

# 對「行賄外國公務員罪」 之檢視與修正建議<sup>\*</sup> ——以日本之立法經驗為借鏡

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## 摘 要

貪污治罪條例第 11 條第三項為「行賄外國公務員罪」之規定，其目的在於防止我國人民或企業為在國際貿易上取得優勢地位或利益，而對外國公務員行賄，以杜絕商業賄賂行為。但該規定自 2003 年制定後，經歷 15 年的時間，卻幾無遭到追訴的案例，究竟是法律制定上發生問題，或是執行上有所困難，值得深入探討。

而日本於 1997 年簽署經濟合作暨發展組織的「禁止在國際貿易中行賄外國公務員公約」後，為了履行相關義務，而於 1998 年在不正競爭防止法中增訂了「對外國公務員贈賄罪」，其後，為了配合經濟合作暨發展組織的檢查，對於該罪及相關規定又進行多次的修正。而日本在立法、修法及執行過程中所遭遇到的相關問題，以及所提出之因應對策，應有值得我國借鏡

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之處。

因此，本文透過對日本「對外國公務員贈賄罪」的介紹，進而檢視我國「行賄外國公務員罪」所存在之問題，並嘗試提出解決方案，期望在提升我國貿易競爭力與履行國際義務間，能尋得適當的平衡點。

關鍵詞：商業賄賂、貪污治罪條例、行賄外國公務員罪、不正競爭防止法、對外國公務員贈賄罪

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# **The Review and Revised Proposal for “Anti-Bribery of Foreign Public Officials” —Lessons from the Legislative Experience of Japan**

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## Abstract

Art. 11.3 of the Anti-Corruption Act is called the “Anti-Bribery of Foreign Public Officials.” It aims to prevent our people or corporations from bribing foreign public officials in the hope of getting advantage or benefit in international trades and to eradicate business bribery. However, it has been 14 years since its enactment in 2003 and there have been almost no lawsuits about it. It’s worth our further discussion on whether there are problems about the rules themselves or whether there are difficulties in enforcing them.

In 1997, Japan signed a pact of the Organization for Economic Co-operation and Development (OECD) to inhibit bribing foreign public officials in international trades. To fulfill related obligations, it added the article of “Prohibition to Provide

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Illicit Gain, etc. to Foreign Public Officers” to its Unfair Competition Prevention Act in 1998. Afterwards, Japan has made many modifications to the related rules of this crime in order to cooperate with the inspection of OECD. Thus, there should be something worth our consultation in Japan’s legislation, amendment, and the problems they encountered in the enforcement.

Therefore, this thesis makes an introduction of Japan’s law of “Prohibition to Provide Illicit Gain, etc. to Foreign Public Officers” and examines the problems in our law of “Anti-Bribery of Foreign Public Officials” in the hope of coming up with the solutions so that we can strike a balance between enhancing our trade competitiveness and fulfilling the obligations as a part of the world.

**Keywords:** Business Bribery, Anti-Corruption Act, Anti-Bribery of Foreign Public Officials, Unfair Competition Prevention Act (Japan), Prohibition to Provide Illicit Gain, etc. to Foreign Public Officers