

Counterfeiting and Piracy - A Global Overview -

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Why is counterfeiting wrong?

Because:

1. it deprives right holders of their rightful benefits
2. it harms or damages the brand image of companies
3. discourages a company to move toward innovation and new creation

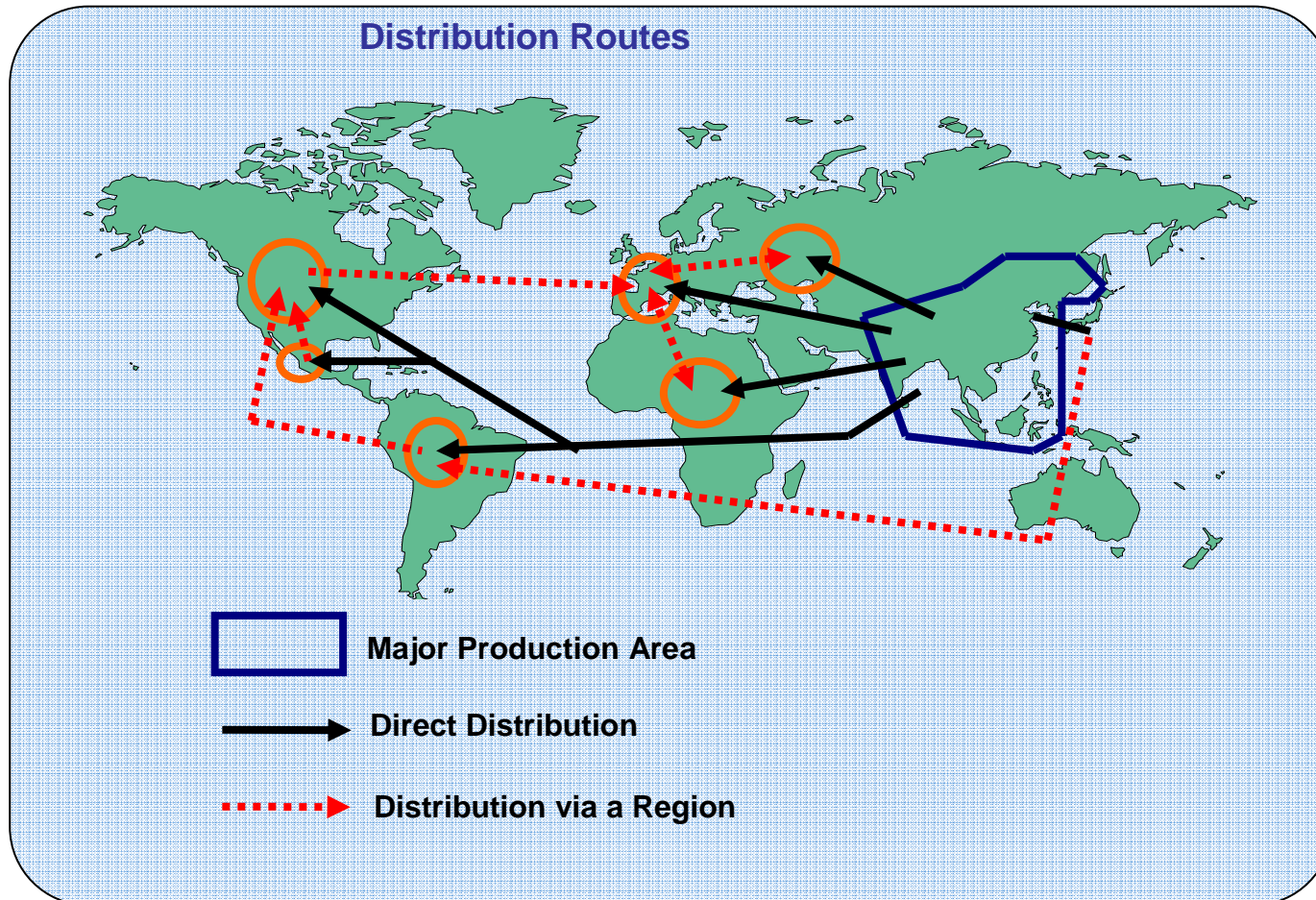
Moreover,

4. it risks consumer's health and safety
5. it funds crime organizations or international terrorist groups

- 1. Status of Damages Caused by Counterfeiting and Piracy in the World**
- 2. Status of Damages Caused to Japanese Companies by Counterfeiting**
- 3. Experiences of Enforcement in Japan**

1. Status of Damages Caused by Counterfeiting and Piracy in the World

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Source: EU (European Union) website (uploaded around 2004?
currently not online)

➤ Estimated total value of counterfeit transactions:

- 500 billion Euro per year

(Source: WCO.World Custom Organization.& ICPO.International Criminal Police Organization.)

➤ Estimated total damage caused by counterfeiting:

- 5 to 7% of the value of world trade

.Source: ICC.International Chamber of Commerce .

- 250 billion US dollars per year

.Source: OECD.organization for Economic Co-operation and Development))

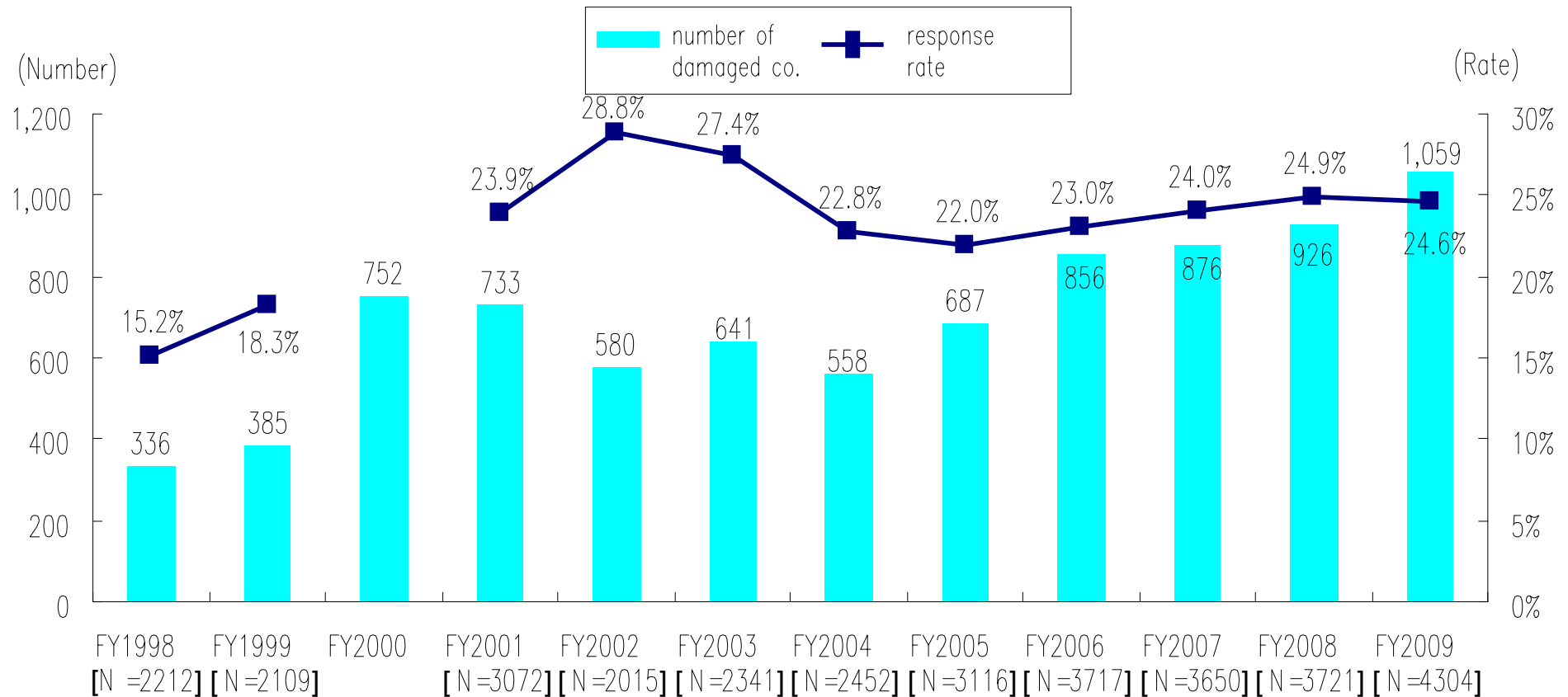
1. Status of Damages Caused by Counterfeiting and Piracy in the World



2. Status of Damages Caused to Japanese Companies by Counterfeiting

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(number of damaged companies / response rate)



(Note 1) Counterfeit damage rate = the number of damaged companies . the total number of companies responding

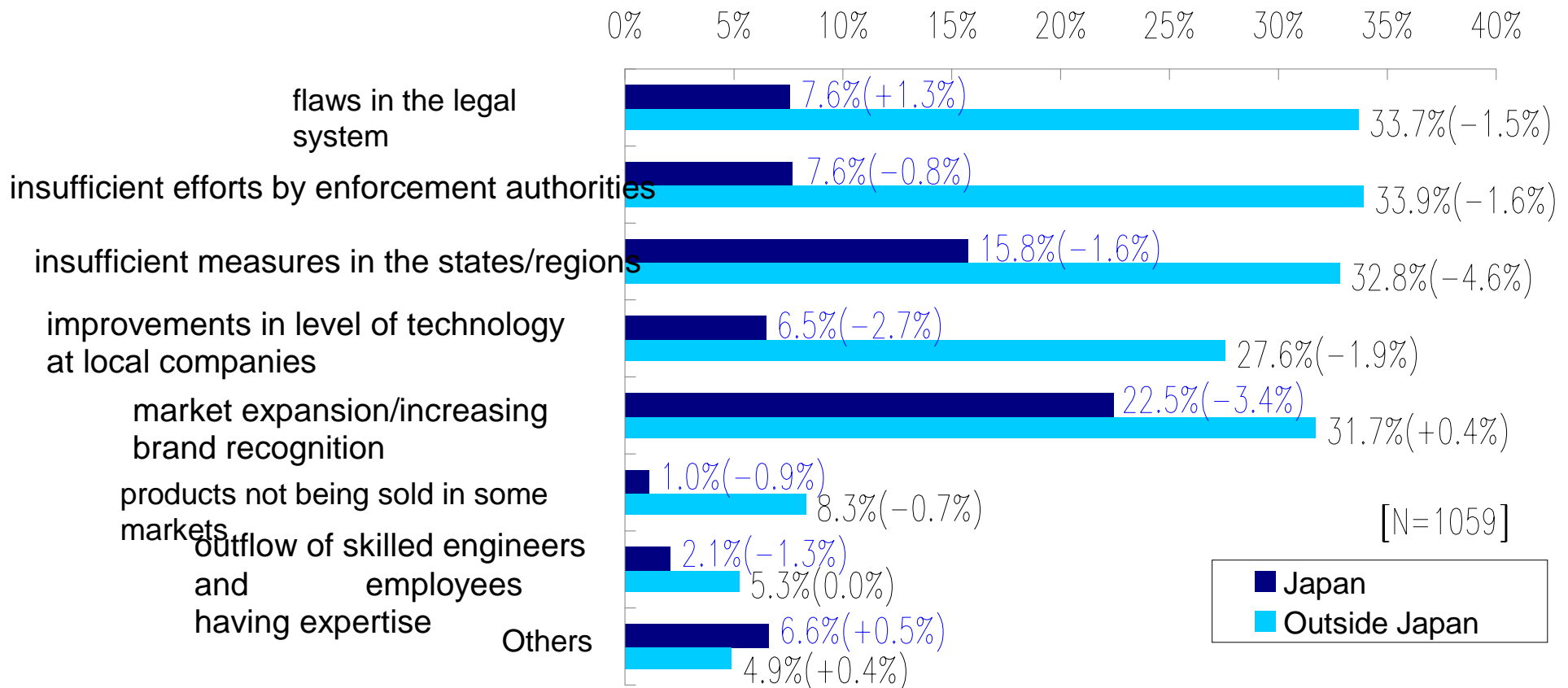
(Note 2) Since the FY2000 survey targeted only damaged companies, the counterfeit damage rate was unknown.

(Note 3) The number of companies damaged by counterfeiting may change depending on the parameters, i.e., the number of valid responses, etc. this graph does not show any trends in terms of any increase or decrease in numbers.

Source: Survey Report on damage Caused by Counterfeiting (March 2011, by JPO)

2. Status of Damages Caused to Japanese Companies by Counterfeiting

What Caused Counterfeit Damage in and outside Japan?



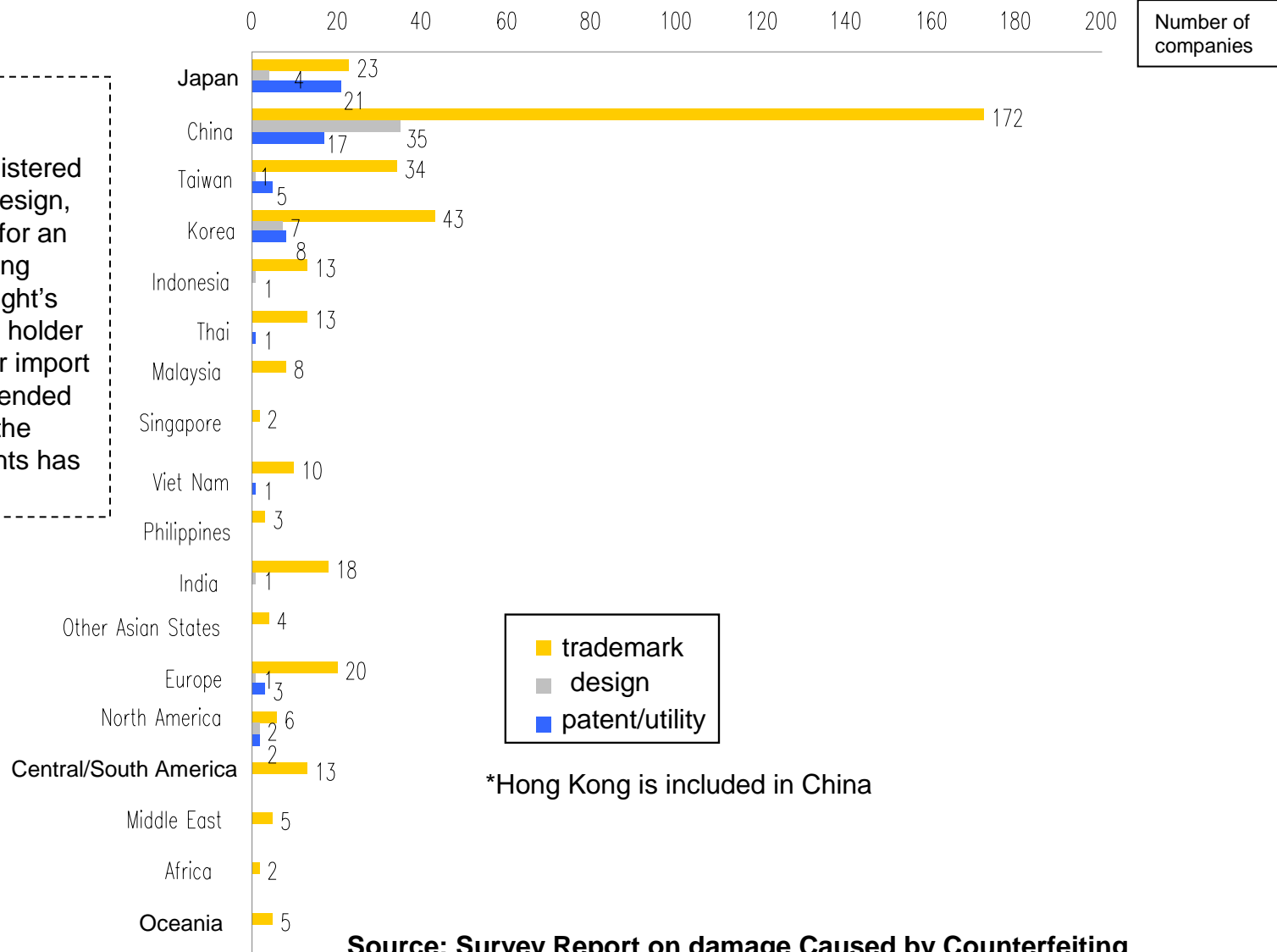
(Note) The percentage in the parentheses represents year-on-year change (%)

Source: Survey Report on damage Caused by Counterfeiting (March 2011, by JPO)

2. Status of Damages Caused to Japanese Companies by Counterfeiting

Number of Companies Damaged by Illegally Obtained Rights

➤ “Illegally Obtained Rights by Others” refers to cases when someone else has filed or registered the IP right for a trademark, design, or patent in a foreign country for an illegal purpose without obtaining permission from the original right’s holder, and the original right’s holder cannot obtain IP protection, or import of the subject product is suspended in said country. Since 2006, the status of illegally obtained rights has been surveyed by IP type.

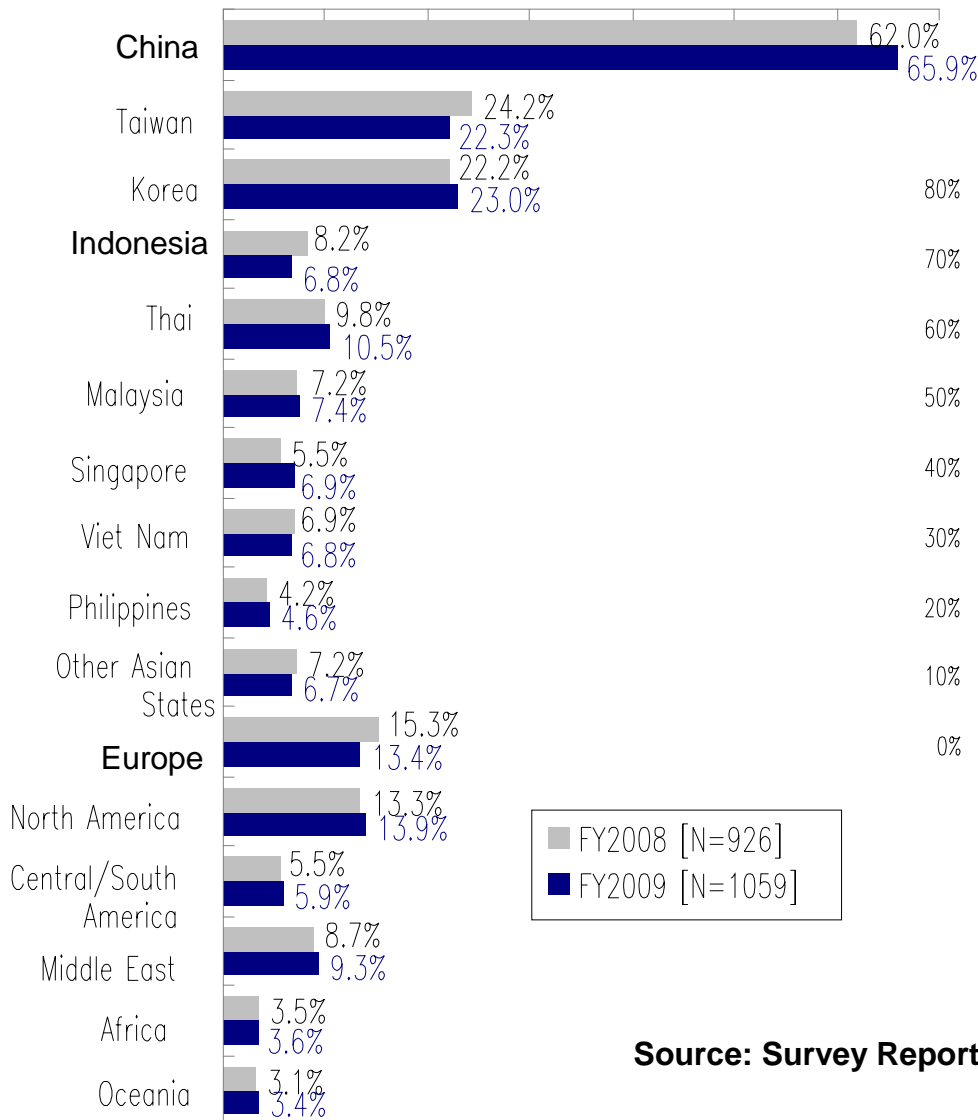


Source: Survey Report on damage Caused by Counterfeiting
(March 2011, by JPO)

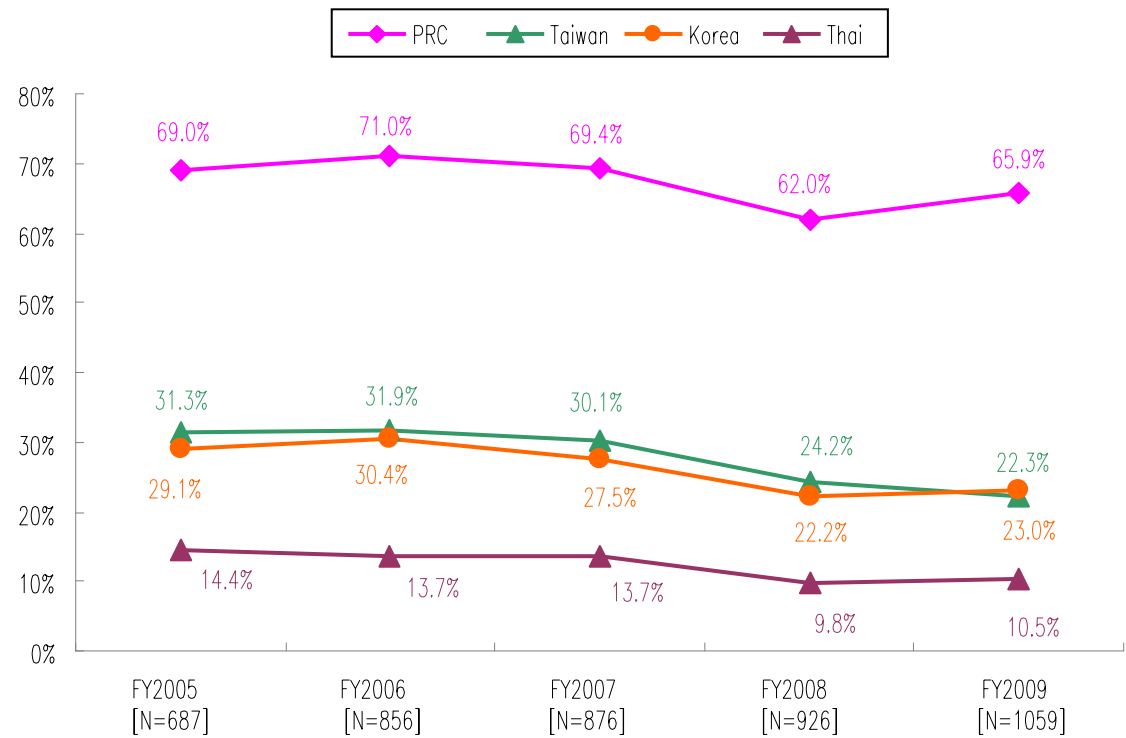
2. Status of Damages Caused to Japanese Companies by Counterfeiting

Rate of Damaged Companies Caused by Counterfeiting outside Japan

0% 10% 20% 30% 40% 50% 60% 70%



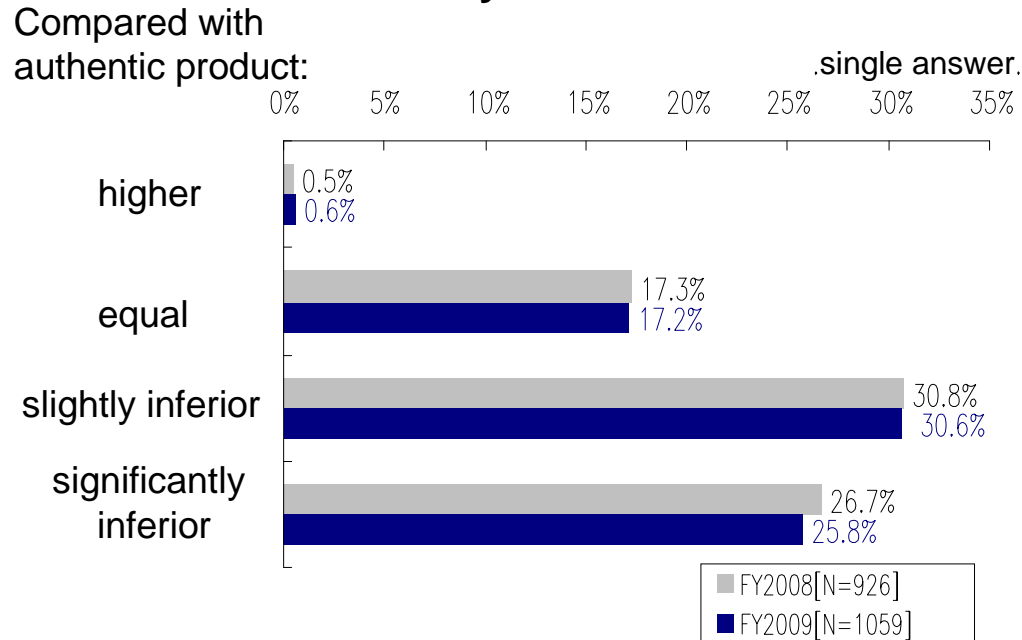
Trend of Rate of Damaged Companies in Major States/Regions



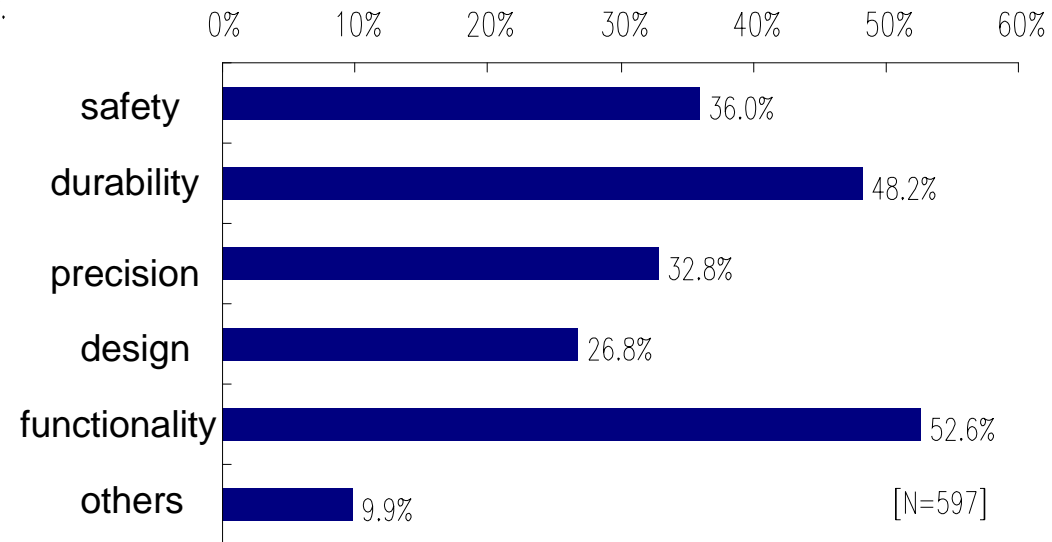
Source: Survey Report on damage Caused by Counterfeiting (March 2011, by JPO)

2. Status of Damages Caused to Japanese Companies by Counterfeiting

Quality of Counterfeit Goods



Type of Inferiority in Quality of Counterfeit Goods

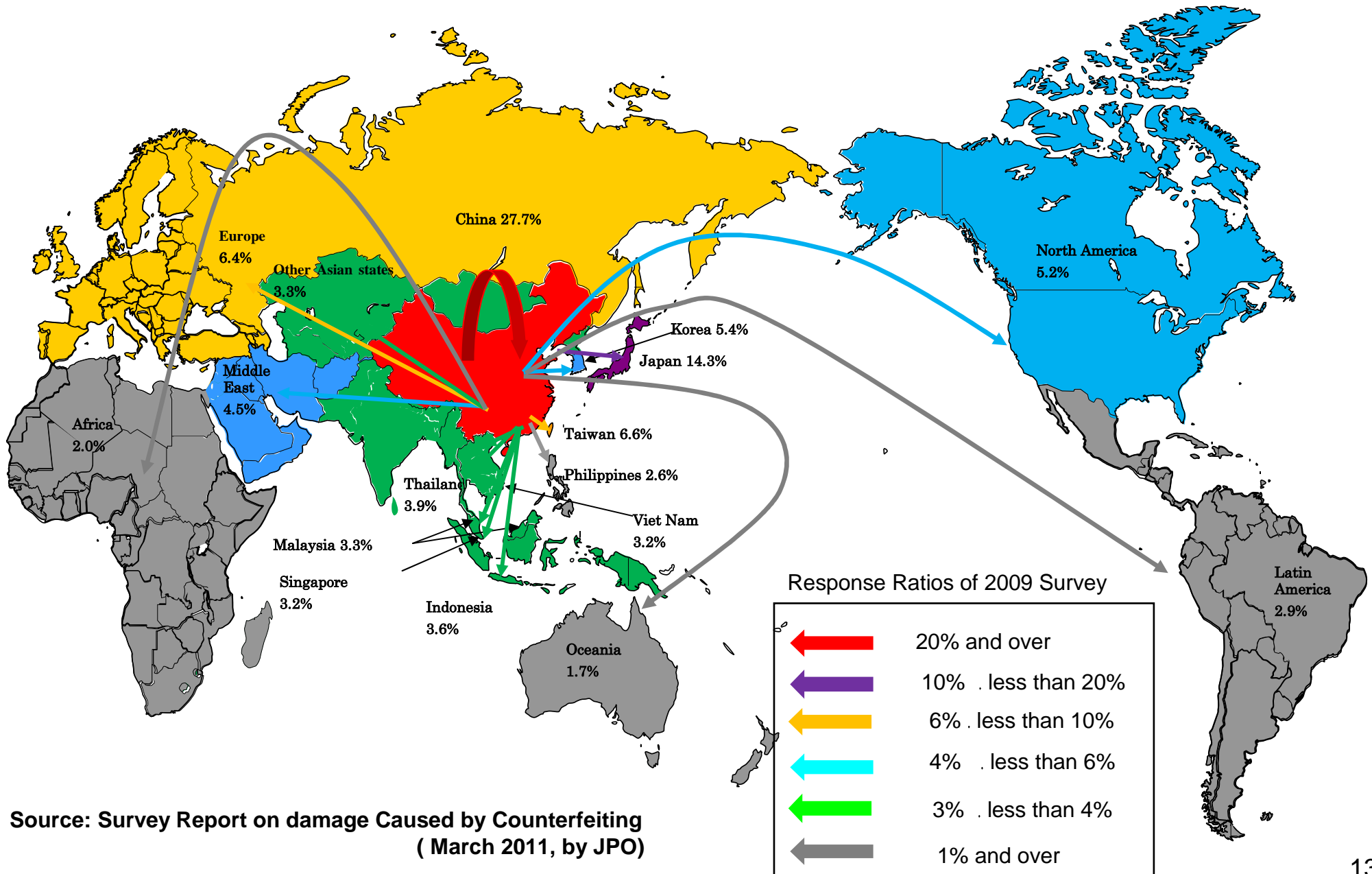


[Note]:

Parameter N represents the total number of responses of “slightly inferior” and “significantly inferior”, when questioned about the “Quality of Counterfeit”.

Source: Survey Report on damage Caused by Counterfeiting (March 2011, by JPO)

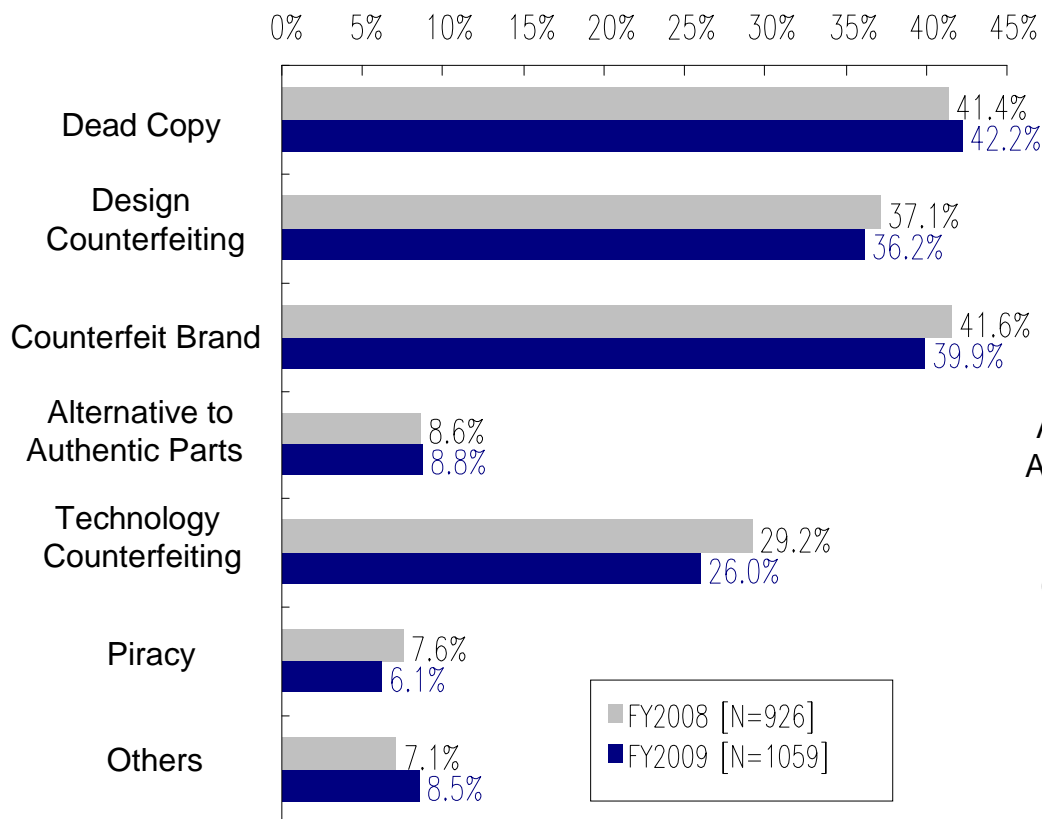
2. Status of Damages Caused to Japanese Companies by Counterfeiting



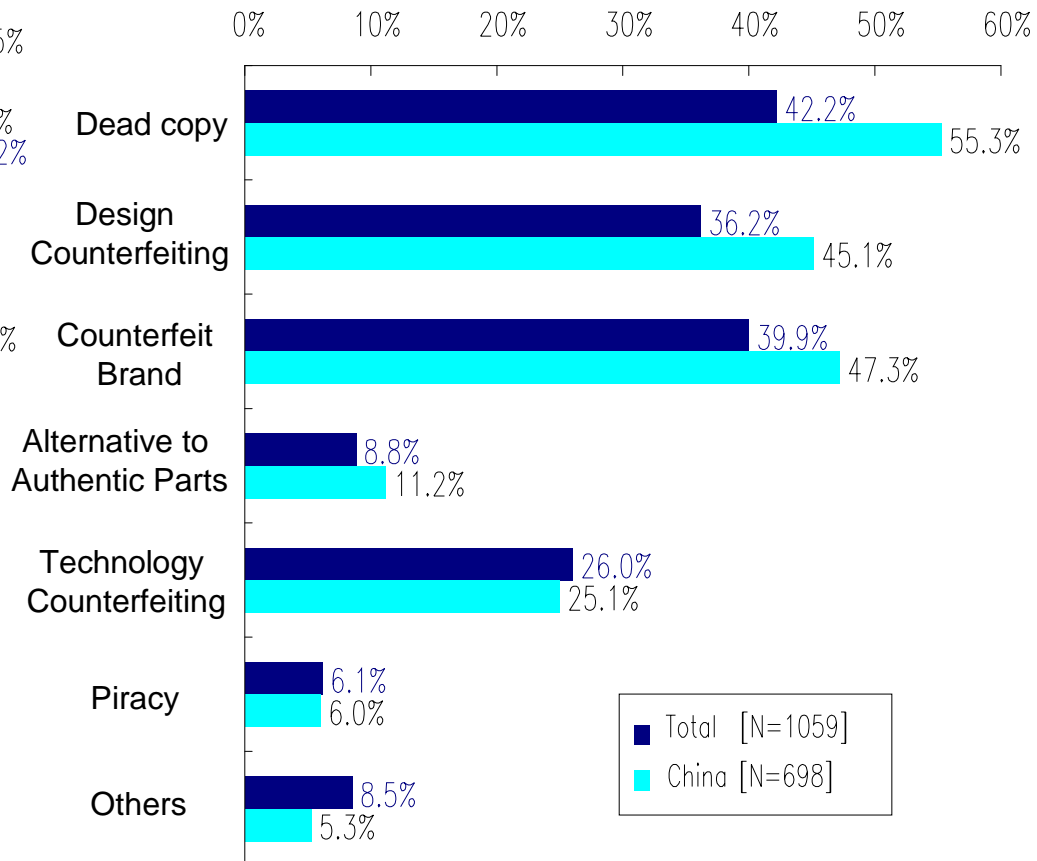
Source: Survey Report on damage Caused by Counterfeiting
(March 2011, by JPO)

2. Status of Damages Caused to Japanese Companies by Counterfeiting

Status of Damages Caused by Counterfeiting



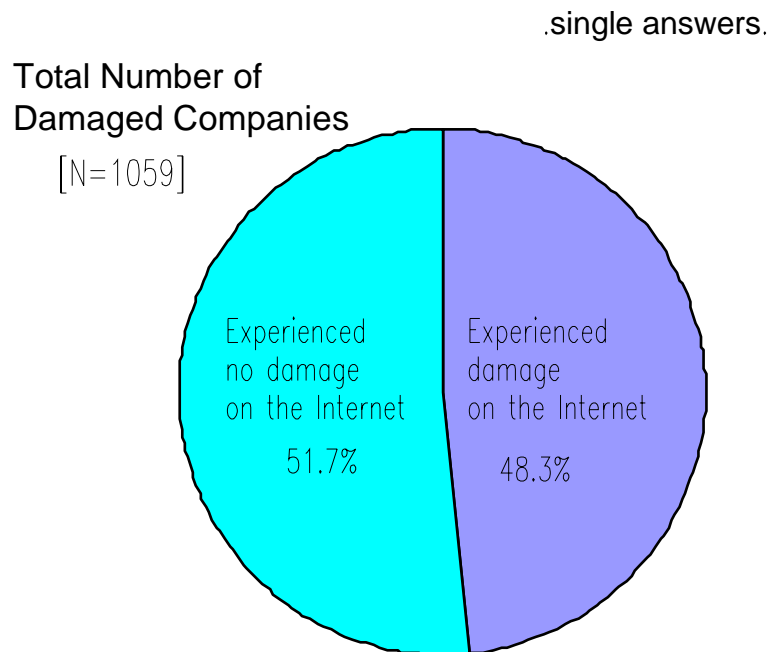
Status of Damages Caused by Counterfeiting in China



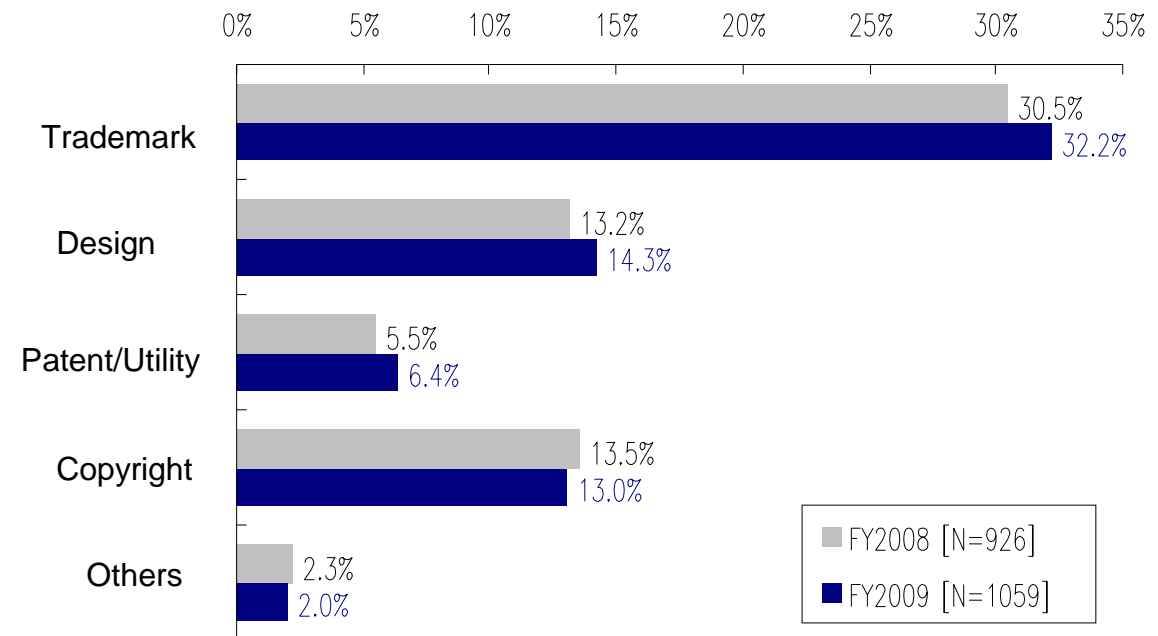
Source: Survey Report on damage Caused by Counterfeiting (March 2011, by JPO)

2. Status of Damages Caused to Japanese Companies by Counterfeiting

Status of Damages Caused by Counterfeiting on the Internet



Breakdown of Damages on the Internet by IP Type

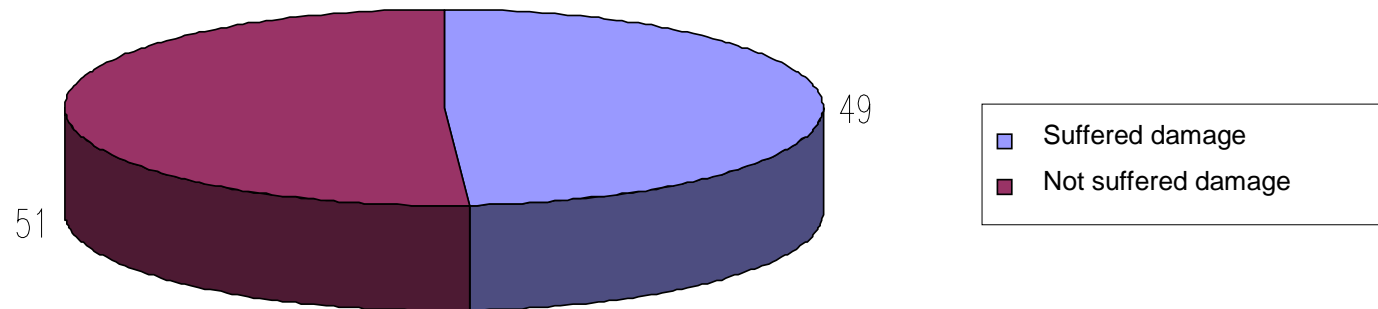


Source: Survey Report on damage Caused by Counterfeiting (March 2011, by JPO)

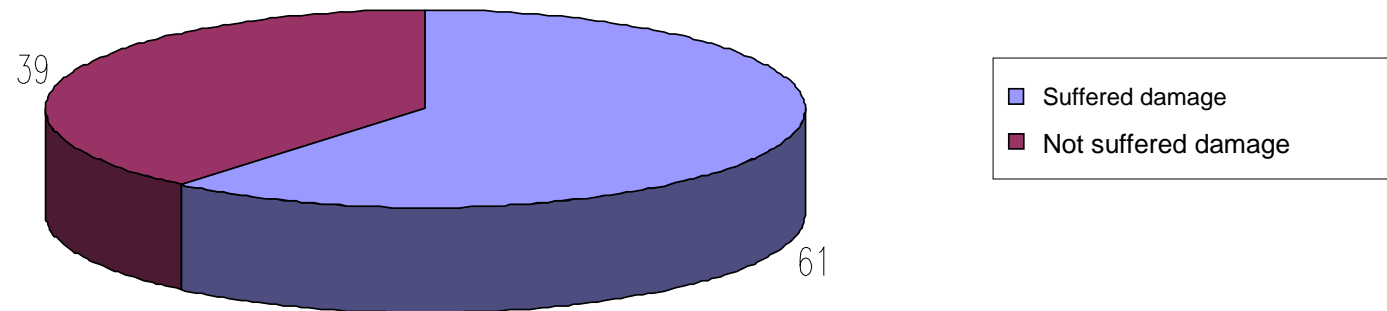
2. Status of Damages Caused to Japanese Companies by Counterfeiting

Status of Piracy

package mode



non-package mode .illegal upload, etc..

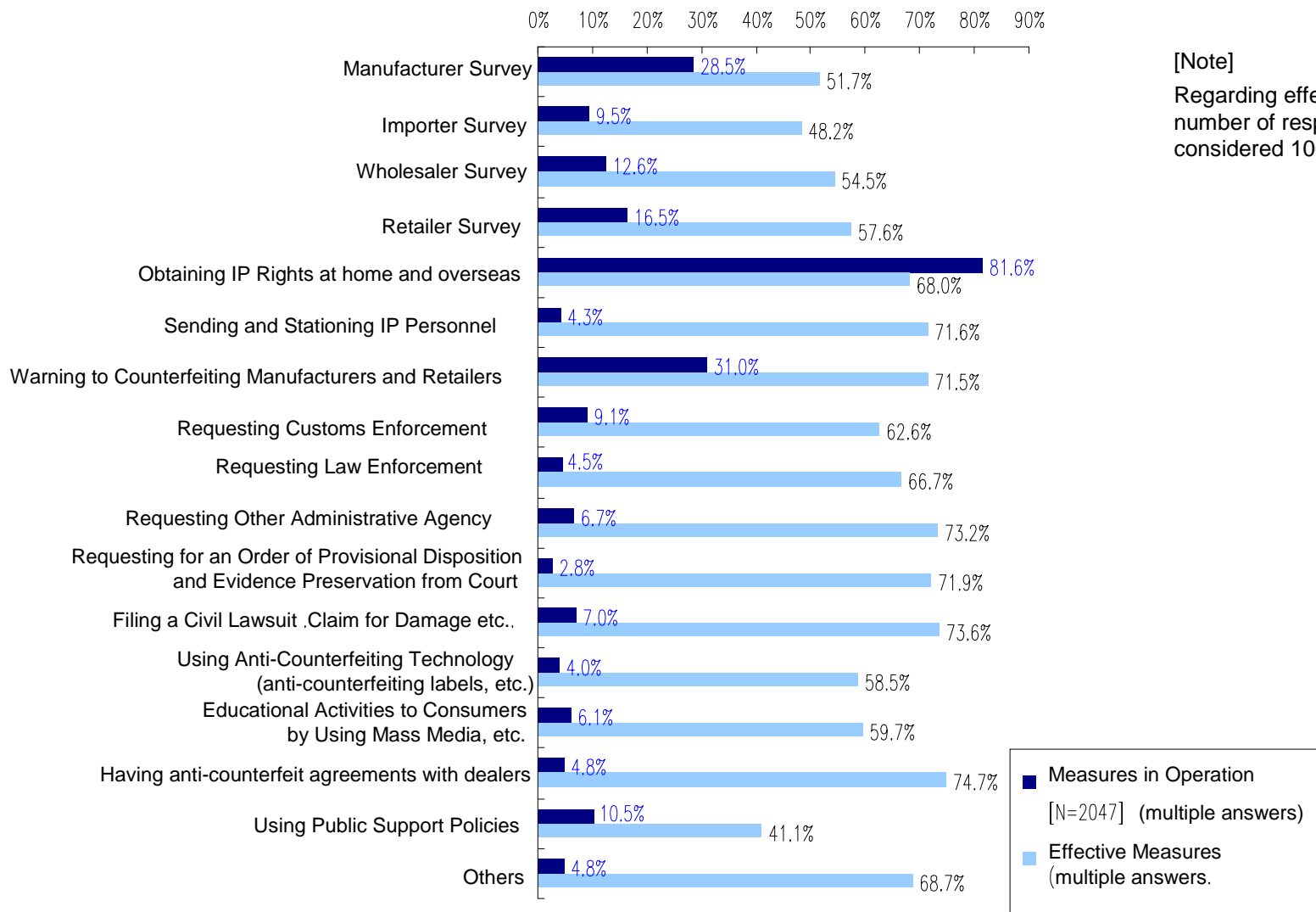


Source: Survey Report on Damage Caused by Counterfeiting (March 2010, by ACA)

3. Experiences of Enforcement in Japan

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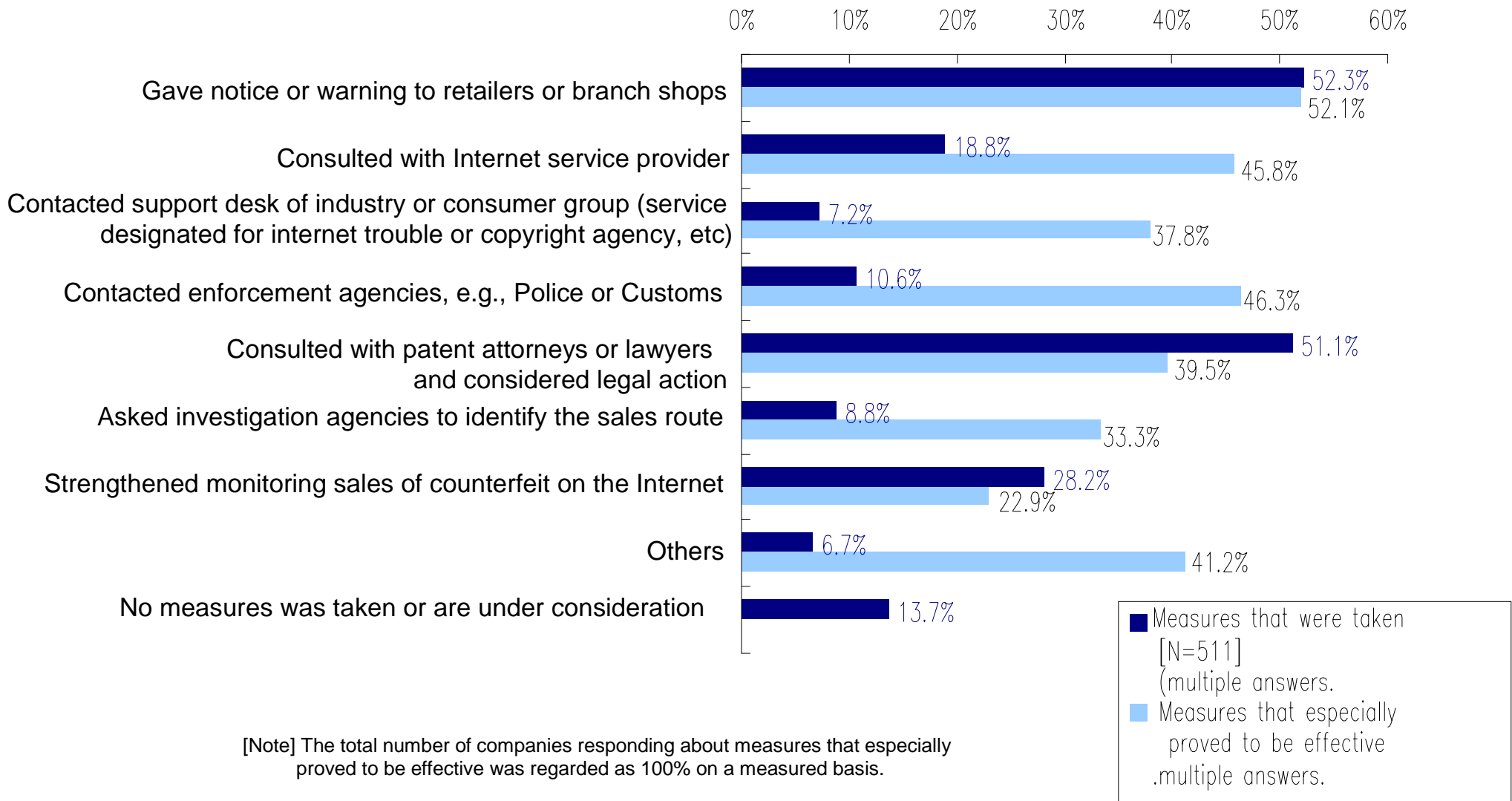
Measures Currently in Operation against Damages caused by Counterfeiting and its Effect



Source: Survey Report on damage Caused by Counterfeiting (March 2011, by JPO)

3. Experiences of Enforcement in Japan

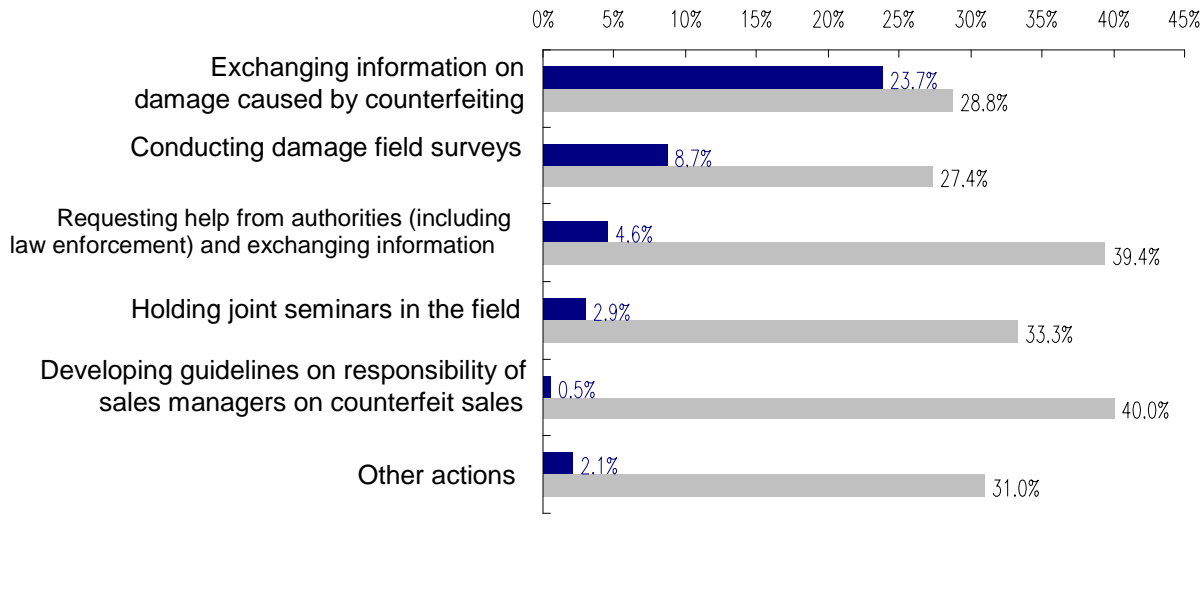
Measures that Were Taken Against Damages Caused by Counterfeiting on the Internet



Source: Survey Report on damage Caused by Counterfeiting (March 2011, by JPO)

3. Experiences of Enforcement in Japan

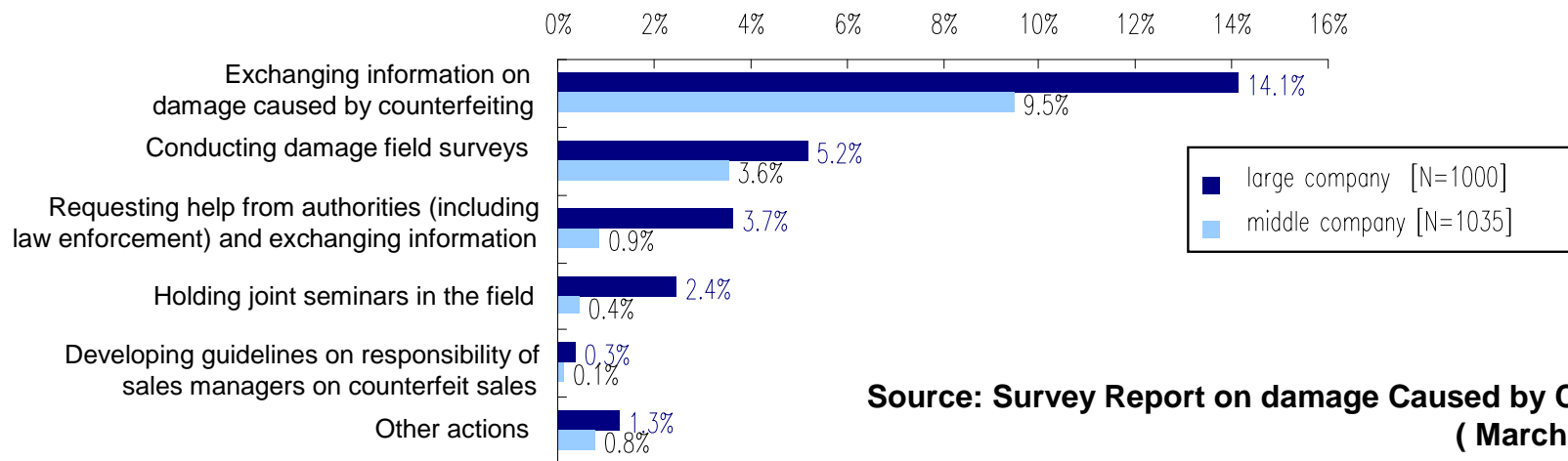
Implementation Status of Inter-firm Cooperation in Measure against Damages by Counterfeiting



.Note 1. Figures show the response rate as the number of responding to each measure divided by the total number of companies currently taking measures. ("no answer" responses were excluded).

.Note 2. Each figure of "measures especially proved to be effective" was divided by the total number of companies which responded to the corresponding measure.

Implementation Status of Inter-firm Cooperation by Company Size



Source: Survey Report on damage Caused by Counterfeiting (March 2011, by JPO)

3. Experiences of Enforcement in Japan

Economic Partnership Agreement (EPA)

To enhance economic partnerships encompassing not only free trade but also a wide range of areas, including investment, personnel exchanges, and IP, between or among countries.

Major Requests in Negotiations on IP Field

- Ensuring IP protection quickly and accurately
- Simplifying procedures and enhancing transparency
- Strengthening enforcement

Successful Example

Protection of publicly known trademarks (Indonesia, Malaysia, Thailand)
*Regulating that if publicly known trademarks in Japan were field in other countries for illicit purposes, they will be rejected or revoked.

Status of EPA in Japan



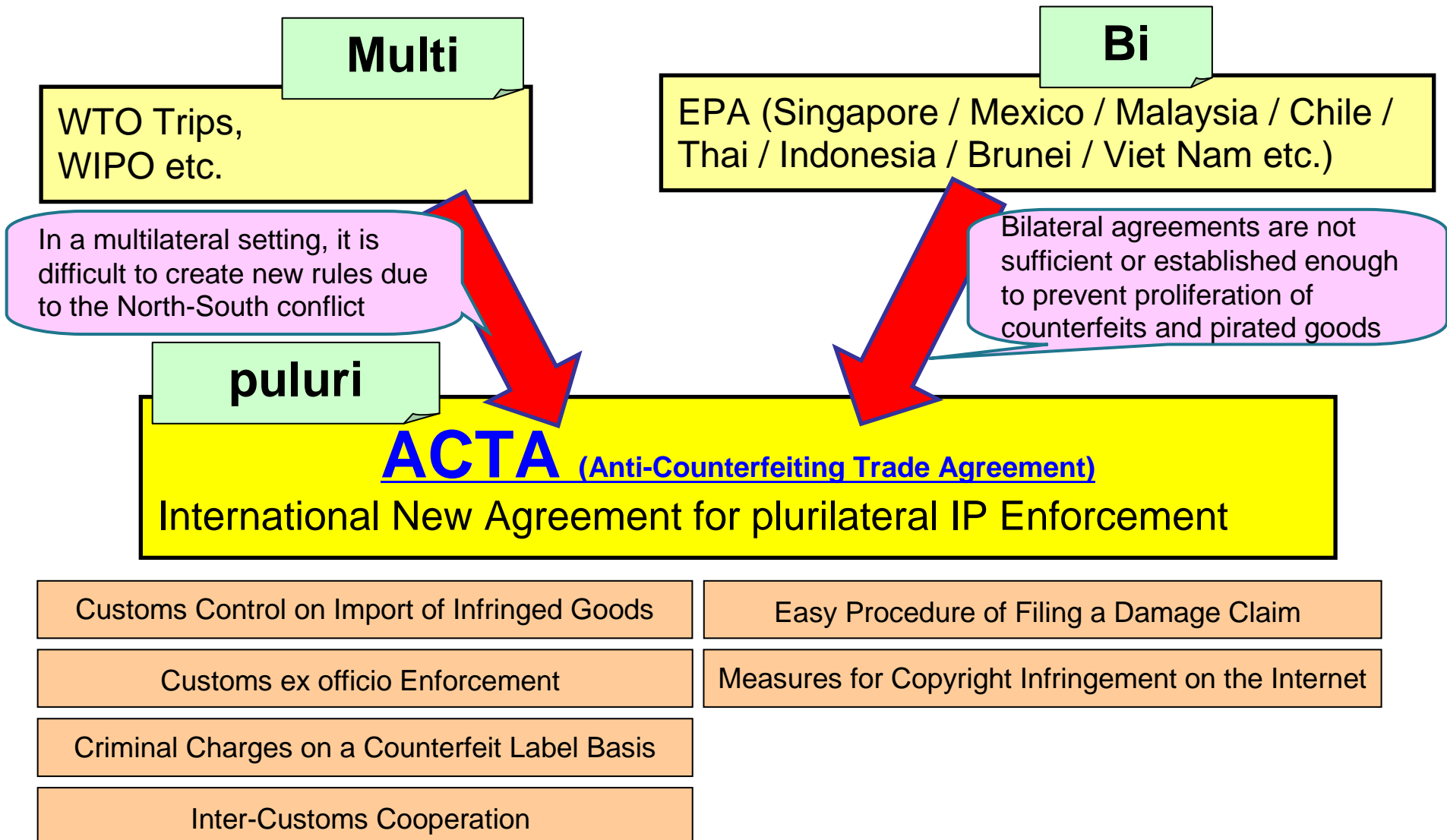
effect	Singapore (2002.11), Mexico (2005.4), Malaysia (2006.7), Chile (2007.9), Thai (2007.11), Indonesia (2008.7), Brunei (2008.7), Philippines (2008.12), ASEAN (2008.12), Switzerland (2009.9), Viet Nam (2009.10), India (2011.8)
signed	Peru (2011.5)
Largely agreed	
Under negotiation	Korea (2003.12-) ^(*1) , GCC ^(*2) (2006.9-), Australia (2007.4-)
agreed to negotiate	-
under study	Canada, Japan-China-Korea, ASEAN+3, ASEAN+6, Mongolia

(*1) No further meetings held since the November 2004 meeting.

(*2) Gulf Cooperation Council; members are UAE, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia.

3. Experiences of Enforcement in Japan

Necessity and Effect of ACTA



3. Experiences of Enforcement in Japan

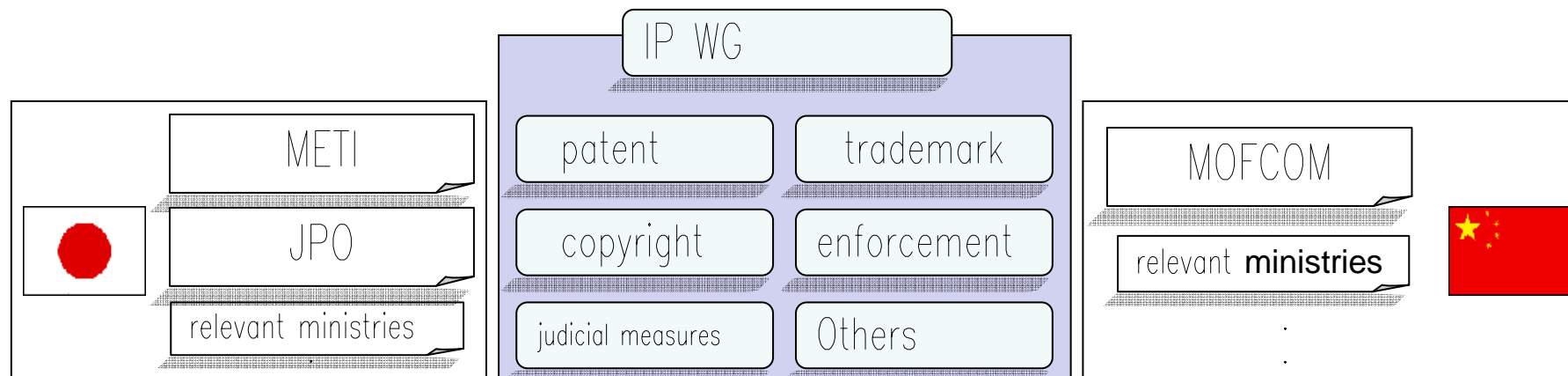
On June 7, 2009, a “MOU on Interchange and Cooperation on Intellectual Property between METI of Japan and Ministry of Commerce of China” was signed between Mr. Nikai, Minister of METI; and Mr. Chin, Minister of Commerce.

Japan-China Working Group

- **Chairman.** Co-chaired by deputy director-general level officials
- **Meeting.** Annually, rotating meetings being held
- **Agenda.** A wide range of topics are discussed, from the legal system on IP protection to enforcement and implementation

Participating

Agencies. Depending on agenda, Japan and China invite own relevant ministries.
 Moreover, upon agreement, industry representatives or scholars can also be invited.



Promoting further interchange and cooperation b/w Japan & China



Creating an environment that is designed to protect IP in China

3. Experiences of Enforcement in Japan

<Measures against counterfeits are enhanced by amending Design Act (as in force in November 2007) >

➤ **“Acts of importing infringed goods” has been added to “Acts deemed to constitute infringement” (Patent Act, Utility Model Act, Design Act, Trademark Act)**

To avoid international circulation, acts of importing infringed goods are added to “Acts deemed to constitute infringement”

➤ **“holding infringed goods for the purpose of assignment” has been added to “Acts deemed to constitute infringement” (Patent Act, Utility Model Act, Design Act)**

To enhance the effectiveness of banning infringement and prevent proliferation of counterfeit goods, “holding” prior to “assignment” has been added to “Acts deemed to constitute infringement”

3. Experiences of Enforcement in Japan

➤ Enforcement of Criminal Charges

Industrial Property	Ceiling for Punishments imprisonment –fine () shows figures before revision	Dual Charge	Ceiling for Corporate (Dual Liability)
Patent Infringement	10 years – 10 m yen (5 years – 5 m yen)	possible .no provisions.	300 m yen .150 m yen)
Utility Model Infringement	5 years – 5 m yen (3 years – 3 m yen)	possible .no provisions.	300 m yen .100 m yen)
Design Infringement	10 years – 10 m yen (5 years – 5 m yen)	possible .no provisions.	300 m yen .100 m yen)
Trademark Infringement	10 years – 10 m yen (5 years – 5 m yen)	possible .no provisions.	300 m yen .150 m yen)

3. Experiences of Enforcement in Japan

Act of Unfair Competition	Ceiling for Punishment imprisonment –fine () shows figures before revision	Dual Charge	Ceiling for Cooperate (Dual Liability)
Infringement of Trade Secrets	10 years – 10 m yen (5 years – 5 m yen)	possible possible.	300 m yen .150 m yen)
Acts of Imitating Configuration	5 years – 5 m yen (3 years – 3 m yen)	possible possible.	300 m yen .100 m yen)

3. Experiences of Enforcement in Japan

Progress of Customs Enforcement System

- Added patent right and others to the scope of Import Suspension Motion.
- Added products infringing breeder's right to the import ban list.
- Mandated right holders / importers to notify their names at onset of certification procedures.
- Sample inspections by the right's holders.
- Added products violating Unfair Competition Prevention Act to the import ban list.
- Introduced a system that provides consultations with expert committees.
- Launched export controls.
- Launched certification procedure for low-volume imports (to cover individual imports).
- Simplified certification procedures.
- Launched transmission of images of allegedly infringing items.
- Reduced the number of copies of Suspension Measures Motion Form (from 9 to 1)

3. Experiences of Enforcement in Japan

Consultation for Individuals

- Offer consultation service for individuals who were damaged by counterfeiting overseas; made a list of law firms which an individual can consult with for professional advice in more complicated cases.
- Offer consultation service for companies at home and overseas damaged by counterfeiting; individual consulting by lawyers and patent attorneys

Referral to Law Firm or Survey Company

- JETRO branch office provides information on several candidate law firms where Japanese speaking staffs are available or which had a good track record of working for Japanese companies
- Refer clients to law enforcement agencies on site to request more control by relevant local administrative agencies
- Have enhanced on-site consultation service with expert practitioners since 2007

Information Provision to Companies

- Created manuals by state/ region, disseminating it through the Internet (Counterfeit Measure Manual/ IP Infringement Cases/ Precedents)
- Provide information, at seminars, on legal system, operations, and measures against counterfeiting in foreign countries

Support for Human Resource Development

- Support human resource development in law enforcement agencies (customs, police etc.) on site to enhance enforcement capacity in countries/ regions where counterfeit damages are taking place; invited a total of 304 law enforcement officers from 17 states, mainly from Asia, from FY1996 through FY2010.

3. Experiences of Enforcement in Japan

Approach to Counterpart Government

- Made requests for revising laws and strengthening counterfeit control, through bilateral meetings such as Japan-China Commissioner Meeting
- Public-Private Joint Mission has expanded to India (2007) and Middle East (2008-2009), following China.

◆ **International Intellectual Property Protection Forum .IIPPF.**

International anti-counterfeiting organization, consisting of companies and organizations which are willingly to combat counterfeit and pirated goods overseas .89 organizations & 144 companies .total 233., as of July 20, 2011.

◆ **Public-Private Joint Mission**

Forum enabling the government, in cooperation with IIPPF, to exchange views on the future course of cooperation on IP protection enhancement, and to request counterpart government agencies engaging in IP protection to improve systems and operations.

3. Experiences of Enforcement in Japan

Amendments to
Design Law etc.

- Added acts of exporting counterfeit goods to those deemed to constitute infringement (4 main types of IP Laws)
- Added acts of holding counterfeit goods for the purpose of assignment to those deemed to constitute infringement (design, patent, utility model)
- Raised ceiling of imprisonment to 10 years for patent, design and trademark infringements; and raised penalties to 10 million yen.

Enhancement of
Waterfront
Measures

- Process inquiries from Customs Director to JPO Commissioner (based on Customs Law)
- Cooperate with Customs in area of IP-related training program to enhance staff's skills of judgment and quick handling.

Cooperation for
Domestic Control
Authorities

- Responded to inquiries of infringement cases from domestic control authorities. The total number of inquiries to JPO was 613 cases in CY2010.

Dissemination &
Raising Consumer
Awareness

- In order to eradicate counterfeit and disseminate significance of IP protection by raising consumer awareness, "Counterfeited and Pirated Goods Eradication Campaign" has been developed, through synergistic effects of TVCM, posters and internet advertisements.



Poster of Counterfeited and
Pirated Goods
Eradication Campaign in 2010

Thank you