



# **Japan's National IP Strategy: Comparative Analysis**

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# Outline

- **Background**
- **Basic IP Law and Its Implementation**
  - IP Headquarters
- **New Legislation**
  - Technology Transfer Systems
  - Others
- **Impact of Legislation**
- **Comparison between US and Japan**

# Background

- **METI-JPO “Pro-Patent Policy” Initiative**
  - Mr. Hisamitsu Arai
  - Major patent law revisions during his tenure as JPO Commissioner (Damages)
- **Political Landscape**
  - JPO/METI
    - Committees (Experts)
    - Competition with other ministries and agencies
  - Industry groups (Nippon Keidanren, JIPA, etc.)
  - IP Professionals (JFBA, JPAA etc.)

# Basic IP Law

- **Enacted: November 2002**
- **National Strategies**
  - To enhance competitiveness by enriching Japan with IP rights (IP-based nation)
  - Intellectual Creation Cycle
- **Creation of IP Strategy Headquarters within Cabinet**
  - To develop a uniform IP policy
  - To coordinate activities at the ministry and agency levels

# IP Headquarters

## Composition

- **Prime Minister Koizumi and his cabinet members**
- **Secretariat**
  - Headed by Mr. Hisamitsu Arai
  - Bureaucrats dispatched from related ministries and agencies, and courts
- **Experts**
  - Industry representatives, professors and lawyers

# IP Headquarters

- **Annual Review**
  - Set a target for each measure, that is executed by a ministry or agency
  - Revise the target if necessary
- **Expert Task Forces**
  - Medical method patents
  - Media content
  - Enforcement

# First Strategic Program

- **Published: July 2003**
- **270 measures to make Japan an IP based nation**
- **Content**
  - **Creation, Protection and Exploitation of IP**
  - **Media contents business**
  - **Human resources**

# Further Developments

- **2004 Strategic Program**
  - Published: May 2004
  - 400 measures (11 month target for JPO Examination waiting period; IP High Court etc.)
- **2005 Strategic Program**
  - Published: June 2005
  - Even more measures (secret order, anti-counterfeiting treaty etc.)

# **New Legislation**

## **Creation: Technology Transfer**

- **Japanese Bayh Dole Act**
  - Enacted: 1999
  - Universities retain IP rights in result of publicly funded research
- **TLO Promotion Act**
  - Enacted: 1999
  - A variety of support to facilitate universities to create their TLOs

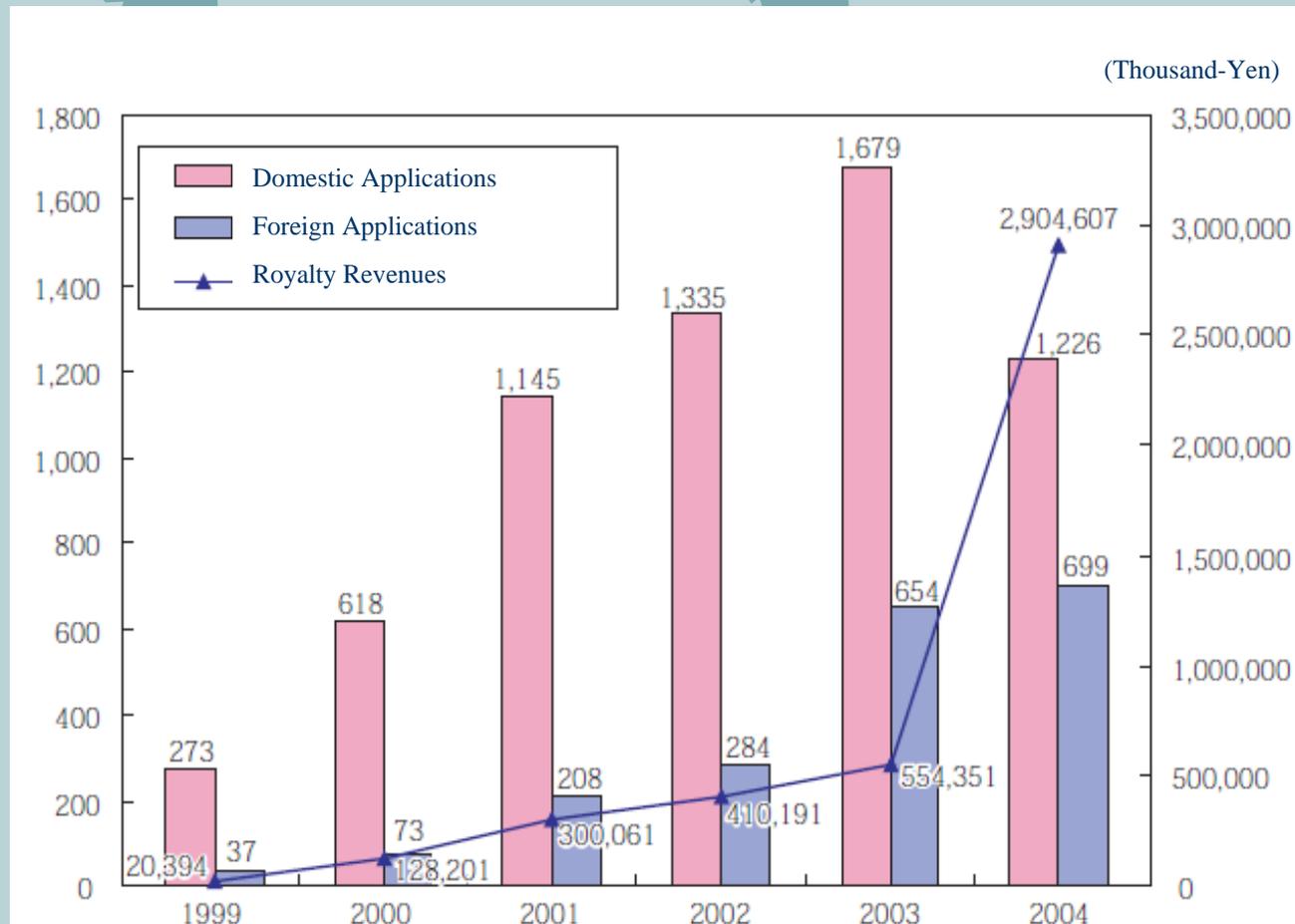
# Technology Transfer System

## University Inventions

- **Pre-Basic IP Law**
  - Professors retain IP rights in university inventions
- **Post-Basic IP Law**
  - Universities can adopt an IP policy to obtain IP rights in university inventions from professors

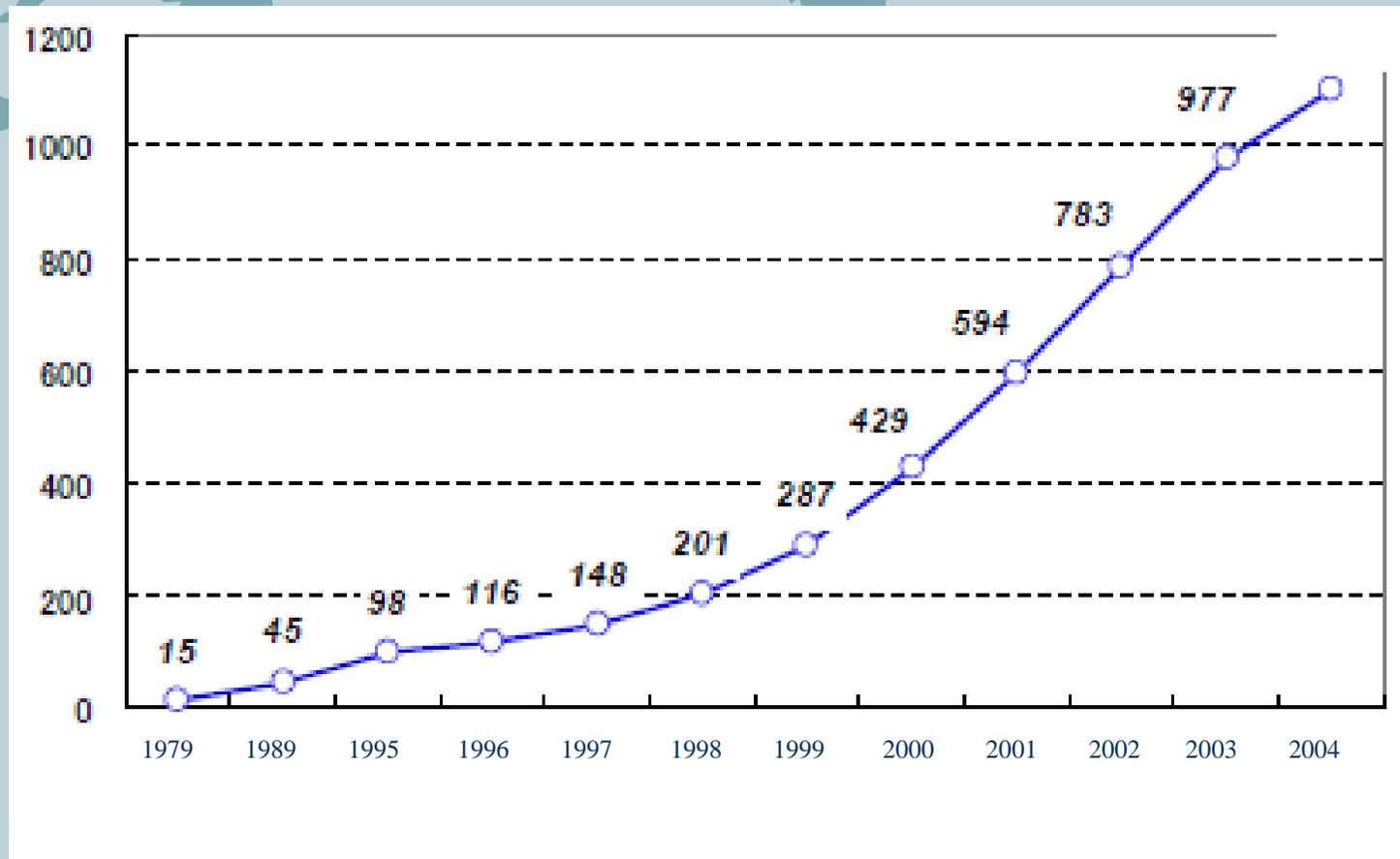
# Impact of Legislation

- Increase in Patent Applications and Royalty Revenues



# Impact of Legislation

- Increase in number of tech. ventures



# Other Legislation

- **Protection**

- Revision of examination guidelines on medical method patents

- **IP Enforcement Restructure**

- **2003 Civil Proc. Revision**

- Exclusive jurisdiction: First instance-Tokyo & Osaka Dist. Ct.; Appeal-Tokyo High Ct.

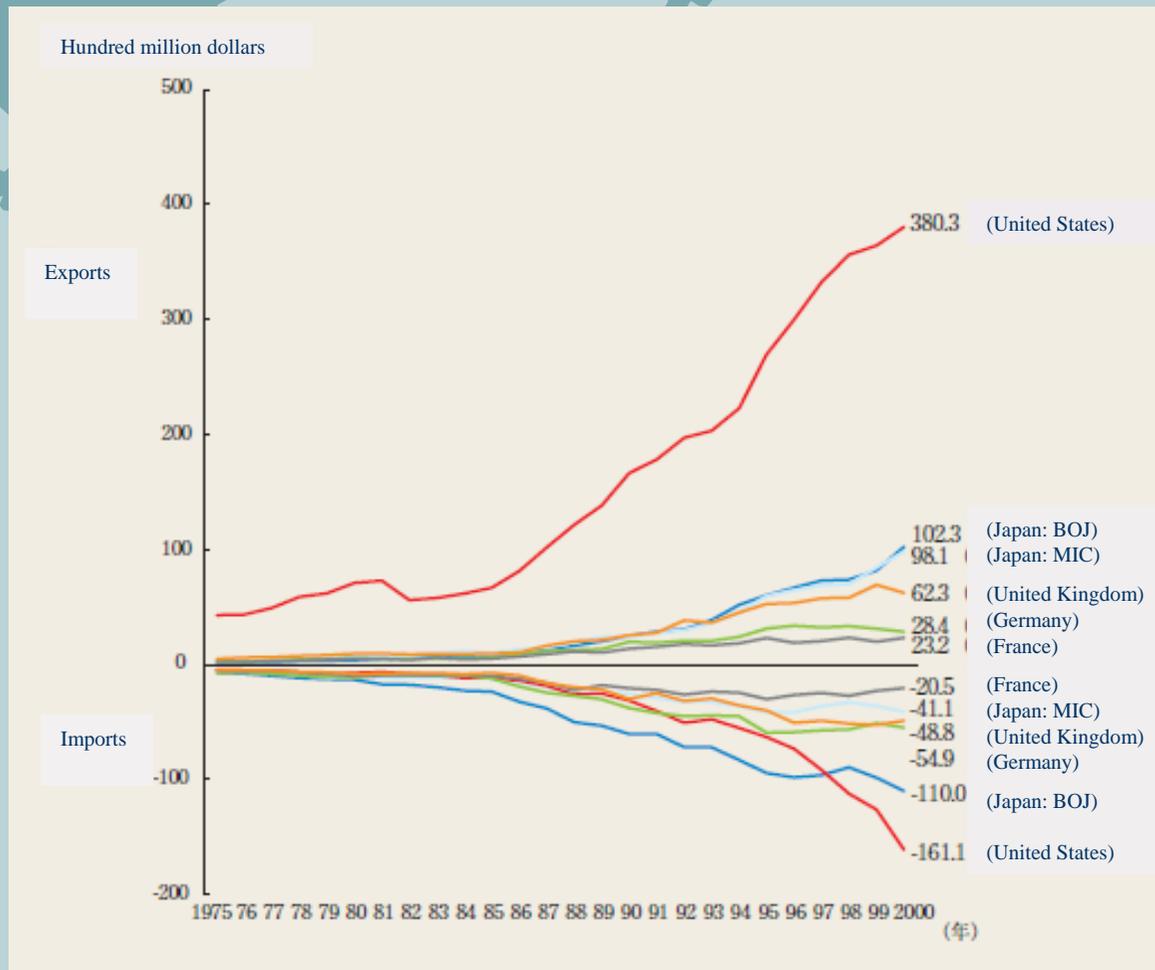
- **April 2005: IP High Court**

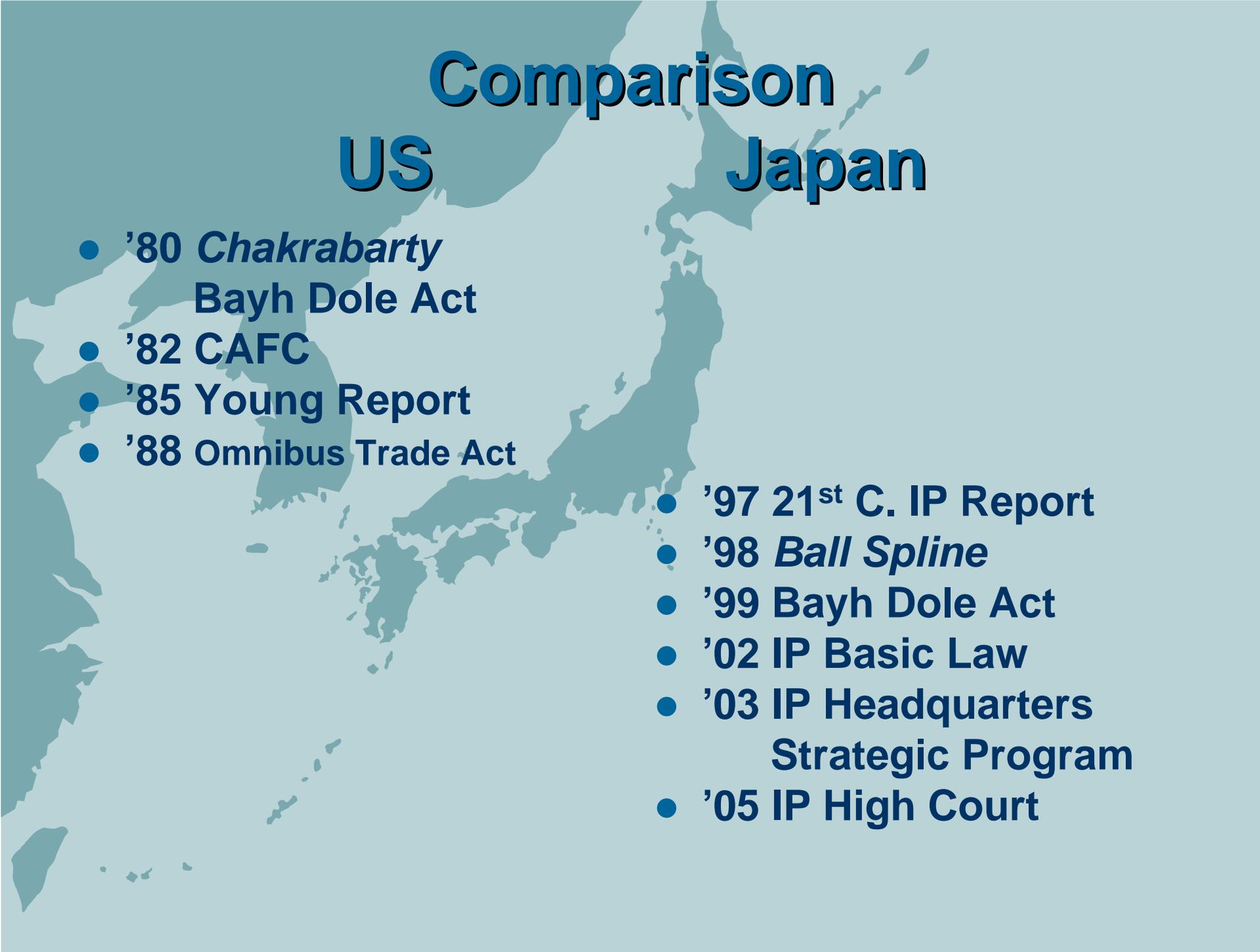
- Semi-independent from Tokyo High Court

# Other Legislation

- **IP Enforcement Restructure (Cont.)**
  - Defense of invalidity
  - Consolidation of opposition/invalidity proceeding
- **Human resources**
  - Law schools
  - IP professional schools
  - Extension programs for business people, engineers and scientists

# Technology Trade Balance Major Countries





# Comparison

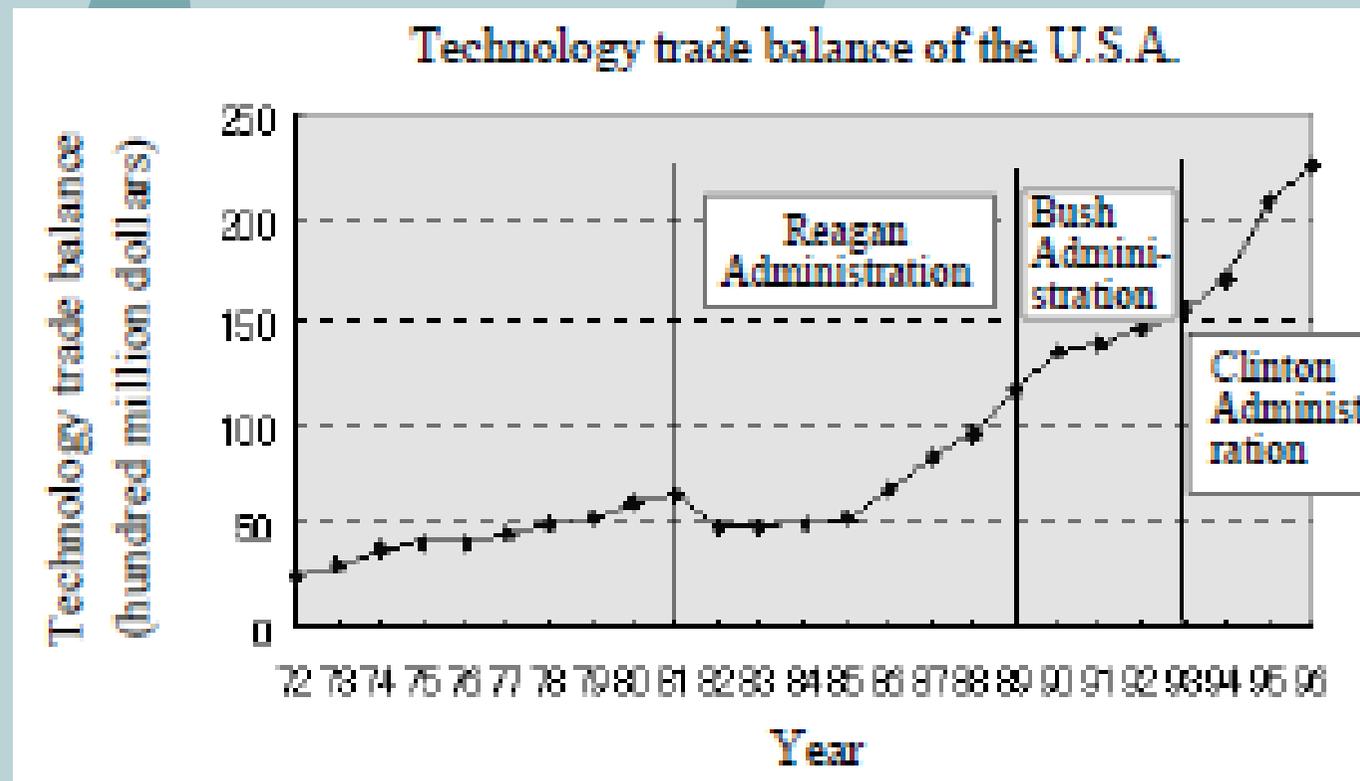
## US

## Japan

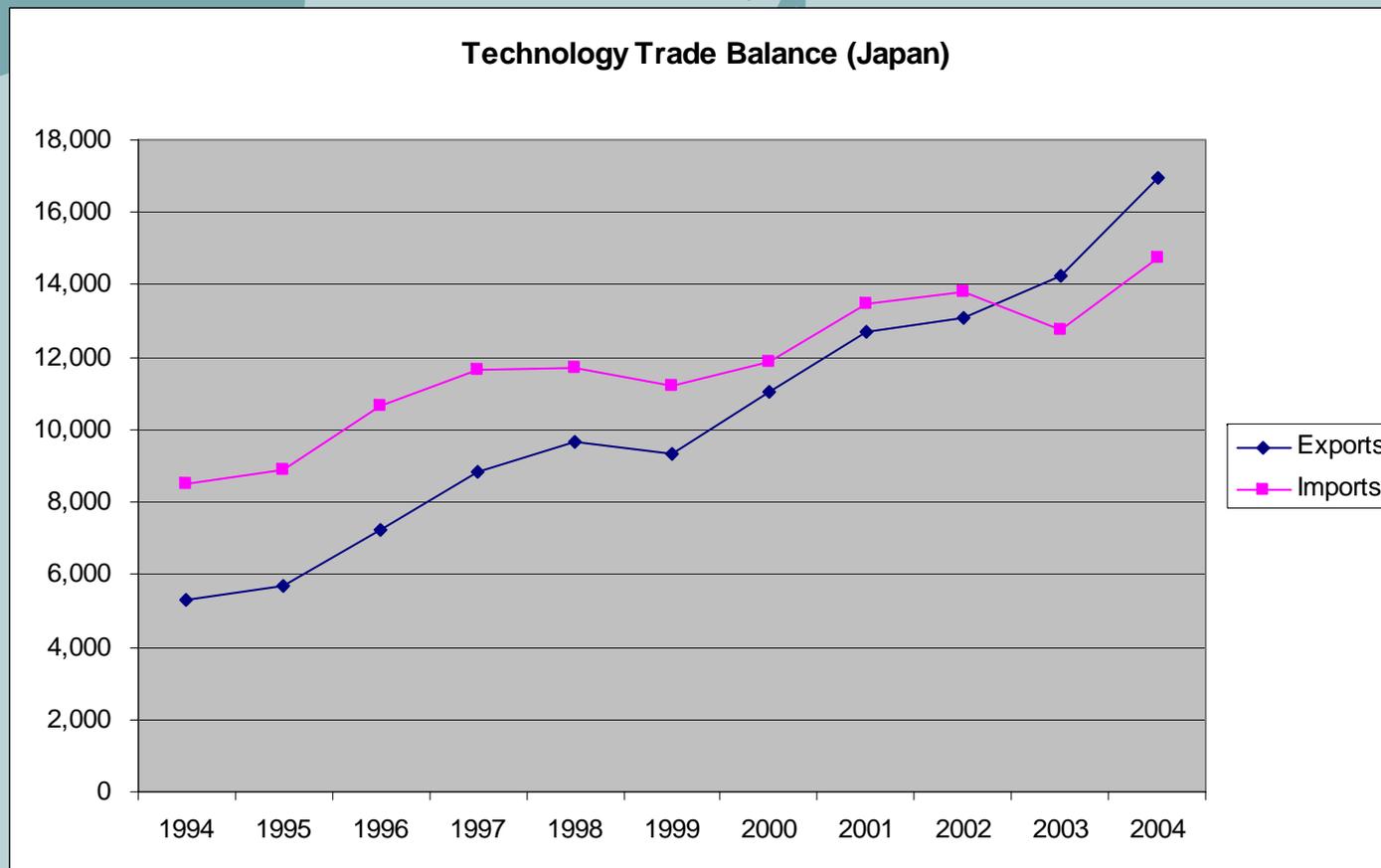
- '80 *Chakrabarty*  
Bayh Dole Act
- '82 CAFC
- '85 Young Report
- '88 Omnibus Trade Act
- '97 21<sup>st</sup> C. IP Report
- '98 *Ball Spline*
- '99 Bayh Dole Act
- '02 IP Basic Law
- '03 IP Headquarters  
Strategic Program
- '05 IP High Court

# Technology Trade Balance USA

- Matoaki Suzuki, Powerful and Overwhelming IP Activities in the Pro-patent Era ([http://www.jfe-steel.co.jp/archives/en/nkk\\_giho/88/pdf/88\\_20.pdf](http://www.jfe-steel.co.jp/archives/en/nkk_giho/88/pdf/88_20.pdf))



# Technology Trade Balance Japan



# Negative Affect?

- **Patent troll problems (US): No serious problem yet in Japan**
  - No enhanced damages for willful infringement
  - Reasonable litigation cost
  - Check & balance mechanisms
    - Experimental use exception
    - Compulsory license
- **Impact on academic culture**
  - Inequity among faculty in different departments
  - Restriction on freedom of study and research

# Conclusion

- **Japan made a commitment to concentrate its investment on IP**
- **The commitment is manifested in Basic IP Law and IP Strategic Programs**
- **Japanese economy recently shows a sign of recovery, which tends to support positive effects from the adoption of national IP policy.**