

**ANNUAL SUBMISSION BY THE GOVERNMENT OF THE UNITED STATES TO
THE GOVERNMENT OF JAPAN UNDER THE U.S.-JAPAN ENHANCED INITIATIVE
ON DEREGULATION AND COMPETITION POLICY**

October 12, 2000

The Government of the United States remains deeply committed to the belief that the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy represents the most important bilateral vehicle by which to address structural and regulatory barriers impeding access to Japanese markets for U.S. goods and services while simultaneously helping to return Japan to sustainable economic growth. The United States therefore welcomes Japan's decision to implement another three-year deregulation program and its stated desire to make the Enhanced Initiative "more meaningful." With this in mind, this year's recommendations place an even greater focus on essential deregulatory steps the United States Government believes Japan should undertake to restructure its economy in ways that will address consumer interests and create a more competitive business environment.

The United States Government also welcomes Japan's recent determination to accomplish an information-technology revolution within five years. To coincide with this laudable goal, the telecommunications component of this submission has been expanded to include information-technology. Reflecting the crosscutting nature of this sector, IT-related policy recommendations appear throughout the submission, including in energy and in housing.

In June 1997, the Governments of the United States and Japan recognized the importance of continued bilateral focus on deregulation when they established this initiative, which identifies key sectors and structural areas for particular attention by the two Governments. The United States welcomes the progress achieved thus far under the Enhanced Initiative, set out in the First, Second and Third Joint Status Reports issued by the leaders of the two countries in June 1998, May 1999 and July 2000, respectively. The United States Government anticipates full implementation of the agreed measures contained in these reports.

The United States Government is pleased to present to the Japanese Government this submission on deregulation and competition policy. In addition to containing numerous specific, concrete proposals in all the sectors covered under the Enhanced Initiative, this submission also calls for significant structural reform in Japan. This document and the results of numerous bilateral working group meetings to be held in the coming months will form the basis for a Fourth Joint Status Report to be issued in the spring of 2001.

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TELECOMMUNICATIONS & INFORMATION TECHNOLOGY

Echoing views long advocated by the United States, consensus is developing in Japan that creation of a vibrant information technology sector requires a fundamental re-orientation of both the business environment and business-government relations. Otherwise, the emergence of a “networked economy” in Japan will remain hostage to the collusive, inefficient structures and practices of Japan’s “old economy.”

Japan's difficulty in stimulating investment and growth in information technology has its roots in telecommunications practices and policies but extends to other elements of the sector as well -- the Internet, electronic commerce, computer services, and software which form the networked economy.

Japan's response to this challenge has been to propose a range of policy initiatives, many of which have merit, such as eliminating barriers to electronic commerce. Traditional government responses to low growth (i.e. promotion of specific companies and technologies), however, risk introducing distortions into the market that prevent true innovation and market-oriented responses, and continue to hobble the sector.

The United States’ experience is that the government’s most important role is ensuring that competition and the innovation that drives it are free to flourish. This has been achieved by opening the telecommunications market to competition among companies, clearing away outdated rules incompatible with a competitive environment and ensuring that participants with market power, particularly in the telecommunications sector, are subject to adequate discipline to prevent them from thwarting competition.

TELECOMMUNICATIONS

I. Independent Regulator

The current structure of the Ministry of Posts and Telecommunications (MPT) impairs its ability to function as a regulator in an impartial and independent manner. This is particularly evident in: (a) political influence on the regulatory function, which tends to favor NTT; (b) MPT's dual roles in industrial promotion and regulation, which often conflict -- particularly where individual companies are identified as vehicles for MPT's industrial policy goals; and (c) the government's interests as a substantial shareholder in NTT. The influence of these pressures on regulation is evident in policies to promote Internet services in Japan. In this case, the Ministry has endorsed policies, such as flat-rate access and fiber-to-the-home, designed to expand Internet usage but has not ensured that sufficient competitive safeguards are in place to prevent NTT from using these policies to monopolize the sector.

The imminent restructuring of MPT provides a timely opportunity to implement institutional changes in JFY2000 which strengthen regulatory independence through measures that:

- A. Shield the regulatory function from political influence through stronger structural safeguards relating to personnel, accountability, and regulatory mandate, including the full separation of the regulatory function from other Ministerial functions, as in other OECD countries;
- B. Ensure that the regulatory function is completely separate from any industrial promotion where funding of new technologies and/or services is involved (A Ministry that both regulates and promotes industry faces inevitable conflicts of interest that undermine its ability to act in an impartial manner, since promotional activities often benefit one market participant or groups of participants over others.);
- C. Eliminate potential conflicts of interest between the government's role as shareholder and regulator of a dominant carrier by fully divesting government ownership in NTT as expeditiously as possible;
- D. Require greater transparency and accountability in decision making (Lack of transparency obscures and thereby permits instances in which the policy rationale for regulatory decisions may be distorted by political influence and industrial policy goals. Greater transparency involves basing regulatory actions on open proceedings rather than closed study-groups. Currently, MPT-appointed advisors produce recommendations under non-transparent MPT guidance. The legal status of these recommendations is unclear and the recommendations are subject to minimal notice and comment, which restricts full input from all interested participants.); and
- E. Prohibit institutional promotion and facilitation of *amakudari*, which raise serious conflicts of interest.

II. Dominant Carrier Regulation and Competition Safeguards

An independent regulator needs a strong mandate based on dominant carrier ("asymmetric") regulation to operate effectively. The United States Government suggests that the Japanese Government prepare in JFY2000 draft legislation to establish a regulatory framework with the promotion of competition for the benefit of consumers as the primary objective and the fundamental criterion guiding all regulatory action. Specifically, new telecommunications legislation should:

- A. Set out a clear, pro-competitive mission for an independent regulatory function;
- B. Implement dominant carrier regulation, which involves:
 - 1. Identifying markets and market segments where carriers are dominant;

2. Exercising more effective oversight over dominant carriers by requiring approval after thorough examination of rates, terms and conditions for any retail and wholesale service offerings where the supplier is a dominant carrier. Such oversight should give the regulator full authority to set rates (as opposed to current practice of “inviting” NTT to file a tariff which the regulator cannot unilaterally alter) and include:
 - a. Requirements to conduct imputation tests on any essential service offering subject to competition to ensure absence of anti-competitive cross-subsidization;
 - b. Prohibition on broad-based "trial" services (e.g., discount plans) that permit NTT to rapidly develop and deploy services in competitive markets without adequate competitive safeguards;
 - c. Prohibition on joint marketing and bundling of services by NTT East and West and other NTT entities;
 - d. Authority to mandate access by competitors to the full range of dominant carrier physical facilities;
 - e. Prohibition on NTT regional operators entering new markets (e.g. long-distance) until they have demonstrated, based on objective measurements, that local markets have been fully opened to competition;
 - f. Introduction of strengthened measures to ensure that the restructured NTT entities do not engage in anti-competitive cross-subsidization or impose inefficiency-related costs on competing carriers. Specifically, by the end of JFY2000, the Japanese Government should:
 - (1) Require the NTT Holding Company, NTT East, NTT West, NTT Communications Corporation, NTT Facilities, and NTT Commware to publish separate financial reports that meet Generally Accepted Accounting Practices (GAAP); and
 - (2) Require that any NTT reports to MPT on successor companies' interactions (including financial, R&D, personnel and other interactions), as called for by MPT in its April 1999 response to NTT's restructuring plan, be made public.

1. NTT eliminate the interconnection surcharge applied to calls originating or terminating on ISDN lines;
2. Accelerate the rate of reduction in interconnection fees should traffic increase at a rate greater than that projected by NTT East and West ;
3. Develop capacity-based interconnection rates as an alternative to metered rates in its review of the LRIC Model;
4. Within CY2000, require the NTT regional companies to provide interconnection within six months of application, without assessing “premium charges,” unless there is a need for major network modification (and to require itemized charges for modification, subject to independent review);
5. Develop in JFY 2000 interconnection conditions applicable to NTT DoCoMo as a “designated carrier” for setting termination rates onto DoCoMo’s network. Require NTT DoCoMo to:
 - a. Publish its interconnection tariffs, including rates, terms and conditions;
 - b. Disclose its computation methodology for interconnection rates;
 - c. Provide interconnection within six months of application; and
 - d. Ensure competing carriers the right to set retail rates for their subscribers for calls terminating on DoCoMo’s network.
6. Establish regulations that require NTT regional companies to expand the list of functions considered basic in their tariffs to include all services currently available to NTT customers. For services where NTT can prove that a “value added” charge is valid, NTT should be obligated to provide such services to competing carriers at wholesale rates.

IV. Rights of Way and Access to Incumbent Facilities

- A. During CY2000, Japan should develop unified regulations to be implemented throughout the Japanese Government in JFY2000 that will require NTT to provide transparent, non-discriminatory, timely and cost-based access to all poles, ducts, conduits, inside wiring and rights of way it owns or controls. Such regulations should:

1. Require NTT to make available on a timely basis all necessary information about facilities it controls and allow other carriers to inspect these facilities;
 2. Ensure that rates, terms and conditions for access, use and construction are just, reasonable and non-discriminatory. MPT should require disclosure of how charges are calculated in order to ensure contracts are fair;
 3. Establish clear rules for costs and burden-sharing associated with surveys and facility modifications;
 4. Require surveys, construction and installation be made on a non-discriminatory basis within a specified time frame;
 5. Permit competitive carriers to install and maintain their own facilities located on NTT property (including fiber in NTT ducts and conduits); and
 6. Maintain an expeditious and unbiased complaint settlement procedure.
- B. Application of such rules to electricity companies, utilities, railroads and highway operators should also be considered.
- C. As priority measures, by the end of CY2000, the Japanese Government should:
1. Extend the interconnection obligations that MPT has placed on certain parts of NTT's networks (e.g. up to the manhole closest to the switch) to other bottleneck facilities, including conduits and ducts linking fiber loops and customer premises;
 2. Eliminate the "30-centimeter" rule that prohibits efficient use of utility poles for competitive carriers' cables;
 3. Eliminate the Ministry of Construction's winter/spring road digging moratorium;
 4. Eliminate mandatory 5-7 year intervals between digging of certain roads;
 5. Explicitly permit trenching of cables, as opposed to installation of conduits and tunnels; and
 6. Establish common guidelines to be followed by each and every road authority in granting carriers permission to dig roads to install their facilities.

V. Resale/Unbundling

- A. In JFY2000, MPT should eliminate all restrictions on carriers' ability to combine owned and leased facilities in building their networks, ensuring that all carriers have the choice to build, buy or lease facilities in any combination necessary to facilitate their business without having to pay for any parts of the network they do not need. Specifically, MPT should:
1. Permit Type I and Type II to lease IRU's, including wavelength-based IRU's, for any period of time;
 2. Require NTT to provide wholesale products for all service products in which it is dominant (leased lines, directory assistance, etc); and
 3. Require NTT to provide access, priced at LRIC, to unbundled elements of:
 - a. Local loops, including:
 - (1) high-capacity lines;
 - (2) sub-loops;
 - (3) dark and lit fiber, including fiber-to-the-home; and
 - (4) inside wiring owned by a designated carrier.
 - b. Inter-office transmission facilities, or transport, including dark fiber;
 - c. Enhanced extended link (EEL), including a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport;
 - d. Equipment to connect loop equipment and in-house wiring, including remote terminals and passive optical network devices (PONs); and
 - e. Individual wavelengths, where NTT has WDM equipment, in market segments where NTT is dominant.

VI. Co-Location

To promote the expansion of services such as DSL, competing carriers should be allowed to place equipment alongside NTT equipment in NTT buildings or as close to the MDF as possible for the most efficient construction of their network. MPT should ensure that NTT:

- A. Charges competing carriers the same rate it charges an NTT group company by making public rates, terms and conditions that NTT group companies enjoy;
- B. Fully discloses in a timely manner information concerning the availability of space in the local NTT building;
- C. Justifies the basis for charges;
- D. Undertakes construction within a set period from the date of application;
- E. Allows other carriers to carry out maintenance of their own facilities; and
- F. Ensures that carriers have access to operation support systems (order, supply, maintenance, recovery, billing and access).

VII. Spectrum Management

The Japanese Government should introduce transparency into its spectrum management policies, including procedures for allocation and assignment of spectrum, and, where appropriate, should use spectrum auctions. As a first step, the MPT should publish details of current procedures and propose further steps to increase the transparency of the process.

VIII. Other Issues

Dialing parity: MPT should ensure that NTT fully implements its obligation to provide dialing parity in any and all locations requested by competitive carriers on a timely, reasonable basis.

Number Portability: MPT should ensure that NTT fully implements number portability so any and all customers are able to retain their telephone numbers when they change operators if they so choose.

ICAIS: MPT, with MITI, should contribute in JFY2000 to developing further analysis of how the state of competition and regulatory response (or lack thereof) in the Asia Pacific region contribute to high Internet costs, based on domestic inputs such as leased lines, backhaul costs, and choice of local telecommunications service providers.

INFORMATION - TECHNOLOGY

In July 2000, the United States Government and the Japanese Government agreed under the Okinawa Charter on Global Information Society on key principles to foster the development of the information-technology sector. The United States is pleased that Japan intends to revise its laws for the digital age to

further facilitate e-business (including e-commerce and e-government). Given the rate of innovation, choices of technology and how they can be applied in these areas are generally best left to the private sector. Where the Internet is concerned, government should deal narrowly with specific problems, while creating an environment where private-sector initiatives can flourish and transactions can take place securely. Following are some specific areas where the government can contribute to a more effective environment in JFY 2000. In many cases, these reflect principles in the Okinawa Charter.

IX. Promoting Trade in Digital Products

To promote trade in digital products (for example software, games, and music) the United States and Japan should endorse unfettered market access for digital products transmitted electronically between Japan and the United States (excepting illegal content) and agree to cooperate in ensuring such access in third markets.

X. Carrier Liability

The Japanese Government should expand coverage of the common carrier provision under Japan's Telecommunications Business Law to include general Type II and special Type II carriers.

XI. Intellectual Property

Robust intellectual property protection is essential to the growth of electronic commerce. To this end, the Japanese Government should:

- A. Clarify that the Japanese copyright law prohibits unauthorized "temporary copies" as per the WIPO Copyright Treaty;
- B. Amend the copyright law to clarify that the personal use exception does not apply in the digital environment, since it is inconsistent with permissible limitations and exceptions on rights under the Berne Convention, Article 9(2); the TRIPS Agreement, Article 13; and the WIPO Copyright Treaty, Article 10;
- C. Amend the Copyright Law to provide for statutory damages; and
- D. Ensure, consistent with the WTO TRIPS agreement, that business method patents, particularly relating to the Internet, are protected in Japan.

XII. Electronic Government Procurement

To further promote e-commerce and e-government, the Japanese Government should:

- A. Ensure that information on government procurement tenders is available via the Internet and that bids for contracts are accepted electronically and, to the extent possible, make this information available in English in order to maximize the number of potential bidders and thus provide a larger pool of more competitive bids; and
- B. Eliminate paper-based requirements for conducting transactions on-line.

XIII. Security

Japan should adopt and implement the principles in the 1992 OECD Guidelines for the Security of Information Systems regarding user choice, international standards, and industry-led, market-driven development of encryption products and services.

XIV. E-Commerce Legal Framework

In preparing its legal framework for global electronic commerce, Japan should revise any media-specific laws and evidentiary rules in a manner that is technology-neutral and consistent with the 1996 UNCITRAL Model Law on Electronic Commerce. In this regard, Japan should:

- A. Revise existing laws and regulations that constrain the growth of e-commerce such as requirements for face-to-face transactions, requirements for paper-based documentation, and physical location; and
- B. Implement its digital signature law in a manner that is flexible and market-based, and also clearly respects the rights of parties to choose the method for authenticating their electronic transaction.

XV. Privacy Issues

- A. Japan is currently drafting a law to protect personal information. In this process, the Japanese Government should strike the careful balance between protecting consumers and the free flow of data for the private sector that is needed for e-commerce to flourish, as was agreed in the Okinawa Charter.
- B. Japan's Outline for Basic Legislation for Personal Data Protection (or the Draft Outline of the Privacy Bill) appears to take a more regulatory approach to privacy protection and represents a clear departure from the Japanese Government's existing approach to privacy. The United States recommends that Japan:
 - 1. Continue to support a self-regulatory privacy framework with the goal of making it more effective rather than moving toward a more regulatory approach;

2. Since domestic privacy laws can have an impact on global e-commerce, Japan should consult closely with the United States and other countries to ensure that the final law is not unduly restrictive so as to stifle e-commerce or create market barriers; and
3. Allow consumers rather than the government to choose how to manage their digital identity and to protect their personal information online.

XVI. Rulemaking Process

To ensure that all interested parties have timely, fair and non-discriminatory opportunities to participate in the development of regulations affecting the information-technology sector, the Japanese Government should:

- A. Continue to utilize the Public Comment Procedure for implementing regulations;
- B. Provide at least a 30-day comment period, and to the maximum extent possible, a 60-day comment period;
- C. Make all of the comments available to the public; and
- D. Provide an opportunity and sufficient time for the public to submit reply comments; and respond to the public comments in the final regulations.

MEDICAL DEVICES AND PHARMACEUTICALS

Japan's medical devices and pharmaceuticals market is the second largest in the world. Nevertheless, American manufacturers, which are global leaders in these sectors, continue to face regulatory barriers that impede their efforts to introduce new products in Japan. The wider availability of innovative medical devices and pharmaceuticals that offer improved and more cost-effective treatments to patients are crucial to Japan's objective of achieving better healthcare while containing overall healthcare costs. In the first three years of the Enhanced Initiative on Deregulation and Competition Policy, the United States and Japanese Governments have made important progress, such as shortening the new drug approval period to 12 months, increasing the use of foreign clinical data for approving medical devices and pharmaceuticals, and providing provisional prices for certain new medical devices. There is, however, substantial room for more progress under the Enhanced Initiative, particularly given that Japan will soon be embarking on a sweeping reform of its healthcare system.

The Government of the United States welcomes continued discussions on the steps the Government of Japan has taken to implement previous commitments under the Enhanced Initiative. The United States Government also welcomes this opportunity to make new proposals for further market-opening progress in these important sectors and recommends that the Japanese Government:

I. Recognition of Innovation

- A. Promote the Availability of Innovative Pharmaceuticals. As stated in the Third Joint Status Report, the Japanese Government will continue to discuss reform of the pharmaceutical pricing system with interested parties, including the United States Government and industry. Discussions will also consider the benefits and shortcomings of the current system as well as alternatives with the goal of promoting and rewarding innovation to increase the availability of innovative pharmaceuticals.
- B. Promote the Availability of Innovative Medical Devices. While taking into serious consideration the views of industry through active dialogue, develop and implement a transparent and predictable system to expedite and increase the availability of innovative medical devices (C2 products). This system would include, for example, provisional pricing, reimbursement calculation, and the timing of final reimbursement listing.

II. Approval Process

- A. Speed the Approval of Innovative Medical Devices. Improve the consistency and speed of the approval process for medical devices by:
 - 1. Clarifying categories for device applications;

2. Ensuring the consistency of, and adherence to (during the review of applications), advice provided in prior consultations by reviewers; and
 3. Providing opportunities for applicants to discuss their medical device applications with senior Ministry of Health and Welfare (MHW) officials.
- B. Reduce the burden on applicants under the Measurement Law by adopting a notification system.
- C. Speed the Approval of Innovative Pharmaceuticals. The United States Government welcomes MHW's decision to shorten the review time for new drug applications (NDAs) to 12-months. From submission to approval, continuing efforts should be made to realize total approval times of 12 months.
1. To enhance understanding of the new NDA 12-month review process, MHW should issue a Notification (tsuchi) outlining the steps of the process from submission to approval.

III. Acceptance of Foreign Clinical Data

- A. Limiting Bridging Studies. Continue to accept foreign clinical data as the primary evidence of clinical safety and efficacy, and affirm that bridging studies would only be required where necessary to extrapolate that data to the Asian population. Also take steps to prevent excessive duplication of clinical trials which can delay availability of new therapies and unnecessarily waste drug development resources by:
1. Affirming that as noted in Appendix C of the ICH Guidelines, the three most relevant racial groups are Asian, Black, and Caucasian;
 2. Taking steps to enhance the transparency and consistency of determining when bridging studies are required; and
 3. Making it unnecessary to conduct an additional bridging study for an additional indication when data to establish extrapolation to confirm comparability exists to support the initial indication of a molecule.

IV. Transparency

- A. Providing Adequate Access to Pricing Organizations. Ensure adequate access is provided for applicants to present views and discuss relevant matters before the Drug Pricing

Organization and the Special Organization for Insurance-covered Medical Materials, which will be established in October 2000.

V. Nutritional Supplements

- A. Promoting Market Liberalization. Continue to institutionalize and implement the measures recommended by the Office of the Trade and Investment Ombudsman on March 18, 1996 to promote liberalization of the Japanese nutritional supplements market by:
1. Utilizing foreign data and information to approve products and support nutritional/health benefit claims; and
 2. Publicizing the data required and the criteria by which approvals of herbs, minerals, vitamins, excipients, and nutritional/health benefit claims are judged.

VI. Health Care Services

- A. Promoting Deregulation. Deregulate the healthcare services sector -- including advertising and the scope of services provided -- with an aim to improving the efficiency of Japan's healthcare system by:
1. Allowing hospitals and healthcare providers to advertise their services and provide relevant information to patients. This would include internationally recognized credentials and accreditations, and the availability of payment or financing terms for procedures not reimbursed under the national health insurance system; and
 2. Modifying the definition of *iryō hojin* to allow for a greater scope of activities to be outsourced.

FINANCIAL SERVICES

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

I. Specific Measures

In this context, the United States welcomes deregulation in the following areas at the earliest possible date:

- A. Permit the Postal financial institutions (*Kampo* and *Yucho*) to employ the services of investment advisory companies through direct onshore trust arrangements (*tokutei shintaku*) without the requirement to convert asset positions into cash before changing asset managers.
- B. Simplify the disclosure requirements for investment trusts, including requirements for drafting and updating a prospectus, and relax the requirements for delivering the prospectus and disclosure forms to investors by permitting electronic delivery.
- C. Eliminate the requirement for physical certificates for privately placed fixed income securities and investment trusts.
- D. Permit multiple classes of shares for investment trusts to provide more flexibility and efficiency in structuring products.
- E. Require full mark-to-market accounting for all investment trusts in order to protect investors.
- F. Modify the regulations on Japanese Government Bonds (JGBs) to permit foreign holders who use global custodians to enjoy the exemption from withholding tax.
- G. Introduce tax-advantaged defined contribution pension plans, in a transparent and competitive environment for product selection, investment offering, and plan administration.
- H. Review current requirements for financial institution reporting and record keeping, and revise or remove those requirements for which there is no clear prudential or disclosure

need. Allow financial institutions to maintain records in electronic form, and where possible, to distribute reports and filings by electronic means.

II. Transparency

To improve transparency in financial sector regulatory and supervisory practice, the United States would welcome measures in the following areas at the earliest possible date:

- A. The operations and decision making of industry associations that have a self-regulatory, investor protection, or other public policy role should be conducted in a transparent and open fashion.
 - 1. Proposed rulemaking by industry associations should be made available for public comment. Comments received from the public should be taken seriously in the formation of final rules governing association members.
 - 2. Written materials -- including regulations, supervisory standards and other guidance, operating rules and procedures, market studies, and other statistical compendia -- should be available to the public at reasonable costs of production and duplication.

III. Insurance

The United States welcomes efforts by the Government of Japan to more fully deregulate and open its insurance sector to international competition. In particular, the United States appreciates recent steps by the Financial Services Agency (FSA), to increase transparency and improve administrative procedures and practices in the insurance sector, including continued deregulation of the insurance product and rate approval processes, further shortening of examination periods, and optimizing personnel and other resources.

The Japanese Government has stated that one of the four main objectives of its central government reform program, which will be instituted in January 2001, is to increase government transparency. Building on this objective in the insurance sector, the United States urges the Japanese Government to take additional measures to achieve this goal.

- A. Transparency in the Regulatory Reform Process. The FSA plans to further deregulate the Japanese insurance market, including the third sector, may involve the development of new or modification of various existing insurance regulations and guidelines. As FSA launches such regulatory reform efforts relating to areas including, but not limited to, direct mutual entry into the third sector, sales of insurance products by banks, and the operation of case agents, the United States urges the FSA to undertake the following measures:

1. Adopt the goal of increasing competition as one of its guiding principles; and
 2. Afford the insurance industry (both foreign and domestic) meaningful opportunities to be informed of, comment on, and exchange views with FSA officials regarding the formulation or modification of such guidelines or regulations, including:
 - a. use of the Public Comment Procedures; and
 - b. allowing foreign and domestic insurance industry representatives membership on FSA-related advisory groups which currently provide recommendations to FSA on proposed regulatory changes.
- B. Postal Insurance (*Kampo*). Consistent with its October 1999 deregulation submission to the Japanese Government, the United States continues to regard expansion of government insurance schemes offered by *Kampo* in a manner that competes with private sector insurance product offerings, to be inconsistent with Japan's goals of deregulation to promote free, fair, and global financial markets. The United States also notes that such schemes fall outside the scope of the Insurance Business Law, and are not subject to oversight by the Financial Services Agency (FSA) or the Japan Fair Trade Commission (JFTC).
1. The United States urges Japan to halt any consideration of the expansion of *Kampo* underwriting activities to new life or non-life product lines.
 2. Building on the provisions of the Third Joint Status Report, should the Ministry of Posts and Telecommunications (MPT) begin the formulation of any new plans to expand or modify the insurance products or riders sold by *Kampo*, the MPT should give early notification of such consideration to all interested parties, including the U.S. Government and foreign insurance providers.
 3. As part of the Japanese Government's administrative reform plans, in 2001 a "Postal Services Agency" (*yusei jigyo cho*) will be formed and in 2003 a "Postal Public Corporation" (*yusei kosha*) will be created. In preparing for the transition from the Postal Services Agency to the Postal Public Corporation, the Japanese Government should afford the insurance industry and other private financial service providers (both foreign and domestic) meaningful opportunities to be informed of, comment on, and exchange views with MPT officials on any MPT- proposed plans, draft legislation and guidelines prior to their promulgation or submission to the Diet. This should include, but not be limited to, full utilization of the Public Comment Procedures.

HOUSING

The Government of the United States and the Government of Japan have worked cooperatively to resolve many outstanding issues related to housing. The United States is encouraged by the measures the Japanese Government has announced, such as approval for 4-story wood-frame buildings. The United States anticipates that these deregulatory changes will lead to many new opportunities for the use of wood-frame building construction and the use of a broad variety of interior products and appliances. The measures already undertaken by Japan, combined with the additional deregulatory measures suggested below, should provide more information and choices to Japanese consumers and lead to better, more affordable housing for Japanese citizens.

The United States has noted in previous submissions that long-term growth of Japan's housing sector is limited by the lack of significant resale and renovation markets and a shortage of quality rental housing. Encouraging growth of a secondary housing market should be a priority for the Japanese Government and the Japanese private sector.

The United States notes that information technology is already being applied to some aspects of the housing sector in Japan, such as providing limited assessment information on local government networks. The United States urges national and local government officials to implement further use of information technology within the housing sector. Faster and broader access to information by consumers will help increase the variety and quality of products available and should make housing more affordable and the sector more environmentally friendly.

The United States believes that the Japanese Government should renew its efforts to reduce excessive regulation and reliance on prescriptive regulations, which impede competition in this sector. Implementation of the following proposals would address these concerns and help Japan achieve the objective of improving the quality, affordability and variety of Japanese housing – without compromising safety.

I. Secondary Housing Market

- A. The United States notes that many Japanese live in housing built before code changes in the 1980's significantly improved the quality of Japanese housing. The legacy of poorer quality homes is that Japan lacks a developed secondary market for housing. Information required by consumers is not easily available publicly and discriminatory financial and tax policies often force consumers to build a new home as the only viable financial choice. A key step to help develop a secondary market is to ensure that consumers have access to as much information as possible. In this regard, the United States suggests that the Japanese Government make the housing sector a model for the Prime Minister's Information Technology Initiative by undertaking the following measures.

1. By April 1, 2001, the Japanese Government should take steps to encourage local governments to make information on property assessments publicly available on an annual basis. This information could be made available via the Internet and should incorporate not simply the assessment value but as much information about the house and property as possible.
 2. By April 1, 2001, the Japanese Government should take steps to encourage local governments to make sale prices for new and existing homes publicly available on a timely basis (i.e. within 90 days of the closing date).
- B. Promoting growth of a vibrant secondary market will provide Japanese consumers with more housing options and will prove less wasteful of resources than the current practice of tearing down existing homes and replacing them with new ones.
1. By April 1, 2001, the Ministry of Construction (MOC) should take steps to promote the environmental benefits of maintaining and renovating good quality existing homes to help ensure their future resale and re-use.
- C. The Japanese Government will ensure that necessary measures are taken to harmonize rules regarding repayment terms and housing related taxes and fees to ensure that maintenance and renovation of existing homes and purchase of existing homes become a serious alternative no less financially attractive to consumers than the building of a new home.
1. By April 1, 2001, the Government Housing Loan Corporation (GHLC) should increase the maximum repayment terms for resale detached housing from 25 to 35 years, harmonizing the time period with that for resale condominiums.
 2. By December 31, 2001, the Government Housing Loan Corporation, in consultation with the Real Estate Transaction Modernization Center, should implement a standard appraisal method that recognizes the importance of maintenance and renovation in determining the value of a new home.
 3. By April 1, 2001, the Government of Japan should initiate the necessary steps to put the registration tax on sales of existing homes on an equitable basis with that of new homes, by reducing the tax from 5 percent to 0.3 percent.

II. Public Comment Procedures

The United States Government welcomes the MOC's use of the Public Comment Procedure regarding the development of cabinet orders, ministerial ordinances, notifications and other relevant

regulations related to housing. However, 30 days or less is insufficient time in which to make technical translations of complex regulatory matters, analyze substantive problems and provide appropriate comment on them.

- A. The United States Government, therefore, urges the MOC to take the necessary steps, by April 1, 2001, to introduce a 60-day comment period.

III. Building Regulations and Standards

- A. The Japanese Government has taken steps to make the Building Standard Law (BSL) performance-based and agreed in previous Joint Status reports to implement performance-based codes.
 - 1. By April 1, 2001, the MOC should initiate a review of the provisions of the BSL related to "special" buildings to ascertain whether they are performance-based.
- B. In July 1999, the Japanese Agricultural Standard (JAS) Law was amended to allow testing organizations overseas to function as JAS-registered grading organizations (RGO) and JAS-registered certification organizations (RCO). The United States Government welcomed this step. The Ministry of Agriculture, Forestry and Fisheries (MAFF), however, has subsequently clarified that a prerequisite for functioning as RGO/RCO is a determination of equivalency, i.e. a determination that the standards system in the applicant country is equivalent to that of Japan.
 - 1. By December 31, 2000 MAFF should issue a positive determination on the equivalency of the U.S. standards system so as to allow U.S. testing organizations to apply to function as foreign JAS-registered grading organizations and/or JAS-registered certification organizations.
- C. The United States Government welcomes MOC's agreement in June 2000, to adopt appropriate ISO testing methods to evaluate the performance of structures and interior finish materials such as noncombustible, quasi-combustible and fire-retardant materials.
 - 1. In light of certain testing procedures that are used in Japan, the United States Government urges MOC to immediately adopt the ISO testing methods in a manner consistent with internationally accepted practices.
- D. Recognizing that proper site placement and design planning can be used to address safety concerns, the MOC should complete a review by December 31, 2001 of the fire-related prescriptive height and area limitations in the Building Standard Law, with the view to eliminating them.

- E. By December 31, 2000, the MOC should render a positive determination on the equivalency of Oriented Strand Board vis-a-vis plywood, based upon the final report provided to MOC in July 2000 by APA -- the Engineered Wood Association.

ENERGY

The Government of the United States welcomes Japan's latest steps in energy deregulation. From its own experience, the United States Government recognizes that energy deregulation is a complex process that can involve many bumps in the road. Nevertheless, the United States urges the Government of Japan to take more aggressive steps to promote a regulatory and competitive environment in both its wholesale and retail energy sectors that would enable Japan to achieve its goals of reducing electricity costs to internationally competitive levels, encouraging innovation and efficiency, and increasing the share of natural gas in Japan's primary energy supply.

With a speedier energy deregulation program in place, Japan stands to improve its long-term economic prospects and ensure the success of its new initiative to achieve an information-technology revolution in five years. Realizing a "Japanese IT society" within this ambitious time frame will depend on Japan's ability to expand the supply of less expensive, more efficiently delivered power. In short, IT growth and energy deregulation go hand-in-hand.

The United States Government urges Japan to remove impediments that discourage market entry, stifle innovation, limit efficiency and keep prices high in its energy sector. While recognizing the importance of Japan's partial liberalization of its electricity market on March 21, 2000, the United States Government believes additional measures are necessary to promote fair, transparent and non-discriminatory access to electricity transmission and distribution lines as well as to gas terminals and pipelines. In order to promote competition in the energy sector and enable Japan to achieve its goals, the United States Government sets forth below proposals urging Japan to fully implement current reforms and promote further liberalization of its energy sector.

I. Regulatory and Competition Policy

- A. Independent Regulatory Authority. The United States Government continues to stress the importance of independent regulatory authorities for the electricity and gas sectors. Regardless of whether these regulatory authorities are in the Ministry of International Trade and Industry (MITI) or external to MITI, they should include a sufficient number of officials expert in the energy sector, and be independent of any provider of energy or energy services and of any direct or indirect influence by the energy industry. To this end, when MITI reorganizes its energy staff into policy and regulatory divisions in January 2001, the new regulatory divisions should:
 1. Be assigned expanded expert staff consistent with the sizable monitoring and enforcement responsibilities required by the revised Gas and Electric Utility Industry Laws;

2. Be given an independently funded budget sufficient to ensure adequate enforcement and monitoring;
 3. Refrain from accepting detailees from any energy or energy service provider and require all of their staff to disclose any financial interest in energy or energy service providers, and recuse themselves from any decision in which they have a financial interest; and
 4. Be given clearly defined regulatory powers and responsibilities.
- B. Rulemaking Process. To ensure that all interested parties have timely, fair and non-discriminatory opportunities to participate in the development of regulations affecting the electricity sector, the Japanese Government should:
1. Continue to utilize the Public Comment Procedure;
 2. Provide at least a 30-day comment period, and to the maximum extent possible, a 60-day comment period;
 3. Make all of the comments available to the public;
 4. Provide an opportunity and sufficient time for the public to submit reply comments; and
 5. Respond to the public comments in the final regulations.
- C. Competition Policy Safeguards.
1. JFTC should publicly clarify that, in order to preserve the ability of new entrants to enter the electricity market, it will actively enforce the Antimonopoly Act (AMA) and the Joint JFTC and MITI Guidelines on Fair Electricity Transactions and the Joint JFTC and MITI Guidelines on Fair Gas Transactions against any exclusionary activities that foreclose access to the Japanese market in a manner that substantially restrains competition or that has the effect of preserving or extending market power.
 2. JFTC should ensure that officials responsible for monitoring the implementation of electricity and gas deregulation and for enforcing the AMA with respect to activities in these industries have sufficient expertise in the respective energy sectors.
 3. JFTC should publicly clarify that, in order to preserve the ability of new entrants to participate in the electricity or gas markets, it will take AMA enforcement action

against any activities by incumbent electricity or gas suppliers to deny essential access to gas pipelines and LNG terminal facilities by such new entrants in a manner that substantially restrains competition or that has the effect of preserving or extending market power.

II. Electricity Sector

Japan's legal and regulatory framework in the electricity sector should include enhanced provisions for open and non-discriminatory access to transmission and distribution grids, more transparent pricing of transmission and distribution services, market incentives for constructing new transmission and distribution lines as demand grows, and greater unbundling of generation, transmission and distribution assets within the electric power industry.

A. Unbundling and Access to Transmission and Distribution Grids. Open and non-discriminatory access to electric transmission facilities for all competing electric power generators is necessary to ensure that Japanese consumers and industry enjoy the lowest possible electricity prices. The continued effective vertical integration of generating assets with transmission and distribution assets within the service areas of Japan's electric utilities creates incentives for integrated utilities to use monopoly facilities such as transmission systems to discriminate against competing market entrants. The recent separation of Japanese utilities' accounts for generation, transmission and distribution, while welcome, is unlikely to erase these incentives. The resulting discrimination hinders the competition that is needed to lower the costs of electricity to Japanese consumers and industry. The United States Government therefore recommends that the Japanese Government:

1. Implement functional unbundling whereby all competing generators, including the generating arms of the major utilities as well as independent generators, have equal access to information on the price and availability of transmission services;
2. Consider operational separation whereby the transmission grid is operated by an independent entity even if ownership remains in the hands of the major utilities;
3. Require or provide financial incentives for the divestiture of generating assets by utilities if functional and operational unbundling are found by the scheduled 2003 review to have been ineffectual in inducing adequate competition, as gauged by the measurements set forth in Section II C;
4. Advance the proposed JFY2002 sale of the Electric Power Development Company (EPDC), set a firm date for the sale, and sell off each of the assets of EPDC separately -- a step that would represent a unique opportunity to encourage

market participation by new entrants, maximize government revenues, and reduce costs to industry and consumers;

5. Create an independently administered power exchange and spot market for electricity transactions that will give buyers and sellers a real-time or day-ahead option for contracting energy transactions -- adjusting laws and regulations as required to ensure that spot transactions can take place electronically;
6. Establish regulations to promote construction of new transmission lines between the service areas of Japan's major utilities, as well as new generation, which would increase the ability of competing generators to bring power to customers throughout the country and would therefore both lower costs and enhance the reliability of service;
7. Gather information on transmission capacity available for use by independent electricity generators and make this information available to the public;
8. Require that technical terms and conditions for interconnection of generation facilities to the grid be clearly specified; and
9. Establish a timetable for extending choice of power suppliers to additional classes of customers.

B. Transparency of Pricing for Electricity Transmission and Distribution. High, opaque transmission tariffs are stifling competition in Japan's electricity market. If potential suppliers have a clearer picture of how tariffs are calculated and how tariffs are likely to change in the future, they can better assess when new generation facilities would be profitable and are more likely to build them in response to the growing electricity needs of industry and consumers. To encourage new entrants into the Japanese electricity market, the United States Government recommends that the Japanese Government:

1. Require that owners of electric transmission and distribution lines adopt a uniform system of accounts and provide a common set of data to government regulators which is open to inspection by the public;
2. Require that transmission and distribution owners provide to the government and the public, at a minimum, the following information:
 - a. The value of each specific asset, and the basis on which the value is calculated (such as original cost, replacement cost, or original cost adjusted for inflation); and

- b. The methods by which tariffs are determined (such as rate of return on rate base, adjustment of previous rates upward for inflation, and/or adjustment of previous rates downward for an assumed efficiency improvement factor).
3. Require utilities to make publicly available their methodologies for calculating backup power charges and provide an opportunity for the public to comment on proposed charges before they are finalized;
4. Require transmission owners to provide day-ahead, hour-ahead, and real-time information on the price and availability of different types of transmission capacity to all market participants at the same time, preferably by electronic means; and
5. Require the utilities to subject the data used to calculate utility transmission charges to an independent audit by a third party.

C. Measuring Progress towards Liberalization. The Japanese Government has scheduled a review of the electricity market liberalization process in 2003. In order to effectively gauge progress toward genuine competition in the electricity sector, it is necessary to establish a basis against which progress can be measured. The United States Government therefore recommends that the Japanese Government:

1. Conduct a comprehensive interim review of the electricity market liberalization process by no later than December, 2001.
2. Establish measurements in early CY2001 so that progress toward creating a competitive environment can be gauged in an objective and systematic way for the proposed interim review in II.C.1. and the review scheduled for 2003. The United States Government recommends that these measurements should include:
 - a. the number of new market entrants by product;
 - b. the percentage of electricity supplied by new market entrants;
 - c. the number of electricity transactions;
 - d. the fraction of each class of consumers (industrial, commercial and residential) which have effective choice of electricity suppliers;
 - e. the percentage of transmission lines with open access within each utility service area; and

- f. the percentage of utilities that have adopted a uniform system of accounts.
3. Make the above measurements public, as well as the results of the reviews mentioned above, so that all market participants, including both electricity suppliers and electricity customers, can understand the progress made and make informed commercial decisions.

III. Natural Gas Sector

Japan buys 60 percent of world LNG and uses 70 percent of its LNG to generate electricity. Thus, the deregulation of the natural gas sector is crucial for the successful deregulation of the electricity sector. A legal and regulatory framework for the natural gas sector should include provisions for open and non-discriminatory access to LNG terminal facilities and gas pipelines, transparent pricing of gas transport services, and incentives for construction of new pipelines and terminal facilities as demand grows.

- A. Unbundling and Access to LNG Terminals and Pipelines. The Japanese Government has agreed to develop a regulatory framework for open and non-discriminatory access to existing and future gas pipelines, which will ensure that Japanese consumers and industry enjoy the lowest possible gas and electricity prices. Access to LNG terminal facilities is often necessary to achieve the same benefits. Monopoly LNG terminal facilities, therefore, should be treated under the same regulatory mechanisms as gas pipelines. The United States Government recommends that Japan:
 1. Establish laws and regulations that would allow open and non-discriminatory access to both new and existing LNG terminals;
 2. Quickly create (even prior to creating a mechanism to enforce open access to existing LNG terminal capacity) the regulatory mechanism for opening access to newly constructed (incremental) terminal capacity as well as the portion of existing terminal capacity which is not under long-term contract;
 3. Encourage effective use of underutilized terminal and pipeline capacity using a capacity release program;
 4. Adopt regulations and incentives to promote construction of new pipelines and LNG capacity, which would increase the availability of gas transport facilities to competing suppliers;

5. Unbundle gas transportation and marketing functions to enhance access to gas pipelines and LNG terminals;
6. Rationalize safety and operational standards for ports where LNG terminals are located and extend the time during which LNG ships can dock;
7. Gather information on gas pipeline and LNG terminal capacity available for use by independent suppliers and make this information available to the public; and
8. Require that technical terms and conditions for use of gas pipelines and LNG terminal facilities be clearly specified.

B. Transparency of Pricing for Gas Transport. Transparent pricing of gas transport services, on long-distance pipelines and in LNG terminals alike, is required to enable competing suppliers to understand the basis upon which prices are calculated by service providers and regulators. This will give competing suppliers a clearer picture of the path that transport tariffs are likely to take over time, so they can better assess when and where gas deliveries would be profitable and are more likely to deliver gas where industry and consumers need it. The United States Government recommends that the Japanese Government:

1. Require that owners of gas pipelines and LNG terminals adopt a uniform system of accounts and provide a common set of data to government regulators which is open to inspection by the public.
2. Require that owners of monopoly LNG terminals and pipelines provide to the government and the public, at a minimum, the following information:
 - a. The value of each specific asset and the basis on which the value is calculated (such as original cost, replacement cost, or original cost adjusted for inflation); and
 - b. The methods by which tariffs are determined (such as rate of return on rate base, adjustment of previous rates upward for inflation, and/or adjustment of previous rates downward for an assumed efficiency improvement factor).
3. Require that data on pipeline access and transmission tariff structures be made available to all market participants by publishing this information on a publicly accessible electronic bulletin board. This information should be published in a timely manner so that market participants can make informed commercial decisions.

C. Measuring Progress towards Liberalization of the Gas Market. The Japanese Government has scheduled a review of the gas market liberalization process in late 2002. In order to effectively gauge progress toward genuine competition in the gas sector, it is necessary to establish a basis against which progress can be measured. The United States Government therefore recommends that the Japanese Government:

1. Conduct a comprehensive interim review of the gas market liberalization process by no later than December, 2001.
2. Establish measurements in early CY2001 so that progress toward creating a competitive environment can be gauged in an objective and systematic way for the proposed interim review in III.C.1. and the review scheduled for late 2002. The United States Government recommends that these measurements should include:
 - a. the number of new market entrants;
 - b. the percentage of gas supplied by new market entrants;
 - c. the number of gas transactions;
 - d. the fraction of each class of consumers (industrial, commercial and residential) which have effective choice of gas suppliers;
 - e. the percentage of pipelines and LNG terminal facilities leased to or owned by new entrants; and
 - f. the percentage of owners of gas pipelines and LNG terminals that have adopted a uniform system of accounts.
3. Make the above measurements public, as well as the results of the reviews mentioned above, so that all market participants can understand the progress made and make informed commercial decisions.

DISTRIBUTION

The ability to move goods quickly and inexpensively from producers to consumers is not only a key measure of economic efficiency, but also of vital importance to economies seeking to benefit from the revolution in information technology. While certain transaction costs associated with the purchase of goods from abroad are decreasing dramatically due to advances in electronic commerce, the physical distribution of foreign-made goods from the port of entry to the end user in Japan remains a heavily regulated and therefore costly and time-consuming process relative to other major countries. These distribution costs and time delays are trade distorting since they affect purchasing decisions and work against the competitiveness of foreign-made products. Efficient distribution systems reduce costs, expand competition and choice, and lower prices.

I. Customs/Import Processing

The Government of the United States recognizes that the Government of Japan has implemented, and plans to implement, positive measures to simplify and automate customs processing. These measures include incorporating a new Simplified Declaration Procedure Act, scheduled to take effect in March 2001, upgrading the Air-NAACS (Nippon Automated Air Cargo Clearance System in JFY 2001, and significant steps toward paperless processing procedures.

- A. In addition to the measures listed above, the Japanese Government is urged to undertake the following measures:
 - 1. Extend the new Simplified Declaration Procedures Act to express carriers;
 - 2. Increase the de minimis value in the Customs Clearance Law from 10,000 yen to 20,000 yen;
 - 3. Use FOB value rather than CIF as the basis for duty calculations;
 - 4. Institute changes in the *hozei* system to minimize the need for cargo to enter a customs area before import permission is granted; and
 - 5. Appoint a lead agency to coordinate responses and to address customs issues as they relate to clearance.

- B. The Japanese Government should also ensure that the NACCS Operating Company (NOC):

1. Makes public its justifications for fee schedules and other changes. In this respect NOC solicit public comment for 60 days before implementing any changes;
2. Publishes all comments received; and
3. Explains why any suggestions were rejected.

II. Large-Scale Retail Stores

Large retail stores enjoy economies of scale, offer greater variety at lower prices, and have a multiplier effect on local employment and income. Restrictions on large stores contribute to low productivity in the distribution sector. In a July 2000 study, *WHY THE JAPANESE ECONOMY IS NOT GROWING: MICRO BARRIERS TO PRODUCTIVITY GROWTH*, the McKinsey Global Institute attributes low productivity in the Japanese retail sector in part to the large number of "extremely unproductive" small retail stores that have been protected through the regulation of large stores.

This low productivity hinders Japan's economic recovery. Implementation of the Large-Scale Retail Store Location Law (*Daiten-Ricchi Ho*) provides Japan with an opportunity to ensure that the number of large retailers grows consistent with the interests of Japanese consumers.

- A. Consistent with its commitments in the Second and Third Joint Status Reports, MITI should take the following steps:
 1. Closely review application of the *Daiten-Ricchi Ho* by local governments, and take appropriate measures to ensure that they apply the Law fairly, reasonably and uniformly; and
 2. Continue to provide information to local governments and openers of large retail stores on the parameters of the authority of local governments under the *Daiten-Ricchi Ho* with regard to the opening of large-scale stores.

III. Promoting Competition in Sectors in Which Dominant Firms Control the Market.

- A. Overly restrictive links between manufacturers and distributors on the wholesale and retail level can thwart competition, diminishing efficiency, consumer choice and environmental benefits. It is important that all ministries and agencies of the Government of Japan with responsibilities for sectors in which dominant firms control the market promote competition in the distribution system.
 1. MITI should work closely with the Japan Fair Trade Commission (JFTC) to ensure that all distributors at the wholesale and retail level in highly oligopolistic sectors are

notified that they cannot maintain agreements among themselves for the purpose of excluding imported or other competitor products. For example, MITI, in conjunction with the JFTC, should monitor fully the Japanese flat glass manufacturers and the glass distribution system to ensure compliance with the AMA and promote competition in this sector.

LEGAL SYSTEM AND INFRASTRUCTURE

As deregulation and restructuring of the Japanese economy continues, the ability of the business community in Japan to rely on the Japanese legal system to facilitate business transactions and resolve disputes will become increasingly important. It is essential that Japan undertake the necessary reforms of its legal system so that it is easily accessible and is able to function expeditiously and efficiently. From the perspective of creating a legal environment in Japan that is conducive to international business and investment and that supports deregulation and structural reform, the United States recommends that the Government of Japan take the measures outlined below.

I. Legal Services

Improving the delivery of international legal and other professional services is essential if Japan is to develop as an international business and financial center. The U.S. Government appreciates the Japanese Government's recognition in the THIRD JOINT STATUS REPORT ON THE U.S.-JAPAN ENHANCED INITIATIVE ON DEREGULATION AND COMPETITION POLICY (THIRD JOINT REPORT) of "the importance of adequate legal services in an international financial center" and the concerns expressed on the adequacy of the Japanese legal services infrastructure to meet international business needs. Based on that recognition, it is important that Japan address the aspects of its legal system that are limiting the ability of Japanese and foreign businesses to obtain in Japan the high quality and fully integrated international legal services that they find in London, Hong Kong, New York and other major financial centers. Accordingly, the United States recommends that the Japanese Government take the following actions:

- A. Permit Partnerships and Other Relationships Between and Among *Gaiben* and *Bengoshi* and Other Legal Professionals. The Japanese Government should eliminate the restrictions on partnership, employment and other cost-sharing relationships between and among Japanese lawyers (*bengoshi*) and foreign legal consultants (*gaikokuho-jimu-bengoshi* or *gaiben*), as well as with other legal professionals, including *benrishi*, *zeirishi*, *shiho shoshi* and *gyosei shoshi*, and to allow complete freedom of association among legal professionals in Japan.
- B. Remove Discriminatory Restrictions on *Gaiben* and Accord Equal Treatment of *Gaiben* and *Bengoshi*. The Japanese Government should remove discriminatory restrictions that apply to *gaiben*, but not to *bengoshi*, including:
 1. Allowing *gaiben* to employ *bengoshi* on the same basis that *bengoshi* are allowed to employ *gaiben*; and

2. Removing the discriminatory requirement, not applicable to *bengoshi*, that a *gaiben* may give advice on so-called “third country” law (the law of a country other than the one which is a *gaiben*'s home jurisdiction) only on the basis of specific written advice from a *bengoshi* or a lawyer admitted to practice in the third country involved. Japan should allow a *gaiben* to offer advice on third country law on the same basis as a *bengoshi*.
- C. Allow Full Credit for Experience in Japan. The Japanese Government should allow a foreign lawyer to count all of the time in Japan spent practicing the law of the lawyer’s home jurisdiction toward meeting the experience required to register as a *gaiben*, not just the one year allowed under current practice.

II. Legal System Reform

The business community is most likely to commit capital and technology to markets with legal systems that are easily accessible and have sufficient and comprehensive legal services and reliable dispute resolution mechanisms. The business community also seeks transparent and understandable judicial procedures that result in predictable, reliable, fair and non-arbitrary judicial decisions. Such procedures, by reducing perceived risks and thereby lowering transaction costs, strengthen the financial attractiveness of proposed transactions and increase the likelihood that businesses will commit resources to a particular market. The United States appreciates the Japanese Government’s recognition in the THIRD JOINT REPORT of the need to reform its judicial system “to meet the needs of Japanese society,” and the steps that Japan is taking to increase the number of *bengoshi*. With respect to the issues of particular concern to the international business community, the United States recommends that the Japanese Government take the following actions:

- A. Increase the Number of Legal Professionals. The Japanese Government should actively consider all possible options that would increase substantially the number of legal professionals in Japan. As a general principle, the number of legal professionals should not be set arbitrarily by regulatory authorities or by professional organizations, but rather should be determined by the demands of the market for legal services. As a starting point, the United States urges Japan to implement a specific and substantial increase in the number of *bengoshi*, such as the goal recommended by the LDP’s Judicial System Study Group in its May 2000 report (reaching the level in France within a specified period of time).
- B. Litigation Process. The Japanese Government should improve the efficiency and speed of civil litigation by, *inter alia*:
1. Expanding the number of judges and judicial staff;

2. Reducing the time between court filing and decision, by, for example, strengthening case management by the courts;
 3. Improving evidence-gathering mechanisms, including providing sanctions for inadequate responses to inquiries pursuant to Civil Procedure Code (CPC) Article 163, narrowing the self-use exception under CPC Article 220, providing for the inspection of facilities by parties where necessary and expanding the duty to produce documents under CPC Article 220 to cover documentary evidence in the possession of the government;
 4. Augmenting the protection of trade secrets during court hearings; and
 5. Creating an express and statutorily-based attorney-client privilege.
- C. Arbitration. The Japanese Government should reform substantially its Arbitration Law to ensure that arbitration procedures in Japan are able to meet modern international business needs.
- D. Judicial Review of Administrative Actions. The Japanese Government should augment judicial oversight over administrative agencies by expanding standing to seek judicial review of agency actions, as well as by expanding the types of agency actions that may be challenged.
- E. Judicial Remedies. The Japanese Government should improve the ability of courts to issue and enforce prompt and effective orders to remedy legal violations and their effects, including by:
1. Expanding the scope of civil lawsuits in which injunctive remedies may be obtained; and
 2. Strengthening the power of courts to design injunctive orders that are likely to be effective.
- F. Judicial System Transparency. The Japanese Government should improve the transparency of judicial proceedings, such as by providing all persons with full, timely and easy access to court decisions and records, while safeguarding trade secrets and other particularly sensitive or private matters.
- G. International Civil Procedure Convergence. The Japanese Government should ensure that its civil litigation system is compatible to the greatest extent possible with foreign court procedures and needs, including by:

1. Clarifying that service by mail will be considered valid service of process under the Hague Convention for the Service of Process and that foreign judgments served in that manner will be considered valid under CPC Article 118; and
2. Facilitating the taking of evidence in Japan for use in foreign litigation and taking steps to join the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.

COMPETITION POLICY & ANTIMONOPOLY LAW

I. Safeguarding JFTC's Independence

The Government of Japan should take formal measures within JFY2000 to preserve the independence of the Japan Fair Trade Commission (JFTC) after it becomes part of the newly created Soumusho (Ministry of General Affairs). Specifically, it should issue a cabinet order or decision, or Soumusho should issue a ministerial ordinance or other internal rule, that fully implements the commitments made by the Japanese Government regarding JFTC independence in the Third Joint Status Report.

II. Strengthening AMA Enforcement

- A. JFTC should make the operation of the surcharge payment system more effective in supporting the investigation and deterrence of collusive agreements among competitors by, for example:
1. Adopting a corporate leniency policy that would exclude firms that meet certain conditions, such as being the first to notify JFTC of an unlawful practice and cooperating fully with JFTC's investigation, from recommendations and/or surcharge payment orders;
 2. Ensuring that, wherever possible, §3 of the Antimonopoly Act (AMA) will be applied to participants in collusive boycotts that curtail the volume of supply and thereby affect the price of goods or services in Japan, so that surcharges will be assessed on such firms; and
 3. Modifying the surcharge rate applicable to small- and medium-sized enterprises (generally only one-half the rate applicable to large firms) to ensure that the surcharge fully disgorges the benefits such firms received from the collusive practices.
- B. In order to strengthen the incentives for firms and individuals to cooperate in its investigations, JFTC should adopt a criminal accusation leniency policy under which JFTC would not file a criminal accusation against firms and individuals that meet certain conditions, such as being the first to notify JFTC of unlawful collusive conduct and cooperating fully in the investigation and prosecution of other participants in such conduct.
- C. JFTC should ensure that rules on unjust low pricing (*futo renbai*) do not discourage legitimate, pro-competitive pricing behavior. JFTC should examine establishing a safe

harbor for firms with less than an appropriate market share. JFTC should also examine taking other necessary measures to ensure that its rules on unjust low pricing are consistent with sound competition policy objectives.

- D. In light of the secret nature of most hard-core antimonopoly violations and the difficulties inherent in obtaining evidence of such violations sufficient to take enforcement action under the AMA, the Japanese Government should seek legislation that would have the effect of extending the period within which JFTC must issue cease and desist orders (currently only 1 year from the termination of the unlawful practices) or surcharge payment orders (currently 3 years from the termination of the practices).

III. Eliminating *Dango*

- A. JFTC and the National Police Agency should, to the extent it does not prejudice law enforcement goals, announce the measures they will take as a result of their consultations to reinforce their respective investigation of *dango* activities that violate the AMA and/or Criminal Code.
- B. The Ministry of Justice (MOJ) and JFTC should examine the adequacy of the Criminal Code, AMA and other laws to prosecute government officials that aid or abet unlawful *dango* activities with a view toward introducing legislation necessary to ensure that government officials are subject to criminal and/or administrative sanctions severe enough to hold them fully accountable for their involvement in such activities and to adequately deter such activities in the future.
- C. In order to ensure that overcharges from *dango* activities are recovered:
 - 1. The Ministry of Home Affairs should make private suits under section 242 of the Local Autonomy Law (*Chiho Jichi Ho*, Law No. 67 of 1947) more effective by submitting legislation that lengthens the prescription period (statute of limitations) and/or clarifies that the prescription period does not start to run until the local government was aware of, or reasonably should have been aware of, the unlawful overcharges, and
 - 2. MOJ should submit legislation to create a private action similar to section 242 of the Local Autonomy Law that would be applicable to overcharges suffered by central government agencies.
- D. The Ministry of Construction and the Ministry of Transport should introduce an administrative anti-*dango* program under which all bidders on public projects will be required to submit written certifications that they have not discussed their bid or exchanged

bidding information with any other bidder. Such a program should include appropriate statutory or administrative sanctions (such as suspension of designation) for untruthful certifications.

IV. Promoting Competition in Regulated Industries

JFTC should play an active role in promoting competition in sectors that continue to be partially or fully regulated. To that end:

- A. The Ministry of Posts and Telecommunications (MPT) and JFTC should establish a joint working group to review ways to promote competition in sectors regulated by MPT (particularly telecommunications, postal insurance and other postal services), including by submitting appropriate legislation to the Diet to amend the relevant basic industry law and by issuing joint guidelines that set out rules on appropriate competition in such sectors. JFTC should similarly establish joint working groups with other regulatory agencies with the goal of identifying and implementing measures necessary to promote competition in sectors regulated by such agencies.
- B. JFTC should publicly clarify that, in order to preserve the ability of new entrants to enter the electricity or gas markets, it will take AMA enforcement action against any activities by incumbent electricity or gas suppliers that deny essential access to LNG terminals or gas pipelines by such new entrants in a manner that substantially restrains trade or that has the effect of preserving or extending market power.

V. Preserving Competition in Stock Acquisitions

- A. In conjunction with Commercial Code reform, JFTC should review the notification system for stock acquisitions and seek an amendment to the AMA that would require pre-notification for stock and other acquisitions currently covered by AMA Article 10 to the same extent as mergers currently subject to pre-notification obligations.
- B. The Japanese Government should increase the number of staff allocated to JFTC's review of mergers and acquisitions (including stock acquisitions) to ensure that JFTC has the resources necessary to investigate these transactions fully and to analyze their competitive effects in an economically sound manner.

VI. Increasing Resources of JFTC

The Japanese Government should increase JFTC's overall staff levels by a substantial amount (at least 40 persons) in JFY 2001.

VII. Promotion of Competition in the Distribution Sector

The U.S. Government welcomes agreement by the JFTC in the Third Joint Status Report to survey and analyze manufacturer/distributor financial and other relationships in the 2000-2001 time-frame as part of its measures to promote an efficient and competitive distribution sector. In this regard, the JFTC should initiate a “highly oligopolistic industry” survey that focuses on the extent and form of financial inter-relationships linking manufacturers and distributors in each of the covered industries to be completed by June 2001. The survey should cover equity ties, provision of loans or other capital sources, and the sharing of employees, facilities and equipment.

TRANSPARENCY AND OTHER GOVERNMENT PRACTICES

Over the past several years, the Government of Japan has taken significant measures to improve its regulatory system. However, additional measures are necessary if Japan is to achieve the level of transparency and accountability recognized as essential by the OECD in its 1999 REVIEW OF REGULATORY REFORM IN JAPAN. The Japanese Government has stated that one of the four main objectives of the central government reform, which will be instituted in January 2001, is to increase government transparency. Consistent with that objective, the United States urges the Japanese Government to take the following measures:

I. Public Comment Procedure

While the Japanese rulemaking process has become more transparent in the 18 months that the Public Comment Procedure has been in effect, it appears to have had only a marginal impact on the substance of new regulations. In most cases, the submission of comments does not appear to have made any appreciable difference in the formulation of final regulations, as they have generally differed little, if at all, from the draft regulations. For these reasons, the United States urges the Japanese Government to take the following measures to improve the use and effectiveness of the Public Comment Procedure.

- A. Extend Public Comment Period. According to the Management and Coordination Agency's (MCA) survey of the use of the Public Comment Procedure during its first year, in nearly 60 percent of the cases in which the Public Comment Procedure was used, ministries and agencies allowed less than one month for the public to submit comments. In most cases, that is far too short for effective use of the Public Comment Procedure. Thus, the Japanese Government should, effective April 1, 2001, require ministries and agencies to provide at least a 30-day comment period, and, to the maximum extent possible, a 60-day comment period.
- B. Expand Solicitation of Public Comments. According to a survey by Japan's National Institute for Research Advancement (NIRA), the Public Comment Procedure has not been fully utilized, in part due to the lack of knowledge of it. NIRA found that while the number of comments submitted increased when the solicitation was published in a newspaper, such publication occurred in only 10-20 percent of the cases. In order to encourage greater use of the Public Comment Procedure, the Japanese Government should strongly encourage ministries and agencies to publish solicitations of public comments relevant in trade publications and the mass media, including English language newspapers in Japan, as well as to make broader use of the Internet.

- C. Make Comments Public. In most cases, ministries and agencies are only providing summaries of the public comments. To enhance the transparency and accountability of the use of the Public Comment Procedure, and to remove the burden of preparing summaries of comments, the Japanese Government should require that all comments be made public within a short period after they are submitted and prior to the formulation of the final regulation.
- D. Incorporate Public Comment Procedure into Law. Because the Public Comment Procedure was adopted as an administrative measure (Cabinet Decision), there is no independent review of its use, and no adverse consequences to ministries or agencies that do not apply it properly. To remedy this serious deficiency, the Japanese Government, by April 1, 2001, should submit legislation to the Diet to:
1. Incorporate the Public Comment Procedure requirements into a law, by amending the Administrative Procedure Law (*Gyosei tetsuzuki ho*), Law No. 88 of 1993, or enacting a new law; and
 2. Authorize the judiciary to hear challenges by the public related to the application and non-application of the Public Comment Procedure by ministries and agencies, if necessary, by amending the Administrative Case Litigation Act (*Gyosei jiken soshō ho*), Law No. 139 of 1962.
- E. Require Advisory Councils to Use the Public Comment Procedure. The United States appreciates that a number of advisory councils have on their own initiative provided an opportunity for the public to comment on their interim reports. The United States strongly encourages greater use of this practice. To provide predictability and to promote the Japanese Government's objective of increasing regulatory transparency, as well as to build on the guidelines relating to advisory councils, the Japanese Government should require, by the end of JFY 2000, all advisory councils (*shingikai*), as well as *kenkyukai*, *kondankai* and *benkyokai*, and their subcommittees and other subsidiary bodies (collectively referred to as "councils"), to use the Public Comment Procedure when they issue interim reports and preliminary recommendations. Councils should provide sufficient time for the public to comment (at least 30 days, and, to the maximum extent possible, 60 days). Also, to the extent possible, councils should provide advance notice of their plans to issue interim reports, such as the date that they plan to issue the interim report.

II. Policy Evaluation and Regulatory Impact Analysis

- A. Policy Evaluation System. The United States commends the Japanese Government for its preparations for a government-wide policy evaluation (*seisaku hyōka*) system, which will be instituted with the reorganization of the central government in January 2001. The new

system, if properly and comprehensively implemented, has the potential of improving the transparency of the central government and strengthening the accountability of ministries and agencies. In instituting that system, the United States urges the Japanese Government to:

1. Expeditiously incorporate the policy evaluation system into a statute; and
2. Ensure that the new Ministry of General Affairs (*Soumusho*) has the necessary authority to ensure compliance with the new system.

B. Regulatory Impact Analysis.

Building on the report of MCA's *Kenkyukai* on introduction of policy evaluation and the draft "Standard Guidelines for Policy Evaluation" (*Seisaku hyoka ni kansuru hyoujunteki gaidorain*), the Japanese Government should establish an advisory council to develop recommendations by the end of JFY 2001 for introduction of a government-wide Regulatory Impact Analysis (RIA) system that would subject regulatory changes with a significant economic impact to analysis and public notice and comments. The advisory council should be directed to propose measures that would:

1. Apply cost/benefit analysis (both quantifiable and non-quantifiable) to proposed regulatory changes that are likely to have a significant economic impact;
2. Use the best available scientific, technical, and economic data when reviewing proposed regulations; and
3. Provide an opportunity for interested parties and the public in general to comment on the cost/benefit analyses, as well as on the reasonableness of the assumptions and methodologies used.

III. Administrative Procedures and Practices

- A. Administrative Procedures and Practices Related to Licenses, Permits and Approvals. U.S. industry, including in the insurance sector, continues to raise concerns with the administrative practices of Japanese ministries and agencies that unnecessarily complicate and burden the process of obtaining licenses, permits and other approvals. These concerns persist despite the Japanese Government's repeated assurances that ministries and agencies are complying with the Administrative Procedure Law, which was intended to address many of these concerns. Building on MCA's plans to publish a report of the measures taken by each government agency in response to its June 1999 "Recommendations Based on the Survey on Securing Fairness and Transparency in Administrative Procedures," MCA should make

its report available to the public and solicit public comments within JFY 2000 as to whether the measures taken by the various government agencies are sufficient.

- B. Administrative Guidance. The Japanese Government should amend the Administrative Procedure Law (APL) to expand its requirements with regard to the issuance of administrative guidance in writing. The amended APL should require ministries and agencies to issue all administrative guidance in writing.

IV. Public Participation in Development of Legislation

Ministries and agencies draft the vast majority of legislation and the Diet generally enacts it with few, if any, amendments. In most cases, there is no opportunity for interested parties, other than those that may be represented on advisory councils or that have special access to ministries and agencies, to have any input into the development of the legislation. Accordingly, the Japanese Government should take appropriate measures to require ministries and agencies, before they submit draft legislation to the Diet, to provide an opportunity for the public to review and comment on the draft legislation, allowing at least 30 days for public comments, and, to the maximum extent possible, 60 days.

V. Self-Regulating Organizations

- A. Transparency and Accountability. The Japanese Government should require industry associations, special public corporations (*tokushu hojin*) and other organizations that are established under the authority of a law and that serve as a self-regulating organization to increase their transparency and accountability. For example, they should be required to use fair and transparent public comment procedures that allow participation by interested persons before adopting or issuing rules. Among the self-regulating organizations that should be subject to such a requirement are:

1. Japanese Federation of Bar Associations (Nichibenren);
2. Investment Trust Management Association;
3. Life Insurance Policyholder Protection Corporation;
4. Non-Life Insurance Policyholder Protection Corporation;
5. Japan Automobile Service Promotion Association;
6. Japan Craft Inspection Organization; and

7. Japan Securities Dealers Association.

- B. 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 industry associations, *tokushu hojin* and other quasi-public organizations, other than by statutory authorization.
- C. Conflicts of Interest. The Japanese Government should take appropriate measures to ensure that there are no conflicts of interest within self-regulating organizations between their regulatory functions and their obligations to their members. Should such conflicts arise, the organization should be obligated to take remedial measures, including transferring such functions to an independent administrative body and ensuring transparent non-discriminatory rulemaking.

COMMERCIAL CODE

The United States commends the Government of Japan for commencing a major initiative to reform its Commercial Code, scheduled to be completed in 2002. The Commercial Code plays a central role in ensuring a positive business climate in Japan for both domestic and foreign firms. Revision of the Commercial Code will have a profound effect on the ability of firms to structure themselves effectively for modern global capital markets and to operate efficiently. If done correctly, revision of the Code should introduce greater flexibility in the organization, management and capital structure of companies, and improve their efficiency and accountability. The revision will also have key implications on the ability of foreign firms to enter and operate in the Japanese market. Implementation of these improvements to the Commercial Code should have a positive effect on revitalizing Japan's economy, and therefore should be adopted with the earliest possible effective dates within Japan's fiscal 2002.

As Japan identifies the areas of the Commercial Code to be revised, the United States urges the Japanese Government to ensure that this Commercial Code reform is sufficiently comprehensive and bold so as to remove the substantial impediments to investment and financial transactions in the current Code and to make corporate management more accountable and efficient. In addition, to ensure that Commercial Code revision takes full account of global trends in corporate governance and transactions and to incorporate greater flexibility now to anticipate future trends, the Japanese Government should provide for broad participation in the revision process by both domestic and foreign interests affected by the revisions. Accordingly, the United States recommends that the Japanese Government ensure that the following items are addressed in the revision:

I. Corporate Capital Structure and Transaction Facilitation

- A. Eliminating many of the current restrictions on a company's capital structure, relying instead on improved corporate disclosure--such as through new accounting standards and the Securities Exchange Law--to address shareholder and market protection concerns. Such current capital structure restrictions include:
 - 1. The 50,000 yen minimum issue price for newly issued shares and its correlative per share net asset value limitation in conducting share splits;
 - 2. Maximum limits of preferred stock, stock warrants and stock options as a percentage of share capital;
 - 3. Limits on warrants and the categories of persons to whom stock options can be issued;

4. Limits on the redemption of shares, the terms of preferred stock, subordinated and participating debt securities and other equity and debt instruments that are commonly accepted in major international securities markets; and
 5. Court valuation procedures for in-kind contributions of capital.
- B. Allowing cross-border share exchanges between companies, in both directions, regardless of nationality.
 - C. Permitting the compulsory tender of shares by minority shareholders after a successful takeover, so that companies can be taken completely private for stock or cash, and such acquisitions can result in 100 percent shareholding.

II. Corporate Governance

- A. Increasing the independence, responsibility and accountability of corporate boards, including by adopting enabling mechanisms and establishing appropriate incentives.
- B. Revising the requirements of approval by full boards of directors to encourage companies whose shares are publicly listed to recognize and authorize a greater role in corporate governance for independent directors and specialist committees of the board. Board committees composed of independent directors could be allowed authority to make decisions on important governance items like compensation, nomination of officers and directors, and audits. Incentives to use such committees could be in the release from other mechanisms that serve the same purpose. For example, a company opting to have an audit committee of independent directors would not need to have statutory auditors (*kansayaku*). This change would be part of a general effort to make corporate management more transparent, accountable and efficient.
- C. Taking measures to ensure that shareholders meetings for public companies are scheduled on dates which are not clearly inconvenient for many shareholders to attend.
- D. Prohibiting companies from including provisions in their articles of incorporation that limit directors to a certain nationality or to employees of the company.
- E. Providing more flexible methods for effecting decisions and resolutions of the board of directors without holding a “physical” meeting, including by remote conferences (such as by telephone or video conference) and unanimous written consent.
- F. Allowing the use of electronic, facsimile and telephonic voting, improving proxy procedures and providing for the timely release of shareholder meeting materials by electronic means

when shareholders have consented to such delivery to encourage shareholder participation in corporate governance.

- G. Increasing the information that publicly listed corporations are required to disclose and make available to shareholders, directors and auditors. Consistent with the OECD Principles of Corporate Governance, at a minimum, corporations should disclose information, the omission or mis-statement of which could influence the economic decisions taken by users of that information.
- H. Reinforcing the obligations of fiduciaries that manage pension funds to exercise reasoned judgement concerning the interests of the trust beneficiaries with regard to voting the shares under their management, rather than simply passively abstaining or uncritically giving proxies to management.

III. Shareholder Derivative Litigation

To ensure the accountability of management to shareholders, the principles on shareholder derivative litigation now in the Commercial Code should be left substantially unchanged, other than for some “fine-tuning” to make them work more fairly. Such fine-tuning could include, for instance, clear codification of the authority of companies to advance expenses and indemnify their directors for liability arising in certain situations, lengthening the time a company has to respond to a shareholder demand to sue, and requiring that a suing shareholder not have known or have had reason to know of the cause to sue at the time he purchased his shares. At the same time, adequate access to corporate documents should be assured to both sides in derivative suits.

IV. Facilitating Corporate Transactions

Revising the Commercial Code so that it flexibly enables and supports market-driven transactions, rather than sets overly proscriptive rules for both governance and transactions by, for example:

- A. Requiring the use of outside statutory auditors (*shagai kansayaku*) for those publicly listed companies that choose to retain the “*kansayaku*” system rather than using an audit committee of independent directors.
- B. Encouraging, rather than requiring, the use of statutory auditors for privately held companies, including wholly owned subsidiaries and privately held joint ventures.
- C. Treating similar corporate transactions in a comparable manner, (unless there is a reason to treat them differently) by, for example, harmonizing the requirement for the preparation of “fairness opinions” for mergers, de-mergers and share exchanges, where it is currently required, and asset sales, where it is not required.

- D. Supplement recent progress in adopting internationally acceptable accounting standards with strict enforcement of the implementation of those standards (through outside audits and proactive government supervision) in order to ensure that a financial statement accurately represents the financial condition of a company. Provide the flexibility in the Commercial Code to allow for the establishment of rules consistent with internationally acceptable accounting standards without necessitating further changes to the Code itself.
- E. Reducing high registration and incorporation fees that apply to companies and assets, and simplify those procedures.
- F. Introducing measures to increase regulatory transparency, including a no action letter system for Commercial Code related issues.

V. Public Input into Commercial Code Revision Process

- A. Given the important issues under consideration in the revision process and potential impact on domestic and foreign firms, the Japanese Government should allow for input by those with experience in other international financial centers to ensure that the provisions in the Commercial Code on corporate governance processes and corporate capital structure correspond with global standards for capital markets and corporate practices.
- B. The Japanese Government should provide interested foreign legal specialists and business representatives meaningful and timely opportunities to participate in the formulation of recommendations by government advisory committees examining revision of the Commercial Code.
- C. The Japanese Government should require the advisory councils that are preparing recommendations on Commercial Code revision to solicit public comments on their interim reports and recommendations.