

**SUBMISSION BY THE GOVERNMENT OF THE UNITED STATES TO THE
GOVERNMENT OF JAPAN REGARDING DEREGULATION, ADMINISTRATIVE
REFORM AND COMPETITION POLICY IN JAPAN**

November 15, 1996

The Government of the United States of America (USG) is pleased to submit to the Government of Japan (GOJ), in the context of the Deregulation and Competition Policy Working Group under the Joint Statement on the United States-Japan Framework for a New Economic Partnership ("Framework"), this submission which addresses specific deregulation, administrative reform and competition policy matters in Japan.

This submission was prepared recognizing that the GOJ is currently undertaking the second and last annual revision of its five-year Deregulation Action Plan ("the Plan"), announced on March 31, 1995, and is taking into consideration specific comments from interested domestic and foreign parties. The United States recognizes that the GOJ subsequently announced on April 13, 1995 its intention to implement the Plan within three years.

This submission is intended as a broad list of suggestions by the USG, building on the initial list submitted to the GOJ on November 15, 1994, the comments on Japan's Deregulation Action Plan submitted on April 21, 1995 and a revised list of recommendations submitted on November 21, 1995. Many of the deregulation, competition policy and administrative reform recommendations made by the USG in 1994 and 1995 remain valid. This submission is not intended to be an exhaustive list of deregulation, administrative reform and competition policy issues in Japan of concern and/or interest to the USG. As deregulation and liberalization of economic and administrative systems are continuous processes, the United States may from time to time submit additional suggestions and requests to the GOJ.

The USG looks forward to a constructive dialogue with the GOJ on deregulation, administrative reform and competition policy, and on the revision of the Plan, in the context of ongoing consultations in the Framework Deregulation and Competition Policy Working Group as well as in other fora.

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I. BASIC PRINCIPLES

The USG reaffirms the basic principles laid out in its submissions to the GOJ of November 15, 1994 and November 21, 1995. The United States continues to believe that effective deregulation in Japan will enhance competition; provide greater market access for foreign goods, services and investment; provide greater benefits to Japanese consumers, producers and service providers through enhanced efficiency, lower prices and greater product and service choice and availability in the marketplace.

Although the Plan incorporates some aspects of these principles, the USG urges the GOJ to extend its commitment to deregulation by adopting fully the following principles:

A. BROAD AND CONTINUOUS REVIEW

All regulations in Japan, whether formal or informal, or whether characterized as social or economic in nature, should be reviewed. This review should be conducted on a continuous basis as a routine and integral part of the GOJ's efforts to open Japan's economy to competition.

B. FREEDOM FROM REGULATION IN PRINCIPLE, WITH REGULATION THE EXCEPTION

The review of regulations should consider whether the regulations are broader or more burdensome than necessary to achieve their legitimate objectives. Regulations that remain in force should be closely and directly linked to recognized public policy interests such as protection of health, safety or the environment; protection of national security; or protection of consumers against deception. Regulations not meeting these limited criteria should be revised or eliminated.

C. ENHANCE TRANSPARENCY AND ACCOUNTABILITY

Regulations should be based on the principles of transparency and non-discrimination, and regulatory officials should be clearly accountable for their actions. All formal and informal regulations should be in writing and published in publicly-available sources. The specific government entities and officials responsible for the implementation of such regulations should always be clearly identified. Proposed changes to new and existing regulations should be disclosed in advance, with ample opportunity provided for public comment.

D. PROHIBITION OF DELEGATION OF GOVERNMENT AUTHORITY

Delegation of actual or de facto regulatory authority to quasi or non-governmental

entities, including nonprofit organizations, *tokushu-hojin*, and industry associations should be strictly prohibited if not based on formal and transparent delegation of authority authorized by the Diet.

E. NON-BURDENSOME LOCAL REGULATION

Local governments should be encouraged to take measures similar to the Plan to review and eliminate unnecessary and burdensome local regulations wherever appropriate. Guidelines prohibiting institution of new local regulations that would have the effect of negating or undermining, in whole or in part, deregulatory efforts at the national level should also be adopted.

F. INCLUSION OF SUNSET PROVISIONS

Sunset provisions, which specify a fixed lifetime of a particular regulation, should be included wherever appropriate, in regulations issued in the future. Sunset provisions should also be incorporated into existing regulations as reviewed.

G. PROMOTION OF MARKET MECHANISM

The market mechanism, supplemented by an active and effective antimonopoly enforcement policy, should be relied upon to determine the best and most efficient allocation of resources and the success or failure of individual firms. Private practices that unfairly restrict competition should not be allowed to replace or supplement official regulation.

II. DEREGULATION PROCESS

The United States Government believes that deregulation must be a dynamic process if it is to be responsive to changing circumstances. To this end, the USG recommended to the GOJ in both the November 15, 1994 and November 21, 1995 submissions that the Plan contain provisions for a private sector participation mechanism, periodic solicitation of public comments, the issuance of a directive to protect private firms and individuals that provide comments from harassment and retaliation, and annual deregulation reports. We strongly reiterate this recommendation this year.

The USG recognizes the commitment made by the GOJ to deregulation. We are encouraged by the strong statements of support for deregulation, competition policy and administrative reform by Prime Minister Hashimoto. In fulfilling his vision, we believe it is critical to establish a permanent administrative mechanism to ensure continued high-level focus on development and implementation of recommendations beyond the scheduled termination of the current Plan in 1997. As such, the USG supports the upgrading of the Administrative Reform Council (ARC) into a permanent organization under the Prime Minister's Office. A strengthened ARC should be given powers to recommend and compel, subject to Cabinet approval, implementation by Ministries and agencies of measures addressing deregulation, competition policy and administrative reform.

In addition, an ambitious reform agenda must focus more on substantive changes, incorporating firm deadlines for enacting specific measures and remedies, and less on general statements of intent, vague implementation deadlines and the simple numerical analysis of adding up "actions" taken. Progress should be measured solely on a critical analysis of the degree to which impediments to open and competitive markets are identified, specific reform measures implemented, and evaluation of the effectiveness of these measures in achieving the desired goal.

III. SPECIFIC DEREGULATION PROPOSALS

A. AGRICULTURE

1. Phytosanitary Quarantine Restrictions

Non-scientific based phytosanitary policies continue to restrict or overly regulate imports of many fresh agricultural products in Japan. In particular, these barriers present major obstacles to imports of fresh fruits, vegetables, and other horticultural products to Japan. While progress has been made in a variety of specific instances, the GOJ should develop a more systematic approach in keeping with the WTO sanitary-phytosanitary commitments and, therefore, should:

- a. Eliminate the routine (unnecessary) and redundant requirements for Ministry of Agriculture, Forestry and Fisheries (MAFF) inspectors in on-site inspection during pre-clearance programs, and reduce the number of MAFF inspectors required;
- b. Eliminate the policy requiring rejections and/or treatment of shipments when cosmopolitan or non-quarantine pests or organisms are found during import inspection. Such treatments often destroy the quality of imported products without foundation in plant protection; and
- c. Eliminate the unnecessary and overly restrictive application of testing procedures for all varieties of an already approved fruit to be exported to Japan. Currently, for some fruits -- such as apples, cherries, and nectarines -- each and every variety must be tested for mortality of the pests in the approved treatment, causing long delays (often years) while Japanese inspectors rear the insect pests and conduct tests. There is no evidence to show that one variety reacts differently from another variety of the same fruit.

2. Food Additives / Product Standards

The overly restrictive approval process for new food additives and continued testing for aflatoxin are particular concerns. The GOJ should:

- a. Eliminate the restrictive application of "use standards" for food additives that are "Generally Recognized as Safe" (GRAS) for human consumption. For example, such additives as *potassium sorbate*, *sorbic acid*, *benzoic acid*, and *sodium benzoate* should be permitted for use in such products as light mayonnaise and creamy mustard as they are for other products;
- b. Accept U.S. manufacturers self-certification of conformance to foreign product

standards, in particular, test results for aflatoxin in processed food products such as peanut butter and spices.

3. Feedgrains

The GOJ's attempts at partial reform of corn and barley import systems have been useful and appreciated by U.S. industry, but the lack of price transparency in these systems, costly inspection fees, and new documentation requirements for participation has a significant impact on purchases of U.S. corn and barley. This limits domestic livestock producers' choices and reduces their competitiveness. The GOJ should:

Eliminate the point system and reduce documentation requirements for direct purchases by producers so as not to limit Japanese livestock producers' ability to choose imported grains and mixed feed products.

4. Racehorses

The United States has requested that Japan further liberalize access for foreign horses. The GOJ should:

- a. Eliminate remaining restrictions limiting participation of foreign horses in Japanese horse races; and
- b. Open horse owner registration to foreigners. Currently only Japanese residents may register with the Japan Racing Association as racehorse owners.

B. AUTOMOTIVE

1. Disassembling repair

The 1995 U.S.-Japan Automotive Agreement, negotiated under the auspices of the Framework agreement, represents a major commitment by the GOJ to deregulation in this important sector. The USG appreciates and welcomes these commitments by the GOJ. A key element of this agreement addresses deregulation of disassembling repair or the "critical parts list." At the conclusion of the negotiations, the GOJ agreed to remove four parts from the definition of disassembling repair, though only two of these parts (shock absorbers and struts) have potential for significant sales in the Japanese aftermarket. Removing additional items from the definition of disassembling repair remains a key factor in opening the Japanese aftermarket to competitive foreign parts and lowering automotive repair costs for Japanese consumers.

The Automotive Agreement called for the GOJ to conduct a study of the parts replacement operations within the scope of the disassembling repair definition with a view toward removing

from the definition all parts and replacement operations that are not necessary from the standpoint of safety and environmental protection. Unfortunately, this study, completed in August, 1996, concluded that no further parts having any significant repair frequency could be deregulated. The USG vigorously objects to this decision and believes that by March, 1997 the GOJ should:

- a. Expediently remove brake and transmission systems from the definition of disassembling repair; and
- b. Modify its decision of August, 1996 so as to remove from the definition of disassembling repair all other parts and replacement operations that are not necessary from the standpoint of safety and environmental protection.

C. DISTRIBUTION AND IMPORT PROCESSING

The Government of Japan should take dramatic steps to further deregulate the distribution sector in Japan with respect to the following issues:

1. Import Processing

- a. Complete the installation and ensure the expanded integration of a system for computerized, paperless import processing which ties in all relevant Japanese Government agencies to permit parallel processing of applications by all concerned agencies;
- b. Institute appropriate fees for use of the new Narita Airport air cargo terminal to encourage its use and facilitation of speedier on-site processing of air cargo;
- c. Continue efforts to encourage the use of pre-filing procedures among importers and Government of Japan entities;
- d. Significantly increase integrated, parallel, pre-arrival review by Customs and other Government of Japan entities, and clearance upon arrival for air cargo and small packages;
- e. Simplify, expand, and coordinate inspection services for import clearance of foodstuffs; and
- f. Ensure that customs regulations are applied uniformly, and are as specific as possible.
- g. Review the number of domestic connections and the fee structure at Kansai Airport, with an eye to increasing connections and reducing excessive landing

fees, rentals and other charges, in order to promote the use of Kansai as a primary international airport.

2. Standards and Certification

- a. Systematically review all standards and certification procedures to ensure that they conform to appropriate international norms; and
- b.. Implement immediately the OTO recommendations, and where appropriate, take additional steps regarding the list of items related to standards and certification submitted by the United States Government and other organizations.

3. Distribution and Wholesaling

- a. Monitor and report on adherence by the Japanese business community to the Ministry of International Trade and Industry's (MITI) 1990 Guidelines on Business Practices in order to promote a free, transparent, and competitive distribution system; and
- b. Reduce significantly the restrictions on entry into the warehouse industry, including licensing and notification requirements, with the goals of abolishing restrictions, reducing shortages of storage space, lowering high fees and minimizing burdens for foreign firms related to the distribution of their products.

4. Retail Distribution

- a. Phase out the Large Scale Retail Store Law (LSRSL) with complete elimination by the end of JFY 2000 and take appropriate measures to prevent local jurisdictions from introducing new restrictions on large scale stores and to ensure that local practices are not stricter than or otherwise inconsistent with national laws;
- b. Eliminate in JFY 1997 all restrictions under the LSRSL on operations of existing stores, including permitted hours of operation and number of days closed;
- c. Eliminate in JFY 1997 all LSRSL store adjustment provisions concerning floorspace reductions;
- d. Pending elimination of the LSRSL law, expedite the processing of large scale retail store applications by, among other things:

- i.) Providing for concurrent processing of store applications by local and prefectural authorities;
 - ii.) Reducing the number of licenses required to open new stores; and
 - iii.) Enabling earlier construction of large-scale stores by reducing delays resulting from MITI processing of the notification and compliance with local prefectural zoning, licensing, and traffic regulations.
- e. Review all other laws, measures, and their application, which affect distribution services in Japan with the intention to eliminate all impediments to distribution services, including but not limited to:
- i.) Law no. 74 of 1977 - Bunya Ho (Law to Adjust Business Opportunities for Small and Medium-sized Enterprises);
 - ii.) Law no. 155 of 1959 - Shocho Ho (Law Concerning Special Measures for the Adjustment of Retail Business);
 - iii.) Law No. 185 of 1957 - (Law Concerning the Organization of Small and Medium Enterprises);
 - iv.) Law No. 61 of 1995 - (Law Concerning Enterprise Reform for Specified Industries);
 - v.) Law No. 82 of 1991 - (Special Measures for Improvement of Commerce Integration);
 - vi.) Law No. 77 of 1986 - Minkatsu Ho (Temporary Measures for the Improvement of Specified Facilities by Utilizing the Abilities of Private Enterprise); and
 - vii.) Law No. 101 of 1973 - (Small and Medium-sized Retailers Promotion Law).

5. Liquor Distribution

- a. Relax, with a view toward eliminating, regulations impeding the establishment or the operation of liquor distribution businesses.
- b. Ease, with an view toward eliminating, liquor licensing regulations limiting the establishment or operation of retail liquor outlets, including those which sell beer and/or wine only.

6. Liberalize Restrictions on Premiums and other Sales Promotions

a. Revise the JFTC's Premiums Regulations

Liberalize remaining restrictions on the use of premiums and other sales promotion devices and rely instead on misleading representation rules to protect consumers from deceptive practices. First steps should include:

- i.) Increasing the limit on the maximum value of a premium to 30% of the value of the main product;
- ii.) Permitting service providers and retailers to make open lottery entry forms available in their retail establishments, provided no purchase is required in order for a consumer to obtain the entry form;
- iii.) Eliminating restrictions on manufacturers or service providers placing their open lottery entry forms in affiliated retail shops, franchisees or in establishments that carry their products to a large extent.

b. Eliminate Anticompetitive Fair Competition Codes

- i.) In order to prevent existing Fair Competition Codes from undermining the JFTC's deregulation of its premiums rules, ensure that all premiums codes are revised by the end of FY 1996 to be no more restrictive than the JFTC's general notifications;
- ii.) Amend Section 10 of the Act Against Unjustifiable Premiums and Misleading Representations to eliminate the JFTC's ability to authorize entrepreneurs or trade associations to establish fair competition codes or other similar agreements, and move toward abolition of existing premiums codes;
- iii.) Revoke immediately the authorization of any fair competition codes that are being used to thwart legitimate competition by members and/or non-members.

D. ENERGY PRODUCTION AND DELIVERY

While recognizing recent reforms, including the reform of the Electricity Utilities Industry Law (*Denki Jigyoho*), the GOJ, in order to reduce energy costs and pass on the benefits of the yen appreciation to Japanese consumers and business, should:

1. Electrical Equipment

- a. Revise the MITI Technical Standards so that equipment that meets U.S. ANSI/ASTOM standards can be used by electric utilities;
- b. Abolish the requirement that U.S. equipment meeting ANSI/ASTOM standards must also meet the standards established by the MITI ordinance Technical Standards (TS), Japan Industrial Standards (JIS), and Japanese Electro-technical Committee (JEC); and
- c. Modify JIS standards to take into account current improvements in materials and technology.

2. Electric Power Generation, Transmission and Distribution

- a. Ensure that the implementing ordinances of the recently revised Electricity Utilities Industry Law (*Denki Jigyoho*) provide for full, fair and non-discriminatory participation by foreign firms in the electric power generation, transmission and distribution market in Japan; and
- b. Periodically review the effectiveness of liberalization efforts in introducing increased competition into the electric power generation, transmission and distribution market.

3. Petroleum and Related Products, and Natural Gas

The United States Government looks forward to consulting with the GOJ regarding specific deregulation measures in Japan relating to: (1) the production and delivery of petroleum and related products; and (2) natural gas delivery and use.

E. FINANCIAL SERVICES

The United States Government welcomes the GOJ's implementation of its commitments in the February 1995 U.S.-Japan Measures Regarding Financial Services, negotiated under the auspices of the Framework Agreement. The USG will continue to focus on the effective implementation of these measures. The USG also welcomes the GOJ's November 11, 1996 announcement of its intention to pursue broad-based deregulation of Japan's financial markets and looks forward to learning more about the concrete proposals envisioned to further develop and open the Japanese financial market. Further regulatory reform of Japan's financial markets would increase competition, helping to improve Japan's long-term growth prospects. For example, the USG would welcome deregulation in the following areas:

1. Pension fund management

- a. Permission for discretionary investment advisory companies (IACs) to manage tax-qualified pension funds, postal life insurance funds, and postal savings funds;
 - b. Immediate elimination of the "one-half" rule limiting access by IACs to the management of employee pension funds;
 - c. Elimination of all remaining asset allocation guidelines imposed on fund sponsors and managers;
 - d. Elimination of the requirement that fund sponsors liquidate all investments when shifting business from one fund manager to another;
 - e. Permission for investment trust management companies to assign discretionary authority to their overseas affiliates; and
 - f. Permission for banks and other institutions to distribute investment trust management products.
2. Corporate securities
- a. Elimination of restrictions on nonbanks' use of proceeds from bond and commercial paper issuance;
 - b. Relaxation of restrictions on the number of shares that can be placed with a single investor; and
 - c. Elimination of the restrictions on over-the-counter trading in equity derivatives and exchange trading in individual stock options.
3. Cross-border capital transactions
- a. Changing all foreign exchange approval and notification requirements to ex-post facto reporting requirements;
 - b. Limiting the number of ex-post facto reports to those necessary to meet prudential concerns; and
 - c. Allowing a broader range of participants to engage directly in the foreign exchange business.
4. Disclosure and accounting practices

Enhance financial disclosure and accounting standards, as well as transparency of the financial regulatory process.

F. HOUSING AND CONSTRUCTION

The United States applauds the steps which have been announced to reduce housing costs in Japan through increased importation of wood products and housing and through the removal of regulatory obstacles in the construction sector. We believe that the following additional steps will be needed for Japan to realize its goal of reducing the cost of home construction in Japan by 33 percent by the year 2000, and to make its market accessible to imports in this sector.

1. Product Approval/Certification

- a. Rationalize, simplify, and expedite the process for gaining approval to use new or innovative building materials and construction methods in Japan, i.e., Article 38 of the Building Standard Law.
- b. Expedite the acceptance of foreign building materials and construction methods, e.g., U.S.-grade marked lumber, panels, glulam and LVL, U.S. standard nails, and U.S. nailing guns. Although some progress has been made in this area, the process for gaining recognition needs to be better defined, and the scope of products included needs to be widened.
- c. Revise the requirements of the Government Housing Loan Corporation (GHLC) and the Government Public Housing Corporation to allow the use of building products and construction systems that provide levels of safety equivalent to, or superior to, those specified in the Building Standard Law. Some progress has been made in this area, but additional progress is warranted in several areas, e.g., eliminating the requirement that metal fasteners and connectors bear the "C" mark, or that products bear the BL mark as a condition for preferential financing.
- d. Expedite and simplify the approval process of product evaluation and verification by entities the Public Works Center, Public Buildings Association, and Center for Better Living, and other similar entities.
- e. Increase the transparency and reduce the length of time necessary to gain Japanese Agricultural Standard (JAS) and Foreign Testing Organization (FTO) certification. Allow FTOs to qualify member companies to affix the JAS mark. Work is underway to improve the transparency of JAS/FTO process, i.e., Manual for Entry into JAS Standards for Wood Products for Foreign Business, but it is unclear if this will result in any time savings.

- f. Streamline and simplify the process for gaining JIS approval.
- g. Increase the transparency of the process for listing products on the Approved Products Lists. Provide for the automatic inclusion of products which have obtained JIS, JAS or equivalent approvals on all Approved Products Lists.
- h. Expedite and simplify the Japan Waterworks Association (JWWA) approval process; ensure that JWWA approval procedures permit U.S.-specification plumbing fixtures and rough-plumbing, or allow Japanese-plumbing fixture and rough-plumbing without the JWWA seal (self-certification).

2. Building/Product Standards

- a. Harmonize Japanese standards with international standards.
- b. Undertake a review of the Japanese Agricultural Standards. Based upon this review, initiate a program to revise those standards which are not performance-based.
- c. Expedite the introduction of performance-based building standards in the Building Standard Law to allow increased use of non-traditional building materials, e.g., asphalt and fiberglass roofing and interior wood finishes, and construction methods.
- d. Expedite the establishment of performance-based building standards for post and beam construction.
- e. Expedite a review of the Building Standard Law, including regulations that limit the location, size, and dimensions of buildings, e.g., the construction of three-story, wood-frame construction in quasi-fire protection districts, and four-story, wood-frame construction outside of fire and quasi-fire protection districts.
- f. Expedite a review of the methodology for calculating design values for construction materials.
- g. Permit U.S. specification light-gauge steel framing for residential use.
- h. Recognize as meeting Japanese standards those foreign products that meet equivalent foreign standards.
- i. Revise water standards so that backflow prevention valves will not be required in order to obtain approval to connect equipment to the local water system.

- j. Revise gas standards so that cut off devices will not be required within a piece of equipment in order to obtain approval to install such equipment where public safety is not adversely impacted.
- k. Revise fire standards and streamline related certification procedures to allow for the use of ventless exhaust hoods in commercial projects and for greater use of wooden doors and windows.
- l. Accept U.S. and international standards and testing for home gas furnaces.
- m. Accept U.S. and international standards and testing for ceiling tiles.
- n. Accept U.S. and international standards and testing for drywalls.
- o. Accept U.S. and international fire standards and testing, and simplify related certification procedures. (More detail)

3. "Common Specifications" (*Kyotsu Shiyosho*)

- a. Develop unified national "common specifications" with a view toward enhancing the use of foreign materials. Materials that meet or exceed these "common specifications" should also be promoted.
- b. Allow for incorporation of new product characteristics into the "common specifications" at any time.
- c. Actively seek and include foreign products into the "common specifications."
- d. Revise "common specifications" to permit the use of Japan Industrial Standards (JIS) or JAS equivalent products.

4. Product Testing

- a. Expedite the recognition of foreign testing laboratories and evaluation bodies for building materials and construction methods.
- b. Review and revise Guidelines for Accepting Test Results with the view to reducing the burdens placed on foreign firms and manufacturers, and eliminate the need for firms to make repeat test.

5. T-Mark Regulations

Accept U.S. standards and testing results for electrical equipment and wiring.

6. Requirements and Regulations

- a. Eliminate local registration requirements that prohibit non-local firms from doing local work without a local "sponsor."
- b. Eliminate scaffolding requirements, or permit moveable scaffolding, in residential and low rise construction.
- c. Revise the chemical regulations under the Building Standards Law to permit gluing of appropriate products.

7. Licensing

- a. Promote greater use of procurement of goods by separating procurement of goods from installation services so that good suppliers without construction licenses can participate in the bidding process.
- b. Permit wider licensing of electrical and plumbing contractors.
- c. Simplify and expedite construction license application procedures by reducing document requirements.

8. Study Committees

Provide more foreign participation in and access to study committees related to construction.

9. Working Visas

- a. Provide a status report on progress in reducing application times for skilled worker visas (North American construction experts).
- b. Describe efforts to disseminate directives to immigration offices to ensure smooth visa approval and entry of workers with requisite construction experience and documentation.
- c. Describe efforts to clarify for Japanese companies the visa standards and the feasibility of hiring foreign workers.

10. Procurement Procedures for Construction-Related Contracts

- a. Facilitate distribution of solicitation packages and other procurement related information by allowing the use of electronic retrieval systems, e.g. Internet,

fax on demand system.

- b. Expand the time frame between announcement of the procurement notice and the deadline for bid submission. Count only working days, i.e., exclude holidays and weekends, in the time period.
- c. Revise definitive criteria to be performance-based and less restrictive.
- d. When developing definitive criteria, commissioning entities should indicate that experience on comparable projects meet the criteria.
- e. Include ongoing projects as part of a firm's past work experience to determine a firm's qualifications.
- f. Allow a firm's experience as a Project / Program Manager or a Construction Manager (PM / CM) to be considered when evaluating a firm's qualifications.
- g. When evaluating a firm's qualifications to participate in a bid, commissioning entities should consider a firm's experience on comparable projects.
- h. Eliminate restrictions on the formation of joint ventures for public works contracts.
- i. Develop a unified set of minimum business evaluation scores for use as a pre-qualification requirement.

G. INSURANCE

The 1994 United States-Japan insurance agreement (the "Agreement"), negotiated under the auspices of the Framework Agreement, commits the Government of Japan to undertake a variety of deregulatory and competition policy measures with regard to Japan's insurance sector. It is clear that substantial deregulation of the primary life and non-life insurance sectors, which together comprise 95 percent of Japan's insurance market, is the most important action the Ministry of Finance (MOF) can take to pass the benefits of deregulation directly to Japanese consumers.

As such, the Agreement calls on MOF to implement broad and meaningful deregulation of Japan's primary insurance sectors, followed by a reasonable period for foreign and medium and small Japanese firms to establish a presence in these sectors, before MOF will permit activities which would result in important changes in the current structure of the "third sector," the remaining 5 percent of the market to which foreign firms have been effectively confined through excessive regulations by MOF. The U.S. Government is seriously concerned, more than two years after the Agreement was concluded, that Japan has failed to articulate a clear

policy fully consistent with these commitments.

The U.S. Government believes the Government of Japan should undertake the following deregulatory and competition policy actions:

1. Primary sector deregulation
 - a. Allow direct marking of automobile insurance which allows for the differentiation of products and rates using internationally accepted risk factors in order to substantially lower premiums for safe drivers and eliminate the current subsidization of bad drivers;
 - b. Substantially lower the threshold for commercial fire insurance beyond the 15 billion yen level by 1998 proposed by MOF in order to reduce insurance premiums for Japanese businesses;
 - c. Significantly and immediately expand the notification system to cover products such as general liability insurance in order to encourage innovation and the development of products more closely fitted to the needs of Japanese insurance consumers;
 - d. Allow insurance providers to exercise fully their legal rights to apply, and receive MOF approval, for products and rates which differ from those currently approved for the Insurance Rating Organizations; and
 - e. Ensure that the Ministry of Finance, and any other insurance regulatory agencies, has sufficient staff and resources to carry out policies to deregulate and provide for an innovative and competitive insurance market.
2. Promotion of competition
 - a. Expeditiously begin a study by the Japan Fair Trade Commission that examines anticompetitive business practices stemming from *keiretsu* relationships and the role of case agents in impeding market access for foreign insurance providers.
 - b. Prohibit government entities such as the Ministry of Posts and Telecommunications from providing insurance services that compete directly with private insurance companies.
3. Public corporations

Ensure that public corporations permit access to their insurance programs to foreign insurance providers on a fair, transparent, non-discriminatory and competitive basis.

H. INVESTMENT

To facilitate investment, the Government of Japan should take significant steps to further deregulate in the following investment-related areas::

1. Foreign Direct Investment Regulation

- a. Eliminate in a timely manner, in as many sectors as possible, prior approval and other restrictions on foreign direct investment.
- b. Facilitate the creation and operation of representative offices by foreign investors by easing associated visa-related regulations that apply to obtaining a resident's status, or revising the status.
- c. Eliminate by the end of JFY 1996 JFTC notification requirements set forth in the Antimonopoly Law which apply specifically and solely to international contracts.

2. Access to Land and Facilities

The relatively high price and limited availability of land and facilities in Japan is a major obstacle to foreign direct investment in Japan. We believe that the availability and affordability of land and facilities for commercial and residential use would increase if regulatory distortions were reduced in a manner consistent with cost-effectively meeting public policy goals. In keeping with the Government of Japan's intention to rationalize land use and improve the function of the real estate market, the following regulatory changes should be considered seriously:

- a. Reduce the capital gains tax on land sold after less than five years of ownership.
- b. Further reduce the tax burden on real estate transactions created by, for example, the land-transfer tax.
- c. Reduce the degree to which commercial property is taxed more heavily than land in other uses.
- d. Ensure that the inheritance tax structure does not unduly skew asset-holding toward land.
- e. Make increased efforts to facilitate the market-oriented disposition of real estate assets by, for example, allowing legitimate capital losses on real estate sales to be carried forward for several years, and more rapidly approving plans for the securitization of real estate assets.

- f. Re-examine lease laws to determine whether legal conditions on lease-lengths can be made more flexible for existing and new leases.
- g. Continue efforts to relax zoning restrictions on land use, especially where they have the effect of reducing land availability for commercial and residential use:
- h. Ease restrictions under the zoning and building codes that apply to "Urbanization Promotion Districts (UPDs) and "Urbanization Control Districts" (UCDs) which unduly limit the height and total cubic size of buildings in some areas, making high-density development difficult.
- i. Ease restrictions on the conversion of farmland within the UCDs, where it is heavily regulated.
- j. Ease "sunshine" access and other construction standards wherever prudent to add flexibility and reduce costs in the real estate market.

3. Employment Policies

Foreign firms face many challenges in hiring and retaining qualified Japanese workers and in fielding foreign executives in Japan's high-cost business environment. Japan's labor market has certain features that raise labor costs overall and tend to reduce labor mobility. Japan's pension/retirement system acts to hold employees in existing jobs. Under the Employment Security Law, the Japanese government tightly controls non-governmental employment services through a complex system of regulation. Deregulation will help match employees with job opportunities throughout the economy, secure future jobs in a competitive economy, facilitate economic restructuring, and ease labor conditions for all firms, including foreign firms, which face particular challenges.

- a. The regulation of Japan's pension system and retirement pay structure should be modified so as to increase the portability of retirement benefits.
- b. Private employment services licenses should be extended to five years.
- c. Private employment service licenses should be granted to individual companies, and not required for each and every office operated by the company.
- d. Full information on the licensing of employment services agencies should be provided by the Labor Ministry on demand.
- e. Rather than the Government of Japan setting an inflexible ceiling on the fees to be charged by private employment services, a basic, market-based fee structure plan should be submitted by the private employment services companies, with

the Government of Japan retaining its power to act upon specific cases of fraudulently misleading or excessive fee charges.

- f. Restrictions on the employment categories and job classifications with which private employment agencies (including temporary worker dispatch services) can work should be eliminated. If any remain, they should take the form of a "negative list" of categories that are prohibited.
- g. Requirements that restrict the job fields in which individual professionals employed by private employment service agencies can recruit and consult (e.g. restrictions limiting them to job categories in which they have had direct experience) should be eliminated. Should any restrictions remain, they should be provided in the form of a "negative list."
- h. Any specific restrictions on advertising by private employment services should be eliminated, and subsumed by general restrictions on fraudulent advertising.
- i. Regulations on the ratio of responsible employees of the worker dispatch agency (temporary employment agency) to that of dispatched employees, and which limit the agency-employees to working with job categories in which they have had direct experience, should be eliminated.
- j. Regulations placing minimum floor space requirements on both placement and dispatch services should be eliminated, and should be also rationalized for those companies which seek to provide both types of services.
- k. For companies seeking to provide both job placement and employee dispatch services, eliminate requirements that they maintain separate offices and separate employees for each purpose.
- l. Eliminate any requirement or practice whereby private employment services must divulge to the Japanese government the names of legitimate clients and job candidates.

4. Mergers and Acquisition

Foreign participation in mergers and acquisitions (M&A) in Japan is extremely rare. M&A transactions are the principal avenue for foreign direct investment in the rest of the industrialized world, and a key source of economic restructuring and innovation. Japan should act to eliminate all unnecessary legal and regulatory restrictions and impediments to an active and open M&A market, bearing in mind the need for anti-monopoly enforcement and prudential supervision. In this regard, the following actions should be taken:

- a. In order to improve financial disclosure, lower the capitalization threshold at which companies must undergo an external audit from 500 million yen in share capital to 100 million yen, while strengthening auditing standards.
- b. Ensure that external audits on publicly-traded firms are freely available to the public.
- c. To the maximum extent possible strengthen and harmonize Japanese accounting standards with international standards, including clear disclosure of unfunded liabilities, and the use of fully consolidated balance sheets, including for tax reporting purposes.
- d. Require publicly-traded companies engaged in cross-shareholding to publicly disclose any restriction on their ability to unconditionally disengage from such cross-shareholding.
- e. Continue to ease and rationalize requirements for all types of firms, including but not limited to "high-technology" firms, to list on the over-the-counter (OTC) market.
- f. Adopt a threshold, in a manner consistent with antimonopoly enforcement needs, below which certain mergers and acquisitions would be exempt from JFTC pre-notification requirements.
- g. Simplify creditor-protection procedures as they relate to mergers, and ease requirements for a general briefing meeting by merging firms with the Government of Japan.
- h. Ease the tax burden on the sales of long-held stocks to ensure that market-based sales are not unduly impeded.
- i. Eliminate any restrictions on the "off-market" sales of securities shares by so-called "stable share-holders" defined as the top ten shareholders in most cases.

I. LEGAL SERVICES

1. Review Restrictions on Foreign Lawyers

- a. Complete expeditiously the GOJ's review of:
 - i.) restrictions on employment of *bengoshi* by foreign lawyers;

- ii.) the 5-year legal experience requirement for foreign legal consultants, and
 - iii.) the scope of practice of foreign legal consultants with respect to third country law, with a view to eliminating or substantially liberalizing these restrictions and requirements.
- b. Include the following additional restrictions in the GOJ's review, with a view to eliminating or substantially liberalizing those restrictions:
- i.) restrictions on employment by foreign lawyers of quasi-legal professionals,
 - ii.) restrictions on partnership between *bengoshi* and foreign lawyers, and
 - iii.) restrictions on the ability of foreign lawyers to represent clients before Japanese government ministries and agencies,
2. Increase the Number of *Bengoshi*

Take steps necessary in FY 1996 so that about 1500 applicants are accepted each year into the Legal Training and Research Institute, as recommended by the Council on Reform of the Examination and Training System for Legal Professions.

J. MEDICAL/PHARMACEUTICALS

The USG recognizes the efforts made by the GOJ to consider the easing of regulations affecting the medical device and pharmaceutical sectors, and appreciates the commitment to take action in some of the previously raised areas. The USG strongly encourages the GOJ to implement the recommendations below quickly and fully, in order to promote transparency, as well as to introduce safe and effective life-saving technologies to Japan's market more quickly.

The USG also recognizes the efforts of the Ministry of Health and Welfare (MHW) to work directly with the American Chamber of Commerce in Japan (ACCJ) to identify areas for deregulation in the medical device and pharmaceutical sectors. We fully support the list of recommendations submitted to MHW by the ACCJ, and appreciate MHW's efforts to work directly with the ACCJ to resolve these issues. The USG recommends that the GOJ implement the following deregulatory measures:

- 1. In Vitro Diagnostics (IVDs)
 - a. Shorten the approval cycle time of IVDs:

- i.) Shorten the actual approval cycle time of Class 2 Chosakai consulting products within the time clock;
 - ii.) Set the time clock of three months for the other partial change applications beside the change of the expiration dating and storage condition;
 - iii.) Abolish the Chosakai examination of the partial change applications for Class 2 Chosakai consultation products;
- b. Change from the "shonin" approval system to the notification system (introduce non-approval system), except for Class 1 and Class 2 Chosakai consulting products. Class 1 and Class 2 consulting products should be examined within the time clock;
- c. Improve the confirmation procedure for Chosakai questions. MHW should confirm Chosakai questions to its members by document promptly unless waiting for the next Chosakai;
- d. Disclose the questions from MHW, Iyakuhin Kikoh and Chosakai to other companies to make the examination of IVDs transparent and efficient;
- e. Disclose the examination at Chosakai for submitted products, or allow companies to listen to the minutes of the examination;
- f. Abolish "Gaihoushin," or Guidelines for Radiopharmaceutical for In-Vitro Diagnostics Use, the minimum requirement for the tracer of RIA kit; and
- g. Simplify the introduction of D-2 products into the reimbursement system.

2. Medical Devices

- a. Exempt from the "Specifications and test methods" elution and biological tests regarding the medical devices which are implanted, inserted, sealed and contacted to the human body. These data are used only as reference (evidence) data when the manufacturer/importer submits an application for the medical devices;
- b. Accept the regulation regarding maximum EtO residual requirement by size, weight, degree of contact, duration of contact to blood/tissue on the medical device (MHW). EtO residual tests data is required for reference when an application for an EtO sterilized medical device is submitted to MHW. The EtO residual requirement shall be less than 25ppm in the case of a medical device which is in contact with blood or tissue for long periods of use;

- c. Accept validation data in place of sterilization data at the time of the approval application when a medical device is sterilized in accordance with ISO or AAMI (MHW);
- d. Exempt the submission to MHW of chemical components and structure of PVCs, Polyurethane and latex, etc., which are National standard (CAS number, etc.) and are used as existing product. Accept the master file system instead. Also, if a manufacturer/importer submits the safety data (biocompatibility data) of new material according to Japanese toxicity guidelines and/or other foreign countries' toxicity guidelines, exempt the submission of the chemical components and structure of these to MHW;
- e. Enlarge the range of exemptions from the requirement to file a partial change application for approved items in the classification category of medical devices (MHW);
- f. Approve medical hyaluronic acid, previously approved as a drug, as a medical device. Specifically, it should be classified under "Medical Devices 4, Orthopedic Devices" in the Pharmaceutical Affairs Law;
- g. Categorize scrub brushes and cottons for disinfecting used before surgical operations as a medical device instead of as drugs (MHW);
- h. Re-examine the rules relating to the acceptance of medical devices for use under the National Health Insurance system, specifically, to have new rules that permit the devices of category C to be included in the National Health Insurance price tariff established at an early date;
- i. Change quarterly applications for reimbursement to monthly applications;
- j. Currently, applied items must be identified for insurance application (A and B segment) by the Economic Affairs Division, after review by the Medical Device Division. Establish an identification process which is separate from the examination process for approval according to the Pharmaceutical Affairs Law; and
- k. Clarify the standardized criteria/procedures for the deregulated items and provide the prefectural government and industries with the published guidelines (particularly for the items of which authority will be moved from minister to governors);

3. Reimbursement Approval Process

In order to speed the process of reimbursement for medical device products, and make available life-saving and life-enhancing technologies to patients in a more timely fashion, the Ministry of Health and Welfare should consider taking, or accelerate implementing the following steps:

- a. MWH should move away from a system of incremental updating of the reimbursement schedule--adding new technologies to the reimbursement schedule only once every two years--toward a system of continuous updating, so as to reflect the continual advances in medical technology. Some steps that would represent positive movement in this direction include the following:
 - i.) Require the Health Insurance Bureau to begin its review of products for reimbursement coverage as soon as the manufacturer submits an application for product approval to the Ministry of Health and Welfare;
 - ii.) Allow new medical devices to be regularly introduced to the national health insurance system four times a year within six months after *shonin* approval;
 - iii.) Offer manufacturers the option of receiving a provisional price until the reimbursement review is completed and a permanent price is established, when the MHW cannot finalize a reimbursement decision on a newly approved product within three months of product approval. The provisional price should be equal to the price of the technology being replaced and a specific time limit should be established during which a final reimbursement decision must be made; and
 - iv.) Offer expedited reimbursement treatment for products that medical technology manufacturers can show reduce overall health care system costs, e.g., technologies that reduce the incidence of hospital readmittance, technologies that allow care to take place in less expensive settings such as the home, and technologies that reduce the number of hospital days required for a given procedure;
- b. MHW should take steps to embrace the transparency of the reimbursement process. Such steps include the following:
 - i.) Establish a standard processing period for reimbursement applications for "class c" medical devices; inform manufacturers whose applications cannot be processed within this period with the reasons for the delay; and develop a flowchart to more clearly define reimbursement review and price decision procedures; and

- ii.) Provide for a more open and transparent Highly Advanced Medical Technology (HAMT) system. Companies whose products are subject to HAMT clearance need to be provided with the: 1) precise definition of the criteria that are the basis for reimbursement decisions; 2) established timetables for processing an item through the system; 3) a full accounting of products rejected for reimbursement at the conclusion of the HAMT process; and 4) reimbursement for products during the HAMT review process. These actions should be taken in the interim with the ultimate objective of abolishing the HAMT system;
- c. Abolish the price control system for Special Treatment Materials (STMs). While U.S. industry is committed to working with the MHW toward effective functioning of the price control regime governing STMs, current efforts to expand this system run counter to the stated Japanese Government policy of economic deregulation.

4. Product Approval

- a. Reduce the "time clock" or standard processing period for approvals of drugs, medical devices and cosmetics from those agreed to under the Market-Oriented Sector-Selective (MOSS) to the following timetable:

	MOSS Agreement of January 1986	New Request
New drugs	18 months	12 months
"Me-too" drugs	24 months	12 months
Over the counter drugs	10 Months	6 months
In-vitro	6 months	3 months
Quasi drugs	6 months	3 months
Medical devices	12 months	6 months
"Me-too" devices	4 months	2 months
Cosmetics	3 months	2 months

- b. Apply the above time clock to applications for SHONIN approvals of drugs and

devices for animal use, which are examined by the Ministry of Agriculture, Forestry and Fisheries; and

- c. Accept internationally harmonized Good Manufacturing Practices (GMPs) standards governing pharmaceutical excipients in accordance with International Pharmaceutical Excipients Council (IPEC Americas, IPEC Europe and the Japan Pharmaceutical Excipients Council) trade association guidelines.

5. Nutritional Supplements

- a. Exempt food supplements, vitamins, and other dietary products from review by the Pharmaceutical Affairs Bureau of MHW. Toward this end, Article 2 of the Pharmaceutical Affairs Law should be amended to add "Food" to the list of products that are not covered by the Law;
- b. Allow any product sold as a nutritional supplement in major overseas markets to be marketed in Japan as food. Only products that are clearly regarded as pharmaceuticals by international pharmacological experts should be subject to separate regulations reserved for pharmaceuticals;
- c. Regarding the packaging and dosages of food supplements, vitamins, and diet products, MHW should allow these items to be sold as non-drugs in conventional capsules (i.e. hard gelatin capsules) in any shape or color, as labeling rules easily permit consumers to identify the product and avoid any confusion with drugs, and allow them to be sold in reasonable dosages; and
- d. Establish over the long term, a separate regulatory regime for nutritional supplements in addition to the two existing regimes for food and pharmaceuticals, as has been done by the United States and other countries, and is currently being considered by international organizations.

6. Pharmaceuticals

Application Procedures for New Drug Manufacturing and Import Licenses:

- a. Create a new and functionalized evaluation system for drugs to encourage greater efficiency in the approvals process, including expansion of pre-NDA examination.
- b. Representative signatures are required on the clinical reports submitted with applications for approval. In view of the inspection for conformity to the principles of Good Clinical Practice (GCP), the signature and seal of the principal clinical investigator on the main report is sufficient and should be

accepted;

- c. Where the original reports accompanying applications for approval are written in English as reference material, allow the main text to remain in English even where a summary in Japanese has been attached;
- d. Allow applicant representation at the evaluation hearings of the Central Pharmaceutical Affairs Council;
- e. Accept clinical data from abroad for clinical study findings. The acceptability of foreign data is crucial in Phase I and Phase IIa clinical programs. Also, accept data from clinical trials performed in collaboration with another country;
- f. As in other countries, allow for a more flexible approach to clinical trial programs, rather than strict adherence to the prescribed order of clinical trials (Phase I - Phase III) which may significantly decelerate drug development;
- g. Regarding post Phase II studies, ICH has come to the step 5 phase on confirmation of dose-responsiveness, and sufficient compatibility with foreign data can be found in spite of racial variations. Therefore, repetitive tests in Japan should be eliminated;
- h. Consider more flexibility in the requirement for dosage-setting studies for investigational drugs used for diseases where infection or other serious outcomes are expected;
- i. Where the expanded indications of approved drugs have already been examined and approved overseas, eliminate new dosage-setting studies and allow for dosages to be determined simply through open studies;
- j. With regard to guidelines for drug quality and product recalls, establish uniform, comprehensive and rational criteria for preventing further occurrences of inferior products, such as contamination by foreign substances, and to improve quality standards in the pharmaceutical industry. The industry is concerned with different implementation of these guidelines (example: Yakkan 95 of 1995 and Yakkan 47 of 1996) among prefectures;
- k. In connection with item k above, MHW or prefectural Health Offices should disclose more information on infringements of the Pharmaceutical Affairs Law so that other companies could learn what to note to improve their operations;
- l. Eliminate self-assays at the time of import for drugs manufactured in the U.S. or European Union even in the absence of mutual recognition of GMP, and also

promote early mutual recognition of GMP with the countries with no agreement yet;

- m. Eliminate self-assays at the time of import for biological preparations from the countries that can issue lot-by-lot certification of public inspection;
- n. Eliminate assay requirements for national inspection of imported antibiotics;
- o. Eliminate burdensome regulations on imported new drugs immediately following NDA approval;
- p. Simplify the customs procedures and formalities for the import of investigational new drugs, including bulk products, in view of the planned implementation of GMP for investigational drugs;
- q. Harmonize the Japanese Pharmacopoeia, for example, to extend access to a wider selection of the excipients already listed in the Pharmacopoeia of other countries;
- r. Simplify administrative procedures for importing psychotropics, etc., to ease delays in processing the application forms for import certification;
- s. Simplify the formalities in obtaining reference substances listed in the Pharmacopoeia of Japan, including unification of responsibility for distribution of reference substances, especially for antibiotics.

K. MOTORCYCLES

The Japanese Government, through the National Police Agency (NPA), has restrictive regulations on motorcycles that inhibit sales, especially of foreign motorcycles, and are not in accordance with international norms. Following the recommendations of the Office of the Trade Ombudsman (OTO), the GOJ should undertake the following deregulation measures:

- 1. Operator licenses
 - a. Remove the severe restrictions on testing for operator licenses on large class motorcycles (greater than 400 cc). The NPA has allowed licenses to be obtained through riding schools as of September 1, 1996. However, the proposed curriculum standards are still overly burdensome in terms of both time and money, and its own testing procedures have remained unchanged. Since these new school curriculum changes have not improved the situation, we request that the NPA:

- i.) reduce the number of classroom sessions required for ordinary-class (126-400cc) operator licenses and make requirements for large-class (greater than 400cc) motorcycle operator licenses the same as for ordinary-class operator licenses; and
 - ii.) eliminate the requirement for motorcycle riding simulators at certified riding schools.
 - b. Do not increase the current age requirements for operator licensing;
2. Highway riding
 - a. Equalize speed limits for motorcycles and automobiles on highways; and
 - b. Remove the prohibition on tandem riding on highways, especially for large class motorcycles.

L. TELECOMMUNICATIONS

As part of the current 3-year deregulation plan, the Government of Japan has made some significant progress in deregulating some aspects of telecommunications services. In several areas, problems with anti-competitive regulation have been solved, or the Government of Japan has made promising policy decisions whose implementation will likely promote competition in the Japanese telecommunications market. However, the United States urges the Government of Japan to undertake significant additional deregulation in telecommunications.

1. Interconnection

The Government of the United States commends the work of MPT's study group on interconnection. If the study group's interconnection rules are fully implemented, they will greatly stimulate new entrants into the domestic Japan telecommunications market, which continues currently to be dominated by NTT. Unfortunately, the study group declined to make a recommendation on one of the key issues in interconnection pricing -- the use of forward-looking, versus historic, costs. The Government of the United States believes that forward-looking costs are the most appropriate economic framework or guiding investment and hence, pricing decisions.

We are encouraged by the Government of Japan's first steps in introducing pro-competitive interconnection rules. As the final version of these rules are developed, we would encourage the Government of Japan to include the following elements:

- a. Forward-looking pricing of network elements;

- b. Mandatory publishing of all major network interfaces (e.g. switching, signaling, transmission) which should be available to all service providers and equipment suppliers on a non-discriminatory basis;
- c. Access by all service providers to all intelligent network functions for all competing service providers, so that competing providers can give their customers access to the same services that are available to NTT customers; and
- d. An obligation that NTT be responsible for network modification that may be necessary to permit competition.

2. MPT Regulation

On balance, the Ministry of Posts and Telecommunications (MPT) has demonstrated a welcome improvement in the transparency of policy-based rulemaking procedures, including in the standard-setting process. MPT has improved the competitiveness of the international telecommunications services market in Japan by resolving the following:

Third country calling: it is now possible for international carriers to offer calling-card services to and from countries besides their home country;

Transit agreements: carriers besides Kokusai Denshin Denwa, the dominant Japanese international carrier, can now use foreign carriers to provide transit services for traffic to third countries;

Domestic resale: Both ends of a leased line may be connected to a public switch network.

The Government of the United States urges MPT to undertake additional deregulation measures to improve competition in the Japanese international telecommunications services market:

- a. Expediting deregulation of international resale services before CY 1997;
- b. Expediting interconnection of leased circuits with the public switch network for all services, including international, before JFY 1997;
- c. Expediting the introduction of legislation before JFY 1997 amending Article 10 of the Telecommunications Business Law in order to eliminate supply/demand factors as a criterion for licensing facilities-based carriers.
- d. Eliminate foreign investment restrictions on NTT and KDD.

With respect to the domestic telecommunications market, in addition to the above measures on interconnection, the Government of Japan should further streamline the licensing application process for Type-1 carriers.

3. Cable Television

- a. The Government of Japan should eliminate the requirement that cable television (CATV) management firms obtain separate licenses for each franchise area they seek to serve, so that one license is applicable nationwide.
- b. The current 33 percent limit in foreign ownership of CATV services should be eliminated.
- c. The prohibition of foreign directors from sitting on the boards of CATV companies should also be eliminated.
- d. With respect to voltage restrictions on telephone equipment, MITI regulations currently require CATV companies providing telephony to power their systems for telephone signals at 60 volts. This requirement prevents companies from using less expensive yet equally safe imported equipment that functions at 90 volts. The widespread use of 90-volt equipment by CATV-telephony providers in other countries demonstrates that MITI's requirement is not necessary for public safety.

4. Direct-to-Home Digital Broadcasting

In order to let the marketplace determine the success of any given service and be technology-neutral in its regulation, the Government of Japan should ensure that restrictions on DTH at a minimum should not exceed those on CATV. The United States Government therefore urges the GOJ to deregulate this area so as to adopt a less rigid and less intrusive regulatory framework. Specifically:

- a. Aspects of MPT's regulation of direct-to-home digital broadcasting ("DTH") services should be deregulated. MPT's regulates DTH with the stated aim of promoting diversity in broadcasting and preventing excessive media concentration. However, with the anticipated launch of several new satellites, any scarcity of transponders will soon be alleviated. In the meantime, MPT's strict regulations are stifling service innovations and diversity of programming that this new technology can provide. MPT should:
 - i.) Eliminate the regulation restricting the number of channels a single broadcaster or programmer can control to only 12 channels. This restriction is inappropriate for DTH, which has the capacity to offer

integrated packages of up to 200 channels; and

- iii.) Eliminate the limit of six channels per 36 MHz per transponder for DTH service. This restriction is not merited by currently available compression technology. In addition, compression technology will continue to improve and regulation at such a level of detail is inappropriate.
- b. MPT should deregulate its regulation of transponder lease tariff rates, given the availability of transponders and competition for multi-channel programming (e.g. CATV, DTH services).
- c. MPT should also deregulate its sequential licensing procedures, which create unnecessary business risks that hinder investment. Currently a satellite must first be successfully launched, then the satellite operator is licensed, and only then can a consignor apply for a broadcasting license. Given the level of capital required to launch a satellite and prepare uplinks and programming, MPT should issue broadcasting licenses to consignors based on the successful launch of a satellite. The time savings and reduction of business risk (i.e. investing despite uncertainties about the status of a license) would speed market development, to the benefit of both consumers and providers.
- d. The USG urges the Japan to remove restrictions on foreign ownership. Specifically, MPT should eliminate:
 - i.) limits in the DTH market so as to permit greater foreign investment beyond the current limits of 20% for CS consignors and 33% for CS consignees; and
 - ii.) the current ban of foreigners serving as directors of a broadcasting company. Investment in the DTH market is discouraged by denying foreign investors board representation.

M. TRANSPORTATION

1. Trucking

- a. Create immediately a nationwide trucking operating license that would be available to international companies serving Japan that wish to engage in intermodal shipping operations;
- b. Create a generally available nationwide trucking operating license;

- c. Eliminate all unnecessary economic restrictions on entry into the trucking industry other than those required by safety and insurance considerations (e.g., remove immediately any district licensing requirements that specify prescribed amounts of terminal space, parking facilities and their maximum distance from the terminal, resting places [spaces] for couriers, and the prescribed size of maintenance facilities); and
 - d. Eliminate restrictions on pricing in the trucking sector in Japan, including any requirements for including a cost statement with freight rate notifications, and eliminate tariff filing in the trucking sector.
2. Freight Forwarding
- a. Allow international companies serving Japan that wish to engage in intermodal shipping operations to obtain an Unrestricted Freight Forwarders license that would allow the international transportation company to conduct its own ground operations without the need to obtain trucking licenses from each district; and
 - b. Eliminate restrictions on pricing in the freight forwarding sector and eliminate tariff filing.
3. Maritime (Harbor Services)
- a. Monitor and ensure full implementation of the agreement to phase out over a five-year period mandatory weighing and measuring of all containerized cargo exported from Japan by one of two measuring associations (*Nippon Kaiji Kentei Kyokai and Shin Nihon Kentei Kyokai*);
 - b. Introduce a permanent seven-day work schedule in Japanese ports to eliminate restrictions and costly delays on the operations of both carriers and shippers;
 - c. Deregulate harbor services and cease its restrictive use of licensing procedures, which effectively prevent new operators from entering terminals to compete with existing members of the Japan Harbor Transportation Association; and
 - d. Seek resolution of problems related to "prior consultation" requirements in Japanese ports.

All maritime harbor services issues listed above are currently being pursued through the Federal Maritime Commission (FMC), which issued on September 12, 1995, an Information Demand Order under Section 19 of the Merchant Marine Act and Section 1002 of the Foreign Shipping Practices Act, and which on November 6, 1996, issued a proposed rulemaking regarding Japanese-flag carriers entering U.S.

ports.

N. OTHER

The USG urges the GOJ to add additional sectors in the future to the Plan, as warranted by changing conditions.

IV. REFORM OF ADMINISTRATIVE LAWS, REGULATIONS AND PRACTICES

Reform of administrative laws, regulations and practices is a necessary complement of sectoral deregulation. An effective administrative reform program would improve the transparency and objectivity of the public policy process and increase opportunities for public participation in the process. Consistent with the Prime Minister's recent pledge to set up an advisory group to devise a concrete plan for administrative reform, the Government of Japan should undertake the following reforms of its administrative laws, regulations and practices.

A. INFORMATION DISCLOSURE

Increasing the transparency of laws, regulations and the administrative processes can play an important role in providing fair and equal opportunities to foreign firms trying to participate in the Japanese market. Increased transparency can also play an important role in reducing and avoiding disputes regarding trade and investment matters, and contribute to the creation and maintenance of a more certain and predictable business environment.

1. Information Disclosure Law

The Government of Japan should enact an information disclosure law that would provide the public with a right of access, enforceable in the courts, to records and other information in the possession or under the control of governmental entities, subject to limited, specific exemptions, the application of which would also be reviewable by the courts. The law should be drafted, submitted to the Diet, enacted and enter into effect before the end of JFY 1997. To ensure the effectiveness of the law, it should:

- a. apply to all government-related entities, including quasi-governmental agencies;
- b. narrowly define the information that is exempt from disclosure and strictly limit the discretion of governmental entities in withholding information from disclosure;
- c. require governmental entities that withhold information from disclosure to provide in writing to the requesting party the reasons for not disclosing the information; and

- d. ensure that parties requesting information under the law are accorded full and effective access to the courts to challenge the refusal to disclose information.

2. Equal Access to Government Information

The Government of Japan should ensure that foreign companies are accorded access to government information and regulatory processes on a basis that is, both in law and in practice, equal to the access accorded domestic companies and Japanese industry associations, regardless of whether the foreign companies are members of the association.

3. Full Transparency

The Government of Japan should ensure that, in addition to ensuring that all laws, as well as all of the following are made available to the public in a prompt, transparent and readily accessible manner: cabinet orders (*seirei*); enforcement ordinances (*shikorei*); ministerial ordinances (*shorei*); rules (*kisoku*); circulars (*tsutatsu*); directives (*kunrei*); announcements (*kokujū*); notifications (*tsuchi*); general regulations (*meirei*); administrative guidance (*gyosei shido*); and other forms of regulation.

B. RULEMAKING AND OTHER ADMINISTRATIVE PROCEDURES

The Government of Japan should take its regulatory process out of a "black box" in which only bureaucrats, former bureaucrats and other special interests are allowed to participate. Instead, Japan should, *inter alia*, adopt a rulemaking process, which would enable the public to participate in the development of regulations. The establishment of rulemaking procedures would contribute to Japan's overall deregulation efforts by providing an opportunity for public scrutiny of the scope and purpose of proposed new regulations. Such a process should encourage governmental entities to modify, or even withdraw, proposed regulations that are inconsistent with overall deregulation objectives.

1. Rulemaking Procedures

The Government of Japan should adopt rulemaking procedures by the end of JFY 1997. The rulemaking procedures should require ministries and other governmental entities, prior to the adoption or issuance of cabinet orders, enforcement ordinances, ministerial ordinances, rules, circulars, directives, announcements, notifications, general regulations, administrative guidance (including administrative guidance to industry associations and multiple persons), and other forms of regulation, to:

- a. publish the proposed regulation in the *Kanpo* or other publicly available publication;
- b. provide opportunity for the public to comment on the proposed regulation; and
- c. take public comments into consideration in finalizing the regulation.

2. The Administrative Procedure Law (APL)

The Government of Japan should annually review and publish a report on the implementation of the APL, which includes the following:

- a. the extent to which governmental entities and officials are aware of and understand their obligations under the APL, and are fully and effectively implementing it;
- b. the extent to which private sector entities and individuals, including industry associations and professional organizations, are aware of and understand their rights and the procedures available under the APL, and are utilizing the APL's provision;
- c. the instances in which governmental entities have issued administrative guidance in writing on their own initiative, and not in response to a request from a person receiving the guidance; and
- d. with regard to requests by private sector entities and individuals that oral administrative guidance be put in writing, the number of instances in which such requests have been made; and whether such requests have been fulfilled by the governmental entities, and if not, the reason cited by the entity for refusing to put the guidance in writing.
- e. In addition, Japan should expand the APL's coverage to all entities that issue administrative guidance, including *tokushu hojin* and other government-related entities.

3. Administrative Guidance

To enhance further the transparency of administrative guidance issued for multiple persons under Article 36 of the APL, the Government of Japan should:

- a. make widely publicly available, information on the subjects of such guidance and establish a process by which private entities and individuals can expeditiously obtain a copy of the guidance upon request; and
- b. clarify that administrative guidance that is given to an industry association with the intent that it will be followed by the members of the association is covered by Article 36 of the APL, and is required to be issued in writing and made available to the public.

4. Paperwork and Other Administrative Burdens

- a. The National Tax Agency should be required to conform its record-retention requirements with other Japanese agencies and allow taxpayers to retain their tax records on microfilm for the entire seven-year period during which retention is required.
- b. The Government of Japan should take measures by FY 1999 to substantially reduce paperwork and other administrative burdens by lengthening the term of licenses, permits and other approvals and promoting wider use of computerized processing.

C. ADVISORY COMMITTEES AND STUDY GROUPS

To more effectively enhance the transparency, objectivity and independence from the bureaucracy of formal and informal advisory committees and study groups, including *shingikai*, *kenkyukai*, *kondankai* and *benkyokai*, that provide advice and recommendations to governmental entities, the Government of Japan should issue a Cabinet Order, by the end of JFY 1997, that would:

1. Membership

The GOJ should prohibit former and current governmental officials from serving as chairpersons of the *shingikai*, and substantially reduce the number of former governmental officials serving as members of *shingikai*;

2. Foreign and NGO Participation

The GOJ should allow foreign non-governmental persons and foreign companies to participate either as members of *shingikai* or as observers at *shingikai* meetings;

3. Independence from Government

The GOJ should set out requirements for procedures for *shingikai* deliberations and development of recommendations, which would provide for independence from government officials and governmental entities;

4. Public Disclosure

The GOJ should require all *shingikai* to publish adequate advance notice of their meetings; to open all meetings to the public, except in very exceptional, narrowly defined cases; and to make the minutes and reports of their meetings readily and easily accessible to the public;

5. Other Advisory Groups

The GOJ should impose the *shingikai* restrictions and requirements, set out in subparagraphs (1-4) to *shingikai* subcommittees, as well as to *kenkyukai*, *kondankai* and *benkyukai*;

6. Government-wide Application

The GOJ should apply the restrictions and requirements set out in subparagraphs (1-4) to all ministries and their related entities: and

7. Annual Reports on Implementation of Requirements

The GOJ should require the preparation and publication of an annual report, beginning one year after the Order enters into effect, on the implementation of the requirements of the Order by each ministry and other entities.

D. INDUSTRY AND GOVERNMENT RELATIONSHIP

The close government-industry relationship in Japan often works to the disadvantage of foreign firms trying to participate in the Japanese market as it provides their domestic competitors with greater access to the governmental processes. The relationship also serves as a disincentive for deregulation.

1. Industry Associations

- a. The Government of Japan should refrain from delegating, formally or informally, governmental or public policy functions, such as product certifications or entry authorizations, to industry associations.
- b. Where there is a demonstrated need for industry associations to participate in granting permissions or approvals, establishing

standards, issuing certifications or engaging in similar public or quasi-public functions, the relevant governmental entity should exercise adequate supervision over the association to ensure that its activities are conducted in an open, transparent and non-discriminatory manner, that there is no discrimination against foreign firms' participation in internal management of the associations, and that it does not restrict the business activities of any firm, including firms that are not members of the association.

- c. The Government of Japan should ensure that regulations, guidelines and other procedures adopted or used by industry associations that may effect the conduct of business in Japan reflect the opinions of non-members, including the foreign business community.
- d. The Government of Japan should ensure that when government entities provide information to industry associations, the entities make the same information readily available to companies in that industry that are not members of the industry association, including foreign companies.

2. *Amakudari* and Other Government-Industry Relationships

The GOJ should take steps to increase the information made available publicly with regard to retired government officials who are assigned to, or otherwise permitted to accept, positions in the private sector and government-related entities, including in *tokushu hojin*, that are directly related to the official's former area of regulatory responsibility.

E. REVIEW OF ADMINISTRATIVE ACTIONS

The Government of Japan should strengthen existing mechanisms for the review and correction of administrative actions of governmental and quasi-governmental entities, in terms of their availability, speed and effectiveness. In addition, where appropriate, the Government of Japan should consider establishing new mechanisms to address disputes between private parties and governmental or quasi-governmental entities.

1. Administrative Appeals Study

The Government of Japan should establish a committee or working group, which includes foreign firms, to examine and prepare a report on the availability and effectiveness of existing mechanisms to resolve complaints by private sector entities and individuals against governmental and quasi-

governmental entities. The report should include an analysis of the operation and effectiveness of the Administrative Appeals Inquiries Law (*Gyosei Fufuku Shinsa Ho*), Law No. 160 of 1962, and the Administrative Case Litigation Law (*Gyosei Jiken Sosho Ho*), Law No. 139 of 1962.

2. Alternative Dispute Resolution (ADR)

The Government of Japan should establish an ADR mechanism that could be used in the resolution of disputes between private parties and governmental or quasi-governmental entities. The ADR mechanism should:

- a. serve as a forum to resolve disputes between governmental and quasi-governmental entities and private parties who would be substantially affected by a decision of an entity relating to an administrative approval, guidance or other action;
- b. be a voluntary procedure that supplements rather than limits other available dispute resolution techniques;
- c. involve neutral persons who function, with respect to an issue in controversy, specifically to aid the parties in resolving their dispute by serving as conciliators, facilitators, mediators or arbitrators;
- d. provide that any person serving as a conciliator, facilitator, mediator or arbitrator in a dispute have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve;
- e. provide that decisions rendered by neutral persons serving as arbitrators be binding and enforceable on the parties to the dispute whenever the parties consent thereto;
- f. ensure appropriate protection (confidentiality) of communications between the parties and the neutral person serving as a conciliator, facilitator, mediator or arbitrator with the goal of fostering and promoting the use of the ADR mechanism within governmental and quasi-governmental entities; and
- g. be governed by published rules of procedure that adopt internationally recognized principles of due process and grant fair opportunities for private parties with an interest in the matter to present their arguments and supply evidence in support thereof.

3. **The Office of Trade and Investment Ombudsman**
Because the effectiveness of the Office of Trade and Investment Ombudsman (OTO) is severely limited by its lack of authority to require agencies to take necessary action to resolve complaints by private entities and individuals, the Government of Japan should strengthen the OTO by giving it the authority to make findings regarding the merits of a complaint and to order the governmental entity to take specific action to resolve the issue.

F. **RESOLUTION OF PRIVATE COMMERCIAL DISPUTES**

Timely and effective procedures, such as arbitration and other alternative dispute resolution mechanisms for the resolution of private commercial disputes between private parties, can contribute to growth in trade and investment and reduce disputes that need to be resolved at the government-to-government level. Accordingly, the Government of Japan should:

1. **Government Role**

The GOJ should facilitate and encourage the use of such procedures in the resolution of disputes involving foreign parties.

2. **Arbitration of Private International Disputes**

The GOJ should enhance mechanisms for arbitration of private disputes between foreign and domestic parties by encouraging the Japan Commercial Arbitration Association to improve its rules and procedures; and

3. **Legal Structures**

The GOJ should amend its arbitration law or enact a new arbitration law to address issues that arise in international arbitrations and thus, facilitate greater use of arbitration in Japan in resolving international commercial disputes.

V. COMPETITION POLICY

A. JFTC's INVESTIGATORY AND ENFORCEMENT POWERS

1. Increase the Number of JFTC Personnel

- a. Announce a firm GOJ commitment to increase the number of JFTC personnel to at least 700 by JFY 1999, so as to ensure that the personnel resources devoted to antimonopoly enforcement are commensurate with the size of Japan's economy.
- b. Increase substantially the JFTC's JFY 1997 budget and personnel ceiling.
- c. Allot the greatest portion of the staff increases to the offices that engage in investigations of Antimonopoly Act (AMA) violations.

2. JFTC's Enforcement Powers

Strengthen the JFTC's powers to uncover and act against anticompetitive business practices so as to maximize the JFTC's ability to fulfill its mission. Some of the actions that the GOJ should consider in this regard include:

- a. Amending AMA §7(2) to authorize the taking of elimination measures against unreasonable restraints of trade and private monopolization within 3-years of the date of the last act in furtherance of the AMA violation.
- b. Amending AMA §94-2 to increase to 5 million yen the maximum criminal fine for the submission of false or incomplete evidence to the JFTC in response to a compulsory request for information pursuant to §40 or §46.
- c. Amending AMA §92-2 to include the submission of intentional false statements to the JFTC in response to requests for information pursuant to §40 or §46, and the intentional destruction of documents to avoid compliance with such requests, so that such activities are also punishable by penal servitude from not less than three months to not more than ten years.

B. STRENGTHENING ANTIMONOPOLY POLICY

1. Active Criminal Enforcement

Increase the emphasis of the JFTC and Public Prosecutors Office on criminal prosecutions of antimonopoly violations so as to increase deterrence of antimonopoly violations by ensuring that enterprises must face high criminal fines as well as surcharges and corporate officials are held personally responsible for antimonopoly violations they participate in.

2. Enhanced Enforcement Against Individuals

Enhance efforts to deter natural persons from engaging in antimonopoly violations on behalf of their employers. Some actions in this regard that should be considered include:

- a. Issuing a policy statement that the JFTC will now make recommendations and issue appropriate orders against officers or employees of trade associations and of their member firms that engage in or assist in violations of the AMA on behalf of the trade association or member firm.
- b. Amending AMA §2(1) or other appropriate sections to make clear that the JFTC is authorized to take elimination measures and issue other appropriate decisions and orders against officers, employees or agents of an entrepreneur that engage in or assist in violations of the AMA on behalf of that entrepreneur.

3. Strengthen Enforcement Efforts in the Area of Distribution Systems and Business Practices

Bolster efforts to eliminate anticompetitive practices in the distribution of goods and services and among members of *keiretsu* groups by vigorous enforcement and creative application of the JFTC's AMA Guidelines on Distribution Systems and Business Practices to various and changing anticompetitive practices.

4. Strengthen Measures against Anticompetitive Market Situations and Structures

- a. Announce the JFTC's intention to apply more actively the provisions of the AMA (§8-4) that address monopolistic situations.
- b. Establish a blue-ribbon study group to examine and make recommendations by the end of FY 1997 on whether improvements are needed in the JFTC's powers and/or enforcement policy to address anticompetitive market situations and structures within the

Japanese economy.

C. ANTICOMPETITIVE PRACTICES BY TRADE ASSOCIATION

1. GOJ Measures to Prevent Anticompetitive Activities by Trade Associations

Ensure that all government agencies take necessary actions to support the efforts of the JFTC in preventing and eliminating anticompetitive activities by trade associations. In particular, these agencies should report suspected infractions of the AMA by trade associations to the JFTC, and refrain from issuing guidance or otherwise encouraging industry associations or their members to engage in conduct that contravenes the AMA.

2. Review of the Trade Association Practices in the Financial Services Sector

Undertake a review by the JFTC and Ministry of Finance(MOF) of trade association activities in the financial services sector, and MOF policies and practices that support those activities, to ensure that trade associations in this sector do not restrain competition, in light of the conclusions of the JFTC's Report on the Activities of Trade Associations from the Standpoint of Foreign Corporations (1996) concerning the financial services sector.

D. COORDINATION BETWEEN JFTC AND MINISTRIES ON PROPOSED ADMINISTRATIVE GUIDANCE

Implement the Deregulation Action Program commitment to ensure that regulations are not replaced by administrative guidance that restricts competition by establishing, through the Cabinet Secretariat or other appropriate body, an administrative mechanism for coordination between government agencies and the JFTC on proposed administrative guidance, and a procedure for evaluating whether government agencies are following the advance coordination mechanism.

E. ANTIMONOPOLY EXEMPTIONS AND MEASURES OF SIMILAR EFFECT

1. Review Exemptions in the Antimonopoly Exemption Act

Review all exemptions to the AMA contained in the Antimonopoly Exemption Act (Law No. 138 of 1947) by the end of JFY 1997, with a view to eliminating or substantially limiting those exemptions by the end of JFY 1998. Early attention should be given to review of the Non-life Insurance Rating Organization Act

2. Accelerate Review of Exemption Systems under Specific Laws

Enact legislation promptly to abolish or restrict 37 antimonopoly exemptions contained in 24 laws by FY 1998 and continue to review the remaining 10 antimonopoly exemption systems with a view to adding to the list of systems that will be abolished or restricted. In this regard, particular attention should be given to abolishing or substantially limiting the Small and Medium Sized Enterprises Organization Act (Law No. 185 of 1957).

3. Review Exemptions in the Antimonopoly Act and the Premiums and Misleading Representations Act

Review all exemptions contained in the Antimonopoly Act and Act Against Unjustifiable Premiums and Misleading Representations by the end of JFY 1997 with a view to eliminating those exemptions and similar measures that are not absolutely necessary. Particular attention should be given to abolishing:

- a. All exemptions regarding resale price maintenance contained in Section 24-2 of the AMA; and
- b. Section 10(5) of the Act Against Unjustifiable Premiums and Misleading Representations.

4. Ensure AMA Consistency of Business Reform Law

- a. The JFTC should review fully all business reform plans approved by other ministries pursuant to the Special Measures Law to Promote Business Reform for Specified Industries (Law No. 61 of 1995) to ensure that they fully comply with the AMA and should take vigorous enforcement action under the AMA against activities engaged in pursuant to those plans that violate the AMA.
- b. Make public all JFTC advice to other ministries pursuant to Article 7 of the Business Reform Law concerning the consistency under the AMA of any business reform plans it has been requested to review and the actions taken by such ministries in response to JFTC notification that the business plans are inconsistent with the AMA.

F. UNNECESSARY JFTC REGULATIONS

1. Eliminate International Contract Notification Requirements

Eliminate by the end of JFY 1996 the notification requirements for international contracts provided for in §6(2) of the AMA, and rely instead on notification requirements, if any, that apply to particular classes of transactions irrespective of the nationality of the parties.

2. Rationalize Pre-Notification Filing Requirements for Mergers and Acquisitions

- a. Adopt a JFTC pre-notification filing threshold for mergers and acquisitions, based on the sales or assets of the parties and/or the size of the transaction, below which the parties need not file a pre-notification.
- b. Ensure that the JFTC retains the power to challenge mergers and acquisitions below the threshold whose effects may be substantially to restrain competition in any particular field of trade.

3. Relax Ban on Holding Companies

- a. Permit the formation of some limited classes of holding companies, after fully taking into account the views of foreign governments and the foreign business community on any such proposal.
- b. Any relaxation of the ban on holding companies should, at a minimum:
 - i.) ensure that the JFTC has a legal and practical ability to prevent holding companies that may further strengthen *keiretsu* ties or increase economic concentration in the Japanese economy or in any particular sector, and .
 - ii.) require holding companies above a minimal assets or sales threshold to notify the JFTC in advance of their establishment or acquisition of additional stock or assets, so that the JFTC may have the opportunity to prevent or order revisions to the proposed action before consummation.

4. Deregulate Restrictions on Premiums and other Sales Promotions

Liberalize remaining restrictions on the use of premiums and other sales promotion devices and rely instead on misleading representation rules to protect consumers from deceptive practices, so that companies can gain consumer acceptance of their products in the most cost-effective manner

possible.

G. EFFORTS TO ELIMINATE DANGO

1. Enhance Legal Remedies Against Bid Rigging

- a. Enact legislation that would require that all bids on publicly-funded procurements be accompanied by a Certificate of Non-Collusion, signed by the president of the bidding company, stating that (i) the bid was arrived at independently without any consultation, communication or agreement with any other bidder as to the terms of the bid, and (ii) there was no consultation, communication or agreement with any actual or potential bidder as to whether either party would or would not submit a bid.
- b. Revise the Penal Code to make it a crime for any person to submit a false Certificate of Non-Collusion.

2. Increase Administrative Sanctions Against Dango

- a. Increase to 12 months the minimum period that companies found to have participated in bid rigging activities will be suspended from bidding on any publicly-funded procurements.
- b. Apply such suspensions from bidding to procurements occurring anywhere in Japan, not just the prefecture where the previous *dango* activities took place.
- c. Require firms found to have engaged in *dango* activities on publicly-funded procurements to repay the Government its proportionate share of the damages incurred by the Government as a result of the bid rigging before it may submit bids on future publicly-funded procurements.

H. PRIVATE REMEDIES AGAINST ANTIMONOPOLY VIOLATORS

1. Permit Damage Actions on the Basis of JFTC Surcharges

Amend §26 of the AMA to clarify that injured parties may file damage actions where the JFTC issues a surcharge order against the defendant.

2. Permit Injunctions in Antimonopoly Damage Actions

Amend the AMA to authorize courts in private damage actions based on antimonopoly violations to order persons to cease conduct that violates the AMA.

3. Subject Trade Associations to Damage Liability

Amend the AMA to make industry associations and their members liable for damages caused by any conduct they participated in that the JFTC has determined violated §8 of the AMA.

4. Ease Filing Fees for Antimonopoly Damage Actions

Submit legislation to apply the same filing fee to damage actions based on antimonopoly violations as is applied to shareholder derivative suits.

5. Ease Burdens of Proof in Antimonopoly Damage Actions

Amend AMA §25 or the Civil Procedure Code to make it easier for victims of antimonopoly violations to meet their burdens of proof on the amount of damages, and on the causal connection between the AMA violation and the damages, in civil damage actions based on alleged Antimonopoly Act violations, whether filed under the AMA or §709 of the Civil Code.

ERRATA SHEET

On the first page of the table of contents, III E. 1. should read "Fund Management."

The last sentence on page 10 should read, "1. Fund Management"

On the second page of the table of contents, the following section was omitted.

"H. Investment

1. Foreign Direct Investment Regulation
2. Access to Land and Facilities
3. Employment Policies"