Complaint

May 15th, 2015

To: Tokyo District Court

On behalf of Plaintiffs:

Attorney Masahiko Yamada

Attorney Koji Iwatsuki

And other 155 attorneys

List of plaintiffs and defendant is listed on the attached sheet.

Value of Complaint: 45 million and 650 thousand yen.

Revenue Stamp Fee: 158 thousand yen.

###

RELIEFS SOUGHT:

Injunctive relief for defendant's negotiations of Trans Pacific Partnership be enjoined and restrained,

Declarative relief that Confirmation that the defendant's negotiating Trans Pacific Partnership and thereof constitute violation of the Constitution be declared by court and,

Monetary relief that Defendant make payment each and every plaintiff for the amount of ten thousand yen.

###

Introduction What litigation seeks.

First: TPP violates the Constitution of Japan.

1 The Trans-Pacific Partnership (hereinafter TPP) is highly likely to infringe on life and freedom citizens of Japan, which is seen in provisions of fundamental human rights codified in the Constitution of Japan (the "citizen" described in this filing denotes individuals recognized as a holder of fundamental human rights under the Constitution of Japan). Furthermore, TPP contains danger that impedes regimes and systems of the country, and it violates a number of provisions of governance system under the Constitution of Japan.

2 While courts tend to refrain which is influenced by requirement of specific legal dispute from delivering judgment over issue of constitutionality, nevertheless, we sincerely ask court to face and examine a series of specific facts that are in violation of provisions of the constitution of Japan and exercise inherent responsibility on which court is situated to achieve the merits of the case examined.

Second: TPP is in conflict with fundamental structure of the country's governance system, stipulated in the Constitution of Japan

1 TPP which is grounded by "elimination of tariff with no exception" as its characteristics holds a grand principle that ensures global corporations' freedom of economic activity and their profit, thereby, the TPP attempt in the name of "non-tariff barrier" to change and abolish a variety of regulations and systems that obstruct such activity and profit. What is being discussed in TPP negotiations is not only on agriculture but also on

liberalization of trades in product and services, investment, government procurement, regulatory issue itself, competition policy and small-medium size enterprise that totals to 21 fields.

2 Treaty overrides laws in legal effect, which mandates domestic laws of Japan rewritten on a large scale for them to meet provisions of TPP that serves for ensuring global corporations' activity and profit. Contents in such 21 fields encompass almost all sectors of living life, thereby have a serious impact on people's life to positively entail to transforming forcefully principle of respect of human fundamental rights.

Third: TPP destroys fundamental structure of governance the Constitution of Japan provides.

1 TPP as part of system of expansive treaty subjects Diet, upon conclusion of the treaty, to revise and eliminate quite a large number of laws and other measures that cover almost all fields of citizens' life. The treaty also mandates the lawmaking organ not to enact laws ever that conflict with the treaty. Accordingly, that Diet be burdened with restriction in making an expansive and comprehensive series of laws is in violation of "The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State," Article 41, the Constitution of Japan. Unclearness of scope of the laws be revised or eliminated violates the said article, as well.

2 TPP negotiations under which each participating government is imposed on non-disclosure obligation that seems unexceptional manifests the negotiations' extreme secrecy.

Despite the fact that the negotiations entails to effect seriously and far too much on citizens' life, the citizens and Diet members are shut out from

what it is going on, which violates proviso, article 73 (3) of the constitutional law.
While the law grants Cabinet government power to conclude treaty, the proviso stipulates, "However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet," which addresses Diet exercise its power of democratic control over diplomacy.

3 Furthermore, a clause called ISD (dispute settlement clause of Investor vs. Country) grants beforehand foreign investor comprehensive right of lawsuit in which the investor complains that an assumed host country or its local government by filing such complaint with an international tribunal.
Despite that such filing is to fall under a domestic legal dispute, the case of the filings is decided by a body of international arbitrators, who are chosen by the foreign investors, and, a result of arbitration may deprive those who complained of the judgment within the judicial authority of the country, Japan. This violates the article 76 (1) of the Constitution of Japan that reads, "The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law."

4 TPP as such, strips country of its legislative power and deprives judicial authority of its power, the two of which form part of governance system of Japan under the separation of the three powers written in the Constitution of Japan, in the end, impedes fundamental frame of governance system written in the Constitution of Japan.

Fourth: TPP materially infringes on fundamental human rights ensured by the

Constitution of Japan.

1 There erupt among citizens a variety of anxiety and sense of crisis over TPP on the subject matter such as of collapse of agriculture and dairy farming, food self-sufficiency rate going plummeted, rise of medical bills, national health insurance system striped of, food safety impaired, excessive regulation on copyright's derivative works enforced, to name a few. TPP, in effect, specifically infringes on citizens' life and health, realty of which we plan to identify in the course of court procedure of litigation.

2 Article 13 of the Constitution of Japan respects citizens and ensures them as individuals their right to life, liberty, and the pursuit of happiness. Article 25 ensures right to live, namely, to maintain the minimum standards of wholesome and cultured living. Under the constitution that ensures aforementioned right to live, the citizens are provided with a variety of specific rights deviated from the right to live. Specifically, those include rights to obtain stable food supply, maintain life for farmers by running business of agriculture and dairy, obtain safe food supply and adequate medical services. TPP infringes deeply on those comprehensive rights of life, which clearly violates the articles 14 and 25 of the constitution.

3 TPP inherently originates against democracy. Process of TPP negotiations under an extreme secretiveness, outcome of which prohibits citizens and Diet members from learning what is going on thereof, infringes specifically on citizens' right to know ensured by Article 21 of the Constitution of Japan. Taking that establishment of democratic society is premised on citizens' right to know into account, TPP manifests nothing

but breaking such democracy, which is inexcusable, even before we discuss about TPP on its merits.

Fifth: We earnestly seek court provide examination on the merits of the facts that citizens' be infringed and, render an adequate decision to respect and protect the Constitution of Japan.

1 Judicial power is said to be vested in State power that applies and effectuates laws in the event that there lies a specific dispute of right and obligation between the parties and, notion of which is embodied in "legal dispute," defined in Article 3 of Court Act that stands as a subject of examination. Facts that citizens' fundamental rights being infringed of which we plan to vindicate and prove in court are resulted from defendant's action of concluding TPP which specifically infringe the rights that include right to live which fulfills requirement enough of "legal dispute." Although there seems judicial attitude for not rendering decisions born from a court tendency of passiveness when it comes to a question of national governance system, this case mandates the judiciary to render decision of the matter that underpins ripeness enough to examine how fundamental frame of national governance system is being destroyed by TPP.

2 In particular, once the ISD is employed as a result of concluding TPP, judicial power of Japan is not to reach the legal dispute within the country that entails to nothing but suicide of judicial power if the court of this case ever avoids decision over employment of the ISD into TPP. Court judges of this case appear to risk themselves being named in history to come as those helped collapse judiciary of Japan.

3 Besides the number of the plaintiffs, quite a number of people, likely to rise to hundreds or even thousands times the number of the plaintiffs, to all of whom TPP with its issues coming out from the 21 areas therein infringes on, watch this case. On top of that, those in the United States and other TPP participating countries who are concerned of the negatives of TPP and those seriously victimized in the Republic of Korea by KORUS FTA, and beyond in the rest of the world take grave interest in this case we have filed here.

The plaintiffs along with their attorneys of this case will demonstrate how TPP treads into citizens' life and structure of their country by presenting the specifics of the number of infringements with evidence. We are determined to pursue the litigation in order enough to make it come true the fundamental human rights, the nexus of the Constitution of Japan achieved.

4 Addressing to court, we would like the court stands firm on principle of the independence of the judges, as defined in Article 76 (3) of the Constitution that notes "All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws," and manages this case meaningful enough to be able to withstand possible comments and criticisms in history to come.

To fulfill such effort, we earnestly would like the court to render adequate decisions grounded by spirits of the Constitution of Japan after thorough examination on the merits of the case that come with fully warranted exercise by the plaintiffs and their attorneys to prove the complaint of the case

###

Causes of Action (Index)

###

Chapter 1: Sketch of complaint

First: Negotiations of Trans Pacific Partnership

Trans Pacific Partnership (hereinafter TPP), concluded in 2005 and entered into force in 2005 (hereinafter "P4" or "Original Agreement") among four countries of Singapore, New Zealand, Chili and Brunei, that added, later, other countries and new targeted fields for its content is generally called a Free Trade Agreement. Negotiating counties current consist of the United States, Australia, Peru, Vietnam, Malaysia, Mexico, Canada and the defendant of this case in addition to the aforementioned four countries, totaling to 12 countries. The defendant, after agreed by other countries for its participation, started to join the negotiation round with the other 11 countries when the 18th round took place in Malaysia and continues such negotiation.

According to defendant's explanation, TPP aims at " Agreement targeting a comprehensive high-level free trade that includes non-tariff issues and new trade agendas. Fields of negotiations encompass trade of products (to be reclassified downward for details.), trade of services (to be reclassified downward for details.), investment and the related thereto, issues of the institutional and across-the-boards, which the defendant has organized into the 21 fields by area.

Second: Parallel negotiations between Japan and the United States (Non-tariff field)

The defendant's entry into TPP negotiations was agreed by the United States called US) on April 12, 2013.

In the course of obtaining such agreement, defendant also agreed to start a bilateral negotiations on non-tariff fields with the US in parallel to TPP

negotiations, which is still going on. The issues between the two countries include expansive items such as automobiles, insurance, transparency, customs procedure, investment, intellectual property, standards and criteria, government procurement, competition policy, courier service, sanitary and shyto-sanitary measures, the names to the extent of disclosed. Over the issue on automobiles, subject matter extends to the details such safeguard on specific automobiles, transparency, standards, preferential-handling-procedure (PHP), green cars, new technology cars, financial incentives, distributions and cooperation with the third countries.

The bilateral Japan-US negotiation runs during TPP negotiations of which it is agreed that implementation of the result of the negotiation is to take effect at the same time when the TPP does. ,

Third: Gist of this litigation

The complaint of the case seeks that TPP negotiations be restrained and enjoined from its on-going rounds by means of an injunctive relief and be declared and confirmed by court that such negotiations be in violation of the constitutional law and the plaintiffs be awarded monetary compensation for damage that includes mental anguish caused by the defendant's action.

###

Chapter Two: What TPP is

First: TPP in relation to Living System

As stated in the Introductory, TPP not only drives agricultural and dairy farmers into despair but also stirs up a variety of anxieties among general publics (publics mean individuals recognized as being fundamental human rights holders under the Constitution of Japan) over whether or not food safety be impaired, medical bills be risen, health insurance system be collapsed, copyright derivative works be excessively regulated. Such anxieties hold the reason from legal point of view.

Anxieties attribute to TPP's notion that, while it keeps the word "free trade," has displaced content with the one far beyond we had imagined. Those who promote "free trade" call strongly for expanding trade generated from efforts of country where the country concentrates in its most fitting field that achieves international division of work on a global scale, which entails to redistributing each country's resources and contributes to benefit its people, in other words, maximization of their happiness.

Content of such free traders' call is so adamant and dogmatic and in the end, it calls for more than eliminating tariffs, it says abrogation of the system each country has inherently has kept for people's day-to-day living that includes regulatory part of laws and regulations and a structure that the administration should be built on. As a matter of fact, coverage for the abrogation runs expansively into other areas such as decision-making process in courts or judicial system itself, rules for local residents' living made by local government, administrative issues of such government, and also custom and practices.

Above, found in textbooks of international economics authored by experts on the subject of free trade like TPP, appears to stand as important thought on principle of free trade.

While developed later, TPP originates the so-called "P4" Free Trade Agreement (a treaty) that was concluded in 2005 and since, it has been in effect among New Zealand, Singapore, Chili and Brunei.

Article 1.1 of P4 addresses part of its objectives "encourage expansion and diversification of trade...eliminate barriers to trade, and facilitate...goods and services." (Underlined by attorneys of this litigation).

A combination of the custom and practices, a foundation of each country, on which people thereof count on for their living is about to be changed by TPP.

Anxiety over the principle of "free trade" and what it means in many fields has been stirred up is positively well reasoned.

Second: TPP in relation to Principles of Constitution of Japan

Most important principle found in the Constitution of Japan is to respect fundamental human rights, which is grounded by thought that scope to restrict such rights has to be strictly limited to which such restriction is really necessary and, if it is it has to be minimum.

On the other hand, with respect to freedom of economic activity, the Constitution of Japan clearly reads (Articles 22, 29) that the limit on such freedom rests on "public welfare." In other words, the constitution allows a policy-based limit, which means there is a difference of assurance among rights. As mega-scale economic entities have become more influential nowadays, their activity penetrates into people's living and often threatens people's

right to live (Article 25, the Constitution of Japan), thereby it has become necessary by many means to regulate freedom of economic activity.
Against such necessity, TPP calls for cross-border and international economic activity heavily ensured and seeks freedom at its maximum of economic activity for foreign corporations.
Where there is a conflict between international economic activity and fundamental human rights, fundamental notion embodied in TPP is only the necessary and the least level of restriction is allowed for the economic activity and strictly regulates such limit. Thereby it is inevitable for people that their right to live be threatened and their right to pursuit of happiness be infringed. Such notion does contradict principle of human rights that reside in the Constitution of Japan.

Third: Why Safety of Food is threatened

1 Introductory Remarks

There is no counter-argument for that rights for life and health rise to the level of most importance among the human fundamental rights, which the Constitution of Japan ensures.
Looking into a TPP's chapter called SPS (Sanitary and Phytosanitary) which links to food safety in line with life and health deserves findings how basic notion in TPP creates tension over fundamental human rights which is employed in the Constitution of Japan.
Consumers' anxiety rests on whether standards of agricultural chemical residues of food be lowered, a large-scale food additives not allowed in Japan be permitted and labeling requirement for genetically-modified food be abrogated. These issues are heavily linked to content and methods found

in the TPP's SPS chapter.

2 About SPS Agreement

SPS provides measures (import ban, regulatory measures on chemical residues, approvals, standards of mandated labeling) restricting food of farming product and meat from entering into a country with its objective to not impair health of people, animals and plants.

You may learn content of SPS in TPP by referring it to a provision found in the SPS Agreement of WTO (The World Trade Organization).

Since the language in the agreement is extremely difficult, it is hard to understand what it means by simply looking at its articles. Such difficulty rises when you see few entry articles: Members have the right to take SPS measures…(Article 2(1), Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as adequate to the circumstances…(Article 5(1).

The articles tend to read as if each country is empowered to make decisions on its own on standards of food safety, which actually might lead it to a misleading understanding.

When you precisely look into the agreement then, however, you come to understand that measures allowed to be taken to protect health of the people, animals and plants are strictly limited.

3 Principle of Sufficient Scientific Evidence to show Toxics

SPS adopts, most importantly, a principle "Based on Sufficient Scientific Evidence" when it comes for country to take measures for import ban that restricts foreign farm product and meat from their entry and standards to prohibit them from domestic distribution (criteria, approvals and mandatory

labeling). Namely, for country to restrict import based upon chemical residues on agricultural product and toxic food additives, the country of import is burdened with demonstrating the said evidence to show the product is toxic which is not necessarily an easy job. It seems unfeasible to repeat a human-body test to obtain such sufficient scientific evidence. Given toxic level of individual agricultural chemical or food additives once determined, it doesn't translate to that their safety is confirmed. Nowadays huge amount of chemicals circulate in market. As a result, it requires large-scale labor to verify complexity-caused toxics that makes demonstrating the evidence next to impossible.

Meantime, preventing toxic food from its distribution and ensuring food safety fall under part of the most fundamental responsibility for a country to bear. Nevertheless, SPS's principle states that country is restrained from entry and distribution of the product unless it can demonstrate the evidence of the toxic.

Those who promote "free trade" tend to consider the restriction of imports without "Sufficient Scientific Evidence" as a "non-tariff barrier," as that impairs free trade. To the contrary, restriction of the product for domestic distribution is apparently necessary at its minimum. In Japan, for example, while labeling on genetic modified foods for human consumption is mandated, the labeling on for feedstuff consumed by livestock such as cows is not mandated. Truth of the matter is that the feedstuff for cows contains genetic modified corn.

4 Relation to Principle of Prevention

Principle of Prevention does pronounce that measures must be taken to prevent outcome from its occurrence where likelihood of serious, irreversible injury

is to be expected even when such likelihood is short of scientific findings, which is apparently established as a general rule in treaties of environment. However, such directive of Principle of Prevention is restricted in the SPS rule. Current practice seems that in the case of import products where concerns of serious outcome for health are raised to require certain level, albeit not sufficient, of scientific evidence, the period of restriction goes merely temporary. A country once took a measure of import restriction is required within a certain period of time to collect the aforementioned evidence viable enough for international level. In the event collection of such evidence failed, the import restriction must be rescinded.

Eventually, epidemiological survey is required to make sure of chronicle affect for health and, in order to ascertain such affect for human health, findings of chronicle are more than often required that take a long period of time, which is actually impossible to complete within a limited short time period.

In particular, it comes that if it ever be possible to determine the findings under a large-scale and long-period-based epidemiological survey that implemented of the material of cause of commonly-seen diseases such as cancer and development disorder.

We cannot help but say the SPS stands out as a rule to infringe people's health when it cannot prevent toxic materials from entering into the country, which is a consequence from excessive restriction of applying Principle of Prevention.

5 Relation to International Standards

SPS follows the requirement "Sufficient Scientific Evidence," which is fulfilled when it meets the international criteria.

The criteria in question come from decisions by CAC (Codex Alimentarius Commission) organized jointly by WHO (The World Health Organization) and FAO (The Food and Agricultural Organization). The criteria, decisions of which are stemmed from representatives of participating countries, however, in reality, the representatives are advised by those of developed countries with a number of corporate staff of agricultural business and in the end, the CAC representatives make a determination. The commission, while it is an open organization to which any NGO (Non-Government Organization) can present its opinion, but in reality, almost all NGOs consist of corporate groups of food industry such as of agriculture or livestock business where their advice tends to be adopted with less difficulty.

Consensus-based decision making system (to require unanimous consent among members) as generally observed in CAC, where one country's disagreement ends up no decision, contributes to failure in making international criteria has resulted in that it has yet to be established mandated labeling as international criteria for genetically modified foods on which a number of concerns have been raised. It is noteworthy that observing the international criteria does not necessarily mean that food safety is ensured.

6 Conclusive Remarks

As has been described, there lies a serious problem on WTO's SPS rule. You may not, perhaps, believe the existence of such problem from a flat image of the organization of 160 countries (as of 2014).

That said. There is also an indication, given that countries are taken it for granted, to ensure food safety by themselves to mean that they are allowed to make their own de facto safety criteria against which no clear opposition has been heard. In fact, more than few countries appear to have misunderstand

that SPS rules let them make their own decision. TPP is likely to replace such mild practice with harder one.

As we plan to note later, there lies in the United States a congressional authority to condition free trade agreement regarding its content to be concluded. A bill (featured on trade) very recently prepared for and related to TPP negotiations reads, "a firm, enforceable SPS is required" that, for sure, indicates SPS rules will be firmly enforced. This means that the consumers' anxiety on food safety being threatened is even more underpinned from the legal viewpoint as well.

Fourth: TPP Rewrites People's Life Frame

1 Introductory Remarks

Earlier in the Third, we showed a clear legal basis for anxiety over food safety raised on TPP. Here show issues of NTB (Non-Tariff Barrier). The NTB, when applied, extends its impact to food safety, which seriously influences people's life and health, part of fundamental human right. As such, NTB requires strictness in application. When it comes to a question of eliminating NTR, the issue influences a lot more on people's life.

2 Non-Tariff Barrier on Trade of Product

Countries set up their own standards not only on food but a variety of industrial products. For example, each country independently writes standards of automotive safety and environment. TPP appears to indicate such individual standards fall under "NTB" and, basically, attempts to consolidate them into a single one or strictly restrict them for those that remain under independent standards.

3 Trade in Services

(1) Wide Coverage in Services

TPP with its intent to eliminate "Non-Tariff Barrier" for Trade in Services provides chapters including "Cross-Border Services," "Financial Services" and "Telecommunication Service."

Services here cover all and entire fields except those of the first and second tiers of the industry and the extent of the coverage go further than commonly imaged.

The area of coverage, obviously, includes distributions, transportation, wholesale, retails, medicals, welfare, education and law, construction and gambling as well. Albeit that TPP would not immediately address the service of welfare that has been provided by local governments, we might foresee that under TPP. (Service provided by national and local governments is excluded from the elimination list of TPP for the time being. Privatization of water service, however, lets foreign enterprises run the business under equal opportunity of participation according to a TPP's thought.). Service industry's share in the developed countries' GDP, nowadays, reaches in the range of 70 – 80 percent which explains how expansive the world of service industry is.

(2) Positive List Method, Negative List Method

Agreement of Services is found among provisions of WTO, on which the organization adopts what is called Positive List method, however, that of TPP adopts Negative List method instead.

The former method lists up areas and conditions agreed between the countries for foreign firms may operate in the country (the Schedule of Commitments).

This method gives country discretion, whether to let foreign firms enter into the country, on which WTO agreement runs. On the other hand, the latter method lists up areas for foreign firms to not operate in the country or conditions imposed during the course of running business in the country (the Schedule of Reservations). In other words, this method, first, allows foreign firm's entry without exception as a principle, which, then, lists up limited areas and conditions, the specifics that may not run in the country. Prohibiting foreign firms from their entry or placing conditions on them with regard to the list require agreement by all participating countries. As a result, each country's discretion becomes highly restricted.

(3) Liberalization of Trade in Services, Binding Policy

Japan adopted Positive List method under WTO agreement and the country has once liberalized a real estate area of the service. What occurred since is that foreigners purchased lands that hold water resources, of which effective measure against it was not taken because such measure was likely to violate the country's commitment to the WTO agreement.

With regard to the issue of Senkaku Islands, there seems no effective solution to prevent the islands from going to be owned by foreigners, other than that the islands be owned by government, which, after the government's purchase invited tension of Japan-China relationship. This shows that "free trade' often makes policy options far fewer when the circumstance, which develops later to a confrontation, never predicted at the time of concluding the agreement. The case related to opening real estate business transaction illustrates one of such examples. Once Negative List method is employed, which is to approve the across-the-board entry of foreign firms, it inevitably makes policy option even fewer, and as a result, its impact over people's

life would rise to an immeasurable level in the expanded areas to come.

(4) Thought of TPP on Regulatory Issues

Set of all kinds of services resides under inseparable relationship with the regulatory system tasked for safety and consumer protections, preservation of public order and ethics, morals, or, consideration for those of economically vulnerable and that for protecting certain industries. In area of products, each country, more than often, sets criteria that include for safety, standards that secure and enhance general versatility and convenience. The regulatory issue goes to that of trades in products and service combined.

In TPP, a discussion is being focused on subject called "Regulatory Coherence," a subject that targets to deal with issues of regulatory measure in general under an independent chapter. There is no such precedent to date in a "Free Trade Agreement," that a single chapter provides, comprehensively, consolidated package of regulatory issues in general, past of which the issues were handled in each distinctive area of products and services.

Efforts towards comprehensive regulatory rulings in general seem equal to driving quite a large number of national policies directly into the subject matter of such ruling. Inherently, regulation exists for the sake of safe and security of people, consumers' interest and keeping public order, which translate as saying that the regulation itself is structured for people's life. Regulatory system seems to represent a natural posture, derived from diversifications in a country that are inseparable from country's social, economical and cultural background, people's awareness and national traits.

Rulings being discussed under "Regulatory Coherence," intending to consolidate regulatory matters in general seem, undeniably, to transform

diversified regulations having been implemented by countries into the one in favor of the interest of the global corporations.

(5) Conclusive Remarks

As a foreseeable result, the trades in product and services will be liberalized and the countries' authority to exercise their own regulatory agenda will be placed in "Non-Tariff Barrier" of multilateral agreements under which frame of people's life will be immensely changed (rewritten). When the fundamental principle vested in free trade is to respect foreign firms' economic activity at its maximum level in a host country which, in turn, is to restrict at its minimum level of such firm's activity, it will ultimately result in that the advantage of foreign corporations prevail over the people's life, a big transformation.

Fifth: About Intellectual Property Right

1 IPR Protection in conflict with Free Trade

It is generally construed that as more free trade advances, less price is paid for product and services that contributes to consumers' interest. This follows that once the trade is liberalized, products from a country of more advantageous condition move into another country that benefit consumers for less expensive products.

However, outcome for medical service fees is said to take place opposite. Upon implementation of TPP, a possibility surfaces that rising fees of the service prompt only high-income earners can afford to obtain the adequate service. For example, an appendix surgery, seen in Japan as an entry level of treatment, ends up in a New York hospital with overnight stay for a three

million yen bill for the service. It is highly likely that rising medical bill occurs in Japan once TPP is concluded, which presents a phenomenon contrary to notion of free trade's benefit. This attributes to that free trade agreements including TPP embody a provision of intellectual property, a subject matter historically not related and even foreign to the promotion of free trade. Protection of intellectual property does not serve for free trade but it does for corporate interest that runs export business.
Intellectual property clause taken into a free trade agreement for a heavier protection stems from thoughts that an assumed profit calculated from an IPR value the firm expects cannot be left behind, which explains why the clause is placed in the agreement. TPP, in particular, intends to maximize to its extreme extent protection of intellectual property, which inflicts danger on people who suffer damage.

2 Occurrence in Medical Field

(1) Rising Drug Price

A System in Japan of Price of Pharmaceuticals

A so-called Prescription Drug Price System, or **Official Price, is set by Minister of** Health, Labor and Welfare (National Health Insurance Act 76(2)). Birth of the system is based on that pharmaceutical firms would set higher price if free price system were taken under which only those who are wealthy can get the service that would entail to all those who need equal and adequate service be shut out (Higher-price-set drugs under Free Price system do sell in exchange for life.).
Prescription Drug Price rests on how the drug at issue is innovative (newness) and whether or not it serves for medical treatment

(effectiveness), plus allowance for developers to secure their adequate profit.

Prescription Drug Price is to be lowered every two years (called price revision) and the price system is structurally designed to provide effective new drugs for medical treatment as wide as possible in the country and also, the system runs taking centrally interest of patients into accounts. The system is seen adopted in many other countries as well since it is necessary for people to obtain right of adequately warranted medical service.

In the United States, pharmaceutical firms set drug price freely, rarely seen in the rest of the world.

The country voices that the US pharmaceutical firms cannot make profit as expected and attributes it to “Non-Tariff Barrier.” Such voices, however, obviously do not fit in notion that origin of “free trade” denotes “less costly product is produced by a country holding advantageous surroundings.”

The United States, since prior to the start of Japan’s TPP negotiations, has been repeatedly negotiating with Japan over the country’s Price System asking the price as high as possible.

B TPP and Drug Price

In September 2011, The United States Trade Representative (hereinafter USTR) announced “TPP trade objectives for expand access to pharmaceutical product,” followed by their calls on “transparency” n the process of drug price setting and subsequent Congressional hearings for opinions of US pharmaceutical firms. The call became employed in “Transparency and fair procedure” clause in a TPP draft version of “Institutional Matters.”

What found here is that in the process of setting price of drugs and medical equipment (hereinafter drugs price), those firms (hereafter drug firms) will

be given a procedural chance of presenting their opinions, price setting of drugs be based on a free market price and value of drugs substantiated by verifiable basis and providing chances of appeal and reexamination to independent (organs) for the price once set.

Premise of such calls comes from nothing but a notion that pharmaceutical firms are deprived of making a reasonably expected profit due to the government's misappropriated measure which dwarfs the value of the intellectual property, thereby, it requires to establish a system where government oversight authority (by Minister of Health, Labor and Welfare) be weakened and finally abolished to reset the system by a newly designed independent commission with its power to accept appeals and re-appeals a once-settled drug price until the so-market-based and the firm-deemed adequate drug price attained.

Imagine, calls not for the people but for the pharmaceutical firms run. (in the provision of the call, a language asking to reveal the names of all the member of the Commission of Drug Price Setting is found, which seems outstandingly questionable.).

Such system being called not only impairs the country's sovereignty but also builds up institutionalization of the infringement of the people's right to obtain adequate medical service. Such institutionalization once adopted, it is unavoidable that drug prices be raised under a relentless pressure presented by the drug firms.

C Conclusive Remarks

Upon the conclusion of TPP agreement, it is unavoidable that the drug price will be raised and finally, the country's drug price setting power will be replaced from the government (Ministry of Health, Labor and Welfare) to the

organ represented by profit seeking pharmaceutical firms.

By that, the country, where continuation of rising aging population already burdens with its financing Public health insurance, will face accelerated deterioration of the public insurance system financing to inflict danger of the system's existence.

(2) Generic Drugs Pushed out of Market

A Generic Drugs

Generic drugs (Later-produced drugs) represent drugs with the composition taken from that of the patent-expired drug, which make the cost less that eventually sets the price less than the once-patented drugs. Generic drugs are indispensable for those taken care of medical service regardless of his or her income.

B Protection of data of the patent expired drugs

A pharmaceutical firm is required to provide with a series of data to verify new drug's safety and effectiveness before the patent granted and the sales permit given. In the case of generic drugs, the production begins under condition that the relevant patent expired, and the data associated with the once-patented drugs is made available for the generic drugs which explains why generic drugs can sell less expensively.

A proposal in TPP negotiations, however, says development data of the new drug will be protected and prohibited from being used by others to protect more of the drug's patent itself, which translates to that a genetic drug firm is mandated to get the data by conducting the same clinical trial as

already done by the patent holder to prove the drug's safety and effectiveness in order to obtain the sales permit, which turns to generic drug price raised. Most of the generic drugs firms are small-medium sized so that financial burden for the repeated trial on them may incur to their decision not to produce such drugs. It does not make sense to do the same trial for drugs to be produced of identical composition. A duplicate trial on humans and animals even impairs medical ethics as well. Data protection for the once-patented drugs does hold reasoning other than to protect pharmaceutical firms' profit even after their patent expired. This demonstrates nature of TPP that advances global firms' profit before people's health.

C System for suspending Generic Drugs Supply

Draft version of intellectual property chapter in TPP notes that government, prior to approving sales permit on generic drugs, notifies relevant patent holders and provides them with chance to sue with a cause of patent infringement and puts the sales permit application in hold until the relevant procedure for the patent holders is cleared. Because of such, generic drugs will never reach people's hand so long as the relevant patent holders that include those of expired one keep legal challenges.

D Other Issues

Patent Law of Japan grants patent of the new drugs for 20 years dated from its application filed that could be extended under an exceptional circumstance for another five years. TPP, however, provides a broader circumstance for an extension than found in the law of Japan.

Thus, TPP puts people out of chance to obtain good quality and less cost medical service of generic drugs. What is only protected by TPP is profit

for global pharmaceutical firms.

(3) Liberalization of Mixed Treatment

A What a ban for Mixed Treatment is

The Mixed Treatment is a term where part of the medical treatment is paid by the public medical insurance and rest of it paid on his or her own, the latter of which is called “Free Treatment.

In the case of cancer treatment, for example, the Mixed-Treatment would allow cost of examination, issuance of prescription and drugs covered by the public insurance (those treated basically pay 30%), but not cost for the other part such as “Advanced Treatment,” which is totally out of the public insurance system. Practicing Mixed Treatment, however, is banned in Japan, which results in that those who are provided with Advanced Treatment have no option other than to pay for the treatment all combined.

The ban at a glance appears removing benefit for those seeking such treatment. While it does not look rational in the eye of the treatment seekers,there is a ground why such treatment is banned, as follows.

B Assurance of Safety of Medical Treatment

The first reason of such banning comes from for securing the safety of the medical treatment. There is a latent danger related to Advanced Treatment and medications thereof, for example, reports that a number of serious side effects occurred from taking the cervical cancer vaccine while its periodical taking is even recommended. Reports on a treatment of the laparoscopic surgery reveal that surgery for a specific surgical area where the public health insurance would not cover, which means treatments of the free

treatment (paid by on his or her own) incurred repeated fatal outcomes. To the contrary of this, the safety has been confirmed for the other area where the public health insurance covers. This tells that Advanced Treatment needs some restraint from medical practice since it is quickly provided and contains a latent danger. The public health insurance system takes balancing such conflict into account.

The public health insurance system approves its coverage once a set of safety and effectiveness of the treatment is confirmed.

During the current practice that prohibits Mixed Treatment, more than few human lives are lost due to a pressure from pharmaceutical firms and medical equipment manufacturers, assisted by ambitious medical practitioners who seek some achievements in Advanced Treatment. If the ban for Mixed Treatment and the restraint for Advanced Treatment were lifted, a danger of medical treatment would spread.

Accordingly, prohibition of Mixed Treatment does address to prevent dangerous medical treatments and medications from their spreading, during which the safety and the effectiveness of the treatment are actually being under an examination procedure. Policy that Public Health Insurance does not cover Mixed Treatment serves for protecting people's life and health from being infringed by the treatment that the safety and the effectiveness of such treatment are not assured.

C Public Medical Insurance Only in its Name

In the meantime, once the ban on Mixed Treatment is lifted, the reasoning for the pharmaceutical firms that their drugs need Public Health Insurance coverage will be lost.

Pharmaceutical firms are obliged to follow drug's official price for their

product covered by Public Health Insurance. On the other hand the firm may set drug price freely so long as they are not interested in such coverage for the procuct. Their motivation for the coverage by Public Health Insurance will likely be lost when they know they have to conduct repeated clinical trials of the drug eligible for the coverage. This prompts treatment under Public Insurance System becomes far behind the development of the medicine and the medical technology. That is to say, Public Health Insurance system may remains its name but its body may poorly be emptied.

D Emptied Public Health Insurance and Rising Medical Bill

Once Mixed Treatment liberalized, the treatment under Public Health Insurance would shrunk and be minimized while treatment not covered by the Insurance along with out-of-pocket payment by individuals endlessly rise. The United States ranks top for the share of the medical fees in GDP where the ratio seen about 10 percent in 1990s jumped to 17 percent in 2010. As a result, burden on the medical bills counts as a number one cause in individual bankruptcies. Rising medical treatment fees contributes to for the people to refrain from obtaining medical service that makes their health deteriorating. The country is now one of the shortest life-expectancy ones along with the fact that people's health condition ranks in the lowest. Society where only those who are wealthy obtain adequate medical service displaces those who are not will impair people's health as a whole. The US example that tells prosperity of medical industry does not necessarily promotes people's health.

(4) Approval of for-profit Hospital

A Non-profit Nature of Medical Service

In Japan by law, a for-profit-organization cannot run hospitals, under which medical entity is prohibited from distributing dividends of surplus (Medical Care Act, Article 54). The surplus for its full amount has to be reinvested to human resources and equipment for the medical service. Advertisement of medical service entity is expansively restricted (ditto, Article 6-5). The president of the entity must be a medical practitioner (ditto, Article 46-3(1)) who administers medical care and health guidance (Medical Practitioners' Act, Article 1).

Medical practitioner is burdened with "contributing to the improvement and promotion of public health and ensuring the healthy lives of the citizenry," (ditto, Article 1) and "No medical practitioner who provides medical treatment shall refuse any request for examination or treatment."

Since medical treatment is an activity that deals with people's life and health, most fundamental human rights, it is put under a public service that intends to provide adequate medical treatment equally to the people. On the other hand, for-profit-entity such as corporations is designed in its nature to make a profit and distribute it to shareholders. Therefore, running hospital by the corporation does not fit in the hospitals' objective that provides a most fundamental value for humans, their life and health. At least, that is premised when Japan established all of its medical treatment system.

B On TPP

As noted earlier, medical service in TPP is put under the trade in services. According to P4 agreement (origin of TPP), the country shall not adopt…measures…to restrict…types of…entity (P4 agreement Chapter 12, Article 6(e)).

Chapter 7 of TPP, on which Negative List method is based and, as a natural corollary, the signatory country of TPP is to approve foreign entities of medical service regardless of their type (profit or non-profit), namely, the country has to accept the type of entity as it is unless all the signatory countries agree to move such entity into the negative list. Under this scenario, the United States where profit-making medical service providers run the business is unlikely to agree with such move.

C Outcome of Profit Making Hospitals

Profit-making organization, rooted its interest to distribute dividends to investors, is tempted to seek the kind of medical service from which most profit will be made that raises a risk of skyrocketing medical bills. Profit-making entity lays priority on making a profit efficiently instead of the objectives of Public Health Insurance system, and tends to focus on Advanced Treatment for the wealthy. The entity would rather object Advanced Treatment be included within the price-regulated Public Health Insurance system because such inclusion may hurt profit. As a result, scope of medical treatment coverage under Public Insurance system will be narrowed and the people except those wealthy may be forced to obtain inferior level of treatment. Also, profit-making entity withdraws from some service fields and geographical area where the service expects unprofitable. Instead, the entity concentrates on where profit is maximized during the course of running business. As a result, a number of treatment fields such as those of obstetrics and gynecology and pediatrics where the risk on the malpractice is higher will be declined from the service that makes the local medical treatment worsened. Accordingly, once the profit-making hospitals are approved for their running in Japan, a gap between the high-incomes and

low-incomes, the locations of the geographical area, the fields of the treatment will be widened, which will make people deprived of their right to obtain an adequate medical treatment. (the issue of running hospitals by profit-making entity does not directly relate to that of intellectual property, however, the basis of global corporate entity that seeks profit by means of the medical treatment remains connected to intellectual property.).

(5) Summary

As aforementioned, TPP sticks to its position on most prioritizing global corporate entity's profit in medical treatment service area as well. Conclusion of TPP agreement launches rising price of drugs and medical equipment and liberalization of Mixed Treatment, invites depriving Public Health Insurance system of its rich content and helps collapse fair, efficient medical system under which people have been served for equal and adequate medical treatment. Approving profit-making hospitals for their operation transforms the current medical activity into that of prioritizing profit seeking. As a result only the wealthy can obtain adequate medical treatment. A breach over the fields and areas will be widened and they might inflict collapse of medical service.

3 About Copyright

(1) Copyright

Copyright covers right of work, defined as production of thoughts or sentiments expressed in a creative way (Copyright Act, Article 2 (1) (1)). A language here, thoughts and sentiments, is widely interpreted to include

mental activity in general and the requirement of a creative way is filled with individuality in its any expressional manner, after all, the production comes close to mean expression in general.

How such expression be represented on or in, includes literature, motion pictures, photograph, artistic, academics, models and computer programs (Copyright Act, Article 10(1)). Central of copyright addresses right to duplicate, which is held by those who created. Broadly speaking, the right prohibits works from being duplicated or imitated. While a patent takes effect when filed with, a copyright does when created (expressed), we may say, copyright resides on all aspect of expressions sitting by us. It is, in general, illegal to duplicate and imitate the work without creator's consent. Copyright holder may seek for injunctive relief and damage in civil suit to those who either duplicated or imitated the work. Copyright infringement also constitutes a crime; Copyright Act imposes those who committed such crime penalty of inprisonment for not more than ten years or fine not more than ten million yen, or both combined. There are voices that such long period of imprisonment appears longer than seen in other countries.

(2) Indictment without Complaint

A Crime to Require Complaint for Indictment

In Japan, indictment of copyright infringement requires beforehand a copyright holder's complaint.

Complaint means an indication by victim of the criminal offence of his or her intent to investigative authorities to seek the offender punished. Such offence is called a crime subject to victim's complaint.

As noted earlier, copyright possibly sits in all the expressions found here and there which raises a question if copyright infringement should be fully punished even where damage is minor or the type of duplication lacks maliciousness, and, if it should, tremendous number of criminal cases would arise. Current copyright act treats such infringement by allowing indictment subject to victim's will that seeks criminal punishment.

B Draft of TPP

TPP of its draft version clearly reads that government prosecute copyright infringement as an offence not subject to victim's. With regard to types of such offence, it specifies, firstly that of commercial scale and secondly, despite lack of commercial scale, that of "significant willful infringement." Taken together, scope of indictment without the complaint is going to be expanded.

C Danger of Government Abuse

In reality, abundance of technically copyrighted expressions is seen, over which the right is often duplicated, video-recorded and even distributed, thereby, activity on such copyrighted work, in a strict sense, is illegal and falls under criminal infringement.

Quite a number of copying-machine-based duplications seen daily in corporations--their sole objective is to make a profit--, which technically constitutes a copyright infringement and may develop to a criminal case. Also at gatherings and conferences of not-for-profit nature, duplicated papers are seen distributed, and on Internet, act of sharing materials among e-mail users is seen as well. Those activities, once the government deems them to satisfy "significant willful infringement," such activities are

likely to be indicted unless a copyright holder consents them.
To make a long story short, the government will be given means to interfere people's day-to-day life.
Above may sound exaggerated, but, beware that constitutionalism embodied into the current constitutional law restrains government from exercising its power for fear that such power tends abused. Thereby, we should be by reason alerted to watch government that interferes people's life. In TPP negotiations, concept of Fair Use appears being discussed which removes certain kinds of relevant activities from infringement. Question of Fir Use developed in the United States yet remains whether it is well settled in Japan. Another question emerges that whether investigative authorities may justly handle the case when the source of infringement is from whistleblowers.
Those who amid a society filled with Japan's inherent culture fear involved into a criminal matter may excessively decline from making a use of copyrighted materials that inevitably draws a chilling effect.
System of government prosecution without complaint from the right holder, if adopted from TPP, would certainly restrain people's activity of intelligence and incur a serious damage to them

D Impact on Culture of Japan

"So-called "Comics Market," born in Japan in 1975 and since its development followed through nowadays to its largest scale in the world, provides a buys-and-sells arena for printed comics pieces, run by cartoon business community. Today it stands as a major cultural event in the country. There are some pieces sold without authors' consent, which clearly suffices copyright infringement; under TPP's draft such transaction will be prosecuted without complaint from authors. Noteworthy is that many of the

pieces in question are, from legal standpoint a derivative work sourced from popular cartoon works already placed in the market, which fulfills an act of “adaptation” of original work, a copyright infringement. The Market has generated quite a number of prominent, popular authors in its history. It is undeniable that the basis of the market development, which employed a general notion that imitation is allowable on which derivative work counts. Indictment without complaint may alter framework of such Japanese culture that has inherently existed deep in history.

(3) Extension of Copyright Length

Length of copyright in the country is defined to last until the 50th year after a copyright holder’s death (in the case of organization, until the 50th year after the copyright published.). Discussions in TPP negotiations apparently premise the right to extend such length to the 70th year for individuals (the 95th year for organization), which raises question that why it be considered adequate when those inherited the right may enjoy for more than fifty years after the death of the inheritee. We wonder if general public ever accept this. It seems unthinkable that an author creates work anticipating the relevant right runs more than fifty years after his or her death. How many authors, if any, are motivated to work for the interest of children or grandchildren. There is abundance of works in circulation and as to books of which, for example, majority of those are actually forgotten in a short period of time that indicates life of the works is getting shorter. This plainly clarifies that the work to hold its value for more than fifty years after the author’s death represents a specific exceptional one. There rarely occurs that value of the work is identified after his or her death of which the right transfers to the inheritor, yet, it requires each and every

inheritor's consent for the work published. In reality, however, it is no easy job to locate each of them after more than such years of the right holder, which as a possibility ends up the work once discovered kept buried. In comparison to patents, right of which lasts for twenty years from its filing date (to mean that majority of such right expires before the death of the inventor) while the copyright does pronounce its distinctive lengthiness. Since Berne Convention for the Protection of Literary and Artistic Works provides creator's work for a minimum fifty years after the death of the creator, discussion of the time of the right does not appear practically worthy, yet we dare to say there is an opinion by scholar that states more or less for ten years appropriately fit for copyright protection after the creator's death.

There seems no logical reason for protecting a copyright period for more than what it is now. Point of the reason for such extension seemingly rests on the United States' trade surplus on copyright revenue. Sole reason of this apparently attributes to extending the right of the aged works to maintain such surplus.

(4) Conclusive Remarks

While issue of copyright encompasses the area such as of statutory damage, internet surveillance, the real purpose behind the issue pursues enhancement of profit making opportunity for the United States and corporations of that country.

In essence, such enhancement contradicts an ideal vested in "free trade," and instead, contributes to protect the United States and the corporations of that country, which is nothing but an emergence of protectionism. Sacrifice for the benefit of the United States is placed in cultural and

intellectual activities and freedom of expression that is deeply linked to infringement of freedom of thought and consciousness.

4 Seeds, IPR

Monsanto (US) and Syngenta (Switzerland) of food industry are among those who heavily advocate TPP in the United States. Let us explain purpose of such corporations in their TPP promotion by referring it to the case of Monsanto, a chemical company that manufactured defoliant, or commonly called an agent orange, which, during Vietnam War, devastated the country's lands and human lives. The company, being a top provider of GMF (Genetically Modified Food), also produces agricultural chemicals. The company sells as a set, one item of herbicide and pesticide that kill weeds and insect respectively and another one, seeds of Genetically Modified Food that withstands the herbicide and pesticide, all developed by the company on its own.

The company's product includes soybean seeds that also withstand from dying while the agricultural chemicals applied. Monsanto holds patents that play a role in their corporate activity. Seeds in general acquired from the harvested produce work for reseeding in the following season, however, Monsanto seeds do not. Farmers once started Monsanto seeds are compelled to repurchase them for seasons to come. The company monitors those who did not purchase their seeds and in the event that their finding of their GMF at the scene prompts their filing lawsuit seeking a huge amount of damage based on their patent infringed; a strategy to drive out those who do not use Monsanto product.

In US, a punitive factor is included as well in the damage, thereby even

when the lost profit incurred direct to the damage is small, total damage with a sanction added amounts to a tremendous figures. Monsanto, taking advantage of the seeds patent, has established monopoly in the market. Food industry that includes the company is said to create monopoly of world's seeds. Enhanced protection of intellectual property right is connected to food industry's ambition as Monsanto's story tells us that.

Sixth: Regulatory Coherence

1 Expansiveness of TPP's Coverage Fields

It seems never exaggerated that to digest the fields TPP targets, which expand down to the items detailed in each field, it requires a lot of painstaking efforts, which easily go far beyond one single person's job. All thinkable assumptions drawn from the United States' mega-size corporations are put and consolidated in TPP's draft, as we note later.
Meanwhile, in the financial services field, there lie risks in Japan of the postal savings and the credit union for their survival in the medium-term future, while we see now the agricultural cooperatives placed in danger caused by TPP.

2 Regulatory Coherence

As one of the twenty-one fields proposed in TPP, "regulatory coherence," as part of the cross-cutting issues is found, which covers all the regulations government plans to implement in a single chapter of which no such precedent is seen in the history of free trade agreements to date.
"Regulatory Coherence," while it appears to respect each country's own regulatory issue in its introductory part of the chapter, it actually narrows

much scope of the country's discretionary power when you read in its details in the later part of the chapter where obvious dangerous clauses are seen. Regulation in nature is to protect people's life and health, environment and public orders by restraining economic activities, in essence, to protect interest of people from such activities. Provisions at "Regulatory Coherence" deal with regulatory issues in general that spread very wide and even address what the domestic governance over economic activities should be. Thereby it requires a careful examination to find out real outcome the provisions lead, for which national-scale discussion is necessary. Number of people who know what is going on in TPP negotiations is close to none, a consequence that the government never provides information on that.

The proposal of TPP contains the followings.

① As to the regulatory measures, to take cost and benefit, an alternative that includes not to regulate into consideration, and to recommend the minimum regulation. With regard to cost, to consider desirably damage by lost investment opportunity.

② To consider regulatory coherence and cooperative means among the countries in the process of setting regulations.

③ To make use of consultative opportunity by the area at issue between the countries.

④ To set up a panel to deal with matter of unifying domestic and inter-country regulations and periodically promote regulatory coherence.

The proposal plans to establish a panel that convenes periodically to coordinate each country's regulations and intends to unify regulatory issue, both of domestic and abroad. This, in turn, has a high potential that country's regulatory system is going to be set by a panel, centerpiece of which is located overseas and adoption of which, in reality, is to strip each country

of its right to set regulations on their own, as the introductory part of the chapter so proclaims. When that occurs, an unimaginable outcome is to spring out, which displaces democracy, government of the people, for the people and by the people.

Seventh: Favorable Protection for Foreign Investors

1 Issues of Relationship between Investment and Trade

Investment that possess its own unique feature is neither product nor services of trade while both of them, however, inevitably requires investment which once in a while serves for speculations transactions and corporate acquisitions, the activities beyond sphere of trade.
Investment chapter in TPP appears to contain more details than seen in other chapters. The chapter intends to protect investment in wider scale and provides an apparatus called either ISD or ISDS. Government of Japan explains that the ISDS plays a central role in investment agreement, or free trade agreement. ("Brief of Dispute Settlement between country and investor (ISDS), by Ministries of Foreign Affairs and Economy and Industry, March, 2013"). Free trade agreement becomes heavily empowered when it embodies ISDS clause. Followings illustrate questions of ISD in the investment chapter.

2 ISD Clause

(1) What ISD is

ISD clause, officially called Investor-State Dispute Settlement, has become the most disputable theme in investment and free trade agreements. The clause allows foreign investors to sue central government that hosted foreign

investment for the damage drawn from premise that the government, either central or local, violated (or deemed so) provisions of the chapter and, thereby the investor may mandate the government to appear at an arbitration tribunal located overseas.

(2) Deficit of Arbitration Tribunal

A Design of Apparatus of Arbitration Procedure

In principle, a collegial body that consists of three arbitrators--one chosen by the foreign investor, one by the government complained and the last one by agreed by both the investor and government-- renders decision on foreign investor's complaint. The body is established per case base and dissolved when the decision is made.

The tribunal is closed from the public eye and holds one-stage system to mean that the decision cannot be appealed. There is no official qualification to be an arbitrator who bears neither responsibility nor accountability to anybody pertaining to the arbitration.

Here, it shows how inattentive the arbitration tribunal in comparison to the body of International Court of Justice. The court is a standing organ consisted of fifteen judges, each of whom is chosen by the United Nations' General Assembly followed by the Security Council and required to gain majority (more than fifty percent of its vote) for the approval vote (Vote is often repeated until the approval reaches majority.). Democracy-based procedure in an international sense is enforced here, leveraged by legitimacy to render coercive judgment for disputes between the countries. A group of arbitrators found in the ISD typifies that of private individuals assembled.

B Kinds of Arbitration Procedure

Of ISD, often emerges a misleading concept that says the ISD runs as if there were a standing organ with which a complaint be filed. Truth of the matter is that the tribunal is a gathering of part-time arbitrators in charge for a single case and location of the argument, if not all, for the case is hardly known.

Broadly speaking, filing system there is divided into two; one under the World Bank called International Centre for Settlement of Investment Dispute (ICSID), the other the United Nations Commission on International Trade Law (UNCITRAIL), the latter of which, in realty, the United Nations is not involved except that a procedure model is developed by the said Commission. The model is actually made in order to settle a dispute between private corporations, not that of country. The former, or ICSID, reveals that, while its secretariat office is located in the Center, location of the argument is hardly visible from the public eye, due to prioritizing the will of the parties involved.

It seems undeniable that such apparatus of dispute settlement as above, possibly, has taken care of a number of cases that ended up settlement kept in secrecy.

World Investment Report annually published by the United Nations Conference on Trade and Development (UNCTAD) tells some of ISD cases are published with a note of reservation that remarks “as far as identified.”

C Unfairness of Arbitration Procedure

Most of the cases at the tribunal, arbitrators are private law practitioners who repeat practice of rotating jobs assigned; at one time being an arbitrator, another time an attorney for the complaint who filed on behalf of an investor. Some arbitrators arrive to a different decision despite point of the argument

appears to be the same. There is no rules that prohibit conflict of interest in the tribunal.

D ISD and National Institutions

Prevailing textbooks of Civil Procedure read, that arbitration, in essence, intends to circumvent a nation-and-public-based judgment.

Arbitration is essentially a settlement method of a private dispute as the words "arbitration over a quarrel" represent its image. An important feature that also bears a disputable cause in ISD lies in its framework, a procedure conducted under private body that hardly warrants justice, and instead, deals with a matter of country's sovereignty, which is inherently vested within a national system under democracy for the interest of the people of the country.

(3) Substantial Rules of ISD

A International Law Prioritized

A problem of ISD goes further. ISD procedure construes a dispute between an investor and a host-country equivalent to the dispute between the national governments and, thereby applies provisions found in a trade agreement that acts as part of international law. Constitutional law and other domestic laws of the country serve as circumstantial materials in the interpretation of the investment provision of the trade agreement. Despite of the fact that the dispute in question occurred domestically, domestic laws including the constitutional law are excluded from their application.

B Ambiguity of Rules

While provisions of ISD, as substantial rules (rules for judgment criteria), contain National and Most Favored Nation Treatments, both of them generally recognized as principles in international law, the provisions also include other specific clauses such as the Performance Requirement (prohibition of performance demand on specific measure) and the Umbrella (respect of agreement on contracts, etc.), both of them relatively clearly written albeit if they are agreeable with.

An important question arises when it comes to the clauses such as "indirect expropriation" and "fair and equitable treatment," the latter of which found in phases of Minimum Standard of Treatment. Those clauses are to function as judgment criteria to decide whether the country's measure be legal or illegal, aside from the fact that such criteria are difficult to construe in their real meaning. For example, the language "fair and equitable treatment" bears difficulty to ever comprehend what the content in its meaning holds.

C Indirect Expropriation

In Japan, "Expropriation" under the constitutional law means acquisition of private property by government either national or local one or a public organization for public use in exchange for "just compensation." The criteria to come is whether a title transfer from a private entity to government or a public organization attributes to "expropriation" worthy for "just compensation" while "Restraint of Private Usage" does not fall under "Expropriation." (Supreme court, June 26, 1963, Case of Nara prefecture reservoir rule: Criminal, Vol. 17, 5, p. 521).

There is a provision in Expropriation represented in Compulsory Purchase of Land Act. An official source in the government says that "Indirect

Expropriation" as under consideration in TPP is construed to be part of "Expropriation" that includes measures that impair usage of an asset once invested, from which profit to be accrued even where there is no transaction of title transfer. (A brief of Investment Agreement and Measures taken by Japan, Economic Partnership Division, Ministry of Economy, Trade and Industry, November, 2012). That is to say, obstacles of usage and revenue are eligible like in the case of expropriation for compensation (In the Investment chapter in TPP, compensation means fair market value that includes expected lost profit for future and commercially reasonable amount of interest, which differs from the provision in the constitution of Japan.). With regard to kinds of obstacles of obstacles of usage and revenue to fit in "Indirect Expropriation," the provision says, (1) Economic impact degree by government measure, (2) Degree of impairment attributable to government measures for the lost investment opportunity clearly and logically expected,

(3) Consideration of characteristics of government measures.

Notion of the concept above remains ambiguity.

Government of Korea headed by the country's Ministry of Justice, July 2006, during which the country's negotiations with the United States on the Korea and the United States Free Trade Agreement (hereinafter KORUS) were still on-going, examined concept of Indirect Expropriation. The country, has held the concept of Expropriation as the one that requires a title-transfer, of which Japan has also construed so. The examination concluded that there is no other choice but "concept of Indirect Expropriation makes eligible for the ISD filing of the government measures (of central and lovcal governments, government invest organ, judiciary and others) on issues of tax, national security, public orders, insurance and others while the concept has not been

established of its international definition." The ministry of Justice also made analysis on the cases of ISD found by that month and, arrived to an assessment that "government measures" brought up to the filings includes "an expansive areas related to the government on laws and regulations, system, practices, inactions, factual actions of government employees." In the end, the ministry voiced that in preparation of concluding the agreement on the subject matter of Indirect Expropriation, work of review on across the board system associated with government departmental function, court of the country, local governments, government investment organs is necessary.

D Obligation of Fair and Equitable Treatment

(a) Abstractness and Customary International Law

"Indirect Expropriation" has already a big impact on even the term links its notion with an established term "Expropriation" from which the former can be referred to. Then when it comes to a new term, obligation of "providing fair and equitable treatment and, sufficient protection and insurance," we wonder who, if there were any, is able to clarify what this term is to mean. While this obligation has been construed to mean "for the country mandated to provide foreigner on minimum standard warranty according to customary international law," however, there are quite a number of countries that keep a lot of different kinds of religion, culture and national background that prompts a serious question, if the customary international law may ever exist in the world. The right answer for that is such law has not been settled in consideration of an acceptance of world diversifications. As a matter of fact, only few, if any, government officials may answer what the minimum standard to be given to foreign investors.

Meanwhile in the United States, “fair and equitable treatment” is said to have been clarified.

A U.S. law called “Bipartisan Trade Promotion Authority Act of 2002” that backed US/Korea Free Trade Agreement, contains a provision, “seeking to establish standards for fair and equitable treatment consistent with United States legal principles and practice, including the principle of due process” (Sec. 2102 (b)(3)(E)) that tells that the domestic law is deemed as a customary international law.

Such U.S. thought appears to have been grounded by the following reason. That is due to strong independence of each state within the country, interstate transaction of product and services is treated as commerce (trade) and the issues of such transaction have been handled amid a number of interstate rules including the federal statutes, federal court judgments accumulated that have taken for a long period of time. However, those rules, taken for granted as international law in the United States, have difficulty to be accepted as customary international law. So, criticizing TPP that it presses for U.S. rules has a sufficient ground.

(b) Content of “Obligation of Fair and Equitable Treatment”

Presuming that there are a number of questions to come, let us here introduce the content of obligation of customary international law with respect to international economic laws that encompasses due process, denial of justice, arbitrary, due diligence, and legitimate expectation. Among those, a protection drawn from “Due Process” and “Denial of Justice” is conceivably understandable, however, intended meanings embodied in “Due Diligence” and “Legitimate Expectation” are yet too abstract.

As aforementioned, Korean Ministry of Justice, in July 2007 ahead of concluding KORUS agreement with the United States, raised internally a

serious question on the issue of the ISD Clause, followed by the study of its effect of which the centerpiece was on "Indirect Expropriation." It was in the beginning of 2000s, right before Korean Ministry of Justice launched study of ISD Clause when a obligation of "fair and equitable treatment" turned out worthy (eligible to become a judgment criteria) issue to be taken as a consideration for an arbitration criteria. Until then, there was rare in the number of precedents that allowed such obligation. In other words, the obligation of "fair and equitable treatment" to be worthy as an arbitration criteria has had only a short history. It usually takes quite a while for customary international law to be established from rich amount of international custom accumulated. Thus we cannot help but construe the claim that customary international law comprises "fair and equitable treatment" fails to pass the test.

(c) Immeasurable Chilling Effect

As aforementioned, it is only since very recently when "fair and equitable treatment" adopted as a valid judgment criteria in the course of ISD procedure; plus, its evolution has been witnessed year by year, which is equivalent in effect to that what "fair and equitable treatment" obligation is not known until being sued. Once ISD adopts such obligation in its clause, development of which will force the country of Japan to face arbitrations overseas for a complained damage, only to produce chilling effect on legislation, administration and judicial system of the country, which will be immeasurable. As to such chilling effect, Korean Ministry of Justice stated "In the case of mega-capital-backed multinational corporations, they tend to file cases of arbitration in order to tame specific government even when there is far lower chance of their winning.

(4) Procedural Characteristics of ISD

ISD clause per se, first born in 1959 in an investment treaty between then-West Germany and Pakistan, has been seen for a long time. The clause is mainly rooted for the developed-country-based corporations that invested in the developing country to prepare for facing a forced withdrawal arisen from the country's nationalization measure of their invested asset, by which they seek the damage not through the country's court system but an alternative ISD-available one. The developed country used to attribute ISD clause to insufficient infrastructure found in the developing countries' court. For the first 40 years or so since the birth of the ISD, the case numbers actually filed were less than ten in total. Growth of the number, a transformation, began by adoption of that clause in North American Free Trade Agreement (NAFTA, between the Unites States, Canada and Mexico, effected in 1994). As to between the developed countries, the United States and Canada, this was the first ISD ever employed. Since, subject of public welfare emerged in the ISD-based filings which caught the public eye as a big social issue such as on environmental regulations and public welfare policies.

Since later part of 1990s, NFTA's first-stage implementation period, the number filed has sharply increased that reached close to one hundred by the end of 2002 followed annually about 50 (568 in total identified as of the end of 2013).

Base of the most of the filings is the issues of regulations or permit/revocation, which is to be classified under domestic matter, not of government's fundamental measure like seen on the subject of nationalization. As the number of filings grows between the developed countries the base of fillings has been changed to a neutral nature of the tribunal rather than the issues of the host country's court, aiming at fairness to be delivered

and kept. Such change of the base reasoned, however, fails, as we have earlier described, to pass the issue of insufficient architecture embedded in the ISD system.

(5) Excessive Usage of ISD

To put it simply, ISD exists for the interest of the foreign investors, global corporations for them to bypass disadvantages arising from the host country's domestic law when applied (circumventing the country's public judgment) and enjoy the specific rules having been designed to protect investors' interest. In the course of TPP negotiations up until certain round, how to prevent frivolous issue from its filing was discussed, however, according to a disclosure by Wiki-leaks in March, 2015, such subject matter totally disappeared.

(6) Relevant Examples of ISD

A Case of Metalcrad &Tribunal Decision, August 30, 2000)

A U.S. landfill management firm Metalcrad purchased a Mexican firm that had a treatment right of hazardous waste landfill nearby a water stream in the seller's country. A local government, concerning the water stream possibly going to be polluted, issued a denial for the buyer's building permit application, which prompted the buyer's ISD filing for damage. Arbitration tribunal decided that the central government of the country is liable for the damage after taking a series of preceding facts into account, that is, the central government once told the buyer that the permit was not necessary and the same government body did not either prevent or restrain the local government's intervention. The tribunal rendered such decision in favor of the buyer, Metalclad, by concluding that the case falls under Indirect

Expropriation, premised on for a lack of transparency and violation of the fair and equitable treatment. The tribunal also ruled that, acknowledging that Mexico employs Federal system, environmental authorities reside in Federal government, not in State or local governments.

The tribunal's decision contains its own problems, at least two.

One is that in the course of determining illegality of local government's measure, the tribunal never stepped in on issues of people's life and health, both of which possibly impaired. This means that for the tribunal it is not worthy to consider local residents' rights of life, health and living before protecting foreign investor's interest.

The other problem is that a confrontational relationship between the Federal and local governments was wrongfully placed under the lack of transparency to substantiate the reason that the government's behavior be illegal.

Here is an example to be referred to. In a case of on-going issue in Japan called USMC Futemma base, on which central government and local one in Okinawa have been confronting each other over the base relocation for the last 20 years. If foreign investors (such as those of construction contractors or equipment providers) were involved for the relocation project, measures having been taken by Okinawa local government would be pronounced illegal which in turn makes the central government liable for its failure for not to have restrained the local government from "obstructing" the relocation, which is to be ended up with damage to be paid by the central government of Japan.

B Case of SD Myers (October 21, 2002)

A U.S. company in Canada, SD Myers exported PCB waste for its disposal to the home country while Canadian government banned such export premised by

the government's ratification of Basel Convention agreement that mandates the government to treat the PCB (PolyChlorinated Bipheny) waste for disposal within the country. The company filed for the damage based on ISD clause. Body of tribunal concluded that the Canadian government's export ban pretending it were for environment, was in realty to protect domestic industry and put the government liable in violations of the national treatment and fair and equitable treatment.

The tribunal's decision indicates a government at time of setting policy must pay careful attention for the asset invested by foreign investors whether it constitutes a discriminatory measure for foreign investors.

C Cases of Domestic Court of Justice Being Filed

Even judicial system of countries is not exempt from being filed under ISD procedure: Mexican judicial system as a whole and also, the United States' jury-backed court judgment were brought up to the ISD. In 2013, an arbitration tribunal ordered the government of Ecuador to file for stay to the judgment for damage rendered by the supreme court of the country, prior to which the court had ruled that a U.S. company liable for the damage caused by it's large-scale environment pollution. Ecuador case shows that an international law deals with a government (its administration) making judgment by court (judiciary) stayed. This illustrates that root of the separation of powers is shaken by a privately appointed body of arbitration tribunal.

D Others

Concerns have been raised over the fact that root of national policy has been targeted by ISD, exemplified by the cases: a Swedish power company filed for the German government's phase-out policy of nuclear power plant: a tobacco

product manufacturer Phillip Morris filed for plain package policy adopted by government of many countries.

(7) Conclusive Remarks

It is well known that excessive liquidity of capital contributes to deepening financial crisis. TPP's investment chapter set up for the capital easily to flow between the countries contributes to ultimately protecting such investment. Language of the insufficiency and unfairness found at ISD provides foreign investors with right making a country subject to obey an overseas-located tribunal decision and, the norms, which are said to be an international law seen in tribunal, override domestic laws to protect investment by foreign investors.

The tribunal determines illegality of the issue whether a rational-based profit anticipated for investment impaired from the investors' eye and asks in effect countries to pay a careful attention, thereby each and every policy the government bears in mind may not be realized unless the foreign investors' interest is taken into account.

Nobody, at least from the domestic law's standpoint, argues against that country owes to protect its people. But under the privately and insufficiently formed arbitration procedure called ISD, the country is more obliged to paying attention for the asset foreign investors invested than protecting the people of its own country. The decision behind closed doors, drawn from few participated, privately held body, is to shake root of the country's existence and threaten right of people for their life and health.

Eighth: About Tariffs

1 Introductory Remarks

We now touch on the subject of tariffs, at the last part of the chapter, which does not mean that the issue of tariffs is least important.
Since tariffs function as the most serious barrier that restricts directly freedom of international economic activity, people's life is also directly connected to the tariffs. We decided on purpose to touch on this subject last, because in Japan the issue of agricultural tariffs is more reported while the impact of tariffs on day-to-day life is least known, albeit both come from TPP.

2 TPP Seeks Elimination of Tariffs With No Exception

P4 Free Trade Agreement (Origin of TPP) concluded among Singapore, Malaysia, Chili and Brunei reads the followings.
"No Party may increase an existing customs duty, or adopt any customs duty, on an originating good," "as set out in Annex I … shall eliminate all customs duties on originating goods of another Party," "On the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules, " in "Article 3.4: Elimination of Customs Duties."
Purpose of TPP clearly rests on to achieve eliminating tariffs with no exception, which is drawn from the P4's language "shall eliminate all customs duties on originating goods of another Party.
As the language "on the request of any party, the parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules" clarifies, TPP is not a kind of treaty that the agreement is perfected once it is nominally concluded. TPP is structured to continue its adjustment and consultations to come after it is concluded on issues of trade barriers that cover in all areas that emerge later between the parties. It

is obvious that seamless work on lowering tariff barrier will continue after the conclusion of the agreement through of which tariff elimination with no exception will be achieved.

3 Impact of Elimination of Tariffs on Agriculture and Fishery Sectors

Once tariff elimination with no exception takes effect under TPP, agricultural import from signatory countries into Japan will drastically be rising, that, in turn, makes domestic agricultural produce falling sharply. According to an estimate made by Ministry of Agriculture, Forestry and Fisheries, the falling ratio of domestic agricultural produce reads, 90 percent for rice, 99 percent for wheat, 100 percent for sweetness-sourced product, 100 percent for starch-based product, 56 percent for dairy product, 75 percent for beef and 70 percent for pork. Product falling for agriculture and fisheries is to amount to for about three trillion yen, according to a unified government estimate.

4 Elimination of Tariffs and People's Rights

Inflows of inexpensive foreign agricultural product as a result of the tariff elimination will hit agricultural business that follows expediting the business even more declined and value of environment and natural resources, etc. impaired. The agriculture field actually has contributed its maintenance as being part of its multi-dimensional function of the field. The falling of domestic agricultural product, an impact from tariff elimination will lower food self-sufficiency rate of Japan and invites conditions by which people can hardly obtain stable food supply. On food issue, fact of the matter is that the government itself has acknowledged, "food is not only indispensable but it underpins essentials for people's health and satisfactory life," and,

"to secure stable supply of food for people constitutes the country's central commitment" ("Food security, Japan and World," Economic Security Division of Ministry of Foreign Affairs, Jan. 2015)

Despite such acknowledgements, plummeting food self-sufficiency rate will be unavoidable.

Estimate on self-sufficiency rate to occur from TPP, provided by Ministry of Agriculture, Forestry and Fisheries (announced January, 2011) indicates that the rate will be down from the on-going 40 percent to 14 percent. It is clear enough that the plummeting food self-sufficiency to be arisen threatens life of people.

Ninth: Conclusive Remarks

As we have stated repeatedly, it is next to impossible to comprehend and understand all of the TPP to come, which has an expansive impact on life of people--far too much. To the extent of scope we have examined, substance of TPP, as below, seems worthy to examine.

Firstly, TPP calls for freedom of international economic activities respected, the call of which is extreme as much as it conflicts with fundamental human rights. TPP transforms all kinds of framework for life into the one that prioritize international economic activities conducted by global corporations. It also attempts the national regulations having been set to protect people to unify into a provision found in TPP under which the regulations in general would be dealt, never having been seen in the Free Trade Agreement in the past.

Secondly, TPP's "benefit for people (consumers) by Free Trade" is no more than its principle. Efforts built in TPP, one of them, particularly, in its Intellectual Property chapter, provide US global corporations and the United States with utmost protection for revenues from overseas, which represents

protectionism. What it is of life, health, a right to live, freedom of expression and intellectual activities of people is going to be immensely restrained.

Thirdly, as symbolized in its ISD, TPP, intending to protect foreign investors' profit and ask government to pay a precise attention of ISD, will interfere with domestic national policy in its details.

Lastly, TPP restrains country from its national governance by allowing an impact from few arbitrators' decision located in privately held closed doors. The impact of the decision to national governance will serve for global corporations to maximize their profit, efficiently. TPP cannot live with democracy. We cannot help but say that from the viewpoint of the Constitution of Japan, TPP empties principle of governance by the people.

###

Chapter 3: Unconstitutionality (Illegality) of TPP

First: In violation of Article 41 of the Constitution

1 Expansiveness of TPP

TPP is a treaty that intends in the name of elimination of "non-tariff barrier," and "free trade," to rewrite all the standards and criteria, etc. and whole system in order to assure global corporations' freedom of economic activities and profit. TPP's targeted area encompasses all structure of people's life. Furthermore, TPP includes an emergence of "protectionism" found in the provision of Intellectual Property that embraces its extreme protection that in effect is in conflict with "free trade," and protection of investment which, as a matter of fact, is not related to trade. TPP will be associated with every dimension of domestic laws.

2 Mandatory Revision and Abrogation of Enormous Number of Laws

Since treaty holds legal effect superior to statutes of national law, Diet will be tasked to review the treaty such as TPP that addresses a lot of areas and judge whether all the laws, cabinet orders, and rules meet the provisions of the treaty like TPP and, when they do not meet, the lawmaking organ will be obligated to revise or abrogate them.

TPP as a treaty is made to serve for all dimensional and systematic purpose, thus, domestic system in general is a subject matter targeted for the review since purpose of international economic law rests on eliminating systems and custom that obstruct activities drawn from the said purpose.

What is described above, however, is in violation of Article 41 of the Constitution.

The article, while it reads “The Diet shall be the highest organ of state power, and shall be the sole lawmaking organ of the State,” pronounces that it is Diet that legislates laws to be observed by cabinet and court on the basis that Diet is representatives of people, being highest organ with its power, superior to the administration (cabinet) and judiciary (court). That Diet is obligated to review and eliminate laws of domestic system when a cabinet has concluded a treaty is equivalent to putting Diet’s legislative power in hold and placing Diet subject to the cabinet, which we cannot help but state a violation of Article 41 of the Constitution.

3 Unclearness of Mandatory Revision and Abrogation

TPP holds a number of abstract norms (rules). As seen at Chapter 2, there are many abstract provisions, particularly found in the Investment Chapter that gives special protection for investment.

At time of US/Korea free trade agreement, Korean Ministry of Justice studying “Indirect Expropriation” in its ISD clause pointed out as we touched on earlier that every kind of measures taken by the government grows to a subject matter of ISD. The Ministry, after studying a part of countermeasure, stated that “Issue of investment dispute is connected to a subject matter linked to all the government departments, judiciary, local governments, government investment organs, which requires trans-governmental measure,” and the government is mandated to take revision and elimination of the laws and regulations into consideration over the issues of “various tax measures, constructions, real estate regulation, regulation on health and environment, investigation and tax inquiry, support system for small and medium enterprise.”

It already bears a big significance even only a subject matter of "Indirect Expropriation" has been studied by Korean Ministry of Justice, a group of legal professionals. Diet is going to be compelled to revise and eliminate more than such subject matter when the organ faces the laws and regulations of "fair and equitable treatment" for foreign investors.

Besides, work for amending laws to prepare to meet regulation that has an impact on trade will require "objective and in logical manner." It violates Article 41 of the constitutional law when Diet is placed in being burdened with amending laws based on such abstract provisions. With regard to ISD, the lawmaking organ is expected to amend laws and subjected to varying norms (rules) provided by an overseas-located private arbitration, which violates the said constitutional article that pronounces Diet shall be the highest organ of state power, and the sole lawmaking organ of the State.

4 Binding Legislative Discretions

Legislative work derived from considerations to be reflected into the work of multi-dimensional value and totality of it includes a variety of social, economical, sectorial interest, fundamental human rights, culture and public orders.

Thoughts that legislative discretion that expansively reach are a result of judicial precedents as found in "it aims at achieving welfare for the people in whole, taking people's various intention into account." Needless to say, the most important value in the Constitution is placed on the fundamental human rights and to respect individuals.

TPP respects "freedom of international economic activity," which confronts with principle of respecting fundamental human rights. Plainly speaking, a set of norms that principally respects freedom of global corporations

and their profit will grow in TPP and binds systematically Diet's current and future legislative discretion. Binding such legislative discretion by TPP translates to Diet is placed under global corporations' control, which obviously violates Article 41 of the constitution.

5 On US System of Domestic Laws

(1) The Constitution of US and Commerce (Trade) Agreement

Lastly, we dare to touch on the domestic legal system of the United States On one hand, albeit rooted in doubt, US Congress couldn't agree with TPP that binds a lot of the nation's legislative power. On the other hand though that in the United States, Congress is not obliged to change laws as a result of TPP concluded. The Constitution of the United States reads authority to regulate commerce (namely, authority to conclude a trade agreement) resides exclusively at Congress. In other words, President who represents the US government is not authorized to conclude trade agreements (TPP is one of those) and also to negotiate it unless Congress gives President such authority. Power of delegation as such contains in it, details conditions, for example, requirement in advance for the President to fulfill "firmly enforceable SPS" and "obligation on fair and equitable treatment."
Such thing as Congress holds authority on trade agreement is not seen in other countries. Flat fact is that the Constitution of the United States employed such exceptional system.

(2) Legal Effect of Commerce (Trade) Agreement and Domestic Laws
In the United States, trade agreement and domestic laws of their domestic legal status hold an equal effect each other. In other countries, laws and

rules are amended as a result of trade agreement concluded, which is not so in the United States.

Under being such, US Congress is able to legislate laws freely without being bound from trade agreement. Between trade agreement and law, a law enacted after a trade agreement prevails over the agreement.

(3) Invalidation of Commerce (Trade) Agreement as Domestic Laws

In the United States, government is given authorization ("TPA: Trade Promotional Authority," according to media) by Congress in advance and signs a trade agreement and thereafter, Congress, when it agrees with the agreement, legislates implementing laws. There is, no exception, a provision that invalidates trade agreement's legal effect over domestic laws.

Such provision specifically includes (1) trade agreement in conflict with federal and state laws are invalid. (2) federal and state laws in conflict with trade agreement are valid. (3) any entity (except the United States) may not argue for or against based on trade agreement (provisions of trade agreement may not empower any entity to claim or exempt obligation. (4) any entity is not allowed to file for claims (litigations) based on trade agreement against actions and inactions of the authorities.

The clauses above have been employed into implementation laws of all the trade agreements since that of WTO agreement. Thus, Congress changes laws as the lawmaking organ wants so while the organ also invalidates the effect of the agreement functioning as domestic law. Obviously, such invalidation issue has raised concerns among international society although the society, in reality, has yet no effective countermeasures. The United States thus far has fundamentally maintained its own system, independent from trade

agreement while making other countries' domestic system changed in favor of the United States (meaning their global corporations, not their people). Nature of agreement above is tantamount to a structurally unequal treaty. Yet, international society has been subdued by the power of the mega-scale country, to result in that TPP is destined to become a structurally unequal treaty.

Second: In violation of Article 76 (1) of the Constitution

1 Article 76 (1) of the Constitution and ISD Clause

Judicial power residing in courts and the power moves up to the summit, the supreme court as Article 76(1) of the Constitution so reads "The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law."
Judicial power in its plain sense means a country's function to resolve a specific dispute by applying judgment norms (rules eligible to be a judgment criteria for the decision) of laws, cabinet orders and other rules.
ISD Clause grants in advance comprehensively special right under which foreign investors are given special treatment for an ISD filing that circumvents court of Japan from rendering judgment on legal dispute that inherently belongs to judicial power of the country.
Question arises whether it violates the Constitution when a matter of exception, not by domestic law but by treaty, of its Article 76 (1) emerges. This issue is discussed below.

2 Examples of Treaties in connection with Article 76 (1) of the Constitution

There are, at most, two examples found in treaties where judgment by court of Japan is legitimately circumvented despite the issue falls under legal dispute within the country.

One comes from diplomatic privileges (Vienna Convention on Diplomatic Relations), and the other from "Agreement under Article 6 of the Treaty of Mutual Cooperation and Security between Japan and the United States of America regarding Facilities and Areas and the Status of United States Armed Forces in Japan," (hereinafter Japan US Status Treaty).

With respect to diplomatic privilege, it is understandable with least difficulty that the issue emerges only in a limited circumstance. As to Japan US Status Treaty, while other serious questions of the treaty have been pointed out, according to the language in the pact, what is circumvented from judgment by court of Japan is limited to crimes committed within the United States Armed Forces and those committed by armed forces personnel during performing official duty. Even the Japan US Status Treaty provides a consideration at least in its form to minimize its influence on judicial power of Japan.

Contrary to the above, ISD gives those, that include unknown numbers of foreign corporations spread over Japan and foreign investors that hold stocks and bonds such as corporate debentures, invest in real estate, right to circumvent judgment by court of Japan. ISD's influence outperforms judicial power in magnitude.

3 Government Statements on Article 76 (1) of the Constitution

There was an issue in Japan of Individual Complaints Mechanism, part of the Second Optional Protocol to the International Convention Civil and Political Rights, (hereinafter IC Mechanism). The government was putting conclusion

of the Convention in hold until when the issue of the country's TPP negotiations surfaced. Basis of such holding was reasoned that it interferes "Independence of Judicial Power (Article 76(3) of the Constitution). This means that the government has acknowledged that violation of the constitutional law occurs when such treaty binds judicial authority. The mechanism provides individuals who considered human right has not been protected within the court system with his or her complaint to the United Nations' human right committee after the procedures in courts exhausted (namely the dispute has been climbed to the supreme court), yet the committee's opinion to come later serves only as that of advisory.

Above tells that the government of Japan at one time premised that even a mechanism, which holds no binding effect, restrains the country's judicial power — while ISD holds such effect. Even the mechanism that originates after exhaustion of domestic court procedure was considered to develop to the issue of the constitution as a restraint to judicial power.

Since such government action speaks that even a treaty that follows the constitution of Japan restrains the constitution of Japan and develops to the issue of the article 76, it is clear that the ISD clause that clearly confronts principle of respect of human rights bears more critical and serious issue of the constitutionality when the clause pronounces its direct and big restraint.

After the issue of the country's TPP negotiations surfaced, the government deleted a language "Independence of Judicial Power" off from the reasons the IC Mechanism was put in hold, which indicates that the government itself evidenced and clarified the unconstitutionality of ISD

4 Conclusive Remarks

Accordingly, while we construe that binding judicial power by treaty violates Article 76 of the constitution, it is clear enough that ISD Clause is in violation of the same article in consideration of the limited exceptions described earlier and the government's point of views to date as described earlier as well; for the matter that grants special protection for foreign investors and, generally and comprehensively, circumvents the judgment to be rendered by the court of Japan.

Third: In violation of Article 25 of the Constitution

1 Legal Characteristics of Right to liv

Article 25 of the Constitution reads, "All people shall have the right to maintain the minimum standards of wholesome and cultured living." ((1), the Article), which ensures people's right to live. And, it continues to "In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health," which makes the country fundamentally liable for seamlessly taking measures of the right to live fulfilled ((2), the Article).

As to legal nature of such right, a prevailing theory, called Abstract right theory, construes the Article to mean that a materialized right of the article is subjected to its legislation. Thus the theory does not allow people to directly seek in court implementation of the right to live; instead, people may seek in court once there is specific law that materializes the right to live, "the minimum of wholesome and cultured living." The theory, even it sounds weak, makes the Article 25 act as benchmark of wholesome living or administration's such settings and empower the article to function for invalidating the benchmark once set by the

administrative agencies when found it is too low and also, invalidates the measures of abrogating the laws and lowering the warranty benchmarks without a justifiable cause for the reasons that they impair the right to live.

We clarify below the right to live materialized by various legislations.

2 Materialized Right to live

(1) People's Right of stable food supplied

The Basic Law on Food, Agriculture and Rural Areas intends "to stabilize and improve people's lifestyle and to develop the national economy" (Article 1) that provides a measure "to secure with increase of domestic agricultural production as a basis," in order to realize "a stable supply of food be secured," as a basic principle.

As to food self-sufficiency rate, the article states that food supply be secured even when unexpected situations such as "a bad harvest or interrupted imports" occurs, (Article 2). And it addresses a responsibility that "the country is to formulate and implement comprehensive policies with regard to food, agriculture and rural areas, pursuant to the basic principles on policies for food, agriculture and rural areas." (Article 7), under which the country is subjected to secure a stable food supply by increase of food self-sufficiency rate. Taken provisions above into consideration, the law specifically ensures people's right for stable food supply by maintaining food self-sufficiency rate.

(2) Right for those engaged in Agriculture and Dairy to maintain living

In order to secure the stable food supply by means of increasing food

sufficiency-rate, it is necessary for those who are engaged in agriculture to be able to maintain the minimum standards of wholesome living. The corollary above is easily drawn from an established notion that protection of people's right to know is consciously backed up by freedom of media report.

Meanwhile, the Basic Law on Food, Agriculture and Rural Areas, with regard to those who are engaged in agriculture, notes that their sustainable development of agriculture shall be promoted (Article 4), in consideration of the role of the agriculture the conservation of national land, water resources, and the natural environment to the formation of a good landscape and maintenance of cultural tradition, in addition to its conventional role as a primary food supplier (Article 3).

The law covers extensive area such as increase of food sufficiency-rate, stable supply of food to people, promotion of agricultural community operated in the place of living for the local residents including farmers as a place for "playing a basic role of sustainable agricultural development. As such, the law ensures right for each individual who is engaged in the agriculture the minimum standards of wholesome living.

(3) Right of safety food supplied

The Food Safety Basic Law, a basis of other laws such as Food Sanitation Act, serves for "promoting policies to ensure food safety" and was enacted "in consideration of the vital importance of precise responses to the development of science and technology and to the progress of internationalization and other changes in the environment (Article 1), consideration of which is noteworthy because it illustrates what our country exactly now faces TPP. The law says food safety shall be ensured "by taking the necessary measures based on the simple recognition that the protection

of the health of our citizens is a top priority (Article 3) and for "the purpose of preventing adverse effects on the health of citizens due caused by food (Article 5) which clarifies that the measure for ensuring food safety is based on a principle of prevention. Article 6 of the law makes "the country responsible for comprehensively formulating and implementing policies to ensure food safety" under the code of basic principles for ensuring food safety.

Combination of a series of laws above ensures people that they have a materialized right to obtain food safety.

(4) Right of adequate medical service supplied

National Health Insurance Act addresses "Insured persons covered by the national health insurance program provided by a municipality or sub-divided ward (hereinafter "Municipality") shall be persons domiciled in the area of said municipality, which clarifies that every people is equally entitled for a health insurance.

Meanwhile, Medical Practitioners' Act, while it restricts those who engage in medical practice to be a medical practitioner practice (Article 17), imposes the practitioner to serve for public welfare by "contributing to the improvement and promotion of public health" (Article 1) and, prohibits practitioner from refusing examination or treatment (Article 19(1)), under which people are equally ensured to obtain medical service.

Furthermore, Medical Care Act "is to contribute to the protection of the health of the nation by safeguarding interests of recipients of medical care and ensuring a system that efficiently delivers good quality and well-suited medical care" (Article 1), and keeps "respect of life," as the basic principle, and imposes those who engage in the medical service including

the medical practitioner to deliver “good quality and well-suited medical care (Article 1-4 (1)).

As a result of these laws of medical services conbined, people are ensured materialized right for an equal and adequate medical service provided.

3 Infringement by TPP on materialized right to live

TPP is to threaten the rights inferred from stable food supply for people by making food self-sufficiency rate plummet as a result of agricultural tariff elimination and, infringe the rights for those engaged in agricultures and dairy of their maintenance of life.

Infringement by TPP goes even further to the rights for safety of food supplied, reason of which arisen from “firm and enforceable SPS” rules, a large-scale limit on principle of prevention and expedited tests for food safety, all insisted by the United States, and to extreme protection of intellectual property right and medical service by corporations that is underpinned by for-profit medical service.

Accordingly, TPP deeply infringes on “the right to maintain standards of wholesome and cultured living” that has been materially cemented as a result of many laws accumulated after the war under the Constitution of Japan.

Thereby, TPP is in violation of the article 25 of the Constitution of Japan.

Fourth: In violation of Article 13 of the Constitution

1 Personal Moral right and Right of Serene Life

(1) Article 13 of the Constitution, Personal Moral right and Right of Serene Life

Article 13 of the Constitution reads, “All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs,” which ensures comprehensibly the rights of people’s life, liberty and the pursuit of happiness, derived from respect of individuals. A series of such comprehensive rules for ensuring human rights is generally construed that it ensures the personal moral right, in other words, the right to insure the interests as a totality of life, body and mind, essentials for person’s moral foundation.

As is founded in spiritual life of human being there is no other provision found in our country’s legal system that exceeds value of the personal moral right.

Rights originated from the personal moral right have been established through number of court precedents accumulated and grown into the right to live in serene life (hereinafter “the right of serene life”).

It is construed that act of threatening directed to the right of serene life develops not only to damage compensation but also to an injunctive relief.

(2) TPP and Infringement of Personal Moral right and Right of Serene Life

As mentioned earlier, TPP is to adopt a rigid SPS rules pressed by the United States. There is difference between Japan and the United States of standards on residual agricultural chemicals and food additives. The United States to date has repeatedly sought Japan to lower standards of residual agricultural chemicals and prompt the permits for food additives, which will put people of Japan in danger from the change of residual agricultural chemicals and food additives.

It goes without saying that life and health make up central of the personal moral right. It is clear that TPP threatens people's life and health and infringes on central of the personal moral right.

2 Right of Self-Determination as a Personal Moral right

(1) Right of Self-Determination as a Personal Moral right

The right for individual to pursue happiness ensured by the article 13 of the Constitution represents the entirety of "rights that contain indispensable interests for individual to keep life on personal morality." The personal morality right is to be construed that it contains the right of self-determination, a personal morality right.

Article 13 of the constitution ensures the "right to make a self-determination without being interfered from others," when a content of such right reaches to a level of indispensable for personal morals. The Supreme Court in the case of "Jehovah's Witnesses," acknowledged in a ruling that "when the patient expresses clearly the blood transfusion is against his religious belief and refuses a medical treatment that requires blood transfusion, his right to make a self determination must be respected as part of a personal moral right," (Supreme court, Third Court, February 29, 2000: Civil, Vol. 54, 2, p. 582).

Decision-makings on life, body and health are ensured by the article 13 of the constitution as the right of self-determination, an indispensable right exactly for the life of personal morality.

(2) Right to know as part of Personal Moral right

In order to exercise the right of self-determination, it, naturally, has to be feasible for a person to acquire information as a basis to make a judgment. Particularly in area of the consumers vs. business firms where a gap between them in quality and quantity of information is found, there develops an ineffective self-determination by consumers unless the country takes certain corrective measure, (Article 1, Consumer Contract Act).

Based on the points above, there currently find various kinds of display system on which the system provides consumers with important benefit to materialize their self-determination right for their expectation derived from facts that they make decision expecting the standards in alleged display.

Particularly, when people are provided with information by the country's regulatory measure for mandatory display of information of life, body and health worthy for people to make decision, such information serves as indispensable source for individuals to decide on how he or she sets up life and health; thereby expectation to the standards drawn from the regulatory measure of mandatory display should be ensured in connection with the right to know, part of a personal moral right under the article 13 of the constitution. This is specifically a right for people to seek government not to undercut criteria without just reason of display system once set up.

When it ever occurs that government's information supply of the mandatory display system, which benefits decision making for life, body and health, diminished from the current level, consumers will no longer be making an effective decision. That insufficiency of information by which a self-determination be made will develop to harm life or body or health grows to inflict irreversible loss.

Therefore, those who are situated where strong possibility of infringement on right to know to decide matters of life, body and health arises, they

are construed to be entitled under the article 13 of the constitution to seek an injunctive relief to the government to prevent, in advance, aforementioned infringement from occurring in the future.

3 TPP and Infringement on Right to Know (Article 13 of the Constitution) as part of Personal Moral right

(1) Toxicity of Genetically Modified Food

Genetically Modified Food generally means the food evolved from genetically modified produce and product of which made by means of technology of gene modification. Such food is currently not produced on a commercial scale within Japan; those in circulation are basically imports.

The food, however, continues being imported due to insufficiency of scientific evidence to substantiate its harmfulness. More than few countries either prohibit or regulate such food. Facts that Genetically Modified Food is under regulatory measure by more than few counties demonstrate that human being senses danger by instinct. Denial of such measure by calling it totally unscientific lacks fairness.

(2) Mandatory Labeling Display on Genetically Modified Food

Japan takes a mandatory display measure for Genetically Modified Food that provides consumer with option to avoid such food, and even allows "Non Genetically Modified Food," a contrary display.

The United States strongly complains by saying that such mandatory measure impairs the United States' export of the food of the US origins.

It is more than likely that when TPP is concluded, the mandatory display of such food will be abolished by rigid application of a clause found in

either SPS or TBT (Technical Barrier on Trade; according to a government information of TPP negotiations situation by field, published prior to Japan's entry to participation of TPP negotiations, subject matter of Genetically Modified Food is discussed under TBT field).
Besides what we have examined above on the mandatory display of the Genetically Modified Food, the United States repeatedly expresses strong complain that the display system of the food falls under Non-Tariff Barrier, which, they say, unjustly prohibits the United States' export

(3) Infringement on Right to Know as a Personal Moral right
There is a strong possibility that the regulatory measure on the mandatory display of Genetically Modified Food as well as other various kinds of food will be forcefully softened once TPP is concluded.

###

Chapter4: Unconstitutionality of Secret Negotiations

First: Undisclosed Content of TPP Negotiations

As discussed in the chapter 2, TPP transforms on a large-scale whole frame of people's safety, life health and system of living. TPP in strong possibility expansively restrains the freedom of expression and intellectual activities and also, it has an impact on what division of power between central and local governments should be set up.

What is going on of the negotiations is that people are totally shut out from almost all of what TPP contains; the negotiations alone advance. Media's coverage focuses only on agricultural product and automobiles or equivalence of them to the most, scarcely on the issues as we discussed in chapter 2 of the frame of the living.

It can hardly reach to the level of overstatement when we say the government never let us substantially know of TPP and what kind thereof is negotiated. Despite assuming that a number of issues have been resolved over the fields and clauses, none of them has ever been disclosed. Immediately after the 18th round of the negotiations, the session Japan fist participated, Mr. Koji Tsuruoka, the country's chief negotiator stated in a press conference that "the government alone cannot decide issues of the negotiations which are likely to influence over what Japan as a whole should be" and indicated to consider means to share the information with the people of the country (July 26, 2013, The Chunichi Press). Despite there is a grave concern as remindful as the chief negotiator stated, the government never discloses TPP's content.

Second: Non-Disclosure Agreement

1 Content of Non-Disclosure Agreement

On-going negotiations behind the closed doors in the absence of the people of the country attributes to a non-disclosure agreement signed prior to joining the negotiations, which holds an exceptional nature.

In New Zealand, a participating country for the negotiations, there was citizens' voice asking disclosure of TPP negotiations. Chief negotiator Mr. Mark Sinclair answered the voice in the following manner (November 29, 2011).

"all participants agree that the negotiating texts, proposals of each Government, accompanying explanatory material, emails related to the substance of the negotiations, and other information exchanged in the context of the negotiations, and plan to hold these document in confidence for four years after entry into force of the Trans Pacific Partnership. Agreement, or if no agreement enters into force, for four years after the last round of negotiations."

"the documents may be provided only to (1) government officials or (2) persons outside government who participate in that government's domestic consultation process and who have a need to review or be advised of the information."

The participating country is allowed to begin the negotiation after the country promises in a written form the content above.

2 Reaction of Government of Japan

What the New Zealanders sought of the TPP negotiations ended up with the content of the Non Disclosure Agreement.

In Japan as well, there are more than few voices demanding for the disclosure of the negotiations content, however, the government never discloses it

by citing the existence of the non-disclosure agreement. Not only to citizen but also Diet member, the government refuses specific content of the negotiations. Even a question raised by a Diet member, whose investigative power being constitutionally warranted, on the subject that was merely what kind of the non-disclosure agreement was, the government's answer for that was flatly "we are refrained from answering any details." And such question remains refused.

Stance of the government that does not even disclose the subject matter and the length of the secrecy, despite the New Zealand already disclosed them stands out as a country that strikingly holds secretiveness among participating countries.

3 Reason of Secret Negotiations

It is perhaps understandable that there are issues for secrecy in diplomatic negotiations. However the issue of the non-disclosure agreement in TPP diverts clearly from diplomatic negotiations to date. As exemplified by the chief negotiator Mr. Koji Tsuruoka who stated that TPP is "likely to influence over what Japan as a whole should be," and that the means to share the information thereof be shared with the people of the country needs considered under the fact that the content of TPP that has a big impact on people's life is being negotiated and decided in secrecy by only a handful number of people is in conflict with the principle of governance by the people.

It goes without saying that extreme secrecy of TPP negotiations is not derived from the nature of the diplomatic negotiations but from the fact that the people's interest is sacrificed for that of the global corporations which grows to the degree that the negotiations couldn't be advanced, unless

the negotiations are in secret.

4 Who Controls US Negotiations

The non-disclosure agreement disclosed by the New Zealand government notes that those "who have a need to review or be advised of the information" are provided with the negotiations documents even though those are outside the government.

As to the member of the national lawmaking body, it had been in the United States that the Congress basically had been shut out from the secret negotiations.

The United States Trade Representative (USTR), while maintaining secrecy to Congress, keeps about 600 individuals, as a negotiation advisor, who are permitted to access to the negotiations documents. Those individuals being advisors belong to the corporations such as Cargill of crop industry, Monsanto of food industry, Pfizer of drugs, Nike of sporting goods, Walmart of retails, each represents in its field the world largest global corporation.

The advisory work includes, analysis of draft, demands to USTR for the corporation he or she works for and proposal of amendment of draft to build up content of the TPP agreement. Whenever TPP's negotiation round held, there finds an arena where a number of lobbyists hired by firms gathered lobbying the negotiators.

Being formed of negotiations between countries, TPP produces its decision substantially by the US global corporations who are permitted to access to the negotiations documents. TPP is nothing but the rules made by the global corporations for the corporations seeking to build a system where their profit accrues in the name of the negotiations between the countries.

5 Information Disclosures at US Congress

In the United States, triggered by the raised criticism against the government's secretiveness, by March 2015 the member of Congress with staff accompanied has become treated to read all texts of TPP negotiations in a secrecy-administered environment. A legislative bill emerged since, ensures such treatment and also, mandates USTR to publish for people TPP's final draft in its entirety on its website before 60 days the President signs TPP agreement.

As US Congress promotes information disclosure, Japan's Diet faces rigid refusal from the government.

Third: In violation of Proviso Article 73 (3) of the Constitution

1 Article 73 (3) of the Constitution

Article 73(3) of the constitution of Japan, while it notes that capacity to conclude treaty resides in the cabinet of the government, it at the proviso subjects the organ to obtain approval from Diet. Such subjecting comes from in need of democratic control over the diplomacy on principle of governance system of the country by the people, and acknowledgment and consent by Diet when treaty holds domestic legal effect.

2 TPP and Importance of Diet's Approval

As seen, TPP obligates Diet, on very large scale, to revise and eliminate domestic laws and the purpose of the treaty intends to focus on revisions and eliminations of the domestic legal system, which makes Diet's approval noted at the proviso of the article 73(3) of the Constitution strikingly important.

At the Diet's approval to be given to TPP, it is necessary for the organ to sufficiently identify what kind of laws are to be revised and eliminated by the conclusion of TPP, followed by the organ's acknowledgment on how the laws are going to be influenced by TPP.

3 Secret Negotiations and Diet's Approval

Despite the fact that TPP, which now for more than two years into the negotiation participation, is consisted of tremendous amount of texts, its content has not been disclosed to Diet.

It is clear that such secret negotiations from which the Diet being completely excluded violates the purpose of the proviso in the article 73(3) of the constitution that intends to provide democratic control over the conclusion of the treaty.

As been stated, there is a non-disclosure agreement between the countries of negotiations and the negotiations document is to remain in secrecy for four years. The point of the matter is how the meaning of the TPP is to be construed under such circumstance of secrecy.

Article 31 of Vienna Convention on the law of treaties (hereinafter "Vienna Convention") states interpretation of a treaty; first, "be interpreted … by context," Article 31(1), and then, "context," in addition to the context, including its preamble and annexes that comprise (a) Any agreement relating to the treaty which was made between all the parties, in connection with the conclusion of the treaty and (b) Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

This tells that the negotiations documents of TPP holds the effect equal to the text of TPP.

To the extent of being known, TPP contains the clauses made of a number of abstract words such as “fair,” “equitable,” “rational,” “minimum,” thereby, it is highly necessary to read the negotiations documents, as part of the agreement.

Seeking approval of Diet for the treaty, while keeping in secrecy the negotiations documents is tantamount to the seeking the one that lacks the part as effective as the text, without which meaning of treaty content cannot be determined and, this results in the purpose of the proviso of the article 73(3) of the constitution immensely impaired, in which the Diet’s right to approve is stipulated.

(To put it simply in consideration of Vienna Convention, the Diet is going to be asked the approval of the treaty, part of which is black-painted)

Approval by the Diet of the treaty, which remains unclear, translates to an approval to which amending domestic laws remain unidentified, which results in violation of the purpose of the article 41 of the constitution.

4 Conclusive Remarks

As seen above, TPP premised on the non-disclosure agreement violates the proviso of the article 73(3) of the constitution.

Fourth: In violation of Article 21 of the Constitution

1 Assurance of Right to Know

People of Japan are ensured the right to know derived from the article 21 of the constitution that provides freedom of expression. People who are a holder of the country’s governance system participate national politics by means of various activities of expression. To participate such, it is indispensable to collect effective information and, thereby, right to know

is ensured as a naturally induced right that contributes to basis of democracy defined by the article 21 of the constitution. The supreme court (Supreme court, November 26, 1960,: Criminal, Vol. 23, 11, p. 1490) in the case of the film at Hakata train station, ruled that "reports by media organs offer important material for making judgment with regard to people's participation on national politics in the eye of Democratic Society that serve for people's right to know." Needless to say, thereby, freedom of reporting facts along with freedom of expressing thoughts resides under the article 21 of the constitution that expressly notes the freedom of expression. Furthermore, in order to let media organs' report hold right content, freedom to collect information for report, along with freedom to report, must be worthy to be sufficiently respected when taking spirit of the article 21 of the constitution into account." The ruling is obviously premised on that people are ensured right to know.

2 Right to Know as a Right to seek Government Information Disclosure

Right to know as aforementioned in its meaning includes right to seek assertively disclosure of government information. It is indispensable for people secured right to know what the government is doing. In other words, people can criticize government activities only when people know what the government is doing. Grounded by that as the supreme court so ruled, right to seek government information disclosed is indispensably premised on the freedom of expression, the article 21 of the constitution.

3 In relation to Act of Information Disclosure

(1) Legal Characteristics of Right to seek Government Information Disclosure

Prevailing theory of right to know called the abstract right theory linked to the right to seek government information disclosure says that the former right is materialized once the latter right is legislated. Under this theory, it is, in its principle, not possible to obtain government information directly from the provision of the article 21 of the constitution.
In our country, it is construed that an Act on Access to Information Held by Administrative Organs serves as a source of materialized right to know linked to the right to seek government information disclosure. Upon being sought information disclosure of TPP (Article 5(3) of Act on Access to Information Held by Administrative Organs), the government, however, totally refuses such disclosure reasoning that such disclosure, mainly, likely causes damage to the relationship of mutual trust with other negotiating countries.

(2) Limit of Act of Information Disclosure

While the aforementioned act is said to have materialized right to know, the act does not specifically read "the right to know."
As to the subject matter of non-disclosure issue related to diplomatic affair such as TPP, the focus for court to make judgment falls under adequacy of the decision made by the minister of foreign affairs, top officer of the organ and, the court singles out the examination on the merits "if there is any sufficient reason for the minister's decision of non-disclosure," which is really a subject matter of right to know.
Furthermore, when it comes to a situation that the court needs to directly ascertain the adequacy of the minister's decision of the document not disclosed, there is no procedural way (such as in-camera procedure) for the court to ascertain the existence of the document. The court is compelled

to render the judgment while it cannot directly ascertain the diplomatic documents at issue. Thereby, the non-disclosure decisions on the diplomatic affairs reasoned by the country's mutual trust with another countries or the disadvantage incurred on the negotiations are easily abused, of which the court is situated not to rule on such abuse. We cannot help but pronounce that the Act on Access to Information Held by Administrative Organs as far as on the diplomatic affairs is too insufficient to ensure the "right to know" materially.

4 Characteristic Feature of TPP

TPP is a treaty and special characteristics of which shows that it intends, under a large scale, systematically to directly transform domestic laws that cover the system of people's life. TPP as such reveals itself as being exceptional one among the treaties. TPP intends to rewrite all areas of people's life into the one that ensures activity and profit of global corporations, and as a result of that, to impair the rights of stable food supplied, obtaining food of safety and adequate medical treatment and life for those engaged in agriculture to live by running agriculture and dairy; those are specifically the centerpiece of the personal moral right. Nevertheless, since the government attempts to expedite the negotiations concluded, there has never been anything tantamount to a nation-scale discussion nor, at least, the debate in Diet yet. Should it occur that a court judgment that mandates the government to disclose the information be firmly finalized (the government, defendant here, would appeal through all the steps to the supreme court), the foreseeable scenario is that the agreement is going to be inevitably signed, by when the final judgment by

the court pronounced, which eradicates the meaning of the information disclosure.

It goes without saying that such situation to arise would infringe the root of primordial, governance by people.

5 Infringement on Right to Know

As aforementioned, the prevailing theory of right to seek government information derived from the article 21 of the constitution remains an abstract right until legislation for such is enacted and then, a materialized right out of the legislation begins eligible for litigation,

However, it should be taken for granted that the people are entitled to seek the government information disclosure straight from the article 21 of the constitution, provided that such information touches on root of principles of respect for fundamental human rights and governance by people, principle of which arises to the level where necessity of disclosure is construed exceptionally high enough; there is an influential theory to suggest that.

Information of TPP negotiations that contains root of principles of respecting fundamental human rights and governance by the people requires being published, direct from the base of the article 21 of the constitution.

The government that refuses disclosing the information of TPP negotiations infringes the people's right to know, a right to seek the government information disclosure derived from the article 21 of the constitution, thereby, it is illegal for the government not to disclose.

###

Chapter 5: Infringement on Rights

First: About Plaintiffs

The plaintiffs are equally the people of the country, and, those who are engaged in agriculture and dairy, who are under medical treatment, who as parent pay attention to food safety, who are, under the name of international competition, forcefully and unstably employed, who are exposed to a continuous pressure of lower wage, who are in need of supplies of stable food and food safety while being a low-income earner, who are in need of adequate medical treatment and who as a researcher are engaged in intellectual activities.

Furthermore, plaintiffs are those who have earnestly made effort to make it happen that safety of food be ensured for people, who as medical caretakers made effort for people that equal and adequate medical treatment will spread over the country, who have worked in developing countries where it is found that people there face pressure from developed countries struggling with poverty and dying of diseases which may be cured without difficulty if occurred in developed countries and attempted to improve a sorrowful situation thereof, and who as a member of the Diet having dedicated energy for securing people's fundamental human rights.

Plaintiffs are, to say the least, have been respected to hold the personal moral right and, each of them, if not perfect, has been ensured right of serene life.

Second: Gist of Changes by TPP of Country's Principles

TPP rests on principle of respect of freedom of international economic activities, particularly, assurance of profit of global corporations, by

which it restrains immensely discretion of the legislation from respecting people's protection and fundamental human rights.
Important part of judicial power will be deprived of by privately held arbitration overseas and measures that do not impair foreign investors' interest will be thoroughly taken. The rules privately developed overseas will dominate the legislative, administrative and judicial powers. Thereby, principle of fundamental human rights under the constitution of Japan will be strikingly transformed and, welfare of people will be subjected to global corporations' interest.

Third: Materialized Damage

1 Infringement on Right to Live and Personal Moral right

By transformation to come of governance structure and its underpinning principle, plaintiffs are those whose right to live and personal moral right is materially threatened, whose dignity as individual built on value of fundamental human rights is infringed, to suffer from egregious emotional distress.
Infringement incurred on plaintiffs' right to live and personal moral right while each of these surfaces differently depending on where it is placed and its phase in life, constitutes an affirmed damage.

2 Infringement on Right to Know

Plaintiffs are, also, those who are deeply interested in finding, in the course of TPP negotiations, albeit such finding varies depending on where the plaintiff is located and his or her phase of life, whether the issues related to plaintiffs are resolved or still under the negotiations and how

they are resolved if resolved, and if the negotiations are still on, what kind of negotiations are under that.

Facts that right to know which is derived from principle of governance by the people is being infringed caused by secrecy of content of TPP negotiations prohibits plaintiffs from playing a role of a holder of country's governance system, which also constitutes an affirmed damage.

3 Benefit of Confirmation of Unconstitutionality

As aforementioned, plaintiffs are those whose rights are materially infringed by TPP and thereby, possess the right that TPP negotiations fall under a violation of the constitution of Japan be confirmed by court.

###

Chapter 6: Injunctive Relief

First: Specific Illustrations of Infringements

While TPP as of yet is under the negotiation stage, influence out of that has been materially arisen that erode area of safety, life and health. It was April 12, 2014 when Japan was approved by the United States of its entry to TPP negotiations. The government of Japan in order to obtain such approval from the United States softened an import restriction on US beef, that the government had maintained over the previous ten years resisting the United States' strong demand, It occurred on February 1, 2013 when the government expanded the import of US beef to younger than 30 months from the previous one younger than 20. Besides, the government, prior to the start of the preparatory talk with the United States, expanded the number of US-made automobiles exempted from testing safety standard to 5000 vehicles per the kind of models (realistically, skipping safety standard test for the US-made vehicles), and practically suspended Kampo Insurance, a Japanese life insurance company from launching the new product and Yucho Bank from selling the residential house loan. Also, in 2013, the year that Japan's entry into the negotiations was confirmed, import of Genetically Modified Food, while the number of safety checks of which had often been low to one or two and below 50 at the most, exploded to close to 100, among the number included modified corn that withstands dioxin-based defoliant, the corn that even the United States does not approve its safety. Now in Japan, such corn having been cleared its safety test reaches close to 100 seeds and is ready for a commercial-scale production.

In local areas of the country where light motor vehicles, an indispensable means to move around substituting for deficiency of public transportation,

a preferential treatment system for a buyer was abolished, a system that builds foundation for public medical insurance has been launched to cover the mixed-treatment, labeling requirement of its function of health foods is liberalized (adoption of a report system), Central Union of Agricultural Co-operatives is reshaped while the organization has sustained farmers who were put under an ineffective agricultural policy. The agricultural policy once intended to raise food self-sufficiency rate by achieving stable food supply is, in effect, about to be abandoned.

Instead, system reform that benefits global corporations is adopted one after another. Although the government does not admit such reform in connection with TPP, it is clear that the reform has been based on a harbinger of TPP, drawn from the US government's report on National Trade Estimate Report and demands by the global corporations who access to the information of TPP.

Second: Injunctive Relief by Personal Moral right

Where there is possibility of infringement that personal moral right, particularly that of life and body, a root of the right, is materially arisen, the article 13 of the constitution ensures the right to seek an injunctive relief, direct from the article without questioning reasons and basis of the infringement, and no matter how nature of the damage is; the nature such as intention or negligence of the infringement, magnitude of infringer's counter-interest by being restrained and enjoined from. In the event that obstruction of living does not reach bodily injury, a court has ruled "Any person has a right of serene life without safety of which on life and body being infringed. When the infringement that illegally exceeds the tolerable limit occurs, the person can seek exclusion of such infringement as against

the personal moral right and also, even when such infringement is not materialized yet, the person can seek, in advance, the infringement to occur or the cause of the infringement be restrained or enjoined from its future occurrence" (Osaka High Court, November 27 29, 1975: Civil, Vol. 35, 10, p. 1881).

As aforementioned, at current stage of TPP negotiations, there already exists an imminent state of danger of the personal moral rights of life and living being threatened. Once TPP is concluded, magnitude of harm and injury to plaintiffs will be immeasurable. Plaintiffs, thereby, are entitled to seek an injunctive relief of TPP negotiations based on the personal moral right.

Third: Injunctive Relief by Right to Live

As we earlier stated that people's right to live, as a materialized right, has been established through a number of legislations under the constitution of Japan that ensures the right to live. TPP is to subject Diet to revise and eliminate laws and rules that underpin people's right to live that has been established as an materialized right and, to destroy the right to live that has been established as an materialized right. We construe that an injunctive relief be permitted when the right to live is about to be infringed as such found in the personal moral right.

###

Chapter 7 Conclusion

Thereby, the plaintiffs as listed under the item numbers from 1 to 11 in a separate paper, seek an injunctive relief and confirmation that TPP negotiations violate the constitutional law and, each and every plaintiff seeks monetary damage for the amount of 10000 yen for the infringement which exceeds tolerance limit arisen from the personal moral right, the right to live and the right to know.

###