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**SUBMISSION BY THE GOVERNMENT OF THE UNITED STATES TO
THE GOVERNMENT OF JAPAN REGARDING DEREGULATION,
COMPETITION POLICY, AND TRANSPARENCY AND
OTHER GOVERNMENT PRACTICES IN JAPAN**

October 7, 1998

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The Government of the United States of America (USG) is pleased to present to the Government of Japan (GOJ) this submission on deregulation, competition policy, and transparency and other government practices in Japan. The proposals it contains are presented in the context of the Enhanced Initiative on Deregulation and Competition Policy ("Enhanced Initiative") agreed to in June 1997 between President Clinton and then Prime Minister Hashimoto, and in light of the progress achieved by the two Governments as detailed in the "First Joint Status Report on the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy" ("Joint Status Report") announced in Birmingham in May 1998. This submission addresses the need for full and timely implementation of the measures set out in the Joint Status Report, and reflects the determination of our two Governments to build on those achievements during the second year under the Enhanced Initiative. The United States believes that this submission should form the basis for a Second Joint Status Report to be issued jointly by the two Governments by the next G-8 summit in June 1999 in Cologne, Germany.

The United States has long promoted deregulation in Japan based upon the belief that deregulation will strengthen the foundations of the Japanese economy, increase business and employment opportunities throughout Japan, open Japan's markets to its trading partners, and improve the standard of living and long-term economic and financial security of the Japanese people. Meaningful and timely deregulation is a critical complement to effective macroeconomic policies to restore domestic demand-led growth to the Japanese economy. Moreover, the current global economic crisis, and particularly the serious economic downturns experienced by many of Japan's Asian neighbors, makes all the more pressing the need for Japan to take forceful action to deregulate and open its markets.

With the Enhanced Initiative as the centerpiece of bilateral deregulation efforts, the United States and Japan continue to address deregulation issues in several bilateral agreements and fora. As such, the proposals contained in this submission are not intended to be an exhaustive list of issues in Japan of interest and concern to the USG.

U.S. EMBASSY REFERENCE SERVICE

The United States welcomes the strong statement by Prime Minister Obuchi to “pour every effort toward carrying out deregulation and market liberalization” in Japan. The United States also appreciates Japan’s recognition of the pressing need for further deregulation in Japan as symbolized by its announcement in March 1998 of the Three-year Program for the Promotion of Deregulation. The United States strongly urges Japan to move quickly to implement the measures contained in that program, and to dramatically expand its scope and depth.

The United States also welcomes the creation last spring of a new Deregulation Committee under the Administrative Reform Promotion Headquarters. The United States appreciates the mandate given the Deregulation Committee both to monitor the implementation of the measures identified in the Plan and to recommend further deregulatory measures for implementation by the Japanese Government.

The United States looks forward to continuing to work closely and cooperatively with Japan on deregulation, competition policy, and transparency and other government practices under the Enhanced Initiative. This submission is presented in that spirit.

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OVERVIEW

Over the years the United States has repeatedly reaffirmed a consistent set of principles and objectives the USG believes should form the foundation of regulatory reform in Japan. Accordingly, the USG continues to urge the GOJ to:

- 1) continually review the economic impact of existing regulations, and eliminate all regulations not closely and directly linked to recognized and appropriate public policy interests;
- 2) dramatically increase the transparency and accountability of Japan's regulatory process;
- 3) prohibit delegation of actual or *de facto* regulatory authority to private entities unless pursuant to statutory authority;
- 4) encourage local governments to review and eliminate unnecessary and burdensome local regulations wherever appropriate;
- 5) include sunset provisions in its regulations; and
- 6) promote competition in the marketplace through active and effective Antimonopoly Law enforcement and competition policy.

The USG also continues to urge Japan to establish a permanent administrative entity with the authority to both generate and ensure implementation of new deregulation measures.

Building on the Cabinet Decision of March 31, 1998, Japan should seriously consider the adoption of a government-wide process on deregulation embodying the above principles. Under such a process government entities would be required to use sound economic analysis to fully assess the economic impact of important regulatory changes. Such a process would, among other things, solicit and incorporate the views of interested parties, assess the cost and benefits (both quantifiable and non-quantifiable) of the proposed regulation and its alternatives; use the best available scientific, technical, and economic data when making decisions; and be guided by the principle of achieving the regulatory objective in the most cost-effective manner possible. In addition, this process would require regulatory entities to minimize competitive distortions in the marketplace by mandating adoption of the most pro-competitive form of regulation consistent with the valid regulatory objectives.

TELECOMMUNICATIONS

The development of global markets has clearly demonstrated that the best way to stimulate increased growth, innovation, and consumer choice in the telecommunications sector is to accelerate the transition from monopoly legacies to competitive markets. Openness to foreign firms, and the investment in innovative services and technologies such firms offer is key to this transformation. Foreign firms have started to commit substantial resources to the Japanese market to contribute to the development of a more competitive market. The goal of the USG is to promote a regulatory environment where such competitive ventures can thrive. While Japan has made important steps towards a more open telecommunications market, regulatory reform in Japan has often lagged behind market needs.

There are two essential tenets to achieving the goal of stimulating competition in the telecommunications sector: facilitating new investment by reducing regulatory and other burdens which increase costs and hinder market entry; and introducing disciplines to ensure that incumbents with dominant positions in the market are prevented from denying market opportunities for new entrants and impeding competition. The recommendations below build on the work of past years towards achieving this goal.

I. Interconnection Issues

- A. Development and Implementation of LRIC Model. **Priority:** The United States has focused for several years on Japan's efforts to reform its system for pricing interconnection with dominant carriers such as NTT, as this is the major hurdle for competitive carriers. Building on measures contained in the Joint Status Report, the United States seeks to work with Japan to ensure the introduction of a more procompetitive interconnection pricing regime. Elements the United States believes are essential to such a regime include:
1. Development by early 1999 of a Long Run Incremental Cost (LRIC) model that accurately reflects forward looking costs for interconnection.
 2. Inclusion in the existing LRIC study group of all interested carriers and the holding of periodic meetings, open to all interested parties, to discuss progress in developing the LRIC model.
 3. Application of LRIC-based interconnection rates beginning on April 1, 2000, through MTP's:
 - (1) early submission of necessary legislation to the Diet;
 - (2) upon passage of such legislation, expeditious issuance of all necessary implementing regulations; and

- (3) use of all appropriate means to achieve NTT's retroactive application of LRIC-based interconnection rates.
- B. Interim Reductions in Interconnection Rates. **Priority:** Given the adverse effect high interconnection rates currently pose to competitive carriers, the United States believes it is essential for Japan to take interim measures to attract investment and stimulate competition. These include:
1. Consistent with measures contained in the Joint Status Report, accelerate the rate of annual reductions of NTT's interconnection rates for JFY 1998 and JFY 1999 to set NTT on a steady reduction towards LRIC-based rates in CY 2000.
 2. Within JFY 1998, develop and introduce depreciation schedules which reflect actual years of usage of equipment, rather than tax-based lives of equipment, for use both in calculating NTT's interim interconnection rates and in developing a LRIC model.
 3. Undertake an independent audit within JFY 1998 of NTT's interconnection accounts and make results publicly available.
- C. Three-Way Interconnection Agreements. **Priority:** Eliminate the requirement within JFY 1998 that all carriers involved in three-way carriage of traffic have interconnection agreements with one another. Permit use of "clearinghouse" carriers in which a clearing carrier, rather than the originating carrier, resolves the accounts with the terminating carriers.
- D. Preventing Competition Distorting Cross-Subsidies. **Priority:** Introduce rules in JFY 1998 prohibiting NTT and NTT DoCoMo from setting interconnection rates and charges for ancillary services above a wholesale level. This cap should reflect an appropriate discount to retail rates, e.g., retail minus avoidable costs such as billing, marketing and collection costs.
- E. Expanding Scope and Definition of Interconnection Obligations. **Priority:** NTT's current tariff does not cover the full range of NTT services and functions competitors require to compete successfully against NTT. To facilitate more robust competition, MPT should:
1. Within CY 1998, establish rules that define basic call functions available to interconnecting carriers to include all services currently available to NTT customers.

2. Ensure that access to these functions requires no up-front payments of network modification fees, and where NTT can justify a "value added" charge for such services, should be priced at a wholesale rate reflecting avoidable-cost discounts to the retail rate.
 3. Initiate within JFY 1998 a rulemaking to set procompetitive terms, conditions and pricing of access to dominant carriers' unbundled local loops, e.g., MDF interconnection, and co-location sites.
 4. Take necessary measures to ensure, within JFY 1998, that regulatory and other impediments to introducing x-DSL technology using NTT's network are removed.
- F. Local Number Portability. **Priority:** Within JFY 1999, implement local number portability with costs shared widely across the entire customer base.
- G. Differential Pricing for ISDN Interconnection. **Priority:** Within CY 1998 eliminate differential interconnection rates for analog calls terminating on ISDN subscriber lines.
- H. Promoting Disclosure for NTT-mandated Costs. **Priority:** Initiate an independent audit of the network modification charges NTT imposes on competing carriers to determine whether these charges are justified and what portion of these charges NTT should absorb, based on the principle that NTT should bear most costs incurred in conditioning its network to accept competition.
- I. Promoting More Timely Interconnection. Revise NTT's tariff in FY 1998 to require NTT, as a general practice, to provision its network for interconnecting carriers within six months, with exceptions clearly limited. Promote greater flexibility (without adding charges) in NTT's schedule for and testing of competitors' switches and programming its switches to permit interconnection.
- J. Dialing Parity. Establish a system for ensuring number dialing parity for local, long-distance, and international services by summer 1999, minimizing the costs imposed on new competitors.
- K. Access to KDD Landing Stations. Establish within CY 1998 procedures ensuring non-discriminatory, timely, cost-based access to KDD's cable landing station and backhaul facilities.
- L. Enforcing Interconnection Obligations vis-a-vis NTT DoCoMo. Prohibit NTT DoCoMo from abusing its market power in its pricing of interconnection by requiring cost-based reciprocal compensation, in contrast to current rates which

are substantially above cost and are asymmetric, i.e., DoCoMo receives more to terminate a call on its network than it pays other carriers to terminate a call on their networks. Require DoCoMo to publish its interconnection rates to ensure that it does not discriminate in its rates.

II. Dominant Carrier Regulation

Development of Framework for Dominant Carrier Regulations. **Priority:** Establish a system of dominant carrier regulation to regulate stringently companies with market power while liberalizing rules and requirements for non-dominant carriers that cannot exert such influence. This regulatory distinction should be applied to the system for approval of end-user rates, approval of terms and conditions for new services, rights-of-way, and other areas where market power may impede competition.

III. Licensing, Tariff, and Service Approval Issues

A. Tariff Approval Streamlining For Non-Dominant Carriers.

1. **Priority:** Within CY 1998, eliminate the requirement that Type I end-user rates be cost-based for non-dominant carriers unaffiliated with a dominant carrier in Japan, and eliminate the requirement that non-dominant carriers file cost or other market justifications for rates or services.
2. Within CY 1998, permit originating carriers to set end-user rates for calls terminating on mobile networks.

B. Licensing Condition streamlining.

1. **Priority:** Within CY 1998, streamline the Type I licensing process by eliminating all economic needs tests, e.g., the requirement to provide business plans proving profitability, and by eliminating the requirement to employ a specific number of engineers.
2. **Priority:** Within CY 1998, eliminate restrictions on Type I carriers leasing circuits and Type II carriers owning circuits, thereby increasing the flexibility of carriers to manage their network in the most economically and technically rational manner.
3. Within CY 1998, for non-dominant carriers, permit introduction of new services and geographical expansion on a notification basis.
4. Within CY 1998, allow the same company to operate both a Type I and Type II business without requiring the formation of a separate subsidiary.

5. Eliminate the requirement that Type I carriers receive MPT approval for entrustment arrangements with other Type I carriers.

IV. Universal Services

Priority: Establish safeguards to ensure that any universal service program introduced does not shield NTT from competitive pressures, such as those resulting from a drop in interconnection rates, and does not allow NTT to pass the costs of its inefficiencies on to its competitors.

V. Notice and Comment Periods

Provide, at a minimum, 30-day comment periods to allow all interested parties an opportunity to comment on proposed regulatory changes. Address comments in final rulemaking.

VI. Rights-of-Way

Without a more procompetitive rights-of-way regime in Japan, investment in the telecommunications sector and deployment of new facilities will be severely constrained. While some of these constraints simply reflect outdated and burdensome practices, other constraints reflect the entrenched interests of incumbents with privileged access to scarce resources. To address these problems, the United States proposes that Japan agree within CY 1998 to implement the following actions within the first half of CY 1999.

- A. Access to NTT Poles, Ducts, and Conduits. **Priority:** Establish regulations requiring transparent, non-discriminatory, timely, and cost-based access to all poles, ducts, conduits and rights-of-way owned or controlled by NTT. Such regulations should ensure that the rates, terms and conditions for access are just, reasonable, and non-discriminatory, e.g., rates should be set at embedded not replacement costs; should set clear rules for modifications; and should establish an expeditious dispute settlement procedure.
- B. Access to Utility Poles, Ducts and Conduits. **Priority:** Establish regulations requiring transparent, non-discriminatory, timely, and cost-based access to poles, ducts, conduits and rights-of-way owned or controlled by utility companies. Such regulations should ensure that the rates, terms and conditions for access are just, reasonable, and non-discriminatory; should set clear rules for modifications; and should establish an expeditious complaint resolution mechanism.

- C. CATV Operators' Rights. Priority: Establish regulations providing cable TV operators with rights to access poles, ducts, conduits and rights-of-way equal to those of Type I telecommunications carriers.
- D. Access to Privately Owned Buildings. Establish rules that facilitate access to privately owned buildings, particularly multi-dwelling units, to ensure that cable TV and new telecommunications competitors can reach the same customers as the incumbent carrier. For example, the GOJ should consider setting rules on demarcation points for telecommunications carriers to access buildings and prohibiting owners of multi-dwelling units from denying a tenant access to any telecommunications or cable TV service.
- E. Access to Roads, Highways, Bridges, Tunnels and Other Public Rights-Of -Way
1. Augment rules to make explicit the requirement that road authorities provide access to roads, highways, bridges, tunnels and other public rights-of-way for telecommunications carriers and cable TV operators on a non-discriminatory, transparent, timely, and cost-based basis. Establish an expeditious complaint resolution mechanism.
 2. Develop a plan to simplify procedures and reduce costs for installing network infrastructure in urban areas through measures such as:
 - (1) Requiring road authorities to publish application procedures and clear terms, conditions, and rates for road usage;
 - (2) Extending time periods for excavation on some roads;
 - (3) Facilitating the use of new, more efficient installation technologies;
 - (4) Advising telecommunications and cable TV companies well in advance of new highway, bridge, and other infrastructure construction plans that may provide new opportunities to install telecommunications and cable TV infrastructure;
 - (5) Carriers or CATV providers, when installing facilities, e.g., conduit, for their own use, should also be able to install conduit for carriers or CATV providers.
- F. Subways and Railroads. Establish rules requiring subway and railroad operators to provide transparent, timely, non-discriminatory, and cost-based access to facilities and rights-of-way owned or controlled by subway and railroad operators in order

to install telecommunications and cable TV infrastructure. Create an expeditious complaint resolution mechanism.

VII. NTT Restructuring

- A. **Priority:** Introduce, prior to NTT's restructuring, strict safeguards to eliminate competition distorting cross-subsidization between restructured corporate units through accounting separation, public reporting requirements, and regular audits.
- B. **Priority:** Permit 100 percent foreign investment in NTT within JFY 1998.

VIII. Type II Issues

- A. **Priority:** Prohibit NTT from charging up-front number programming fees for Type II carrier interconnection and set a mandatory two-month time period during which NTT must program new access codes into its system.
- B. Prohibit disclosure of the rates, terms and conditions of commercial contracts filed with the MPT to any competing Japanese international Type I carriers or any other entity.
- C. Eliminate requirement that carriers' costs for terminating traffic in other countries be filed with operating agreements associated with provision of ISR services.
- D. Within CY 1998, require NTT to offer wholesale rates for services to Type II carriers based on volume, including rates for a large volume of Direct-Dial-In numbers and interconnection.
- E. Within JFY 1998, eliminate registration requirements for Type II carriers offering international services other than basic voice service.

IX. Third Generation Wireless Standards

The adoption of third-generation wireless standards will have an enormous impact on the development of the competitive development of wireless service and equipment market. As articulated in comments the United States formally submitted to the MPT on September 30, 1998, the United States urges Japan to:

- 1. Not to pre-empt the ITU standards evaluation process by prematurely selecting a single standard before global needs are adequately addressed; and

2. Ensure that the third generation standard or standards adopted do not adversely affect second-generation systems, by hindering the evolution or migration from second to third generation systems.

X. Direct-to-Home (DTH) Communications Satellite (CS) Services

Japan's CS services market continues to be hobbled by outdated regulations developed in the era of analog broadcast transmission. This regulatory regime has added unproductive business costs and has hurt the development of innovative service offerings made possible through new digital technologies. The United States urges Japan to eliminate regulations and administrative requirements relating to the corporate structure of DTH providers, which have no demonstrated purpose relating to consumer welfare. Specifically, the United States urges Japan to:

- A. **Priority:** Eliminate channel restrictions and the consignor-consignee system within CY 1999 for CS-DTH subscription services.
- B. **Priority:** Ensure, through an open process addressing the views of interested parties, that the introduction of digital services into the terrestrial broadcast and broadcast satellite market does not adversely affect the development of a competitive, private market for multi-channel pay TV services.
- C. **Priority:** Agree within CY 1998 to permit 100 percent foreign ownership in DTH subscription service providers and allow foreigners to serve as directors of DTH companies; implement this new policy in the first half of CY 1999.
- D. Eliminate the requirement within CY 1998 that DTH providers offer channels to be purchased individually, so called "a la carte" pricing.

XI. Cable TV issues

- A. **Priority:** Within CY 1998, issue clear rules that require NTT as a dominant carrier to offer its fiber facilities on a non-discriminatory basis to all entities on fair and reasonable terms. For example, MPT should prohibit NTT from developing exclusive or preferential relationships with any CATV or CS operator when it leases its fiber for video transit services.
- B. **Priority:** As a condition for allowing NTT to lease Fiber-to-the-Home, require NTT to offer to all competitors access to two-way telecommunications and other advanced services carried on this fiber and prohibit NTT from placing any limits on the service a leasing operator can provide. MPT should prohibit NTT from requiring, as a condition of leasing such services, that any CATV or CS operator

agree not to provide services that compete directly with NTT's telecommunications services, e.g., telephony, Internet, or data services.

- C. Conduct an independent audit to ensure that NTT is not cross-subsidizing these rates.
- D. Prohibit NTT from discounting fiber lease rates for end-users which remain NTT customers.
- E. Decide within CY 1998, and implement within CY 1999, regulatory changes to permit 100 percent foreign ownership and unlimited foreign board membership in all CATV companies.

XII. Testing and Certification

- A. Within CY 1998, reduce fees charged for testing and certification.
- B. Within CY 1998, eliminate MKK's quality-control testing for ISO 9000-certified companies.

XIII. Regulations on Power Main Signaling Devices

Access to the Japanese market for devices which use signals carried over power mains, e.g., office automation control devices, is currently restricted by regulations which are unnecessarily burdensome. Japan should relax these regulations within CY 1999 to expand the market for such devices by:

- A. Modifying the category *Special Type Digital Transmitting Equipment* under Japanese power main implementation regulations, i.e. regulations 46 and 48 implementing the Radio Law to include phase modulation, specifically bi-phase shift keying, as an approved form of signal modulation that does not require a blocking filter; and
- B. Modifying the technical parameters of the category *Special Type Digital Transmitting Equipment*, including carrier frequency, power, leaked RF, transmission speed and auto re-sending cycles in accordance with international standards.

HOUSING

Japan's March 1996 Imported Housing Initiative was launched in order to improve the quality, and to lower the cost, of Japanese housing. It has three primary goals: 1) to revise on an expedited basis building regulations for American-style 2x4 construction and improve market access for products used in this type of construction; 2) to expedite and increase recognition of foreign grademarks, including through "equivalency" procedures, and 3) to revise the Building Standards Law (BSL) to provide for performance-based construction regulations.

In the context of Japan's Imported Housing Initiative, the United States has emphasized that the elimination of tariffs on wooden building materials, which was endorsed by APEC Heads of State at their November 1997 meeting in Vancouver, if implemented by Japan, would further stimulate competition in this sector, benefitting Japanese consumers. The United States has also encouraged Japan to take steps that would stimulate residential construction and demand. In addition to increasing demand for building materials, increased housing starts tend to have a positive impact on demand for other durable goods, such as appliances and furniture.

Although progress has been achieved in bilateral talks on a number of specific issues (most notably the recognition of U.S. lumber grademarks), the United States is concerned with the slowing pace of reform, and most notably with Japan's failure to issue new 2x4 construction regulations as set out in the Joint Status Report. The USG urges the GOJ to undertake the following measures:

I. Transparency

- A. Bilateral Discussion and Review. **Priority:** In order to facilitate an exchange of views and ensure consistency with international practice, provide in a timely manner through the bilateral housing experts group, copies of draft implementing measures (cabinet orders, notifications), including draft procedures implementing the "type" approval regulations set out in Article 68 of the BSL.
- B. Notice and Comment. **Priority:** Afford an opportunity for public comment, through the use of notice and comment procedures, on cabinet orders and notifications which will be issued over the next two years to implement revisions to the BSL.
- C. Educational Programs. Expand the scope and frequency of educational programs aimed at Japanese builders and consumers to acquaint them with ongoing reforms and expanded choices of building methods and U.S. building materials and plumbing products, similar to recent seminars designed to promote American-style, three-story construction in quasi-fire protection zones.

II. Performance-Based Standards/Systems

- A. American-style Construction. **Priority:** By December 1, 1998, publish testing methods and procedures for 2x4 construction based on international and North American practice. Revise the testing requirements incorporated in the current draft of these regulations, most notably the testing requirement concerning accidental wetting, which is unique to Japan, to be consistent with existing international practice.
- B. Implementation of the Revised BSL. Implement by March 31, 1999 the following elements of the revised BSL:
1. **Priority:** A performance-based building standard for three-story, wood-frame construction in quasi-fire protection zones, including multi-family and mixed-use (residential-commercial) buildings;
 2. **Priority:** A centralized, uniform system in Japan for acceptance and evaluation of test data for building methods and materials (including foreign test data); and
 3. A new system of building code enforcement which will ensure, among other things, uniform application and compliance at the local level across Japan.
- C. Performance-Based Standards. **Priority:** By November 1, 1999, implement performance-based standards for all building materials (e.g., interior wood finishes, roofing, ceiling tiles, exterior siding), and building systems (e.g., four-story, multi-family and mixed-use, wood-frame construction) to ensure fair and equitable treatment for all products and systems.
- D. JAS Standards. By March 31, 1999, revise Japanese Agricultural Standards (JAS) for structural plywood, emphasizing performance-based standards, including board strength.

III. Product Approval/Certification

- A. Foreign Testing Organizations. **Priority:** By March 31, 1999, allow Foreign Testing Organizations (FTOs) to function as Registered Grading Organizations (RGOs), as recommended by the Interim Report of the Basic Issues Subcommittee of the Research Committee for Agricultural and Forestry Standards.

- B. Foreign Test Laboratories. **Priority:** Expedite the approval of foreign test laboratories and evaluation bodies for building materials and construction methods, and expand the use of “equivalency” for foreign testing methods and grademarks.
- C. Wooden Windows. **Priority:** By November 1, 1999, eliminate discriminatory treatment of foreign wooden windows resulting from “grandfathering” provisions for Japanese window manufacturers, and ensure that all windows sold in Japan have been tested to the same performance and fire standards.
- D. UL Application. Approve Underwriters Laboratories’ (UL) application for accreditation as a testing laboratory for fire materials.
- E. JIS Grademark for Nails. Approve Japan Industrial Standard (JIS) grademark equivalency for U.S. manufacturers of nails.

IV. Subsidies

Eliminate preferential loans by the Government Housing Loan Corporation for homes constructed with domestic lumber.

MEDICAL DEVICES AND PHARMACEUTICALS

The Government of Japan faces the critical challenge of ensuring high quality health care for a rapidly aging population while striving to contain overall health care costs. The following proposals are advanced by the Government of the United States in the belief that market-led innovation through deregulation and structural reform are the best means to improve health care quality while containing overall health care costs in Japan.

I. Recognition of Innovation

- A. Promote the Introduction of Innovative Pharmaceuticals. **Priority:** In the spirit of the agreement in the Joint Status Report to recognize the value of innovation, adopt a market-based pricing system to promote the introduction of innovative pharmaceuticals.
- B. Prompt Creation of New By-Function Categories for Medical Devices. **Priority:** In accordance with the Joint Status Report, work constructively with industry and interested parties to develop as soon as possible streamlined and transparent procedures for the prompt creation of new functional reimbursement categories for medical devices.

II. Acceptance of Foreign Clinical Data

Expand and Speed the Acceptance of Foreign Clinical Data. **Priority:** Fulfill the measures set out in the Joint Status Report to greatly expand the acceptance of foreign clinical data in the approval of medical devices and pharmaceuticals by continuing to interpret the March 1997 MHW directive as broadly as possible and continuing to use an acceptance process that is transparent and avoids inappropriate delays in the incorporation of the International Conference on Harmonization (ICH) Guidelines. Take measures to further expand and speed the acceptance of foreign clinical data in the approval of medical devices and pharmaceuticals. These measures should include, but not be limited to:

1. Revoking the requirement that data submitted with an application for medical device or pharmaceutical approval must be presented at a domestic conference of specialists or published in an academic journal;
2. Eliminating inconsistencies between reviewing bodies' interpretations of the acceptability of foreign clinical data; and

3. Continuing to work with the ICH to develop the ICH Common Technical Document and create a plan for its use in Japan that meets the ICH schedule.

III. Approval Process

- A. Speed the Approval and Reimbursement of Medical Devices. **Priority:** Speed the approval and reimbursement processes for medical devices. Measures to achieve this goal should include, but not be limited to:
 1. Ensuring that decisions made by review personnel are treated as binding on the reviewing institution and are binding on other reviewers later in the process;
 2. Preventing redundant regulatory review by the Pharmaceutical and Medical Devices Evaluation Center and the Japan Association for the Advancement for Medical Equipment in the approval of "me-too" medical devices; and
 3. Eliminating the Highly Advanced Medical Technologies System.
- B. Realize the 12 Month New Drug Application (NDA) Approval Time Frame. **Priority:** Fulfill the agreement in the Joint Status Report of 12-month NDA approval by April 2000 by ensuring that steady and continuous progress takes place in accelerating the approval processing period for NDAs. Measures to achieve this goal should include, but not be limited to:
 1. Ensuring that decisions that are made by review personnel are treated as binding on the reviewing institution and are binding on other reviewers later in the process;
 2. Allowing the submission and simultaneous review of more than one pending NDA for the same drug for different indications or formulations;
 3. Providing for the ability to approve a dosage strength which is bracketed by previously approved dosage strengths without having to conduct further clinical studies;
 4. Specifying clearly the criteria, the selection review process, and the time frame for approval of applications for priority product treatment; and

5. Allowing industry to request priority product treatment at the onset of the NDA process.

- C. Introduce a Group Appraisal System for Contact Lens Solutions. **Priority:** Pursuant to the Government of Japan's 1998 Deregulation Plan, take in JFY 1998 the necessary measures to introduce a group appraisal system for the approval of contact lens chemical disinfection solutions where a manufacturer may obtain MHW approvals for use of all brands of contact lenses in a group by testing one representative in the group.

IV. Distribution System

Ensure the Safety of the Distribution System. **Priority:** Ensure the safety and integrity of the distribution system for medical devices by not separating the service component from medical device reimbursement.

V. Transparency

- A. Clarify the Application of the New Good Clinical Practice (GCP) Guidelines. **Priority:** Ensure a smooth transition to the new GCP by ensuring that new drug approval applications and other required documentation compiled under the old GCP will be recognized without the need to conduct new clinical trials.
- B. Continue to Ensure Transparency. **Priority:** Pursuant to the Joint Status Report regarding transparency, continue to ensure transparency in the consideration of health care policies, allow foreign pharmaceutical and medical device manufacturers meaningful opportunities to state their opinions in the relevant advisory councils on an equal basis with Japanese manufacturers, and provide them on their request, with opportunities to exchange views with MHW at all levels.

VI. Overall Greatest Value Methodology at the Local Levels

Introduce Overall Greatest Value Methodology (OGVM). **Priority:** In furtherance of the measure in the Joint Status Report, the USG urges the GOJ to take the necessary measures to allow local governments to use the OGVM in their procurement, in particular for medical devices and pharmaceuticals, by the beginning of JFY 1999.

VII. Nutritional Supplements

Liberalize the Sale of Nutritional Supplements. **Priority:** Implement fully the measures recommended by the Office of the Trade and Investment Ombudsman on March 18, 1996 to fully liberalize the Japanese nutritional supplements market, e.g., vitamins, herbs, minerals, and non-active ingredients.

FINANCIAL SERVICES

The United States Government welcomes the GOJ's successful implementation of the measures in the 1995 U.S.-Japan Measures Regarding Financial Services, negotiated under the auspices of the Framework Agreement, as well as the GOJ's actions taken to date under its Big Bang financial deregulation initiative. The USG will continue to closely monitor the implementation of the measures that have been taken, as well as look with interest at the additional steps planned under the Big Bang initiative to further open and develop the Japanese financial market.

Further regulatory reform of Japan's financial markets will increase competition, helping to improve Japan's long-term growth prospects and contribute to a wider variety of investment opportunities for individuals and Japanese companies.

I. Specific Measures

In this context, the USG would welcome deregulation in the following areas at the earliest possible date:

- A. Favorable consideration of a move to a *tokkin* framework for the management of publicly-administered savings, including *Nempuku*, *Kampo* and *Yucho* funds.
- B. Elimination of the requirement that fund sponsors liquidate all investments when shifting business from one asset manager to another.
- C. Expansion of the scope of business opportunities for securities companies to offer new products and services.
- D. Elimination of restrictions on nonbanks' use of proceeds from bond and commercial paper issuance.
- E. Enhanced disclosure by financial institutions (including fund managers) to market participants.
- F. Introduction of tax-advantaged defined contribution pension plans.

II. Transparency

The USG would welcome deregulation that improves transparency and government practices, including:

- A. Establishment of an open and transparent process for the approval of new products and services.
- B. Institution of notice and comment procedures for all new regulations, with sufficient time between finalization of regulatory changes and implementation that industry can make necessary organizational, operational and systems changes.
- C. In particular, institution of notice and comment procedures for the following regulatory measures:
 - 1. New disclosure rules for investment trusts scheduled to become effective when banks begin selling investment trusts on December 1;
 - 2. Delegation of discretionary authority by investment trust management companies to offshore affiliates;
 - 3. Regulations for accounting changes related to consolidated accounting and market-value accounting;
 - 4. Regulations related to the Special Purpose Corporations Law; and
 - 5. Regulations related to the Service Company Law.
- D. Ensure that the establishment and operations of a Securities Investor Protection Fund are equitable, transparent and impose prudential discipline through:
 - 1. Ensuring segregation of assets between customer and proprietary accounts;
 - 2. Requiring verification of capital adequacy and solvency ratios as a requisite for Fund membership;
 - 3. Disclosing individual firm compliance with Fund requirements to the public; and
 - 4. Ensuring the use of appropriate notice and comment procedures.

E. Use of notice and comment procedures for regulations of private sector organizations, including:

1. Japanese Securities Dealers Association;
2. Life and Non-life Policyholder Protection Organizations;
and
3. Non-life Rating Organizations.

ENERGY

The Japanese Government has placed a high priority on reducing energy costs to international levels while maintaining a stable energy supply. The United States welcomes the Deregulation Committee's expressed interest in its August and September statements in promoting deregulation and competition in the energy sector and its intention to: review the electricity supply system and boost competition between electric utilities; consider abolishing the existing permission system for the large-lot electricity supply business and removing the distinction between electricity for business use and industrial use with the liberalization of large-lot sales; clarify a timetable for the liberalization of small-lot sales; consider the disclosure of electric utilities' calculation basis for consignment electricity transmission user fees in order to ensure fair competition between new entrants and the existing electric utilities; consider taking measures to revitalize the power generation market and to review the existing rates system in order to increase the efficiency of electric utilities; increase efforts to introduce competition mechanisms in the gas business; ease the requirements and expand the scope of large-lot supply; and revitalize the consignment gas-transmission business. The following proposals are advanced by the Government of the United States under the premise that market-led innovation through deregulation and structural reform are the best means to achieve Japan's goal.

I. High Pressure Gas Law

The High Pressure Gas Law, which requires manufacturers to apply for inspection of all designated equipment, includes unnecessarily onerous requirements that impede foreign access to the Japanese market. The Government of Japan should revise and streamline testing, inspection, and information requirements. Specifically, Japan should:

- A. Bring testing requirements for turbines and compressors in line with internationally accepted standards such as the American Petroleum Institute (API) and American Society of Mechanical Engineers (ASME) standards, including the casing pressure test which unnecessarily requires equipment to be tested at four times the design pressure.
- B. Streamline testing/inspection requirements for turbines and compressors.
- C. Facilitate inspection of turbines and compressors in the country of origin prior to shipment.

- D. Simplify information requirements in the application process for the design and construction of turbines and compressors.

II. Electricity Utilities Industry Law

Equipment inspections and reporting requirements under the Electricity Utilities Industry Law are unnecessarily burdensome and discourage foreign firms from competing in this sector. The Government of Japan should revise standards and streamline inspection and information requirements. Specifically, Japan should:

- A. Bring standards for high-pressure equipment with welded parts or casings, including steam turbines, in line with internationally accepted standards such as the American Petroleum Institute (API), American Society of Mechanical Engineers (ASME), and National Electrical Manufacturers Association (NEMA) standards.
- B. Streamline inspection requirements for high-pressure equipment with welded parts or casings, including steam turbines.
- C. Facilitate inspection of high-pressure equipment with welded parts or casings, including steam turbines, in the country of origin prior to shipment.
- D. Simplify the application process for the design and construction of high-pressure equipment with welded parts or casings, including steam turbines.

III. Upgrading Existing Power Generation Facilities

With the continuing advances in power generating technology, equipment producers and electric utilities throughout the world have derived ways to get increasingly more power out of existing machines and facilities through technological upgrades. However, in Japan, onerous national, prefectural, and local restrictions make upgrading existing facilities uneconomical. The Government of Japan should review and streamline the regulations governing the upgrading of existing power generation facilities, in a manner consistent with national energy policy goals, so as to offer a greater range of cost effective ways to augment existing power generation capacity and meet increased energy demand.

IV. Certification of Standby Generator Sets

Obtaining regulatory approval or private-sector certification for the installation of standby generator sets is an unnecessarily burdensome process in Japan. The Government of Japan should take steps to facilitate the acceptance of international certifications for standby generator sets. Specifically, Japan should:

- A. Streamline and simplify the regulatory approval process for installation of generator sets.
- B. Through the Fire Defense Agency, instruct local fire stations that certification by recognized bodies should be equivalent to Nippon Engine Generator Association (NEGA) certification.

V. Power Main Signaling Devices

Access to the Japanese market for devices which use signals carried over power mains, e.g., office automation control devices, currently is restricted by unnecessarily burdensome regulations. Japan should relax these regulations within CY 1999 to expand the market for such devices. Specifically, Japan should:

- A. Modify the category *Special Type Digital Transmitting Equipment* under Japanese power main implementation regulations, i.e., regulations 46 and 48 implementing the Radio Law, to include phase modulation, specifically bi-phase shift keying, as an approved form of signal modulation that does not require a blocking filter.
- B. Modify the technical parameters of the category *Special Type Digital Transmitting Equipment*, including carrier frequency, power, leaked radio frequency, transmission speed and auto re-sending cycles, in accordance with international standards.

VI. Gasoline Stations and Gasoline Pumps

Recent deregulation in the gasoline sector, including the introduction of self-service stations in April 1998, has created greater competition in this sector and led to lower gasoline prices for Japanese consumers. However, Japan continues to maintain unique and excessive regulations for gasoline stations and gasoline pumps. The Government of Japan should revise its regulations governing gasoline stations and gasoline pumps to eliminate

unnecessary, outdated, and redundant regulations. Specifically, Japan should:

- A. Streamline and ensure transparency of the regulatory and approval process for self-service stations and pumps.
- B. Adopt anti-hazard and other requirements consistent with those of internationally recognized safety and testing laboratories/agencies.

VII. Standards

- A. Accelerate privatization and reliance on voluntary, market-driven standards related to the energy sector.
- B. Support the efforts of the Japanese and U.S. private sectors to resurrect the International Standards Organization (ISO), Technical Committee 11, Boilers and Pressure Vessels, with the goal of developing an ISO standard that will allow the harmonization of all pressure equipment standards.
- C. Move toward performance-based regulations through greater utilization of voluntary, private sector standards.

VIII. Transparency

- A. Ensure an open, competitive, transparent, and non-discriminatory procurement process.
- B. Allow foreign energy goods and services suppliers or their designated distributors or representatives, meaningful opportunities to participate and state their opinions in the relevant advisory councils, trade associations, and other relevant bodies on an equal basis with Japanese manufacturers.
- C. Allow interested parties full and timely opportunity to review and comment on draft standards, technical requirements, and other regulations relating to the energy sector. Interested parties also should be provided, upon request, the opportunity to exchange views with MITI and other relevant Japanese Government agencies at all levels.
- D. Require private and quasi-governmental organizations that develop and issue standards, technical requirements, and other regulations

relating to the energy sector to use a notice and comment procedure before adopting or issuing these standards and other requirements and to establish a process by which the decisions of these private organizations can be appealed.

IX. Competition Policy

The U.S. Government appreciates the 1997 surveys conducted by the Japan Fair Trade Commission (JFTC) on deregulation and competition in the electricity and gas sectors. As Japan deregulates its energy sector, the JFTC should monitor closely market developments, vigorously enforce the Antimonopoly Law, and dedicate additional resources to competition policy advocacy in this sector.

LEGAL SERVICES

As Japan implements the “Big Bang” and other market liberalizations, it is essential that its services infrastructure, especially its legal service providers, be capable of fulfilling the new opportunities created by the liberalization and deregulation. Both Japanese and foreign parties must be able to obtain fully integrated transnational legal services for domestic and cross-border transactions. However, unreasonable and unnecessary restrictions on the provision of legal services prevent both foreign and Japanese lawyers from offering clients such comprehensive services. While the legislative measures that Japan enacted in 1998 addressed several restrictions that the United States had identified, the following measures are still needed.

- A. Remove Partnership and Employment Prohibitions. **Priority:** The Japanese Government should remove the prohibition against partnerships between Japanese lawyers (*bengoshi*) and foreign legal consultants (*gaikokuho-jimu-bengoshi*) and the prohibition against the employment of *bengoshi* by foreign legal consultants.
- B. Count Time Spent in Japan. The Japanese Government should allow a foreign lawyer to count all of the time spent practicing the law of the lawyer’s home jurisdiction in Japan toward meeting the experience required to register as a *gaikokuho-jimu-bengoshi*, and not just the one year allowed under current practice.
- C. Increase the Number of *Bengoshi*. The Japanese Government should increase the number of trainees admitted to the Supreme Court’s Legal Research and Training Institute to not less than 1500 trainees per year as soon as possible, but no later than the class entering on or after April 1, 2000. New avenues of qualification outside the Legal Research and Training Institute or the radical expansion of the Institute should also be explored.
- D. Remove Restrictions on Quasi-Legal Professionals. The Japanese Government should remove the partnership, employment and cost-sharing restrictions on relationships between quasi-legal professionals (which include *benrishi*, *zeirishi*, *shiho shoshi* and *gyosei shoshi*) and *bengoshi* and *gaikokuho-jimu-bengoshi*, as well as relationships between the various quasi-legal professionals. The Japanese Government should allow complete freedom of association among all these types of legal professionals and should allow quasi-legal professionals to participate directly in foreign law firms.

- E. Allow Consultations on Behalf of Third-Parties. The Japanese Government should confirm and clarify that it is within the scope of permissible activities of *gaikokuho-jimu-bengoshi* to confer with Japanese government agencies and other authorities on behalf of clients.
- F. Consideration of Professional Corporations. The Japanese Government should expeditiously examine the establishment of professional corporations for *bengoshi* and other legal professionals in Japan to determine whether their establishment would facilitate in providing more comprehensive, transnational and easily accessible legal services for Japanese clients.
- G. Remove Restrictions on Advertising. The Japanese Government should require the removal of prohibitions against advertising other than reasonable minimum rules that are needed to ensure that advertising is not misleading.

AUTOMOTIVE AND MOTORCYCLES

I. Automotive

The Japanese Government has implemented the specified deregulatory measures related to the auto parts aftermarket that were included in the 1995 U.S.-Japan Automotive Agreement. The U.S. Government welcomes these actions as well as the Deregulation Committee's announcement that it is considering prolonging the period of validity for *shaken* inspections. However, in accordance with the measures under this Agreement, the Government of Japan should further broaden and accelerate its deregulatory efforts to promote competition, improve market access, and lower costs in the automotive sector.

A. Motor Vehicle Inspection Procedures. **Priority:** In order to reduce unnecessary regulatory burden and increase the number of garages that are designated to perform government-mandated safety and/or emissions inspections as well as repairs, the Government of Japan also should revise and streamline the motor vehicle safety inspection and testing requirements and the space and equipment requirements on garages that conduct these inspections. Specifically, the Ministry of Transportation should:

1. Reduce the requirements concerning the use of specialized vehicle inspection and testing equipment to the minimum necessary levels;
2. Reduce the requirements concerning facility layout and area to the minimum necessary levels; and
3. Update *shaken* inspection requirements in light of technological changes that have occurred in the automotive industry with the goal of reducing regulatory burden.

B. New Vehicle Registration. Streamline the new vehicle registration process consistent with the Deregulation Committee's expressed interest in a review of procedures for automobile registration, including eliminating the current license plate system and permitting dealers to issue temporary licenses to new car purchasers. In addition, the Government of Japan should:

1. Eliminate the garage certificate and move to a notification system;

2. Separate and streamline the payment of new vehicle taxes from car registration procedures; and
 3. Permit the use of an address certificate or driver's license in lieu of the certificate of seal impression (*hanko*).
- C. Mechanic Certification. Rapidly adopt MOT's preliminary decision to create a new, class 2 chassis mechanic to support the development of the specialized garage system established under the U.S.-Japan Automotive Agreement.
- D. Disassembly Repair Regulations. Eliminate repairs of brakes and other components from the requirements of the disassembly repair regulations in order to introduce meaningful competition into the Japanese auto parts aftermarket.
- E. Ensure Transparency. Allow foreign auto and auto parts manufacturers meaningful opportunities to state their opinions in the relevant advisory councils on an equal basis with Japanese manufacturers, and allow interested parties full and timely opportunity to review and comment on new regulations and standards. Interested parties also should be provided, upon request, the opportunity to exchange views on these issues with MOT and MITI at all levels.

II. Motorcycles

The GOJ, through its Road Traffic Law, maintains unnecessary restrictions on the operation of motorcycles on motorways, which do not contribute to highway safety, are not in accordance with international norms, and limit the use of large motorcycles.

- A. Within CY 1999 the GOJ should eliminate the ban on tandem riding (carrying a passenger) on national expressways and motorways.
- B. Within CY 1999 the GOJ should raise the highway motorcycle speed limit so that it is the same as the speed limit for automobiles.

DISTRIBUTION

I. Customs/Import Processing

The Government of Japan has undertaken recent efforts to modernize and expedite slow and cumbersome customs clearance procedures that hamper on-time delivery, keep prices high, and discourage Japanese consumers from taking advantage of direct mail merchandising and catalog purchases. The GOJ should continue and expand these efforts with the goal of achieving processing times comparable to other industrialized countries. In particular, GOJ support and implementation of the methodology described in subsection A below would be a sign of its genuine desire to modernize and expedite its slow and cumbersome customs clearance procedures. Specifically, the GOJ should:

- A. **Priority:** Adopt simplified, streamlined cargo processing systems designed for use by importers who have established records of compliance with national customs laws and regulations based on the following four principal elements:
 - 1. Release of cargo on the provision of the minimum information necessary to identify the cargo and permit the subsequent completion of the final customs declaration;
 - 2. Permit the filing of a single customs declaration for all imports in a given period where cargo is imported frequently by the same person/enterprise;
 - 3. Clearance of the cargo at the declarants' premises or another authorized place; and
 - 4. Use of the importer's commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other customs requirements.
- B. Permit private facilities in the area surrounding Narita airport to conduct the same bonded warehouse functions as exist inside Narita airport to meet greatly increased cargo volume expected when the second runway is completed by the year 2000.
- C. Establish a new system to permit cargo of a single company to be transferred directly to its bonded warehouse and bypass the common bonded warehouse thereby simplifying the process,

reducing time and cost, and allowing air cargo companies to provide better services to their customers.

- D. Extend normal customs processing hours at Narita Airport for cargo to 6:00 A.M. to 10:00 P.M. every day, including Saturdays, Sundays, and holiday to bring it in line with hours for passenger baggage.
- E. Establish an *ex-post* notification system for unloading cargo to and from aircraft outside of regular customs processing hours to replace current system requiring separate application and prior approval for each individual flight.
- F. Change the authorized port-of-exit procedures for exports from a prior approval system to an *ex-post* notification system.
- G. Establish procedures to effect customs release of cargo 24 hours per day by implementing a surety bond system, bank guarantee, or round-the-clock bank clerk.
- H. Address importers complaints that Nippon Automated Cargo Clearance System (NACCS) is prohibitively expensive and difficult to use.
- I. Continue efforts to modernize and expedite customs processing through, *inter alia*, expanded use of NACCS, pre-arrival review and clearance-upon-arrival procedures.
- J. Establish minimal overtime charges for the release of low risk merchandise not requiring examination by customs inspectors, and assess higher fees only when merchandise is physically examined.
- K. Increase the *de minimis* value specified in Customs Tariff Law, Article 14, Section 18 from 10,000 Yen to 30,000 Yen. Also, bring procedures in line with most other countries by calculating duties on a FOB instead of CIF basis.
- L. Expand the pre-arrival clearance system for immediate import. For other cargo clearance, emphasis should be placed on determining import duties after cargo has cleared customs as in other industrialized countries, in order to minimize cargo inspection and clearance procedures on arrival.

- M. Simplify, expand, and coordinate inspection services for import clearance of foodstuffs.

II. Retailing and Services

The USG welcomes the repeal of the Large Scale Retail Stores Law -- a key market access barrier for foreign retailers and consumer goods manufacturers -- but strongly urges MITI to ensure that the new measures that replace it and other measures that affect the retail sector, such as the City Planning Law, are not used by local interests to unfairly restrict competition by large retailers. In addition, the USG urges MITI to abolish its retail regime that favors small and medium-size enterprises, which has served to maintain the existing exclusionary distribution structure rather than to open it, impeding foreign access and hurting Japanese consumers. Specifically, the GOJ should:

- A. **Priority:** Formulate clear and precise notification criteria for large retailers that apply to opening or expanding large stores.
- B. **Priority:** Ensure that the study group being established to draw up guidelines for the operation of the Large Scale Retail Store Location Law (LSRSL) solicits and considers the views of large retailers. The study group should use notice and comment procedures with respect to its interim report.
- C. **Priority:** In implementing the new LSRSL the GOJ should clearly define local jurisdictions' authority with respect to the business operations of large-scale retail stores. In doing so, the following issues should be addressed:
 - 1. Specific parameters regarding store siting should be established and published that retailers can use for planning and which minimize the possibility of unreasonable adjustment demands and arbitrary interpretation by local authorities;
 - 2. The issues regulated under the current Large-Scale Retail Store Law -- floor space, opening days, days of operation, and hours of operation -- should not be subject to adjustment under the new LSRSL. Implementation should focus on addressing negative environmental impacts, e.g., garbage, noise, traffic, not adjusting legitimate large store business operations.

3. The area from which opinions can be drawn under the new LSRSLI process should be limited to the smallest administrative unit e.g., town or city within which the proposed store site is to be located.
- D. **Priority:** Use a Notice and Comment process to allow interested parties full and timely opportunity to review and comment on MITI draft guidelines and other measures implementing the new LSRSLI.
 - E. **Priority:** Establish close and continuous central government monitoring of local jurisdictions' application of the new LSRSLI, including semi-annual surveys through 2005 on how local jurisdictions are implementing the law with results and data backing these surveys available for public examination.
 - F. **Priority:** Establish a formalized official process at the central government level in which MITI will hear and act on retailers' complaints should local jurisdictions unreasonably restrict large retail stores.
 - G. **Priority:** Ensure that local jurisdictions do not use recent amendments to the City Planning Law to impose unreasonable restrictions on the location of large retail stores as occurred under the Large Scale Retail Store Law.
 - H. Eliminate all other market adjustment laws, including the Shochoho (Law No. 155 of 1959: The Retail Trade Adjustment Law), and the Bunyaho (Law No. 74 of 1977).

III. Transportation and Warehousing

Japanese laws limit competition and raise costs in the trucking and warehouse sectors by imposing unnecessary entrance requirements and burdensome rate filing requirements. The GOJ should:

- A. Reduce significantly the restrictions on entry into the warehouse industry, including licensing and notification requirements, with the goals of reducing shortages of storage space, lowering high fees, and minimizing burdens for foreign firms related to the distribution of their products.
- B. Deregulate fares and charges in the trucking business.

- C. Ease requirements for the submission of cost account statements concerning fees and charges for freight forwarding businesses.

COMPETITION POLICY & ANTIMONOPOLY LAW

I. Competition Policy Advocacy

Regulatory reform helps to spur economic growth, market access and economic efficiency by unleashing the forces of competition. Successful regulatory reform in Japan must be built on a solid foundation of effective competition policy. Recognizing this fact, the Japan Fair Trade Commission (JFTC) should, in addition to vigorously enforcing the Antimonopoly Law (AML) (Law No. 54, 1947), substantially boost its efforts as an advocate of competition policy and regulatory reform by championing removal of competition-blunting regulations -- especially regulations that block new firm entry.

- A. **Priority:** Establish a JFTC Competition Policy Bureau by April 2000. The Competition Policy Bureau's purpose will be to act as an assertive competition advocate by promoting competition and regulatory reform in sectors of the Japanese economy that are or may be subject to government regulation.
- B. **Priority:** Establish a JFTC Competition Policy Advocacy Plan, by April 1999, which will aim to:
 - 1. eliminate unnecessary and costly existing regulation;
 - 2. inhibit the adoption of unnecessary new regulation;
 - 3. minimize the competitive distortions caused when regulation is necessary by advocating the least anticompetitive form of regulation consistent with the valid regulatory objectives; and
 - 4. ensure that regulation is properly designed to accomplish legitimate regulatory objectives.
- C. **Priority:** Establish a model JFTC Antimonopoly Law Compliance Manual and Program (hereafter, JFTC Model Plan) by April 1999. The JFTC Model Plan should set out rigorous compliance standards and procedures aimed at ensuring that company employees act consistently with the AML, and the JFTC should widely disseminate information regarding the Model Plan to the business sector.

- D. **Priority:** Consistent with the Cabinet Decision (March 31, 1998) and the JFTC Survey of the Standards and Certifications of Public Interest Corporations (July 1998), the JFTC should closely monitor private sector regulations (*min-min kisei*) (see also Transparency and Other Government Practices, Private Sector Regulations) used by industry and nonprofit associations. The JFTC should take appropriate measures against entities that use *min-min kisei* to unreasonably restrict competition or new market entrants.
- E. By December 1999, use JFTC powers pursuant to AML §§ 42 and 44-2, respectively, to:
 - 1. hold at least one set of public hearings regarding important deregulation and competition policy issues; and
 - 2. submit at least one report to the Diet, through the Prime Minister, regarding the JFTC's views on important deregulation and competition policy issues.
- F. Amend the AML by April 2000 to create a right for the JFTC to:
 - 1. provide its views or otherwise participate in proceedings, hearings, or deliberations conducted by any central or local government organs (including *shingikai*) in order to offer procompetition policy options; and
 - 2. review and comment upon any proposed regulation to assess the regulation's competitive effect.
- G. Amend the AML and Cabinet Law (Law No. 16, 1947) to permit the JFTC Chairman to attend Cabinet meetings.

II. Private Remedies

The USG welcomes the establishment of the JFTC's advisory council which is examining the current legal restrictions on private injunctive relief and private damage actions for alleged AML violations. The USG also appreciates the recent efforts of the MITI's advisory council which examined issues related to private remedies. The USG strongly believes that the real availability of injunctive relief and damages through private litigation is an integral part of a comprehensive antimonopoly legal regime - persons directly injured by anticompetitive behavior should have the ability to enforce the AML on their own. Moreover, private AML

enforcement can play a key role in alerting Japanese firms to the importance of conforming their business practices to the AML, which in turn will keep markets free, open, and competitive. The USG strongly urges: (1) the JFTC advisory council to recommend progressive measures to lift legal encumbrances on private injunctive relief and private damage actions; and (2) the GOJ promptly to enact legislation to lift legal encumbrances on private injunctive relief and private damage actions.

Priority: Amend the AML and other appropriate laws by April 1999:

1. to permit private parties to sue for injunctions in actions based upon alleged violations of the AML; and
2. to lift legal restrictions on plaintiffs in damage actions based on alleged AML violations to: (a) meet their burdens of proof on the amount of damages; and (b) prove the causal connection between the AML violation and the damages.

III. Anticartel Enforcement

Consistent with the OECD Recommendation (March 25, 1998) concerning *Effective Action Against Hard Core Cartels*, which recognized that "hard core cartels are the most egregious violations of competition law," the JFTC and relevant GOJ ministries should take measures to boost anticartel enforcement.

- A. **Priority:** To facilitate the JFTC's filing of criminal accusations to the Ministry of Justice (MOJ), by April 1999:
1. increase investigatory burden-sharing between the Public Prosecutor's Office and the JFTC;
 2. earmark increased resources to MOJ for criminal AML investigations;
 3. increase the number of MOJ prosecutors detailed to the JFTC; and
 4. ensure that at least one prosecutor detailed to the JFTC has substantial experience (e.g., over twenty years).

B. **Priority:** Initiate public hearings, pursuant to AML § 42, or set up a JFTC advisory council, by April 1999 to examine methods of strengthening the JFTC's investigatory powers. In particular, the hearings or the council should examine:

1. amending the AML to provide the JFTC with search warrant power;
2. amending AML §7-2 to authorize measures against unreasonable restraints of trade and private monopolization within 3 years of the date of the last act in furtherance of the conspiracy to violate the AML;
3. amending AML §94-2 to increase the maximum criminal fine for submitting false or incomplete evidence to the JFTC in response to a compulsory request for information pursuant to AML §§ 40 and 46; and
4. amending AML §92-2 to include submitting intentional false statements to the JFTC in response to a compulsory request for information pursuant to AML §§ 40 and 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 10 years.

C. **Priority:** By April 1999,

1. require all bidders on public projects to certify through a Certificate of Independent Pricing Determination (CIPD) that the prices in the bid have been arrived at independently without any consultation, communication, or agreement for the purpose of restricting competition with any other bidder or competitor relating to: (a) prices; (b) the intention to submit a bid; or (c) the method or factors used to calculate the prices offered.
2. require all bidders on public projects to certify through a CIPD that the prices in the bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation).

3. amend the penal code to make it a crime to submit a false CIPD.
- D. Amend AML §89-1 by April 2000 to strengthen substantially criminal penalties and establish, in conjunction with strengthening criminal penalties, a JFTC Investigation Cooperation Policy through which firms that report their unlawful antimonopoly activity, under certain conditions, may be accorded favorable treatment when criminal penalties are applied. The JFTC Investigation Cooperation Policy should precisely set out: (1) the conditions necessary for favorable treatment when the firm reports unlawful activity before an investigation has begun; and (2) alternative requirements for favorable treatment in cases when the firm cannot meet the conditions in (1).

IV. Distribution

- A. **Priority:** Announce by April 1999 a JFTC Retail Sector Competition Promotion Initiative whereby the JFTC will:
1. monitor closely the activities of local and prefectural governments which are considering requests to establish a large-scale retail store; and
 2. make submissions to local and prefectural governments, which are considering requests to establish a large-scale retail store, on the procompetitive effects of large-scale retail stores.
- B. **Priority:** Initiate by April 1999 a JFTC follow-up survey to the "Survey on the Transactions between Firms in the Distribution of Paper" (June 29, 1993) to assess current business practices.
- C. **Priority:** Complete and make publicly available by April 1999 the JFTC follow-up survey of the flat glass market.
- D. Initiate a survey on the extent and form of financial inter-relationships linking manufacturers and distributors in "highly oligopolistic industries." The survey, on an industry-by-industry basis, should cover equity ties, provision of loans or other capital sources, and the sharing of employees, facilities and equipment.

- E. Increase the transparency of the application of the Premiums and Misrepresentations Law (Law No. 134, 1962) § 9-5 by requiring prefectural governments to make publicly available: (1) the facts of each case; and (2) the reason for any action taken.

V. Antimonopoly Act Exemptions

- A. **Priority:** Consistent with the Cabinet Decision (March 31, 1998) enact legislation by April 1999 to abolish AML §24-3 (Depression Cartels exemption), §24-4 (Rationalization Cartels exemption), Antimonopoly Exemption Act exemptions, and exemptions pursuant to other laws.
- B. Abolish § 10-5 of the Premiums and Misrepresentations Law, which exempts Fair Trade Councils from the AML.
- C. Abolish §7 of the Business Reform Law (Law No. 61, 1995) and amend the law to: (1) provide that any Minister receiving a business reform plan application shall forward a copy to the JFTC; and (2) state explicitly that the AML applies to all business activities taken under the Business Reform Law. Pending this action, ensure that the JFTC reviews all applications, especially joint applications, submitted under the law and make publicly available all JFTC advice given regarding applications.

VI. Merger Policy

- A. **Priority:** Issue by April 1999 new Merger Guidelines to clarify recent AML amendments.
- B. Increase the transparency of the JFTC's "prior consultation" mechanism when reviewing mergers or stock acquisitions.

VII. JFTC's Budget and Resources

- A. **Priority:** Increase:
 - 1. JFTC's FY 1999 budget by 5%; thereafter, annually increase the JFTC's budget by 5% over the next 5 years, taking into consideration that revenues from administrative surcharges far exceed the existing budget, and that increasing resources to the JFTC staff will likely increase collected administrative surcharges.

2. JFTC's FY 1999 staff by 25 persons; thereafter annually increase the JFTC's staff by 25 persons over the next 5 years and allot most staff increases to investigatory sections and competition policy advocacy.
- B. Prepare and take all necessary measures to maintain the JFTC's independence, especially regarding personnel matters, when the JFTC becomes part of the Ministry of General Affairs in 2001.

TRANSPARENCY AND OTHER GOVERNMENT PRACTICES

Greater transparency and increased opportunities for public participation in Japan's regulatory system are essential complements to effective sectoral deregulation in Japan, and will lead to a more effective and accountable regulatory system. An improved regulatory environment would play an important role in reducing market access barriers faced by foreign firms.

I. Notice and Comment Procedures

A. Government-Wide Procedures. **Priority:** Building upon the Cabinet Decision of March 31, 1998 and the Central Government Reform Law, and the measures in the Joint Status Report, the United States urges the GOJ to adopt by the end of JFY 1998 notice and comment procedures that would enable all interested parties to participate effectively in the formulation and modification of regulations proposed by ministries, agencies and other government entities (collectively referred to as "government entities"). Such procedures should require government entities to:

1. Publish proposed regulations in the *Kanpo*;
2. Provide a reasonable time period (at least 30 days) for interested parties to comment on the proposed regulations;
3. Make all comments available to the public for review; and
4. Seriously consider and address the comments in preparing the final regulations.

B. Interim Voluntary Use of Notice and Comment Procedures for Significant Regulations. Pending the adoption and implementation of government-wide notice and comment procedures, government entities should follow the example of MPT and use on their own initiative notice and comment procedures before issuing significant regulations. In particular, the United States urges the use of notice and comment procedures in developing the following regulations:

1. MITI: Guidelines and regulations to implement the new Large-Scale Retail Store Location Law;
2. MOC: Regulatory measures to implement revisions of the Building Standards Law;

3. MOF:
 - (1) New disclosure rules for investment trusts scheduled to become effective when banks begin selling investment trusts on December 1, 1998;
 - (2) Delegation of discretionary authority by investment trust management companies to offshore affiliates;
 - (3) Regulations for accounting changes relating to consolidated accounting and market-value accounting;
 - (4) Regulations relating to the Special Purpose Corporations Law; and
 - (5) Regulations relating to the Service Company Law.
4. MHW: Regulations to implement health care reform legislation; and
5. MOT: Measures to deregulate the harbor transport industry.

II. Information Disclosure

- A. Enactment of an Information Disclosure Law. **Priority:** The United States appreciates that information disclosure legislation has been introduced in the Diet, and strongly urges Japan to enact an information disclosure law by the end of JFY 1998 and to implement it by the end of JFY 1999. To provide the public with effective access to government information, the law should, *inter alia*:
 1. Apply to all central government entities and government-related entities, including special public corporations (*tokushu hojin*); and
 2. Allow requests for disclosure to be filed by foreign companies and foreign individuals.

- B. Establishment of a Uniform Document Management System. In conjunction with the enactment of an information disclosure law, it is essential that the Japanese Government establish a uniform document management system that applies to all government entities. As part of such a system, Japan should set common standards that apply to all government entities with respect to the classification, filing and preservation of documents.
- C. Effective Date of New Regulations. In order to enable businesses to make the necessary changes in their operations to meet new regulatory requirements, there should be a reasonable period of time between the announcement of new regulations and their effective date. Accordingly, by the end of JFY 1998, the Japanese Government should require all government entities to allow a reasonable time between the date of the announcement of final regulations and the date on which the regulations become effective.

III. Approval Process

- A. Examination Procedures and Standards. The United States supports the GOJ's plans, as set out in the Joint Status Report, to simplify and speed up the examination procedures for licenses, permits and approvals (collectively referred to as "approvals"), and Japan's plans to review examination standards for such approvals. The United States urges Japan to complete the review by the end of JFY 1998, and to conduct it in an objective and comprehensive manner by:
 - 1. Ensuring that the review is conducted by an impartial entity;
 - 2. Soliciting the views of interested parties on the existing examination standards; and
 - 3. Making public the results of the review.
- B. Improvement of Approval Process. **Priority:** In addition to the measures set out in the Joint Status Report, the United States urges Japan to adopt the following measures to rectify the burdensome and unpredictable nature of Japan's approval process:
 - 1. Require all government entities to publish by the end of JFY 1998 in the *Kanpo* a detailed description of all information that must be included in, or appended to, applications for

approvals, as well as the procedures that the government entities will use to review applications.

2. Prohibit government entities from requiring or encouraging applicants to engage in prior consultations, i.e., discussions with the government entity regarding the content, scope or other aspects of a potential application, before the government entity will formally accept it.
 3. Ensure, consistent with Article 7 of the Administrative Procedure Law (APL), that government entities accept every application that is submitted to them and, without delay, commence review of it.
 4. Consistent with Article 7 of the APL, require government entities that determine that an application does not contain all required information to provide the applicant with a written statement identifying all deficiencies in the application or other measures that the applicant must take to conform to the necessary requirements for the granting of the approval.
 5. Consistent with Article 9 of the APL, require government entities, upon the request of an applicant, to provide the applicant with a written statement of the status of the application and a statement as to when a decision (or disposition) of the application can be expected.
- C. Specific Sectors. Improvements in the following approval processes are particularly important:
1. MOF and the Financial Supervisory Agency -- Financial products and services, and insurance products, including the adoption in JFY 1999 of a file-and-use system, with limited exceptions, for a broad range of insurance products and rates;
 2. MOC -- Process for obtaining approval to use new and innovative construction materials and methods; and
 3. Japan Harbor Transport Association's prior consultation process.

IV. Advisory Councils

Noting the recommendations of the Administrative Reform Conference (*Gyosei Kaikaku Kaigi*), the United States strongly supports the reform of Japan's advisory councils, including *shingikai*, *kenkyukai*, *kondankai* and *benkyokai* (collectively referred to as "advisory councils"). Also, in order to enhance the transparency and objectivity of its advisory councils, the USG urges the GOJ to adopt the following:

A. Use of Notice and Comment Procedures

1. The United States appreciates the efforts of several advisory councils to provide an opportunity for the public to comment on their interim reports, and notes MITI plans to incorporate notice and comment procedures in its advisory council process. Given the important role that advisory councils play in the regulatory process in Japan, the United States urges the Japanese Government to require, by the end of JFY 1998, all advisory councils to use notice and comment procedures when they issue interim reports and preliminary recommendations (collectively referred to as "interim reports"). Advisory councils should be required to undertake the following:
 - (1) publish or otherwise make widely available to the public their interim reports;
 - (2) provide a reasonable time period (at least 30 days) for interested parties to comment on the interim reports; and
 - (3) give serious consideration to the comments in preparing the final report or recommendations.
2. Pending adoption and implementation of advisory council-wide notice and comment procedures, the United States urges the voluntarily use of notice and comment procedures by advisory councils, including the following:
 - (1) MITI's advisory council that will make recommendations regarding the guidelines required to implement the new Large-Scale Retail Store Location Law;

- (2) MPT's advisory council that is developing an interconnection model;
- (3) MOT's advisory council that is examining deregulation of ports; and
- (4) MOC's Central Council on Construction Contracting Business.

B. Enhanced Transparency

1. Consistent with the Cabinet Decision of September 29, 1995, the Japanese Government should require all advisory councils by the end of JFY 1998 to make public their terms of reference or mandate and the minutes of their meetings.
2. The Japanese Government should require subcommittees and other subsidiary bodies of advisory councils to comply with the same transparency requirements as advisory councils.

- C. Foreign Participation. The Japanese Government should take measures to allow foreign non-governmental persons and foreign companies to participate either as members or as observers at advisory council meetings.

V. **Private Sector Regulations**

As the Japanese Government removes and relaxes regulations, it is essential that industry associations and other public interest corporations (*ko-eki hojin*) and other private sector organizations (collectively referred to as "private organizations") are not allowed to substitute private sector regulations (so-called "*min-min kisei*") in place of government regulations. Private regulations, including rules on market entry and business operations, approvals, standards, qualifications, inspections, examinations and certification systems (collectively referred to as "private regulations"), can adversely affect business activities. The United States notes the concerns of various Japanese entities with regard to private regulations, as for example, in the 1996 and 1997 Reports of the Administrative Reform Council (*Gyosai Kaikaku Inka*), and the July 1998 JFTC Report on its Survey of the Standards and Certifications of Public Interest Corporations. The United States urges the Japanese Government to undertake the following measures:

A. Delegation by Governmental Entities. The Japanese Government should prohibit government entities from delegating governmental or public policy functions, such as product certifications or approvals, to organizations unless such delegation is expressly provided by a statute.

B. Transparency

To increase the transparency of private regulations, the Japanese Government should:

1. Direct each private organization, which is authorized by the GOJ, to make widely available to the public, by the end of JFY 1998, the following information on its regulations:
 - (1) A description of the regulation, the industry or enterprises subject to it, and any penalties for not complying with it; and
 - (2) The authority or basis for each private regulation, that is, whether it is authorized by a specific law or regulation, or whether it was established as a result of administrative guidance.
2. Require all private organizations to conduct their activities in an open, transparent and non-discriminatory manner and so as not to restrict the business activities of firms that are not members of the organization.
3. Require private organizations, which are authorized by the GOJ, to use notice and comment procedures before adopting or issuing regulations, particularly the following:
 - (1) Securities Investor Protection Fund;
 - (2) Japanese Securities Dealers Association;
 - (3) Life and Non-Life Policyholder Protection Organizations;
 - (4) Non-life Rating Organizations; and

(5) Energy sector organizations.

- C. Monitoring Mechanism. The Japanese Government should establish an entity to monitor the use of private regulations.

VI. Administrative Guidance

- A. Consistent with the statement in the Cabinet Decision of March 31, 1998 of the need to increase the transparency of administrative guidance, the Japanese Government should publish a list and the text of all administrative guidance that is currently in effect, including the government entity issuing such guidance, the date it was issued and the entities to whom the guidance was issued.
- B. Consistent with the APL and the statement in the Cabinet Decision of March 31, 1998 that the APL should be strictly enforced, the GOJ should require government entities issuing administrative guidance to incorporate into the guidance a statement that compliance with the guidance is completely voluntary, and that the recipient of the administrative guidance will not be treated disadvantageously for not complying with the guidance.

VII. Overall Greatest Value Methodology

In furtherance of the Joint Status Report, the United States urges Japan to take the necessary measures to allow local governments to use the overall greatest value methodology in their procurements by the beginning of JFY 1999.