Id* at art. 2, item. 6.
[32] *Id* at art. 2, item. 7.
[33] *Id* at art. 2, item. 8.
[34] *Id* at art. 2, item. 9.
[35] *Id* at art. 2; Unlike the U.S., which has more than a hundred extradition treaties with foreign countries, Japan only has two extradition treaties: one with the U.S., and the other with South Korea.
[36] 31 U.S.T. 892, art. 2, para. 1.
[37] *Id* at art. 5.
[38] 31 U.S.T. 892, art. 6, para. 1.

Double Criminality

Under the principle of double criminality, an extradition is not allowed unless the offense for which extradition is requested is a crime in both the requesting and the requested countries (abstract/general double criminality).[39] In the antitrust law context, the Extradition Treaty enumerates "[a]n offense against the laws relating to prohibition of private monopoly or unfair business transactions"[40] as one of the extraditable offense when such an offense is punishable by both the requesting and the requested countries "by death, by life imprisonment, or by deprivation of liberty for a period of more than one year …."[41] The U.S. antitrust law prohibiting cartels, *i.e.*, section 1 of the Sherman Act,[42] satisfies this element since it has the maximum of a ten-year imprisonment term. The Japanese law prohibiting cartels, the Antimonopoly Act, also satisfies the element since it has criminal sanctions with the maximum of a five-year imprisonment for cartels.[43] Regarding a bid-rigging case, article 96-6 of the Penal Code[44] might satisfy the element since it has a three-year maximum prison term. The Penal Code for a bid-rigging, however, only applies for "public" auction or bid, therefore it does not apply to the auto parts cartels where manufacturers fixed the prices for the auto parts targeting private corporations.

Even if the elements of the abstract/general double criminality are satisfied, an extradition will not be allowed when the imposition or the execution of punishment for the requested offense would be barred by the laws of Japan (concrete/specific double criminality or punishability).[45] One of the typical bars by the laws of Japan in the antitrust context is a statute of limitations. In 2009, the amendment of the Antimonopoly Act strengthened the criminal punishment for cartels from a maximum of a three- year prison term to maximum of a five-year term.[46] Because of the amendment, the term for a statute of limitations for an act concluded after December 31, 2009 was extended from three years to five years.[47] The term for the statute of

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[39] Act of Extradition, art. 2, item 3 & 4; 31 U.S.T. 892, art. 2, para. 1; *See* Kēichi Aizawa, *Tōbō Hanzainin Hikiwatashi ni okeru Sōbatsusei* [*Double Criminality for Extradition*], *in* SHIN-JITSUREI KEIJI SOSHŌHŌ (1) SŌSA [NEW EXAMPLES FOR CRIMINAL PROCEDURE (1) INVESTIGATIONS] 304, 308-10 (Ryuichi Hirano & Kōya Matsuo eds., 1998)(Japan); *See also* Keiji Isaji & Atsushi Yamashita, *Beikoku Han Torasutohō eno Kigyō Taiō – Keijibatsu no Jijitsujō no Tetsuduki Kankatsu to sono Haikei kara Kōsatsu suru* [*Dealing with the U.S. Antitrust Law by Corporations – Consider through the De Facto Procedural Jurisdiction of Criminal Punishment and its Background*] 1010 NBL 22, 26-7 (Oct. 2013)(Japan).

[40] 31 U.S.T. 892, schedule 45.

[41] *Id* at art. 2, para. 1.

[42] 15 U.S.C. § 1.

[43] Shiteki Dokusen no Kinshi oyobi Kōsei Torihiki no Kakuho ni kansuru Hōritsu [Antimonopoly Act], Act No. 54 of April 14, art. 89, 1947 (Japan), *available at* http://www.jftc.go.jp/en/legislation_gls/amended_ama09/amended_ama09_11.html.

[44] KEIHŌ [PEN. C.], art. 96-6 (Japan).

[45] Act of Extradition, art. 2, item 5; 31 U.S.T. 892, art. 4, para. 1, item 4; *See* Aizawa, *supra* note 39, at 308-11; *See also* Isaji & Yamashita, *supra* note 39, at 27.

[46] Antimonopoly Act, art. 89 (1947), *amended by* Act No. 51 of June 10, 2009.

[47] KEIJI SOSHŌHŌ [KEISOHŌ][C. CRIM. PRO.], art. 250, no. 5 (Japan), *available at* http://www.japaneselawtranslation.go.jp/law/detail/?id=2056&vm=04&re=01&new=1; Seirei no. 253 of Oct. 28, 2009 (Japan).

limitations for an act concluded before January 1, 2010 remains three years.[48] Therefore, a request for the extradition would face a five-year or three-year statute of limitations, depending on when the act for which extradition is sought was concluded. Conspiracy periods for most auto parts cartels lasted beyond January, 2010,[49] therefore the five-year statute of limitations would apply in those cases. However, if an individual who participated in a certain conspiracy had withdrawn from the conspiracy before January, 2010, he might only be subject to the three-year statute of limitations and would not be subject to extradition.[50]

In addition to a statute of limitations, the absence of accusation by the JFTC could be a hurdle for extradition. In general, absence of a complaint in the offense indictable only on complaint has not been deemed as a bar to extradition.[51] Thus, it seems that the same argument applies to the case where the JFTC's accusation is absent. However, the reason for the interpretation that the absence of complaint is not a bar for extraditing the offender who committed the offence indictable only on complaint is unclear. In fact, the wording of the punishability does not explicitly exclude such cases.[52] In addition, considering the fact that the JFTC exclusively has discretion whether or not to pursue a criminal sanction[53] based on its expertise,[54] it is not necessarily inconceivable that the absence of criminal enforcement by the JFTC could be seen as a bar for the extradition under Japanese laws.[55]

Probable Cause

The Act of Extradition provides that an extradition cannot be allowed "when there is no probable cause to suspect that the fugitive committed the act constituting the requested offense."[56] The Extradition Treaty also provides a similar provision.[57] Thus, when the DOJ wants to extradite an alleged violator, it has to prove that there is probable cause to suspect that the

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[48] Act No. 51 of June 10, 2009, art. 18; C. CRIM. PRO., art. 250, no. 6

[49] *See* Table 1.

[50] *See* Kimeda & Hirao, *supra* note 14, at 40-1.

[51] Shigeki Itō, *Tōbō Hanzainin Hikiwatashihō Kaisetsu* [*Commentary on the Act of Extradition*] 16-6 HŌSŌ JIHŌ [SŌJI] 1, 28 (1964)(Japan); Toshiyuki Baba, *Nichibei Hanzainin Hikiwatashi Jōyaku no Zenmen Kaisei ni tsuite* [*About the Comprehensive Amendment of the Treaty on Extradition between Japan and the United States of America*] 31-8 HŌRITSU NO HIROBA [HIROBA] 56, 60 (1978)(Japan).

[52] *See* 31 U.S.T. 892, art. 4, para. 4 ("In the case of a request for extradition emanating from the United States, when the imposition or the execution of punishment for the offense for which extradition is requested would be barred by reasons prescribed under the laws of Japan …."); *See also* Act of Extradition, art. 2, item 5 ("A fugitive shall not be extradited in any of the following circumstances; … (v) When…the imposition or the execution of punishment on the fugitive for the requested offense would be barred under the laws and regulations of Japan.").

[53] Antimonopoly Act, art. 96, para. 1.

[54] HITOSHI SAEKI, CHŪSHAKU DOKUSEN KINSHIHŌ [COMMENTARY ON THE ANTIMONOPOLY ACT] 842 (Tetsu Negishi ed., 2009)(Japan).

[55] Isaji & Yamashita, *supra* note 39, at 27; *See* Umebayashi, *supra* note 14, at 56; Nobuaki Mukai, *Jōhō Kōkan ya Tōbō Hanzainin Hikiwatashi Tō no Tōkyokukan Renkei to "Ikigai Chōsa" wo Meguru Kadai ni tsuite no Shiron* [*Essays on Issues Regarding Inter-Agencies Cooperation on Information Exchange and Extradition, and "Extraterritorial Investigation"*] 1462 JURISUTO [JURIST] 52, 55 (Jan. 2014)(Japan).

[56] Act of Extradition, art. 2, item 6.

[57] 31 U.S.T. 892, art. 3 ("Extradition shall be granted only if there is sufficient evidence to prove … that there is probable cause to suspect … that the person sought has committed the offense for which extradition is requested ….").

person sought has committed the requested offense, *i.e.*, a violation of the U.S. antitrust law. Whether the DOJ will succeed in proving the probable cause depends on Japanese prosecutors. In other words, Japanese prosecutors, who might not necessarily be familiar with the U.S. antitrust laws, have to prove, before the Tokyo High Court, that there is probable cause that the person sought has committed the violation of the section 1 of the Sherman Act, not a violation of the Japanese Antimonopoly Act.

This procedural structure might bring an unexpected result to the DOJ. In fact, in 2004, a request by the U.S. government to extradite a Japanese citizen for alleged economic espionage[58] and some other related offenses was rejected by the Tokyo High Court.[59] In this case, the U.S. and Japanese governments must have had close discussions between them regarding whether the alleged offense was extraditable, and must have concluded positively. The High Court's decision rejecting the request, therefore, must have been unexpected for both governments.[60] When the DOJ wants to extradite a Japanese national based on the Sherman Act violation, they will have to face a similar risk before the Tokyo High Court.

Pending Procedure or Final judgment

"When the person sought has been prosecuted or has been tried and convicted or acquitted by the requested [country] for the offense for which extradition is requested," a person sought cannot be extradited.[61] Therefore, if the JFTC chooses criminal sanction toward a given case, and the case goes to the criminal court in Japan, a person in the given case cannot be extradited. This principle seems to have its base on the concepts of double jeopardy[62] and/or *non bis in idem* – not twice for the same.[63] Double jeopardy and/or *non bis in idem* do not necessarily bar second prosecution for the same act by different sovereigns.[64] Thus, assuming, *arguendo*, that the JFTC and the DOJ pursue the given case only for the fairness of the market within their respective territories, one might conclude that the extradition from Japan to the U.S. would be permissible.[65] However, the Extradition Treaty prohibits the extradition when the requested offense is pending or the final judgment was rendered. This restriction is based on the understanding that either criminal prosecution or extradition is enough to deter international

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[58] *See* Economic Espionage Act of 1996, 18 U.S.C.S. § 1831.
[59] Tōkyō Kōtō Saibansho [Tōkyō High Ct.] March 29, 2004, Hei 16 (Te) no. 20, 1155 HANREI TAIMUZU [HANTA] 118 (Japan).
[60] *See Court Rejected U.S. Request for Extradition in Industrial Spy Case*, JAPAN TIMES, Mar. 30, 2004, *available at* http://www.japantimes.co.jp/news/2004/03/30/national/court-rejects-u-s-request-for-extradition-in-industrial-spy-case/#.Uve5Hj15Muc.
[61] 31 U.S.T. 892, art. 4, para. 1; *See* Act of Extradition, art. 2, item. 7 ("A fugitive shall not be extradited … [w]hen a criminal prosecution for an offence based on the act constituting the requested offense is pending in a Japanese court, or when the judgment in such case has become final,").
[62] U.S. Const. amend. V.
[63] NIHONKOKU KENPŌ [KENPŌ][CONSTITUTION], art. 39 (Japan), *available at* http://www.japaneselawtranslation.go.jp/law/detail/?id=174&vm=04&re=01&new=1.
[64] *See*, *e.g*, Abbate v. United States, 359 U.S. 187 (1959) (permitting a federal prosecutor for bringing federal criminal charges against the same act previously prosecuted under state law); *See also*, *e.g*, Bartkus v. Illinois, 359 U.S. 121 (1959) (permitting a state prosecutor for bringing state criminal charges against the same act previously prosecuted under federal law); Baba, *supra* note 51, at 59.
[65] Umebayashi, *supra* note 14, at 55.

crimes and that the parties to the Treaty respect principles of comity.[66] In addition, *non bis in idem* is considered, at least in Japan, applicable to the facts within the "identity of the charged acts."[67] The Japanese government may prosecute a person in the given case only on account of anticompetitive effects in the domestic market. Even under these circumstances, extraditing the person sought in the same case for the same acts – although it might not necessarily be impossible – seems to contradict the basic understanding for extradition and, at least, with the concept of *non bis in idem.* Thus, it might be conceivable to say that Japan would not extradite the person sought in such a case.[68]

Limitation to Extradite Own Citizens

The Act of Extradition prohibits the Japanese government from extraditing its own citizens.[69] The Extradition Treaty also declares that the requested country shall not be bound to extradite its own citizens.[70] Different from the Act of Extradition, however, the Extradition Treaty grants the requested country the power to extradite its own citizens in its discretion.[71] The MOJ has broad discretion as to whether the extradition of Japanese citizens is appropriate.[72] Although there is no firm standard for the MOJ to rely on, he should, in general, take into account diplomatic consideration to the requesting country, necessity of preserving domestic law and order, protection of human rights for the person who may be extradited, and various domestic and foreign considerations.[73]

When it comes to the criminal accusation, the JFTC has taken the position that it should seek criminal penalties for "[v]icious and serious cases which are considered to have wide spread [sic] influence on people's livings …."[74] The JFTC has usually taken, based on its policy, administrative action toward the cartels, rather than pursuing criminal prosecutions against individuals. In one of the auto parts cases – the bearing cartel – the JFTC pursued criminal prosecutions against individuals for the first time after about three and a half years.[75] The rest of the auto parts cases so far ended up with administrative sanctions against corporations, namely

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[66] Baba, *supra* note 51, at 59; Toshiyuki Baba, *Nichibei Hanzainin Hikiwatashi Jōyaku ni tsuite* [*About the Treaty on Extradition between Japan and the United States of America*] 720 JURIST 73, 76 (Jul. 1, 1980)(Japan).
[67] *See* C. CRIM. PRO., art. 312, para. 1.
[68] *See* Umebayashi, *supra* note 14, at 55-6.
[69] Act of Extradition, art. 2, item. 9.
[70] 31 U.S.T. 892, art. 5.
[71] *Id*.
[72] Act of Extradition, art. 14.
[73] *See* 1521 HANJI 33.
[74] Japan Fair Trade Comm'n, Dokusen Kinshihō Ihan ni taisuru Keiji Kokuhatsu oyobi Hansoku Jiken no Chōsa ni Kansuru Kōsei Torihiki Iinkai no Hōshin [The Fair Trade Commission's Policy on Criminal Accusation and Compulsory Investigation of Criminal Cases Regarding Antimonopoly Violations] (Oct. 7, 2005), *available at* http://www.jftc.go.jp/en/legislation_gls/antimonopoly_rules.files/legislation_guidelinesamapdfpolicy_on_criminalaccusation.pdf.
[75] Japan Fair Trade Comm'n, Jikuuke Seizō Hanbai Gyōsha ni yoru Kakaku Karuteru Jiken ni Kakaru Kokuhatsu ni tsuite [The JFTC filed a criminal accusation on the price-fixing cartel over industrial machinery bearings and automotive bearings] (Jun. 14, 2012), *available at* http://www.jftc.go.jp/en/pressreleases/yearly-2012/jun/individual-000486.files/2012-JUne-14.pdf.

cease and desist orders and surcharge orders.[76] Based on the JFTC's policy and its past enforcements, it is natural to assume that the JFTC regards administrative sanctions as sufficient deterrence against most cartel activities.[77] Under the present situation where the JFTC has not vigorously imposed criminal sanction on cartel participants, the MOJ would likely defer to the decision by the JFTC, especially, in the case in which double sanctions could be imposed by the DOJ and the JFTC.[78]

The principle of proportionality should also be taken into consideration in this context. This is "[t]he principle that the use of force should be in proportion to the threat or grievance provoking the use of force."[79] Assuming it applies to the MOJ's discretion, his decision regarding the propriety of the extradition has to be rational.[80] Therefore, it seems that one could argue that the MOJ's discretion could be limited by the JFTC's decision not to take criminal sanction against the given case since the JFTC exclusively has discretion as to whether or not to pursue criminal sanction based on its expertise. It could also be argued that an extradition of a Japanese citizen sought in such a case where the JFTC did not apply a criminal sanction deviates from a rational exercise of the MOJ's discretion and, in fact, could be seen as a handover of its sovereignty.[81]

One of the reasons for the Extradition Treaty to modify the principle that limits extradition of the requested country's own citizens is to avoid irrational outcomes in the case where the offence was committed in the requesting country by the requested country's citizen and the offender escaped to the requested country.[82] In the given case where a cartel was formed in Japan for auto parts installed in vehicles manufactured in Japan for export to the U.S. or elsewhere, the JFTC *may* choose to pursue criminal sanctions against the offender in such a case. Therefore, the above mentioned reason for permitting extradition of the requested country's own

[76] The amount of surcharge is calculated by multiplying the sales amount of the relevant goods or services during the period in which the unreasonable restraint of trade was implemented. The maximum period is three years. The calculation rates are, as described in the table below, varied from one percent to ten percent depending on the type of industry to which a corporation belong and size of the corporation. Antimonopoly Act, art. 7-2, para 1 and para. 5.

Type of Industry	General Size	Mid and Small Size
General	10 %	4 %
Retailers	3 %	1.2 %
Wholesalers	2 %	1 %

The rate will be increased to 150 per cent of the original rate if the company was subject to a payment order for surcharge due to unreasonable restraint of trade or private monopolization within the past 10 years. Antimonopoly Act, art. 7-2, para 7. In addition, the calculation rate for the surcharge will be increased to 150 per cent of the original rate if the company played a major role in a given case. Antimonopoly Act, art. 7-2, para 8. If the company's activities fall into both of the above categories, the calculation rate of surcharge will be doubled. Antimonopoly Act, art. 7-2, para 9.

[77] Umebayashi, *supra* note 14, at 56-57; *See* Isaji & Yamashita, *supra* note 39, at 29.

[78] Umebayashi, *supra* note 14, at 56-57; *See* Isaji & Yamashita, *supra* note 39, at 29.

[79] BLACK'S LAW DICTIONARY 1338 (9th ed. 2009).

[80] *See* Kimeda & Hirao, *supra* note 14, at 42.

[81] *See* Umebayashi, *supra* note 14, at 56.

[82] Baba, *supra* note 51, at 60-61; Baba, *supra* note 66, at 77.

citizen does not seem to apply, or, at least, the necessity for modifying the principle that limits extradition seems relatively weaker.

Offense Committed Outside the Territory of the Requesting Country

The extradition treaty provides that when the requested offense for which extradition is sought has been committed outside the territory of the requesting country, extradition shall be granted if the laws of the requested country provide for the punishment of such an offense committed outside the territory of requested country.[83] Hence, even if an extraterritorial application is permissible under the Sherman Act to the offense committed outside the U.S., one cannot be extradited if the Japanese Antimonopoly Act is not applicable to an offense committed outside Japan, which is equivalent to the offense for which extradition is requested.[84]

The principle for the Japanese penal system is to punish criminals who committed a crime within its territory (territoriality principle).[85] This principle also applies to the criminal penalties in the Japanese Antimonopoly Act.[86] Therefore, at least, on its face, the Japanese Antimonopoly Act does not apply to the offense committed outside Japan. Hence, one might conclude that the extradition would not be granted where the offense for which extradition is requested has been committed outside the U.S. However, interpretation of the application of the territorial principle requires further discussion.

Despite the absence of provisions explicitly permitting application of the Antimonopoly Act to an offense committed outside Japan, there is a theory that the territoriality principle comprehends a case where not only the act, but the result, as a part of the structural elements, occurs in the territory of Japan.[87] Assuming that this theory applies to the Antimonopoly Act, it could be deemed as an offense committed within Japan where the result, "a substantial restraint of competition,"[88] occurs within Japan even if the conspiracy occurred outside Japan.[89] Thus, for example, the Antimonopoly Act would be applicable to the case where some U.S. manufacturers agree in the U.S. territory to fix the price for certain parts exported directly to Japan.[90] However, it is still unclear whether the criminal sanction in the Antimonopoly Act would be applicable to a case where some U.S. manufacturers agree in the U.S. to fix price for certain parts, and then the final products which contain those parts are exported in Japanese market.[91]

Most arguments regarding the relationship between an extradition and the offense committed outside the territory of the requesting country end at this extent. These arguments seem to assume that the allegations by the DOJ have been based on the effects doctrine and/or

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[83] 31 U.S.T. 892, art. 6, para. 1.
[84] If the offense for which extradition is requested has been committed by a citizen of the requesting country, however, this limitation would not apply; *See* 31 U.S.T. 892, art. 6, para. 1.
[85] PEN. C., art. 1.
[86] TADASHI SHIRAISHI, DOKUSEN KINSHIHŌ [ANTIMONOPOLY ACT] 638 (2nd ed. 2009)(Japan).
[87] SAEKI, *supra* note 54, at 813.
[88] Antimonopoly Act, art. 2, para. 6.
[89] Umebayashi, *supra* note 14, at 55; Isaji & Yamashita, *supra* note 39, at 27.
[90] Umebayashi, *supra* note 14, at 55; Isaji & Yamashita, *supra* note 39, at 27.
[91] Umebayashi, *supra* note 14, at 55.

the Foreign Trade Antitrust Improvement Act (FTAIA).[92] However, rather than invoking the effects doctrine and/or the FTAIA, the DOJ seems to have been applying the U.S. antitrust law to the auto parts cartels because at least some of the acts were committed on U.S. soil.[93] If that is the case, perhaps, the above arguments might not be applicable to the auto parts cases. But, it still depends on the interpretation of "the offense committed outside the territory."[94]

In any event, there has been no case whatsoever in which the JFTC applied criminal punishments to cartel cases where non-Japanese nationals colluded with others outside Japan. The JFTC so far lacks effective and practical tools, such as a plea bargaining system, to bring criminal punishments to foreign cartelists. In addition, based on the assumption that the JFTC regards administrative sanctions as enough deterrence for most cartels, it is unlikely that the JFTC would apply criminal punishments in cases where non-Japanese nationals colluded with others outside Japan, at least, in near future.[95] If that is the case, the interpretation enabling extradition in the case where the offense committed outside the requesting country – in this case, the U.S. – seems to give an option only to the U.S., but not to Japan, to extradite the requested country's nationals.[96] Even assuming that such an interpretation is theoretically possible, it seems that one could argue that the application of the interpretation would result in an unbalanced treatment between two countries unless Japanese enforcer obtain effective and practical tools to bring criminal sanctions to foreign cartelists.

Why Did They Cross the Pacific?

Based on the analyses above and the fact that there have been no reports to date that Japanese nationals were extradited for cartel offenses from Japan to the U.S., it is conceivable that extradition has not been a useful tool for the DOJ to capture Japanese cartelists who had decided to stay in Japan. Why, then, did more than twenty Japanese executives and employees in the auto parts cartels decided to serve prison terms in the U.S.?[97] There might be three plausible and independent, yet compatible, reasons for their decision.

First, uncertainty of extradition in actual cases might have driven them to their decision. Despite the hurdles the DOJ would face, as described above, and the fact that no extraditions for Japanese nationals have been reported for antitrust violations, no defense counsels could have been able to give 100 percent assurance to their client that they would not be extradited in the given cases. The complexities of interpretations regarding extradition and the lack of clear precedence in this field make it difficult to predict the outcomes of individual decisions whether or not to stay in Japan, If one had decided not to plead guilty, then had been extradited to the U.S. and had faced a trial, he would have probably received a higher sentence than he got with a plea

[92] 15 U.S.C. 6 (a).
[93] Yasumi Ochi, *Buhin Karuteru Mondai to Nichi-Bei-Ō Dokusen Kinshihō no Ikigai Tekiyō* [*Issues on Parts Cartels and Extraterritorial Applications of Japanese, the U.S., and EU Antimonopoly Acts*] 41-11 KOKUSAI SHŌJI HŌMU [JOURNAL OF THE JAPANESE INSTITUTE OF INTERNATIONAL BUSINESS LAW] 1609, 1609-11 (2013).
[94] 31 U.S.T. 892, art. 6, para. 1.
[95] Isaji & Yamashita, *supra* note 39, at 27.
[96] *See id*. at 27-8.
[97] Conversely, six individuals who did not agree to plead guilty and were indicted in the auto parts cartels seem to have decided to stay in Japan; *See* table 2.

agreement. Individuals in the auto parts cases had to place a bet on their fortune among possible extradition and ensuing higher sentence, a failure in DOJ's extradition request to Japanese government, and probability to get a not-guilty verdict.[98] Taking these factors into account, many Japanese nationals might have decided to minimize the uncertainty of extradition and possibilities of higher sentences.

The second plausible reason for their decision might be the assurance to travel freely for business activities in the U.S. after they completed their terms of imprisonment.[99] In fact, a foreign cartelist can be excluded from the U.S. for at least fifteen years even if his conviction does not result in a jail sentence.[100] In addition, even if one chooses not to travel to the U.S. territory, he would face possible extradition if he enters or tries to enter one of the 190 member countries of the International Criminal Police Organization (INTERPOL).[101] As the DOJ has taken the position that it would "plac[e] indicted international fugitives on "Red Notice" list maintained by INTERPOL,"[102] a fugitive who is on "Red Notice" – lookout lists for people sought by a particular country – could be extradited once he is identified by one of the INTERPOL member countries.[103] As a matter of fact, a Japanese citizen who had been indicted in the U.S. for cartelizing was arrested after trying to enter India,[104] although the extradition was ultimately unsuccessful.[105] In this extent, extradition could be a possible threat to a fugitive who wants to travel outside Japan. A possible exclusion from the U.S. for at least fifteen years can also be a serious career killer especially for an international business person in his prime.[106] Recognizing these considerations, an international business person in his prime could reasonably choose to serve a short prison term in the U.S. and obtain an assurance to travel freely after his term of imprisonment.[107] Furthermore, it is said that the most defendants who agreed to plead guilty in the auto parts cartels have been imprisoned in minimum security prisons which have comparatively freer environments than higher security prisons.[108] Comparing possible extradition

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[98] Toshiaki Tada, *Teidan - Kokusai Karuteru Kisei no Saizensen* [*Three-man talks - The Frontline of International Cartel Control*], 1462 JURIST 12, 28 (Jan. 2014)(Japan)

[99] The DOJ itself acknowledged this notion, *see* Memorandum of Understanding Between the Antitrust Division United States Department of Justice and the Immigration and Naturalization Service United States Department of Justice at 1 (Mar. 15, 1996)[hereinafter Memorandum], *available at* http://www.justice.gov/atr/public/criminal/9951.pdf ("[T]he chief inducement for aliens charged with antitrust offenses to submit to U.S. jurisdiction is the ability to resume travel for business activities in the United States …."); *See also*, Isaji & Yamashita, *supra* note 39, at 23-5.

[100] Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) (2006); 8 U.S.C. § 1182(h)(1)(A)(i) (2006); Eric Grannon & Nicolle Kownacki, Are Antitrust Violations Crimes Involving Moral Turpitude? 36-3 THE CHAMPION 40, 41 (Apr. 2012).

[101] Kimeda & Hirao, *supra* note 14, at 37; Isaji & Yamashita, *supra* note 39, at 24-5.

[102] Hammond, *supra* note 11.

[103] J. William Rowley, D. Martin Low & Omar K. Wakil, *Increasing the Bite Behind the Bark: Extradition in Antitrust Cases*, THE ANTITRUST SOURCE 1, 8 (Apr. 2007),

[104] *See* Dalip Singh, *Japanese Held*, TELEGRAPH (India), Dec. 21, 2002.

[105] Rowly, Low & Wakil, *supra* note 103.

[106] Grannon & Kownacki, *supra* note 100, at 41.

[107] Umebayashi, *supra* note 14, at 55; Isaji & Yamashita, *supra* note 39, at 24; Tetsuya Nagasawa, *Three-man talks - The Frontline of International Cartel Control*, 1462 JURIST 12, 26.

[108] Isaji & Yamashita, *supra* note 39, at 22-23; Hiroyuki Oka, *Jidōsha Buhin Karuteru ni Taisuru Nichi-Bei Tōkyoku no Sochi to Hōteki Mondaiten* [*Enforcements against the Auto Parts Cartels by Japanese and the U.S. Authorities and Legal Issues*], 41-6 JOURNAL OF THE JAPANESE INSTITUTE OF INTERNATIONAL BUSINESS LAW 811, 817-8 (2013).

by INTERPOL member states and exclusion from the U.S. for more than fifteen years with a relatively short term imprisonment in a minimum security prison, perhaps, it might not necessarily be surprising phenomenon that Japanese business persons decided to cross the Pacific and face punishment in the U.S.

The third possible reason might be the assurances of employment after the terms of imprisonment. Although no such arrangement has been found in publicly available sources so far, there could be arrangements, formally or informally, between companies and individuals that the companies would allow individuals who decided to serve prison terms in the U.S. to return to their previous companies, or, at least, related companies when they finish their terms of imprisonment.[109] However, since publicly available sources are limited until now, detail analyses in this respect still need to be developed based on further research.

Closing

As the above analyses show, it might be natural to see, until now, that the threat of extradition from Japan to the U.S. was not the main reason for the cartelists in the auto parts cartels to voluntarily surrender to the U.S. to serve their prison terms. The DOJ itself has acknowledged the difficulties in securing jurisdiction over foreign nationals by extradition.[110] In fact, a famous extradition case involving an antitrust offense was unsuccessful; the U.S. failed to extradite a British national from the UK to the U.S. based on a price-fixing charge. Ian Norris, a British national was indicted on a price-fixing charge and related obstruction-of-justice charges in the U.S.[111] His extradition based on a price-fixing charge was, however, actually rejected for lack of double criminality,[112] although he was eventually extradited to the U.S. on the obstruction-of-justice charges. Yet, the DOJ has said that it would seek extradition for alleged offenders who do not voluntarily surrender to the U.S. to cooperate with its investigations.[113] It is, in fact, said that the DOJ has indicated to defendants in the auto parts investigations that it would seek extradition unless they surrender to the U.S. jurisdiction.

If the DOJ succeeds in an antitrust extradition despite the hurdles described in this paper, it is going to be a huge game changer for U.S. cartel enforcement and the cartelists who have chosen to stay in their home countries. At the same time, when the Japanese government makes decisions on an extradition request for alleged Sherman Act violations in a given case, it should be accountable for its decision, especially when it extradites its own citizen in a case where a cartel was formed in Japan. In such a case, the JFTC and the Japanese government may seek criminal sanctions against individuals. If the JFTC and the Japanese government seek criminal sanctions, cartelists in that case cannot be extradited because of the pending criminal procedure as described above. Despite its authority and capability to use criminal sanctions against

[109] *See* Oka, *supra* note 108 (speculating that there might be an underlying structure that the company recommends a curved out executive/employee to serve his prison term exchange for a promise that they will allow him to go back to the company, the executive/employee wants to go back to the company after his imprisonment, and the DOJ welcomes this treatment to secure foreign nationals' imprisonment).
[110] Memorandum, *supra* note 98 ("[T]he Antitrust Division generally cannot secure jurisdiction over aliens charged with antitrust offenses by extradition ….").
[111] United States v. Norris, No. 03-632 (E.D. Pa. Sept, 28, 2004)(second superseding indictment).
[112] Norris v. United States, [2008] UKHL 16.
[113] *See* Hammond, *supra* note 11.

individuals, if the JFTC does not seek criminal sanctions and the Japanese government entrusted the case to the U.S. by extraditing its own citizens, they should explain the legitimacy and the reasonableness of their decision to the public. On the other hand, when the Japanese government decides not to extradite the person sought, the JFTC should, if possible, take an appropriate action, either administrative or criminal, against the alleged violations.

Table 1: Corporate Participants with the DOJ*				
Corporate	Market/Product(s)	Conspiracy Period	Fine	Plea Agreement
Furukawa Electric Co., Ltd (Furukawa)	Wire Harnesses (WH)	1/2000-1/2010	$200 million	Plea Agreement
Yazaki Corp. (Yazaki)	(1) WH (2) Instrument Panel Clusters (Meters) (3) Fuel Senders	(1) 1/2000-2/2010 (2) 12/2002-2/2010 (3) 3/2004-2/2010	$470 million	Plea Agreement
Denso Corp. (Denso)	(1) Electronic Control Units (ECUs) (2) Heater Control Panels (HCPs)	(1) 1/2000-2/2010 (2) 1/2000-2/2010	$78 million	Plea Agreement
Fujikura Ltd. (Fujikura)	WH	1/2006-2/2010	$20 million	Plea Agreement
Autoliv Inc. (Autoliv)**	(1) Seatbelts, Airbags and Steering Wheels (2) Seatbelts	(1) 3/2006-2/2011 (2) 5/2008-2/2011	$14.5 million	Plea Agreement
TRW Deutschland Holding GmbH (TRW)***	Seatbelts, Airbags and Steering Wheels	1/2008-6/2011	$5.1 million	Plea Agreement
Tokai Rika Co., Ltd. (Tokai Rika)	(1) HCPs (2) Obstruction of Justice	(1) 9/2003-2/2010 (2) 2/2010	$17.7 million	Plea Agreement
Nippon Seiki Co., Ltd. (Nippon Seiki)	Meters	4/2008-2/2010	$1 million	Plea Agreement
G.S. Electech Inc. (G.S.)	Speed Sensor Wire Assemblies	1/2003-2/2010	$2.75 million	Plea Agreement
Diamond Electric Manufacturing Co., Ltd. (Diamond Electric)	Ignition Coils	7/2003-2/2010	$19 million	Plea Agreement
Panasonic Corp. (Panasonic)	(1) Switches (2) Steering Angle Sensors (3) Automotive High Intensity Discharge (HID) Ballasts	(1) 9/2003-2/2010 (2) 9/2003-2/2010 (3) 7/1998-2/2010	$45.8 million	Plea Agreement
Hitachi Automotive Systems Ltd. (Hitachi)	Starter Motors, Alternators, Air Flow Meters, Valve Timing Control Devices, Fuel Injection Systems, Electronic Throttle Bodies, Ignition Coils, Inverters and Motor Generators	1/2000-2/2010	$195 million	Plea Agreement
Jtekt Corp. (Jtekt)	(1) Bearing (2) Electric Powered Steering Assemblies	(1) 2000-7/2011 (2) 2005-10/2011	$103.27 million	Plea Agreement
Mitsuba Corp. (Mitsuba)	(1) Windshield Washer Systems, Windshield Wiper Systems, Starter Motors, Power Window Motors and Fan Motors (2) Obstruction of	(1) 1/2000-2/2010 (2) 2/2010	$135 million	Plea Agreement

	Justice			
Mitsubishi Electric Corp. (MELCO)	Starter Motors, Alternators and Ignition Coils	1/2000-2/2010	$190 million	Plea Agreement
Mitsubishi Heavy Industry Ltd. (Mitsubishi Heavy)	Compressors and Condensers	1/2001-2/2010	$14.5 million	Plea Agreement
NSK Ltd. (NSK)	Bearing	2000-7/2011	$68.2 million	Plea Agreement
T.RAD Co., Ltd. (TRAD)	Radiators and Automatic Transmission Fluid Warmers (ATF warmers)	11/2002-2/2010	$13.75 million	Plea Agreement
Valeo Japan Co., Ltd. (Valeo)	Air Conditioning System	4/2006-2/2010	$13.6 million	Plea Agreement
Yamashita Rubber Co., Ltd. (Yamashita)	Automotive Anti-Vibration Rubber	4/2003-5/2012	$11 million	Plea Agreement
Takata Corp. (Takata)	Seatbelts	1/2003-2/2011	$71.3 million	Plea Agreement
Toyo Tire & Rubber Co., Ltd. (Toyo)	(1)Automotive Anti-Vibration Rubber (2)Automotive Constant-velocity-joint boots	(1) 3/1996-5/2012 (2) 1/2006-9/2010	$120 million	(Plea Agreement)
Stanley Electric Co., Ltd. (Stanley)	Automotive High-intensity Discharge (HID) Lamp Ballasts	7/1998-2/2010	$1.44 million	Plea Agreement
Koito Manufacturing Co., Ltd. (Koito)	(1) Lighting Fixtures (2) HID Lamp Ballasts	(1) 6/1997-7/2011 (2) 7/1998-2/2010	$56.6 million	(Plea Agreement)
Aisan Industry Co., Ltd. (Aisan)	Electronic Throttle Bodies	10/2003-2/2010	$6.86 million	Plea Agreement
Bridgestone Corp. (Bridgestone)	Automotive Anti-Vibration Rubber	1/2001-12/2008	$425 million	(Plea Agreement)

* As of March 18, 2014.
** Autoliv is a Stockhom-based company.
*** TRW is a Germany-based subsidiary of US-based TRW Automotive Holdings Corp.
**** "Plea Agreement" with parenthesis indicates that the actual plea agreement was not yet found in the DOJ website.

Table 2: Individual Participants with the DOJ*				
Individual	Market/Product(s)	Prison Time	Fine	Plea Agreement
J. F. (Furukawa)	WH	1 year & 1 day	$20,000	Plea Agreement
H. N. (Furukawa)	WH	15 months	$20,000	Plea Agreement
T. U. (Furukawa)	WH	18 months	$20,000	Plea Agreement
T. H. (Yazaki)	WH	2 years	$20,000	Plea Agreement
R. K. (Yazaki)	WH	2 years	$20,000	Plea Agreement
S. O. (Yazaki)	WH	15 months	$20,000	Plea Agreement
H. T. (Yazaki)	WH	15 months	$20,000	Plea Agreement
K. K. (Yazaki)	WH	14 months	$20,000	Plea Agreement
T. S. (Yazaki)	Meters	14 months	$20,000	Plea Agreement
N. I. (Denso)	HCPs	1 year & 1 day	$20,000	Plea Agreement
M. H. (Denso)	HCPs	14 months	$20,000	Plea Agreement
Y. S. (Denso)	(1) ECUs (2) HCPs	16 months	$20,000	Plea Agreement
H. W. (Denso)	HCPs	15 months	$20,000	Plea Agreement
K. F. (Denso)	Obstruction of Justice	1 year & 1 day		(Plea Agreement)
H. Y. (Ohio subsidiary of a Japanese automotive supplier)	Automotive Anti-Vibration Rubber	1 year & 1 day	$20,000	(Plea Agreement)
T. M. (Autoliv)	Seatbelts	1 year & 1 day	$20,000	Plea Agreement
S. O. (G.S.)	Speed Sensor Wire Assemblies			Indicted
R. F. (Fujikura)	WH			Indicted
T. N. (Fujikura)	WH			Indicted
S. K. (Panasonic)	Switches and Steering Angle Sensors			Indicted
T. K. (U.S. subsidiary of a Japan-based automotive anti-vibration rubber product supplier)	Automotive Anti-Vibration Rubber	1 year and 1 day	$20,000	(Plea Agreement)
G. W. ** (U.S. subsidiary of a Japan-based automotive products supplier)	Seatbelts	14 months	$20,000	Plea Agreement
Y. U. (Takata)	Seatbelts	19 months	$20,000	(Plea Agreement)
S. I. (Takata)	Seatbelts	16 months	$20,000	(Plea Agreement)
Y. F. (Takata)	Seatbelts	14 months	$20,000	(Plea Agreement)
M. H. (Japanese automotive supplier)	Automotive Anti-Vibration Rubber			Indicted
K. N. (Japanese automotive supplier)	Automotive Anti-Vibration Rubber			Indicted
S. I. (Diamond Electric)	Ignition Coils	16 months	$5,000	(Plea Agreement)
T. I. (Diamond Electric)	Ignition Coils	13 months	$5,000	(Plea Agreement)

* As of March 18, 2014.
** G.W. is a U.S. citizen.
*** "Plea Agreement" with parenthesis indicates that the actual plea agreement was not yet found in the DOJ website.