

**Annual Reform Recommendations from the  
Government of the United States to the Government of Japan under the  
U.S.-Japan Regulatory Reform and Competition Policy Initiative**

**October 23, 2002**

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Now in its second year, the U.S.-Japan the Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) was established by President Bush and Prime Minister Koizumi to promote economic growth.

The United States welcomes Japan's continuing efforts to achieve meaningful economic reform and is encouraged by Prime Minister Koizumi's recent pledge in the Diet to ceaselessly carry out "structural reforms without sanctuaries" and his commitment to "implement bold regulatory reform across sectors." The United States also welcomes Japan's adoption on March 29, 2002 of its revised three-year Regulatory Reform Promotion Program and is following with interest the Government of Japan's plans to establish Special Zones for Structural Reform.

The recommendations included in this submission put an emphasis on reform measures pertaining to key sectors and cross-cutting areas and are designed to facilitate a return to sustainable growth and open markets in Japan. Furthermore, the United States has made a concerted effort to focus on issues that Prime Minister Koizumi and his Administration have identified as important areas for reform, such as telecommunications, information technologies, medical, energy, and competition policy.

The proposals included in the Summary of Recommendations and the Annex are being provided to the Government of Japan to serve as the basis for discussions over the coming year in the High-level Officials Group and the Working Groups established under the Regulatory Reform Initiative. These Groups will in turn develop a second annual report to the President and Prime Minister specifying the progress made under this Initiative, including reform measures to be taken by each Government.

During the first year of this Initiative, private-sector representatives joined the Working Groups to provide valuable expertise, observations, and recommendations on a wide range of issues. The United States looks forward to working with Japan in the coming weeks to identify issues addressed in this Initiative that could benefit from continuing private-sector input.

The Government of the United States is pleased to present these reform recommendations to the Japanese Government and looks forward to receiving Japan's reform proposals to the United States.

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## SUMMARY OF RECOMMENDATIONS

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## TELECOMMUNICATIONS

Japan has made significant progress over the past several years promoting competition in the telecommunications sector through regulatory reform. The benefits of continued reform extend beyond the immediate goals of ensuring non-discriminatory treatment of foreign carriers and expanding opportunities for foreign equipment suppliers. In a networked global economy, the availability of cost-effective telecommunications services affects overall national competitiveness and an economy's ability to respond to global markets and technology trends.

The United States commends Japan for taking significant measures to promote competition in this sector in recent years. The United States also takes note of the recent progress Japan has made in the roll-out of advanced telecommunications technologies, including the deployment of broadband services. Like Japan, the U.S. Government considers broadband an important potential source of economic and social benefits. In furtherance of these goals, the United States urges Japan to consider even more far-reaching reforms that challenge the status quo, facilitating a transition to advanced networks and services, and allowing market forces to overtake obsolete regulations that hinder the development of a competitive environment.

The U.S.-Japan Telecommunications Working Group under this Initiative provides a timely opportunity to exchange views on emerging issues faced by both countries in the telecommunications sector. The United States therefore suggests that the Working Group enhance its dialogue by inviting experts from government and the private sector to provide their perspectives. In addition, the United States recommends that Japan implement the following reforms in CY2003:

### SUMMARY OF RECOMMENDATIONS

- **Deregulate Competitive Carriers:** Focus regulatory obligations on carriers with market power and eliminate or reduce filing and reporting requirements for carriers without market power.
- **Promote Transparent and Independent Regulation:** Take steps to transfer regulatory functions to an independent agency not under ministerial authority, and end MPHPT control over NTT business decisions.
- **Dominant Carrier Regulation and Competition Safeguards:** Reinforce dominant carrier safeguards to prevent abuses by carriers with market power.
- **Wireline Interconnection:** Complete the implementation of cost-oriented, transparent and reasonable interconnection rates that are necessary for a competitive local market and ensure that interconnection will be available to competitors on non-discriminatory terms.
- **Mobile Termination:** Establish a means to determine if rates for termination to the NTT DoCoMo network are set at reasonable, competitive levels and eliminate discrimination in retail rate-setting.
- **Rights of Way:** Continue to improve the rights of way regime through annual reviews of rights of way guidelines in order to promote competitors' installation of network facilities.

## INFORMATION TECHNOLOGIES

Both the United States and Japan recognize that a vibrant and growing IT sector is key to revitalizing other sectors in our respective economies. Japan has taken significant steps towards and continues to make progress in establishing an environment that will promote the use of the Internet and e-commerce, and spur growth in the IT sector. In addition, the United States commends the Japanese Government for recognizing the economic importance of protecting intellectual property, including digital content, as a foundation for bolstering the Japanese economy.

Although Japan's e-commerce market is one of the largest in the world, its tremendous potential for growth remains unfulfilled because the IT sector is fettered by regulatory and other barriers. The Japanese Government has recognized in its "2002 e-Japan Priority Policy Program" that legal and other barriers persist which hinder e-commerce and has identified key policies to reinvigorate Japan's goal of becoming the world's most advanced IT nation by 2005. These priority policies include facilitation of e-commerce, digitization of Government administration and other public services, and ensuring security and reliability of advanced information networks. In addition, as part of Japan's goal to become a "Nation Built on Intellectual Property," the Prime Minister's Strategic Council on Intellectual Property recognized in its "Intellectual Property Policy Outline" that the digital content industry cannot flourish without providing adequate protection that effectively responds to the challenges of the digital age.

The United States welcomes and supports the measures Japan has begun to undertake to achieve these goals, and this year's submission is designed to complement and support these priority policies and objectives. In addition, creation of a thriving IT sector requires a fundamental reorientation of both the business environment and private-sector/government relations that can only be facilitated through regular use of an open and transparent public comment process. A key objective of the IT component of this Initiative is to promote and expand private-sector input and the use of public comment opportunities in the policy-making and regulatory processes.

### SUMMARY OF RECOMMENDATIONS

- **Regulatory and Other Barriers:** Remove existing barriers that impede B-to-B and B-to-C e-commerce; allow non-attorneys to provide mediation and arbitration services for profit; ensure that Japanese Government e-commerce guidelines remain flexible and appropriate for evolving changes in technology and the marketplace; increase private sector input at all stages of the IT policy-making process.
- **IPR Protection:** Extend Japan's terms of copyright protection and strengthen the enforcement system against infringement; provide security for commerce in the digital age through strong anti-circumvention measures; implement an effective Government-wide software asset management system.
- **Promotion of E-Commerce:** Support private sector self-regulatory mechanisms for privacy and Alternative Dispute Resolution; ensure transparency in the implementation of any new privacy laws and network security guidelines; and ensure that laws governing electronic transactions are technology-neutral.
- **IT Procurement Opportunities:** Support fair and open procedures for e-government and e-education procurement by ensuring transparency, efficiency, security, and private sector-led innovation.

## ENERGY

The U.S. Government welcomes the work of the Japanese advisory groups examining liberalization of Japan's electricity and gas sectors. These groups have identified a number of key policy goals and next steps toward achieving a Japanese energy market that promotes transparent and fair competition among all market players. Energy market liberalization will facilitate lowering of electricity costs to internationally competitive levels and reducing costs for consumers and commercial users, which can help Japan's industries gain a greater degree of competitiveness and return the economy to sustainable growth. To achieve a genuinely competitive market, increase efficiency, and improve the environment for investment, the United States urges Japan to expeditiously adopt measures to further liberalize this important sector and ensure fair, transparent and non-discriminatory access to electricity transmission and distribution lines as well as to gas terminals and pipelines.

The reforms the U.S. Government proposes for the Japanese electricity and gas sectors support those proposed by the Japanese Government's Three-Year Plan for Promoting Regulatory Reform. Identifying energy as a key sector for regulatory reform in its April 2002 revision, the Plan recommended expansion of the scope of liberalization of electric power and gas retail sales.

The U.S. Government urges Japan to swiftly to promote further liberalization in the electricity and gas sectors – based on clear policy goals and timetables – as set out in the recommendations below:

### SUMMARY OF RECOMMENDATIONS

- **Independent Regulatory Authority:** Take concrete measures to ensure that the Electricity and Gas Market Divisions of METI are free from undue political and industry influences.
- **Reform Timetable:** Clarify the type of market structure Japan will adopt in the electricity and gas sectors, establish timetables for the regulatory reform process needed to achieve this market structure, and complete all reform initiatives required to launch the selected market design in the gas and electricity sectors by the end of JFY2003.
- **Electricity Access and Transparency:** Promote fair competition by ensuring neutrality and transparency of network and accounting information in electricity transmission and distribution for all market participants.
- **Adequacy of Infrastructure in Electricity and Gas Sectors:** Take concrete steps to ensure that Japan has adequate interconnection and transfer capability to support a competitive national power market, including sufficient networks for transmission as well as gas pipelines and LNG terminals.
- **New Entry of Competitive Electricity Suppliers:** Promote new entry by streamlining siting requirements and developing a concrete plan and schedule for expanded retail choice.
- **Gas Transportation Access and Transparency:** Promote open access to the gas pipeline network and transparency on pricing and availability of information for all market participants.
- **New Entry of Competitive Gas Suppliers:** Expand gas transportation infrastructure and gas market liberalization to guarantee new entry by suppliers of gas, including electric generators.

## MEDICAL DEVICES AND PHARMACEUTICALS

Japan has traditionally utilized a combination of price cuts and co-payment increases to meet the fiscal demands of its healthcare system. Japan is now pursuing, however, a more comprehensive approach to healthcare reform. The U.S. Government welcomes this approach which emphasizes the patient's perspective and the importance of efficiency, R&D, specialization, and innovation. This approach should also consider how different cost structures in various parts of the healthcare system influence each other (such as length of hospital stays) and how faster access to innovative products can result in cost savings.

On the pharmaceutical front, special attention is being given to the viability of the Japanese drug industry. The Ministry of Health, Labor and Welfare, for example, has released a major policy paper on the structure of Japan's pharmaceutical sector and how it can contribute to broader economic growth. The United States views discussion of the proposals raised in this paper as an important opportunity for all stakeholders to address the need for a pricing system that creates the resources and incentives necessary to encourage future innovations.

In addition, the Pharmaceutical Affairs Law, which governs the entire regulatory system for medical devices and pharmaceuticals, is being revised for the first time in more than 40 years. The regulatory bodies that conduct product reviews and regulate clinical trials are also being restructured into one agency that will oversee the regulation of medical devices and pharmaceuticals from development to final market approval. The U.S. Government supports these efforts to develop a regulatory system that embraces the ideas of efficiency, harmonization, and the latest global science. These efforts will also enable Japan's regulatory system to adapt to the new challenges of the bio-genomic age. Medical devices and pharmaceuticals, including blood products, derived in part or in whole from biologic sources (biomedicine) are important new areas that the Reform Initiative will begin addressing.

### SUMMARY OF RECOMMENDATIONS

- **Comprehensive Healthcare Reform:** Establish a Prime Minister's council on comprehensive healthcare reform that would provide meaningful opportunities for all stakeholders, including foreign industry, to present and discuss ideas. Such a body would consider ways to increase the system's overall efficacy to maintain quality care for an aging population while containing overall costs.
- **Pricing Reform:** Ensure that innovative medical devices and pharmaceuticals are introduced into the healthcare system in a timely manner, and that such products receive appropriate evaluations in a transparent and predictable pricing process. This pricing process should also encourage future development and innovation.
- **Regulatory Reform:** Continue to reform the regulatory systems for medical devices and pharmaceuticals to ensure faster, more efficient product approvals that give maximum consideration to common international practices.
- **Bio-Medicine:** Ensure that the pricing process for biological products (medical devices and pharmaceuticals) reflects the investment costs of meeting the regulatory requirements of such products, and that treatment of such products takes place in a nondiscriminatory, science-based manner.
- **Nutritional Supplement Liberalization:** Further deregulate the sale of nutritional supplements.

## FINANCIAL SERVICES

The U.S. Government welcomes the progress Japan has achieved in opening its financial system to foreign and domestic competition, including through the successful implementation of the 1995 U.S.-Japan Measures Regarding Financial Services and the actions Japan has taken to date under its Big Bang financial deregulation initiative. A more efficient and competitive financial sector will play a crucial role in returning Japan to its full growth potential.

### SUMMARY OF RECOMMENDATIONS

- **Defined Contribution Pensions:** Encourage the development and adoption of defined contribution pension plans by increasing contribution limits, by allowing employees to match the contributions of their employers and by allowing plan providers to gain regulatory approval for prototype plans that can be used cost effectively by small- and medium-sized businesses.
- **Investment Trusts:** Encourage greater household and pension fund investment in securities by increasing the safety, flexibility, and understandability of investment trusts and by lowering the costs of providing this key investment vehicle.
- **Self-Regulatory Associations:** Increase the transparency and openness of the operations and decision-making of industry associations that have a self-regulatory, investor protection, or other public policy role.
- **Postal Financial Institutions (*yucho* and *kampo*):** Allow the postal financial institutions to employ the asset management services of investment advisory companies through direct onshore trust arrangements; increase transparency and promote private sector provision of services by subjecting any new financial service activities proposed for the Postal Financial Institutions to full public comment and consideration before their introduction.

## COMPETITION POLICY

An economically sound competition policy, accompanied by vigorous enforcement of the Antimonopoly Act (AMA) against anticompetitive behavior, is one of the keys to Japanese economic recovery. Active promotion and preservation of competition in Japanese markets will create a climate that encourages new entry and innovation, and fosters efficient companies that are competitive domestically and internationally. The foremost challenge to the Japanese Government in this regard is to ensure that the Japan Fair Trade Commission has the tools, resources, government-wide support and administrative independence necessary to enforce the AMA effectively and aggressively. It is also incumbent on the Japanese Government to implement a meaningful program aimed at eliminating the bid rigging system in Japan. An effective anti-*dango* program could reduce public-works expenditures by 30 percent and make resources available for important government programs aimed at reinvigorating the economy. Finally, Japan's regulatory reform efforts need to be firmly grounded in a commitment to create competitive markets and to rely on market principles, rather than government direction, to determine the outcome of the competitive process.

The United States therefore recommends that Japan take the measures set out below:

### SUMMARY OF RECOMMENDATIONS

- **Independence of JFTC:** Introduce legislation to make JFTC an independent agency under the Cabinet Office.
- **JFTC Resources:** Increase the staff and budget of JFTC substantially and steadily and establish an office of trained economists within JFTC to provide economic analysis and expertise.
- **Effectiveness of JFTC Enforcement:** Strengthen JFTC's investigative powers, enhance AMA administrative sanctions, introduce *per se* illegality for cartels, and increase criminal AMA enforcement.
- **Measures to Address Bid Rigging:** Implement the *kansei dango* act, introduce an effective program to collect overcharges from *dango* participants, and assist citizen suits that seek recovery of overcharges incurred by local governments.
- **Competition and Regulatory Reform:** Create competitive markets in the energy sector, prevent anticompetitive exclusionary behavior by dominant telecommunications carriers, ensure procompetitive privatization of public corporations and other public entities, and monitor competitive conditions in structurally non-competitive sectors.

## TRANSPARENCY AND OTHER GOVERNMENT PRACTICES

Japan's economic vitality depends on consumer, investor, and business confidence, which is closely linked to a transparent regulatory system that guarantees fairness, predictability, and accountability. By providing ways for both domestic and foreign firms to gain full access to information and opportunities to participate in the regulatory process, Japan would create a more attractive investment environment and thereby spur growth. In addition, transparency is vital to a wide range of economic reform measures, including the establishment of Special Zones for Structural Reform and the privatization of public corporations.

Shortcomings in Japan's regulatory system are, however, apparent in the implementation of the Public Comment Procedures (PCP). If effectively used, the PCP could serve as a cornerstone for achieving a transparent regulatory system. While the Japanese Government has made some advances toward implementing more effective and fair Procedures since their adoption in 1999, surveys by the Ministry of Public Management, Home Affairs, Posts and Telecommunications have repeatedly shown deficiencies. The Ministry's third Report on the Implementation Status of Japan's Public Comment Procedures for FY2001 reinforces concerns that Japan's rulemaking process remains opaque. Results of that survey show that incorporation of comments into final regulations continues to be infrequent and largely non-substantive. According to the survey, the total number of public comment periods consisting of at least 30 days still comprises less than half of the total number of cases. Further, the percentage of cases in which government agencies incorporated comments into final regulations actually declined in 2001. The United States therefore recommends that the Japanese Government undertake the following improvements in its regulatory system to support Japan's ongoing structural reform efforts and afford all participants adequate, effective and equal access to government information and the policymaking process.

### SUMMARY OF RECOMMENDATIONS

- **Public Comment Procedures (PCP):** Improve the effectiveness of this potentially potent regulatory mechanism by establishing a centralized system that would allow parties to find solicitations of public comments in one location, requiring a minimum 30-day comment period, and strengthening the PCP from being mere guidelines to being a law.
- **Special Zones for Structural Reform:** Ensure that establishment of these zones is done in a transparent, non-discriminatory manner, with a focus being placed on encouraging market entry and an understanding that successful measures used in the zones should be applied on a national basis as expeditiously as possible.
- **Public Input into the Development of Legislation:** Take steps to facilitate public input into draft legislation while it is being developed by the Government before it is submitted to the Diet.
- **Privatization of Public Corporations:** Ensure that the process to restructure and privatize public corporations is transparent and that the private sector has opportunities to provide input.
- **Postal Financial Institutions:** Ensure that the transfer of postal services to a public corporation is undertaken in a transparent manner, curb expansion of product offerings of postal financial institutions, and subject the postal financial institutions to the same standards as their private sector counterparts.

## LEGAL SERVICES AND JUDICIAL SYSTEM REFORM

The creation of a legal environment in Japan that supports regulatory and structural reform and that meets the needs of international business is a critical element of a successful strategy for economic recovery and restructuring. The Japanese legal system must be able to respond to the market's need for the efficient provision of international legal services, and provide a sound and effective foundation for the conduct of business transactions in an increasingly deregulated environment.

The United States recognizes the important work Japan is doing in the area of judicial system reform, and urges that it be continued. One area that needs immediate and decisive reform, however, is the problem of outmoded restrictions on the delivery of international legal services in Japan. The current legal regime imposes needless and unworkable restrictions on partnership and employment relationships between Japanese lawyers (*bengoshi*) and foreign lawyers (*gaiben*) and on the ability of foreign lawyers to practice in an effective manner – creating an inhospitable environment for the provision of integrated international legal services in Japan. This has had a detrimental impact on consumers of legal services in Japan who are unable to obtain necessary international legal expertise and advice in an efficient and timely manner. For these reasons, the United States recommends that Japan take the following measures:

### SUMMARY OF RECOMMENDATIONS

- **Freedom of Association:** Eliminate all prohibitions against freedom of association between Japanese and foreign lawyers – including permitting partnerships between Japanese lawyers and foreign lawyers, as well as with their law firms – and allow foreign lawyers and their law firms to employ Japanese lawyers.
- **Professional Corporations and Limited Liability Entities:** Allow foreign lawyers and law firms to choose freely the form of business used in establishing their offices in Japan, including recognizing limited liability partnerships (LLPs) and limited liability corporations (LLCs) of foreign law firms; permit foreign lawyers to form professional corporations just as *bengoshi* already can do; and allow foreign lawyers and their law firms to establish branch offices throughout Japan on an equal footing with Japanese professional corporations.
- **Eliminate Needless Restrictions on Foreign Lawyers:** Count all time that foreign lawyers spend practicing in Japan towards the experience requirement to qualify as a *gaiben*; allow *gaiben* to provide advice on the law of third countries on the same basis as Japanese lawyers; and reduce documentary requirements and the time required for processing applications to qualify as a *gaiben*.
- **Transparency and Fairness of Bar Association Proceedings:** Ensure that *Nichibenren* and the mandatory local bar associations provide *gaiben* with effective opportunities to participate in the development and enforcement of rules affecting them.
- **Legal Reform:** Introduce legislation that will improve the judicial system by increasing the speed and efficiency of civil litigation and ensuring effective judicial oversight of administrative agencies.

## COMMERCIAL LAW

The United States commends Japan for its reform of the Commercial Code, which should introduce needed flexibility into the organization, management and capital structure of Japanese companies. Additional measures, however, are needed to facilitate merger and acquisition activities by both foreign and domestic firms, which will contribute to corporate restructuring in Japan and bring crucial technologies, know-how, and employment to Japan's economy. The Japanese economy will also benefit from additional measures to improve corporate governance. Good corporate governance will improve the performance of Japanese companies by ensuring that management strives to maximize shareholder value through increased productivity and economically sound business decisions.

For these reasons, the United States encourages Japan to build on the actions it has already taken to reform the Commercial Code by taking the following measures:

### SUMMARY OF RECOMMENDATIONS

- **Revise Industry Revitalization Law to Facilitate M&As:** Take concrete steps towards introducing modern merger techniques to facilitate merger and acquisition activities in Japan through amendments to the Industry Revitalization Law that would enable firms seeking to restructure under the law to use triangular merger and cash merger approaches.
- **Flexibility in Merger Procedures:** Publish the agenda and time schedule of the Ministry of Justices' study on introducing triangular mergers, cash mergers and short form (squeeze out) mergers into the Commercial Code, with the goal of introducing legislation in FY2004.
- **Increase Information Available to Shareholders for Proxy Voting:** Make publicly available on the Internet all securities law reports and filings by publicly traded companies; provide additional time for shareholders to review proxy materials before shareholders meetings; and require disclosure of key information on the audit, competition and nominating committees of companies that adopt them.
- **Proxy Voting by Pension Funds:** Require pension fund managers to vote proxies for the benefit of fund beneficiaries, to disclose their voting policies, and to maintain records of their actual proxy votes.

## DISTRIBUTION

Japan's Three-Year Program for Promoting Regulatory Reform states that “the distribution sector functions as a nexus connecting producers and consumers, and plays a major role in...improving the quality of life of the citizenry.” The U.S. Government applauds the Three-Year Plan’s goal to “advance regulatory reform of the distribution sector, including the abolition of regulations that impede free corporate activities, to contribute to improving consumer convenience and expanding consumer choice, and to facilitate upgrading and improving the efficiency of the distribution sector as well as the manifestation of ingenuity by distribution sector enterprises.”

The ability to move goods quickly and inexpensively from producers to consumers via air cargo is a key measure of economic efficiency. In addition, a robust air cargo industry is essential for the proper functioning of “just-in-time” supply systems for both retailers and manufacturers. The air cargo industry has seen exponential growth in recent years and is now an essential tool for the conduct of international business and for the timely distribution of goods and information. The United States notes the measures the Japanese Government have taken to expedite customs clearance of air cargoes. More needs to be done, however, in order to take full advantage of the economic benefits provided by the air cargo industry. In addition to further modernizing customs clearance procedures, the United States urges Japan to rationalize the landing fees charged at its international airports.

### SUMMARY OF RECOMMENDATIONS

- **Airport Landing Fee Reform:** Formulate the level of landing fees in an open and transparent manner, and based on the actual cost of providing services.
- **Expand U-clearance:** Enable full pre-approval clearance (U-clearance) regardless of carrier used or if transiting multiple bonded warehouses (OLT).
- **De Minimis:** Raise the *de minimis* value in the Customs Clearance Law from 10,000 yen to 30,000 yen.
- **Customs Clearance Availability:** Provide customs clearance availability 24 hours per day and 365 days per year and apply overtime charges only for after hours processing.
- **Expand Simplified Declaration Procedures:** Allow air carriers or authorized cargo agents to serve as importers of record.
- **Pre-clearance Declaration for Air Cargo:** Allow the processing of pre-clearance declarations for air cargo prior to flight arrival.

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## ANNEX

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## TELECOMMUNICATIONS

**I. Eliminating Unnecessary Rules, Strengthening Regulatory Independence, and Promoting Greater Transparency.** In 2002, the Japanese Government took a bold step and called for a fundamental revision of the regulatory structure for telecommunications in Japan. Japan's Information and Communications Council recognized the importance of reducing burdensome regulations where possible for telecommunications service providers and overhauling outdated aspects of the regulatory regime such as the Type I/II classification. Elimination of unnecessary regulation will reduce the cost of doing business and allow carriers to provide more quickly the services that customers want. The United States recommends that the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) seek Diet approval in CY2003 of amendments to the Telecommunications Business Law that links the regulatory requirements on telecommunications service providers to the degree of market power they hold, thereby deregulating competitive carriers and maintaining sound dominant carrier regulation. Specifically:

A. Deregulating Competitive Carriers. The U.S. recommends that MPHPT seek Diet approval in CY2003 for amendments to the Telecommunications Business Law that would:

1. Grant MPHPT explicit authority to forbear from applying legacy regulations where competition in a market or market segment permits user interests to be achieved without government intervention, and where risks of competitive abuses are minimal.
2. Eliminate the Type I/II carrier distinction and classify carriers on a technology-neutral system, distinguishing carriers by whether or not they have market power, based on transparent criteria. Ensure that the deregulated status currently accorded to Type II carriers is incorporated into provisions affecting non-dominant carriers.
3. For non-dominant carriers in competitive markets, provide authority to:
  - a. Institute class licenses, which do not require any application by telecommunications service providers;
  - b. Replace tariff filing requirements with Internet-based public notifications, eliminating *ex-ante* MPHPT procedures;
  - c. Eliminate all filing and notification requirements for contract-based services;
  - d. For interconnection, entrustment, and other business arrangements between competitive carriers, eliminate all filing and notification requirements;

- e. For initial licensing requirements, eliminate requirements to provide detailed cost justifications, financial assumptions, and network planning information beyond the general scope of services and description of network;
- f. For network expansion, eliminate approval processes, and limit any notification requirements to brief general descriptions; and
- g. Permit carriers to acquire and use wavelength-based IRU's (indefeasible rights of use) for the provision of services.

B. Promoting Transparency and Strengthening Regulatory Independence. The United States observes that a number of cases have been brought to the newly established Telecommunications Business Dispute Resolution Commission. While the Commission has the capacity to challenge MPHPT regulations and decisions, its function is limited, particularly at the sensitive stage of early policy development. The United States recommends that Japan revisit the question of an independent regulator for the telecommunications sector to shield regulatory decision making from political influence and undue influence of the companies it regulates. The United States recommends that the Japanese Government take particular note of suggestions by Keidanren and other voices within Japan to:

1. Consider removing regulatory functions from the purview of a ministerial agency and move them to a fully independent organization;
2. Eliminate any requirement that the Japanese Government own a specified amount of NTT shares;
3. Eliminate ministerial interference in management operations of NTT, including business plans and personnel decisions;
4. Establish meaningful sanction authority (imposition of fines, payments of damages, license restrictions) to punish anti-competitive behavior;
5. In the area of equipment standards, work with telecommunications industry organizations which have assumed quasi-regulatory functions to ensure that those organizations adhere to the standards of transparency and non-discrimination – including in access to information about Telecommunications Technology Committee (TTC) processes and ability to comment on TTC policy proposal – that MPHPT follows in its industry study groups; and

6. As interim steps:
  - a. Consider measures to strengthening the operation and effectiveness of Japan's Dispute Resolution Commission, including steps to maximize transparency in dispute settlement actions;
  - b. Draft laws and ordinances in a manner that clearly explains the application of provisions, so as to minimize the need for extensive ministerial consultation; and
  - c. Refrain from applying public telecommunications rules to value-added suppliers, including Internet access and transport providers.

**II. Network Access and Promotion of Competition.** Competitors' access to bottleneck facilities is essential to promote both facilities-based and service-based competition, key Japanese Government goals. Relevant issues include:

- A. Dominant Carrier Regulation and Competition Safeguards. The United States recommends that MPHPT ensure that a revised Telecommunications Business Law retain obligations specific to carriers with a dominant position in Japan's market and give the Ministry the authority to enforce these obligations. In particular, the United States recommends that MPHPT:
  1. Ensure in law and/or regulation non-discriminatory cost-based access to poles, ducts, conduits, and rights of way and provide transparent pricing methodology for such access;
  2. Establish methods for evaluating pricing abuses by dominant suppliers (e.g. imputation tests) for voice as well as data services;
  3. Make the entry of NTT East and West into long-distance service conditional on broader access to their Operation Support Systems (OSS);
  4. Institute transparent means for evaluating whether leased lines are offered at reasonable, competitive rates;
  5. Consider rules (e.g. separate affiliate transaction rules) to ensure that a dominant supplier does not use revenues from a regulated service to subsidize a non-regulated service; and
  6. Develop competition-related performance metrics, including reporting requirements, and financial penalties for missing metrics. Such metrics should ensure that a dominant carrier treats competitors no less favorably than it treats itself or its affiliates in matters such as provisioning, quality of service, and repair and maintenance of all network services and facilities needed by competitors.

- B. Wireline Interconnection. With the introduction in FY2000 of a long-run incremental costing (LRIC) methodology to calculate interconnection costs, Japan has taken an important step towards instituting greater accountability in the setting of interconnection rates and ensuring that competing carriers have access to the NTT East and West networks at cost-oriented, transparent, and reasonable rates. In continuing the reform of NTT's interconnection regime, the United States recommends that Japan:
1. In the spirit of its 2000 pledge to review interconnection rates and structure, remove non-traffic sensitive costs from metered interconnection rates, starting in FY2003;
  2. To permit an objective evaluation of NTT East's and West's ability to absorb non-traffic sensitive costs out of existing monthly rates, require NTT East and West to document, in a transparent manner:
    - a. Precisely which costs are currently recovered from monthly subscriber line charges;
    - b. How such costs are identified and allocated between different services (e.g. ISDN, DSL, leased lines etc.); and
    - c. The assumptions behind such cost recovery, including *inter alia* cost recovery already achieved through initial subscriber line charges, depreciation rates used, and allowable profit margins.
  3. Introduce an open, impartial, and objective process for use of traffic data for the LRIC model;
  4. If traffic data period chosen diverges from the period corresponding to other aspects of the model, provide an opportunity to change other inputs as well, to reflect latest technology, equipment prices, and other costs;
  5. Consider differentiating interconnection rates between regional carriers (through slower reductions for a higher-cost company, but not rate increases), taking into account dangers of (and methods to prevent) anti-competitive price squeezes;
  6. If a long-term transition to alternate costing methodologies is to be considered, ensure competitors' continued participation in the process, and continued accountability and transparency both of NTT costs and MPHPT decisions used as a basis for setting rates; and
  7. Consider transitioning to a bill-and-keep cost-recovery mechanism for a range of network access functions.

- C. Mobile Termination Rates. The United States recommends that Japan:
1. In accordance with Japan's Telecommunications Business Law and its 2002 commitment to ensure competitive interconnection rates for dominant wireless networks, institute an objective and transparent means for evaluating whether wireless termination rates are set at reasonable, competitive levels; and
  2. For wireline carriers seeking to interconnect with mobile operators, ensure that the current practice of permitting discriminatory treatment in the setting of retail rates is eliminated, consistent with Japan's WTO obligations.
- D. Non-Discrimination in Service Quality. For facilities where unbundling is required, the United States recommends that the Japanese Government require NTT East and West to include among their interconnection terms and conditions a service level agreements (SLA) similar to those offered to retail customers, specifying the period within which NTT East and West must respond to a disruption or deterioration of service.
- E. Multi-Party Interconnection. The United States recommends that the Japanese Government require NTT to permit interconnection for traffic destined to a third party terminating carrier regardless of whether interconnection agreements between originating and terminating carriers have been concluded.
- F. Expanding Menu of Basic Service Interconnection. The United States urges the Japanese Government require NTT regional companies to expand the list of functions available on an interconnection basis to include all services currently available to NTT customers, consistent with Japan's WTO Reference Paper commitments. In particular, require NTT East and West to provide emergency services (110) to competitors at cost-oriented, tariffed rates.
- G. Rights of Way. The United States urges Japan to continue to improve the rights of way regime through annual reviews of rights of way guidelines. In particular, the United States recommends that Japan:
1. Extend the interconnection obligations that MPHPT 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; and
  2. Ensure that lessors adhere to fair standards for burden-sharing associated with facility modification.

**III. Measures to Promote Advanced Technologies and Services.** The United States and Japan share a common policy goal to expand the adoption of the Internet and information technology in order to stimulate growth, increase productivity and raise the quality of life. The U.S.-Japan Telecommunications Working Group under this initiative provides a timely opportunity to exchange views on the experience of both countries, identify market-based approaches which contribute to expansion and use advanced telecommunications technologies, and facilitate the mutual understanding of regulatory processes in both countries. The United States proposes that, where possible, the Working Group enhance its dialogue by inviting experts from government and the private sector as guest speakers to share their views.

## INFORMATION TECHNOLOGIES

- I. Removing Regulatory and Non-Regulatory Barriers.** Japan continues to make progress in fostering an environment that will promote the use of the Internet and the growth of e-commerce. The Japanese Government recognizes that legal and other barriers remain which hinder e-commerce and has identified the “enhancement of e-commerce” and the “enhancement of consumer protection” as key priorities in the 2002 e-Japan Priority Policy Program. In line with the goals of these priorities, the United States urges the Japanese Government to:
- A. Remove remaining barriers in existing laws and regulations that hinder e-commerce, such as requirements for face-to-face or paper-based transactions and other hindrances to business-to-business (B-to-B) and business-to-consumer (B-to-C) e-commerce; and amend laws and regulations as necessary to allow electronic notifications and transactions in sectors in which they are currently barred.
  - B. Establish a flexible Alternative Dispute Resolution (ADR) system for e-commerce that would allow persons (including non-attorneys) to provide mediation and arbitration services for profit.
  - C. Ensure that new laws, ordinances, and guidelines enacted to regulate legitimate online businesses and e-commerce follow the U.S.-Japan mutually recognized principle of private sector self-regulation, and do not over-regulate or hinder e-commerce.
  - D. Ensure that e-commerce guidelines remain flexible and appropriate for evolving changes in technology and the marketplace by providing ongoing opportunities for review and comment by interested parties and requiring that all new guidelines and revisions are subject to the Public Comment Procedure.
  - E. Implement measures to increase private sector input at all stages of the policy-making process, from conceptualization to implementation, including:
    - 1. Utilizing information technology to make public/private-sector dialogue interactive and transparent;
    - 2. Ensuring meaningful public comment periods that provide a minimum of 30 days, and that comments received are seriously considered and reflected in the final measures and actions that are implemented; and
    - 3. Increasing the number and diversity of private sector members of the IT Strategic Headquarters.

- II. Strengthening the Protection of Intellectual Property Rights.** The United States commends the Japanese Government for raising awareness of key intellectual property issues that need to be addressed in the “Intellectual Property Policy Outline” issued by the Prime Minister’s Strategic Council on Intellectual Property on July 3, 2002. In line with the Strategic Council’s recognition of the economic and cultural importance of intellectual property and its objectives to promote the creation and strengthen the protection of intellectual property, the United States urges the Japanese Government to adopt the following recommendations to address the challenges of the digital age:
- A. Copyright Term Extension. Extend Japan’s terms of copyright protection in alignment with the current global trend toward extending terms to life of the author plus seventy years for works generally, and to 95 years from publication for works for which the term is not based on a human life.
  - B. Statutory Damages. Strengthen the enforcement system against intellectual property infringement by adopting a statutory damage system that will act as a deterrent against infringing activities, ensure that right holders are fairly compensated for the losses suffered by infringement, and free judicial resources from the costly and difficult burden of having to establish and calculate actual damages.
  - C. Software Asset Management. Affirm that Japan’s current system for management of software assets is effective in ensuring that software procured by the Japanese Government is appropriately licensed and legitimately used.
  - D. Temporary Copy Protection. The Japanese Government took a significant step forward by recognizing that “temporary storage” implicates the reproduction right. However, this recognition of temporary copies has not been widely disseminated and the scope of protection remains vague. Given the importance of this new interpretation, the United States urges Japan to provide certainty and clear guidance to right holders by issuing an official statement on its interpretation that clarifies the scope of protection for temporary copies.
  - E. Internet Service Provider Liability Rules. Monitor compliance with the implementing guidelines for ISP liability rules and their effectiveness for ensuring that infringing materials are taken down quickly and adequate remedies are provided for any injuries suffered. The United States also urges the Japanese Government to support any revisions of the guidelines and/or the law for ISP Liability Rules that may be necessary to ensure an effective notice and take down system and the appropriate balance of the rights and interests of all parties.
  - F. Technological Protection Measures. Clarify the scope of anti-circumvention rules to provide a sufficient level of security for digital content.

- G. Intellectual Property Policies. Ensure that any Cabinet orders, ministerial ordinances, notifications, guidelines or other measures prepared for the purpose of implementing the Basic Measures in the “Proposed Intellectual Property Basic Law,” the policy goals of the “Intellectual Property Policy Outline,” and any related subsequent measures and goals are subject to the Public Comment Procedures; that a minimum period of 30 days is provided for comments, and that comments received are seriously considered and reflected in the final measures and actions that are implemented. In addition, ensure that the implementation of the “Intellectual Property Basic Law” measures and policy goals are in compliance with international obligations, standards, and norms.

**III. Promoting and Facilitating Public and Private Sector Use of E-Commerce.** The evolution of the Internet as a way to conduct commerce has highlighted the borderless nature of the global economy. To promote confidence in the online environment, governments continue to modify or implement new legal frameworks, where appropriate, for issues such as protection of personal data and security of transactions. In some cases, governments are looking to the private sector to provide the best solutions. The United States urges the Japanese Government to play a positive but minimal role in promoting the growth of electronic commerce, with emphasis on private sector self-regulatory mechanisms and technology-neutral solutions driven by innovation and market forces.

- A. Privacy. Recognizing that the Diet will consider legislation on privacy, the United States urges the Japanese Government to utilize the Public Comment Procedures, providing a minimum 30-day comment period to the maximum extent possible, in developing any implementing ordinances and other measures required by the new law. In addition, the United States proposes that Japan take steps to support a self-regulatory framework for privacy and encourage the private sector’s development of authentication systems which do not unduly intrude on individuals’ personal privacy.
- B. Promote ADR. The 2002 e-Japan Priority Policy Program recognizes the need to enhance consumer protection through establishment of an Alternative Dispute Resolution (ADR) framework for B-to-C e-commerce. The United States recommends that the Japanese Government establish an ADR Framework that promotes private-sector led ADR mechanisms to resolve both B-to-C and also B-to-B e-commerce disputes, which enhance protection for small- and medium-size enterprises wishing to engage in e-commerce.
- C. Electronic Signatures. To ensure that the technology-neutral approach of Japan’s Law Concerning Electronic Signatures and Certification is apparent in the law’s implementing regulations as well as in future laws, the United States recommends that the Japanese Government:
1. Affirm that electronic records, with or without electronic signatures attached, may be submitted as proof in court, and such records will not be denied legal effect merely because they are in electronic form;

2. Ensure that the revisions to the law's implementing regulations, expected in fall 2002, reflect its technology neutrality; and
3. Emphasize in the proposed "Law Concerning Digital Signature Administration by Local Governments" and its implementation that local governments should utilize all authentication technologies appropriate for the transactions, including digital signatures/Public Key Infrastructure.

D. Network Security. The United States welcomes Japan's efforts to ensure the security and reliability of advanced computer and communications networks, including those used by government entities and private enterprises. The United States understands that the Japanese Government plans to devise guidelines for the inspection of computer systems, as well as introduce a registration system for network security inspectors. The United States urges Japan to:

1. Develop the guidelines in a transparent manner, ensuring that foreign and domestic interested parties have the opportunity to review and comment on the draft guidelines.
2. Confirm that inspections will not be mandatory for all private-sector firms and work in conjunction with the private sector to develop and disseminate best practices for network security.
3. Ensure that a registration system for network security inspectors is implemented in a transparent and consistent manner and allows for registration by both domestic and foreign network security inspection service providers.

**IV. Expanding Procurement Opportunities for IT-related Goods and Services.** Japan's 2002 e-Japan Priority Policy Program strives to digitize administrative procedures at all levels of government, building the foundation of electronic government online services. As a result, public institutions will dramatically increase their purchases of hardware, software, and network infrastructure. The Japanese Government can play an important role in promoting the principles of open competition, transparency, and private sector-led innovation in IT-related procurement.

A. IT Procurement Rules. As the Japanese Government adopts new procurement policies for information systems, the United States recommends that Japan take steps to ensure that the new rules are:

1. Implemented in a transparent and consistent manner throughout all ministries;

2. Effective in facilitating fair and open procurement procedures; and,
  3. Adopted by local and prefectural governments as they continue to develop e-government systems.
- B. Online Bidding. As the Japanese Government prepares to launch online bidding for non-public works by the end of FY2003, the United States urges the Japanese Government to ensure that the online procurement systems:
1. Promote fair and open tendering procedures; and
  2. Support the concepts of transparency, efficiency, security, and private sector leadership, as recognized in the “Advancing E-Government” statement under the US-Japan E-Initiatives.
- C. E-Education. Recognizing that the Japanese Government – through the 2002 e-Japan Priority Policy Program – aims to improve IT literacy and utilization of PC-based Internet in public schools, the United States proposes that the two Governments plan to cooperate in 2003 on an event that promotes private sector technological solutions for e-education objectives of local school districts.

## ENERGY

- I. Independent Regulatory Authority.** The U.S. Government has consistently stressed the importance of the independence of the regulatory authorities for the electricity and gas sectors. The United States welcomed the establishment in 2001 of the Electricity Market Division and the Gas Market Division within the Ministry of Economy, Trade and Industry (METI). If Japan is to attract new investment in new infrastructure, however, these Divisions must be – and must be seen to be – free from undue political and industry influences. To this end, the United States recommends that the Japanese Government:
- A. Continue reviewing the adequacy of expert staffing assigned to the Electricity Market Division and the Gas Market Division to ensure that staffing is consistent with the sizable monitoring and enforcement responsibilities required by the revised Gas and Electric Utility Industry Laws;
  - B. Provide these Divisions with an independently funded budget sufficient to ensure adequate enforcement and monitoring;
  - C. Refrain from accepting detailees from any energy or energy service provider and require 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
  - D. Clearly define the scope and division of regulatory powers and responsibilities between the Electricity Market and Gas Market Divisions on the one hand, and the policy making divisions within METI on the other.
- II. Reform Process – Setting Policy Goals.** To promote investment that will foster a stable energy market and infrastructure, as well as new entry, the U.S. Government recommends that the Japanese Government take the following measures:
- A. Expeditiously clarify and define the type of market structure that Japan will adopt in the electricity and gas sectors.
  - B. Establish timetables for the energy sector regulatory reform process needed to achieve the market structure it has defined.
  - C. Complete all necessary reform initiatives in order to launch the selected market design in the gas and electricity sectors by the end of JFY2003. The U.S. Government also urges the Japanese Government to provide opportunities for public comment throughout the regulatory reform process in this sector.

**III. Electricity Sector.** The Electricity Industry Committee has articulated that Japan needs a clearly delineated electricity sector reform policy that provides a stable and fair electricity supply system. To achieve this goal, Japan must develop and implement measures that will provide the access and transparency necessary to enable market participants and potential entrants to make sound business and investment decisions. Such measures include development of a system that will provide transparent prices for electricity sold in wholesale markets, accurate and timely information to all market participants regarding the availability and prices of transmission services, strengthened provisions for non-discriminatory access to transmission and distribution services, assurance of adequate interconnection between electricity service areas to support efficient use of electricity generation as well as Japan's goal of a competitive national power exchange, and elimination of legal and regulatory barriers to entry by new market participants.

A. Access and Transparency. The Electricity Industry Committee has articulated the need to ensure that Japan's electricity network serves as a common infrastructure for power providers and enables transparent and fair competition among all market players. The United States welcomes the Committee's examination of the neutrality and transparency of Japan's transmission and distribution systems. To promote neutrality and transparency, the U.S. Government recommends that METI take important next steps toward creating the framework for a competitive electricity market, including:

1. Develop and implement a system to provide timely and accurate information about available transmission capacity to all market participants (similar to OASIS).
2. Implement operational unbundling of generation and retail services from transmission, distribution, and other activities to ensure transparent and unbiased calculation of available transmission capacity, and to ensure the provision of nondiscriminatory transmission and distribution services to all market participants. (The U.S. Government's view is that structural or operational unbundling are the only effective means of achieving these goals. If the Japanese Government elects not to implement even operational unbundling, the U.S. Government recommends that METI clarify how the alternative means it selects is as effective.)
3. In keeping with the Electricity Industry Committee's stated objective, establish a system to enable economically efficient electricity transactions over wider geographic areas and timely construction of grid-related facilities if needed to support such transactions. (The U.S. Government notes that provision and maintenance of an adequate transmission system is essential to sustaining fair competition in a market over the long term.)
4. Implement measures to mandate greater accounting transparency for power providers in order to ensure fairness in cost allocation, including eliminating pancaking of transmission tariffs.

5. Develop measures to allow industrial users to respond to price signals through time-of-use metering and real-time price information.
6. Take concrete measures to allow retail price responses when establishing a nationwide, competitive wholesale electricity market. (The U.S. Government notes that while establishment of a nationwide electricity market without operational unbundling and without creation of independent entities to administer calculation of available transmission capacity may offer some economic benefits, it would be difficult to estimate their magnitude *ex ante*, because discrimination in the provision of transmission services would likely continue to persist to a significant degree and potential buyers might still have reason to rely on their own generation rather than buy at a lower price on the exchange. Transmission constraints also may preclude economically desirable transactions. The U.S. Government further notes that “behavioral” remedies for discrimination in the transmission sector (e.g., monitoring for prohibited abusive practices) have not proved adequate in the United States and other countries, leading to reliance on “structural” measures such as unbundling.)
7. Given the questionable effectiveness of the existing network rules (including *ex post* monitoring and transmission tariff examination) and information firewalls, take further concrete steps to ensure that the electricity network secures fairness and transparency for all market players, including:
  - a. Providing transparent interconnection charges to transmission facilities for all market participants; and
  - b. Developing and implementing guidelines for pricing and provision of transmission support network services (i.e., ancillary services), such as load balancing and load following.

B. Ensuring Adequacy of Transmission Infrastructure. A reliable, competitive national power market requires an adequate transmission infrastructure. Accordingly, it is desirable to assess the adequacy of the existing transmission system to support the pattern of generation and trade that a competitive national market would tend to induce. The U.S. Government recommends that the Japanese Government undertake the following measures by the end of CY2003:

1. Undertake a study to determine the pattern of generation that would result if the nation’s existing generation capacity were always used optimally to meet fluctuations in demand (i.e., regional economic dispatch) and if transmission capacity were always available at reasonable cost;

2. Undertake a power flow study to demonstrate that Japan has adequate interconnection capability to operate its generation infrastructure in such an economically optimal manner, as would occur if a national power market were established; and
3. If such a study reveals inadequacies in interconnection capability needed to support a competitive national power market, develop concrete measures to remedy such inadequacies where economical.

C. New Entry of Competitive Electricity Suppliers. The U.S. Government welcomes the Electricity Industry Committee's stated objective of establishing a retail market in which consumers can choose from diverse services and prices offered by multiple suppliers through competition. Based on our experience, the U.S. Government believes that opportunities for new entry into the electricity supply market comprise one of the steps necessary to achieve this goal. As such, the U.S. Government recommends that METI take the following additional steps to promote new market entry:

1. Complete a publicly available assessment of existing regulatory requirements for siting of new generating units and transmission lines and the potential for streamlining of measures within METI's jurisdiction by the end of JFY2002.
2. Develop and make public within JFY2003 a concrete plan and schedule for expanded retail choice, including the necessary technical and practical measures, which will provide market participants and potential new entrants with a clear understanding of the market environment, fostering investment and ensuring adequate supply.
3. Privatize the Electric Power Development Company (EPDC) in JFY2003 in a manner that promotes competition in the electricity sector and provides a fair opportunity for all market participants to purchase EPDC assets.

**IV. Natural Gas Sector.** The Gas Market Reform Study Group set out numerous important reform principles in its April 2002 report, including the need for creation of an efficient, transparent, fair, and competitive gas market. In addition, the newly established Urban Heat Energy Subcommittee (of the Advisory Committee for Natural Resources and Energy) has reiterated the necessity of ensuring fair competition in the energy market as a whole, recognizing the link between gas and electricity market liberalization. The Subcommittee has also targeted the need for predictability of the gas market to foster investment necessary to promote a stable gas supply. To achieve these commendable goals, the U.S. Government recommends that the Japanese Government undertake the following crucial steps to promote open and non-discriminatory access to LNG terminal facilities and gas pipelines, guarantee transparent pricing of gas transport services, ensure adequacy of pipelines and terminal facilities to meet growing demand, encourage new entry into the gas market, and expand liberalization to more gas customers.

A. Access and Transparency. To promote effective use of the gas pipeline network and a competitive gas and LNG market, the U.S. Government recommends that METI take the following necessary steps:

1. Unbundle transportation activities from marketing and other activities by implementing measures beyond firewalls and separation of accounts to guarantee that all competing suppliers have equal access to information on the price and availability of pipeline and LNG terminal services;
2. Direct the recently established Gas Policy Small Committee and Gas Safety Small Committee to conduct their discussions in a transparent manner and open for public comment, and direct the Urban Heat Energy Subcommittee to publish any recommendations emerging from discussions by these advisory bodies;
3. Provide transparent usage charges for pipeline and LNG facilities for all market participants;
4. Carry out the following measures proposed by the Gas Market Reform Study Group in its April 2002 report:
  - a. Develop and implement guidelines for public disclosure of pipeline network and LNG terminal usage information;
  - b. Require that LNG terminal owners create and make available to all applicants documents clearly detailing conditions and procedures for terminal use; and
  - c. Require that LNG terminal owners provide written explanations to parties denied use of these terminals.

5. Expand drafting and filing requirements for natural gas transportation contracts to ensure that all gas suppliers can compete in a fair manner in natural gas wholesale and retail markets.

B. Ensuring Adequacy of Transportation Infrastructure. The Japanese Government's planned expansion of natural gas use requires sufficient gas transportation infrastructure. The U.S. Government welcomes the gas pipeline construction and interconnection proposals set forth by the Study Group on Gas Market Reform in JFY2001. In keeping with these proposals and the Urban Heat Energy Subcommittee's interest in promoting establishment of an effective pipeline network, the U.S. Government recommends that METI:

1. Establish guidelines for determining the need for construction of new pipelines and LNG facilities; and
2. Based on these guidelines, improve incentives to promote construction of new pipelines between the service areas of Japan's major gas suppliers and new LNG facilities within Japan's electricity service areas.

C. New Entry of Competitive Gas Suppliers. To expand consumer choice, the Japanese Government needs to promote competition among current gas suppliers and facilitate new entry by competitive suppliers. New entry by gas suppliers and electricity suppliers requires sufficient transmission infrastructure. A larger pool of customers (including new electricity generators) would also attract new market entry. The U.S. Government therefore recommends that the Japanese Government:

1. Conduct a publicly available assessment of major regulatory requirements for siting of new pipelines and LNG facilities and the potential for streamlining of those siting requirements; and
2. Expand gas market liberalization to promote gas supplier choice and improved benefits for a greater number of consumers.

## MEDICAL DEVICES AND PHARMACEUTICALS

- I. Medical Device and Pharmaceutical Pricing Reform and Related Issues.** To date, Japan has utilized a combination of price cuts and co-payment increases to meet the fiscal demands of its healthcare system. However, Japan is now pursuing a more comprehensive approach to reform. The U.S. Government welcomes this approach which emphasizes the patient's perspective and the importance of efficiency, R&D, specialization, and innovation. This approach should also consider how different cost structures in various parts of the healthcare system influence each other (such as length of hospital stays) and how faster access to innovative products can result in cost savings. As this occurs, the U.S. Government urges Japan to:
- A. Establish a Prime Minister's council on comprehensive healthcare reform that would provide meaningful access for all stakeholders, including foreign industries, to present and discuss ideas;
  - B. Continue to provide foreign industry with meaningful access to discussions the Ministry of Health, Labor and Welfare's major policy paper titled, "Toward Reinforcing the Global Competitiveness of the Pharmaceutical Industry, Mainstay of the Century of Life: An Outline of a Vision of the Industry." These discussions provide important opportunities to address the links between initial pricing, re-pricing and development. Steps should also be taken to ensure that implementation of the paper occurs in a nondiscriminatory manner.
  - C. Ensure that the medical device and pharmaceutical pricing processes provide adequate direct access, including pre-filing consultations, for applicants to discuss product characterizations with decision makers. Such access would include:
    - 1. Direct consultation with the Health Insurance Bureau (HIB) officials who draft pricing recommendations for the Drug Pricing Organization (DPO) and the Special Organization for Insurance-covered Medical Materials (SOIMM) regarding applicants' pricing requests as well as the recommendations HIB makes to DPO and SOIMM; and
    - 2. Allow applicants to present opinions to and hear explanations from the DPO or SOIMM at its first meeting.
  - D. Increase the transparency of the medical device and pharmaceutical pricing processes by clarifying what data (type and source) are used to characterize medical devices and pharmaceuticals for pricing.
  - E. Periodically review the new and expanded premium pricing systems for medical devices and pharmaceuticals to ensure that premiums are being used to fully recognize and encourage innovation as intended.

- F. Ensure that the special characteristics and regulatory requirements of biologic products are reflected in the pricing and repricing of such products.
- G. Provide all stakeholders, including foreign industries, meaningful access to any discussions regarding the possible utilization of a prospective payment system or diagnostic related groups to ensure continued access to advanced medical devices and pharmaceuticals.
- H. Introduce a reimbursement procedure that recognizes the innovativeness of more effective diagnostic equipment, e.g., imaging devices and in-vitro diagnostics.

**II. Medical Device and Pharmaceutical Regulatory Reform and Related Issues.** The reform of the Pharmaceutical Affairs Law and the establishment of a new review agency to conduct medical device and pharmaceutical approvals are important opportunities to improve the speed and efficiency of Japan's regulatory systems as well as to adapt to the new challenges of the bio-genomic age. The U.S. Government supports Japan's efforts to develop a regulatory system that embraces the ideas of efficiency, harmonization and the latest globally accepted science. We welcome the continued involvement of our industries in this process. As this process continues, the U.S. Government encourages Japan to:

- A. In the development and adoption of any user-fee systems used by the new review agency, Japan should:
  - 1. Consult actively with all industry stakeholders through a cooperative process regarding appropriate fee-for-service structures and levels to ensure that they are transparent, predictable and equitable as well as methods of assessing the efficiency of the new agency; and
  - 2. Ensure that all user-fees are used to supplement the new agency's budget for the purpose of increasing resources dedicated to faster approvals of new products and indications.
- B. Improve the transparency and predictability of Japan's Post Marketing Systems for medical devices and pharmaceuticals. The U. S. Government recommends that MHLW should ensure that manufacturers have direct access to MHLW's safety officials (internal and outside experts) as well as have the ability to present global safety data that will be given balanced consideration in evaluating adverse reactions.
- C. Continue science-based discussions with all stakeholders, including foreign industries, that take into full consideration common international practices regarding the definitions and labeling requirements of biological products.

- D. Develop and implement the proposal regarding the “Megatrial Center” while ensuring that MHLW provides all industry stakeholders with meaningful and impartial access to the process, and assure that manufacturers retain control of their products as well as studies conducted with their products and all associated intellectual property.
- E. Ensure that continuing medical device regulatory harmonization efforts in areas such as classifications, data requirements, testing standards and Quality System regulations, proceed while giving maximum consideration to common international practices.

**III. Nutritional Supplements.** Japan’s market for nutritional supplements is undergoing liberalization. As these efforts continue, the U.S. Government encourages Japan to continue to ensure that the data requirements of the regulatory system should be reasonable and appropriate, and limited to that which is necessary to ensure safety and efficacy.

## FINANCIAL SERVICES

- I. Specific Measures.** The United States welcomes regulatory reform in the following areas at the earliest possible date:
- A. Permit the Postal Financial Institutions (*yucho* and *kampo*) to employ the asset management 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. Increase the DC pension plan contribution limits to a level that makes DC pension plans a viable retirement savings option for employees. Permit employees to match the contributions of their employers as one mechanism to increase contribution limits. Assure that contribution limits for defined contribution plans make them a competitive alternative to defined benefit plans in corporations that offer their employees a choice between DC and DB plans;
  - C. Allow defined contribution plan providers to submit for review and approval a basic prototype “safe harbor” DC pension plan that, once approved, could then be adopted cost effectively by small- and medium-sized companies after notification of the authorities and a waiting period, without requiring further review and approval of the basic plan structure;
  - D. Permit multiple classes of shares for investment trusts to provide more flexibility and efficiency in structuring products;
  - E. Further improve rules governing Money Management Funds (MMFs) with respect to mark-to-market accounting, maturity, credit quality, and diversification;
  - F. Revise the E-Notification Law to include lenders subject to the money lending business law to allow customers who have consented to electronic notification to receive notification by electronic means; and
  - G. Work closely with the private financial services community to review current requirements for financial institution reporting and record keeping, and revise or remove overlapping or duplicative disclosure and reporting requirements. 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. In line with the announced goal of carefully reviewing the activities of public sector corporations and avoiding competition with the private sector, we request that any proposed report or legislative action relating to the financial service activities proposed for the Postal Financial Institutions (*yucho* and *kampo*) be the subject of full public notice and comment and consideration before their introduction.
- B. 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. Specifically, the United States recommends that:
  - 1. All proposed rulemaking by industry associations should be made available for public comment, and that comments received from the public should be seriously considered in the formation of final rules governing association members; and
  - 2. Written materials – including regulations, supervisory standards and other guidance, operating rules and procedures, market studies, and other statistical compendia – should be made available to the public electronically and in paper form at reasonable costs of production and duplication.
- C. As a complement to self-regulatory organizations, we request that the Japanese financial authorities encourage and work with private sector financial industry associations established to represent the views and the expertise of their members.

## COMPETITION POLICY

- I. Independence of JFTC.** The Japan Fair Trade Commission (JFTC) must have both the appearance and the reality of independence if it is to be effective in promoting and safeguarding competition in the Japanese market. To this end, the United States recommends that Japan introduce legislation in the next ordinary session of the Diet that would change JFTC's organizational status to that of an independent agency under the Cabinet Office as early in JFY2003 as is practicable.
- II. JFTC Resources.** JFTC continues to lack sufficient resources for accomplishing its missions of investigating and redressing anticompetitive activities and promoting competition throughout the Japanese economy. The United States recommends that Japan:
- A. Continue to increase the staff and budget of JFTC substantially and steadily, with at least a 50 person increase in JFY2003 in the personnel levels of divisions responsible for investigations, mergers and acquisitions, and related activities; and
  - B. Establish an office within JFTC composed of graduate-level economists who, by providing economic analysis and expertise, can help ensure the economically sound application of competition principles to JFTC investigations and competition advocacy activities.
- III. Effectiveness of JFTC Enforcement.** JFTC must have effective enforcement tools at its disposal if it is to be able to keep ahead of increasing sophistication of firms engaging in anticompetitive practices. In particular, JFTC's investigatory and enforcement powers should be at levels commensurate with those of the antitrust enforcement authorities in other major countries. The United States urges that Japan:
- A. Strengthen JFTC Investigation Powers. Undertake a comprehensive review of JFTC's investigatory, remedial and sanction powers, with the goal of submitting by early 2004 legislation to amend the Antimonopoly Act (AMA) that would ensure that JFTC's powers are equivalent to those of other major antitrust enforcement authorities in OECD countries. This review should include such issues as:
    - 1. Providing JFTC with authority to reduce or eliminate surcharges for whistle-blowers and for enterprises with serious financial hardship;
    - 2. Strengthening JFTC search and investigative powers for purposes of criminal accusations;
    - 3. Revising AMA criminal accusation procedures to be consistent with procedures used in other crimes;

4. Increasing penalties for interference or non-compliance with JFTC investigations;
  5. Extending the statute of limitations period (*sochi kigen*) for issuance of cease-and-desist orders by JFTC to three years; and
  6. Increasing the maximum term of imprisonment for criminal violations of the AMA to 5 years, thereby extending the statute of limitations (prescription) period to 5 years as well.
- B. Enhance AMA Administrative Sanctions. Introduce legislation to increase surcharge levels significantly, including for small- and medium-sized enterprises, so that they will have a substantial deterrent effect, and expand the scope of violations to which surcharge payment orders can be applied.
- C. Make Cartel Activity *Per Se* Illegal. Strengthen JFTC's ability to take enforcement action against hardcore cartels and bid rigging conspiracies by introducing legislation that would eliminate the requirement to prove that such conduct resulted in a substantial restraint of competition.
- D. Increase Criminal AMA Enforcement. Encourage the Ministry of Justice (MOJ), the Tokyo High Prosecutors Office and JFTC to increase the number of cases in which AMA violations are prosecuted criminally, and institute a mechanism for closer coordination between the Tokyo High Prosecutors Office and JFTC during the course of JFTC investigations that are likely to lead to the filing of a criminal accusation.
- E. Provide AMA Seminar Program for the Judiciary. Encourage the Supreme Court and JFTC to work together to develop a series of seminars for Tokyo High Court (and other) judges aimed at providing a solid understanding of the legal and economic underpinnings for JFTC and private sector actions brought pursuant to the AMA.

**IV. Measures to Address Bid Rigging.** Bid rigging harms both the competitive process and Japanese taxpayers, and undermines respect for competition principles and for the Antimonopoly Act. Most damaging is government official support and assistance in bid rigging conspiracies. In order to significantly reduce bid rigging, the United States urges that Japan:

- A. Implement the *Kansei Dango* Act. Take measures to implement fully the recently-enacted law addressing assistance given by government officials to bid rigging conspiracies (*kansei dango*). Such measures should include:
1. Adoption by JFTC of procedures for determining the participation of government officials in bid rigging conspiracies;

2. Implementation of procedures by JFTC for providing materials and other necessary assistance to the heads of ministries and agencies for conducting investigations that are required by those entities; and
  3. Appointment by each covered ministry and agency of a “designated official” who will be responsible for conducting the investigations required by the Act.
- B. Collect Overcharges from *Dango* Participants. Initiate a government-wide study, led by the Ministry of Land, Infrastructure and Transport (MLIT) with the participation of JFTC and other appropriate ministries and agencies, on methodologies for the calculation of overcharges resulting from bid rigging activities and on necessary administrative procedures for ensuring the collection of such overcharges from bid rigging participants, with the goal of instituting effective procedures for collecting overcharges by May 2003.
- C. Assist Citizen Suits Filed Pursuant to Local Autonomy Act. In light of the benefits to Japanese taxpayers and society that result from citizen suits that are filed pursuant to section 242 of the Local Autonomy Act and that seek recovery by local governments of overcharges suffered as a result of bid rigging, provide reasonable assistance to the courts in those cases, including:
1. Provision by JFTC of information and materials in its possession relevant to the case; and
  2. Offering the expertise of the JFTC and other relevant ministries and agencies in the calculation of overcharges.
- V. **Competition and Regulatory Reform.** Regulatory reform in Japan, if it is to be successful, must be based on market principles, and must have as its goal the creation of competitive markets. To this end, the United States urges that Japan:
- A. Create Competitive Markets in the Energy Sector. Solicit active JFTC input into Japan’s plans for deregulation of the electricity and gas sectors, including with respect to the creation of a sound and competitive power exchange market.
- B. Prevent Anticompetitive Exclusionary Behavior by Dominant Telecommunications Carriers. Ensure that JFTC is empowered and encouraged to apply the AMA fully and actively to exclusionary conduct by dominant carriers in the telecommunications sector and that JFTC’s advice is obtained and fully considered before any proposed reforms of the Telecommunications Business Law are submitted to the Diet.

- C. Ensure Procompetitive Privatization of Public Corporations and other Public Entities. Ensure that the restructuring and privatization of public corporations and other public entities is accomplished in a manner that does not impede, and in fact enhances, competition, including by requesting JFTC to review and provide input on any privatization or reorganization plans.
  
- D. Monitor Competitive Conditions in Structurally Non-Competitive Markets. Take proactive measures to promote and safeguard competition in sectors characterized by non-competitive market structures.

## TRANSPARENCY AND OTHER GOVERNMENT PRACTICES

- I. Public Comment Procedures.** Japan's adoption in 1999 of Public Comment Procedures (PCP) offered the potential of significantly improving Japan's regulatory system by allowing all interested parties to review and submit comments on draft regulations before they are finalized and implemented. After three years of implementation of the PCP, however, there are still serious concerns with its effectiveness. A survey on August 22, 2002 issued by the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) on the use of the PCP revealed serious and persistent deficiencies in the use of the PCP. As in past years, a majority of comment periods were less than 30 days. Moreover, the percentage of cases in which government agencies incorporated comments into final regulations fell to only 14 percent of the 354 rules and regulations open for comment in FY2001. To address these concerns, and to make the PCP a useful and effective regulatory mechanism, the United States urges the Japanese Government to take the following measures:
- A. Establish a centralized system that would allow parties to find solicitations of public comments of interest to them in one location, preferably on the Internet. This system would be for all solicitations of public comments, whether or not they are covered by the PCP. The central location would be in addition to the various means currently used by governmental agencies for solicitations of comments, and should include solicitations of public comments by *shingikai*, *kenkyukai*, *benkyokai* and other study groups;
  - B. Require use of a minimum 30-day comment period, except in urgent cases for which a 14-day comment period could be used, and recommend use of a 60-day comment period to the maximum extent possible; and
  - C. Undertake the legal steps necessary to incorporate the PCP into the Administrative Procedure Act, a move that would strengthen it from a mere guideline to a law.
- II. Special Zones for Structural Reform.** The U.S. Government follows with interest the Japanese Government's proposal to establish Special Zones for Structural Reform. This new approach to deregulation and structural reform, if effectively implemented, could provide important opportunities for Japan to return to sustainable growth. As Japan moves forward with this proposal, the United States recommends that:
- A. The zones be selected and established in a transparent manner;
  - B. A focus be placed on expanding market-entry opportunities, which is key to increasing competitiveness;
  - C. Domestic and foreign companies alike have non-discriminatory access to operate in the zones;

- D. The Headquarters for Special Zones for Structural Reform establish a transparent review mechanism to determine the effectiveness of the zones;
- E. The zones be established with the understanding that there be no limitation on the approval of zones that cover similar sectors in other parts of Japan; and
- F. Successful measures used in the zones be applied on a national basis as expeditiously as possible.

**III. Public Input into the Development of Legislation.** Governmental agencies in Japan generally do not provide opportunities for interested parties – other than those represented on advisory councils or with special access – to have input into the development of legislation before it is submitted to the Diet. The United States highly commends the Cabinet Secretariat for taking the initiative to provide the public with a rare and important opportunity to review the “Summary of the Proposed Intellectual Property Basic Law” before it was finalized and submitted to the Diet. The U.S. Government therefore urges other Japanese Government ministries and agencies to follow this example and implement the practice of facilitating public input into draft legislation while it is being developed by the Government before it is submitted to the Diet. While other legislation of interest to the United States is cited in various parts of the this document in regard to this issue, two specific examples of the need for public input into legislation are:

- A. Life Insurance Policyholder Protection Corporation. The Japanese Government’s current pledge to enact fiscal measures to fund the Life Insurance Policyholder Protection Corporation (Life PPC) will expire in March 2003. Legislation to address future funding of the Life PPC will be drafted prior to March 2003 and holds the potential to impact the financial health and operations of both domestic and foreign life insurance companies and consequently, public confidence in the industry. The United States urges the Japanese Government to fully utilize and implement the Public Comment Procedures and afford the insurance industry (both domestic and foreign) and all interested parties meaningful opportunities to be informed of, comment on, and exchange views with officials on proposed plans, draft legislation, amendments to existing regulations and other regulatory measures related to the Life PPC prior to their implementation and or submission to the Diet.
- B. Non-Life PPC. In the event legislation is considered to address funding of the Non-Life PPC, the U.S. Government urges the Japanese Government to follow a similar approach as recommended above in Section III A.

**IV. Privatization of Public Corporations.** The United States notes with interest Prime Minister Koizumi's drive to restructure and privatize Japan's public corporations. The United States also recognizes that, if implemented vigorously, this reform effort could have a major impact on the Japanese economy, stimulating competition, increasing efficiency, and leading to a more productive use of resources. As reform of the public corporations advances, the United States urges Japan to:

- A. Conduct the restructuring and privatization in a transparent manner; and
- B. Ensure that domestic and foreign private sector entities that will or may be affected by the reform have an opportunity to provide input into reform plans, such as through use of the Public Comment Procedures.

**V. Postal Financial Institutions.** The U.S. Government continues to share concerns voiced by Keidanren and others related to the effect of the postal financial institutions – postal savings (*yucho*) and postal insurance (*kampo*) – on the efficient operation of Japan's financial markets. The drafting of implementing rules and regulations, which will guide the creation of the Public Postal Corporation in 2003 and establish operational guidelines of the three postal services (mail delivery, savings, and insurance), provides an important opportunity for the Japanese Government to take concrete steps to address key transparency and competition issues related to these organizations.

- A. Transparency. The process for the transfer of the postal services from the Postal Services Agency to a public postal corporation and its possible effects on the private sector remain unclear. To remedy this, the U.S. Government urges MPHPT to take steps to sufficiently inform and seek input from the public (including foreign insurers) on all aspects of the transfer that may affect private sector operations in the relevant sectors. This includes affording the insurance industry and other interested parties (both domestic and foreign) meaningful opportunities to be informed of, comment on, and exchange views with MPHPT officials on:
  - 1. MPHPT-proposed plans and draft legislation prior to their submission to the Diet; and
  - 2. Draft guidelines and other regulatory measures prior to their implementation, with full utilization and implementation of the Public Comment Procedures.
- B. Curb Expansion. In transferring the postal services and establishing a public corporation in 2003, the United States recommends that Japan prohibit the postal financial institutions (*kampo* and *yucho*) from underwriting any new insurance products or originating any new non-principal-guaranteed investment products.

- C. Same Standards. In transferring the postal services and establishing a public corporation in 2003, the United States recommends that, in order to create a level playing field between the postal financial institutions and their private sector competitors, Japan subject the postal financial institutions to the same laws, level of taxation, safety net contribution requirements, and standards of regulation as their private sector counterparts.
- D. Privatization. The U.S. Government notes that Prime Minister Koizumi has received recommendations from the private panel he tasked with studying the possible privatization of the postal services organizations (including the postal financial institutions). As any modifications to the existing system could have a significant impact on competition in, and the effective operation of, the broader insurance market in Japan, it is important that any decisions on privatization be made and implemented in an open and transparent manner. This would include the same measures as outlined above in Section V A.

## LEGAL SERVICES AND JUDICIAL SYSTEM REFORM

### I. Legal Services

- A. Freedom of Association. The United States urges that Japan eliminate all prohibitions against freedom of association between Japanese lawyers (*bengoshi*) and registered foreign lawyers (*gaiben*), as well as between *bengoshi* and foreign lawyers (or their law firms) practicing outside of Japan, and to allow them, as legal professionals of equal status but with differing scopes of practice, to determine their own forms of association. In this regard, the United States recommends that Japan:
1. Permit *gaiben* to enter into partnership relationships with *bengoshi* or *bengoshi* professional corporations that allow them to form a single unified law firm with a name of their choice, and for the law firm to provide integrated legal advice and services on any and all matters within the competence of its members;
  2. Allow law firms, whether composed solely of *gaiben* or of *gaiben* and *bengoshi* partners, to employ *bengoshi*; and
  3. Ensure that neither the Japanese Federation of Bar Associations (*Nichibenren*) nor the local bar associations restrict *bengoshi* from entering into partnership or other forms of association with foreign lawyers outside of Japan or with international law firms headquartered outside of Japan.
- B. Professional Corporations and Limited Liability Entities. *Gaiben* and foreign law firms should be able to choose freely the business entity they use in establishing their offices in Japan. In this regard, the United States urges that Japan:
1. Ensure that its legal system provides full legal recognition to limited liability partnerships and limited liability corporations of foreign law firms operating in Japan, so that the offices of foreign law firms in Japan may be registered as branches of the respective home country entities;
  2. Permit *gaiben* to form professional corporations as an alternative to establishing branches of home country entities; and
  3. Allow law firms composed of *gaiben* or of *gaiben* and *bengoshi*, whatever business form they may use in Japan, to establish branch offices throughout Japan on an equal footing with Japanese professional corporations.

- C. Eliminate Needless Restrictions on *Gaiben*. Legal practice in Japan by registered foreign lawyers can provide important expertise and other benefits to Japanese consumers of legal services, leading to more efficient business transactions. For these reasons, it is important to minimize barriers to practice by *gaiben*. To this end, the United States urges that Japan:
1. Ensure that the Ministry of Justice (MOJ) take necessary measures so that all of the time in Japan spent practicing the law of a foreign lawyer's home jurisdiction is counted toward meeting the experience requirement to qualify as a *gaiben*;
  2. Ensure that *gaiben* are permitted to provide advice on third country law on the same basis as such advice may be provided by *bengoshi*; and
  3. Take steps to reduce the documentary requirements and time required for processing applications for qualification as a *gaiben*.
- D. Transparency and Fairness in Bar Association Proceedings. The United States recommends that Japan take necessary measures to ensure that Nichibenren and the mandatory local bar associations provide *gaiben* with effective opportunities to participate in the development and enforcement of all laws and rules that affect them, including the receipt of reasonable notice and an opportunity to be heard, and including participation on disciplinary committees that review alleged misconduct of *gaiben*.

## II. Legal Reform

- A. Improvements in the Civil Litigation System. The United States urges that Japan expeditiously implement the Program for Promoting Justice System Reform. In particular, the United States recommends that Japan, in order to meet its goals of increasing the speed and efficiency of civil litigation and reducing by 50 percent the length of trials, submit legislation in the next ordinary session of the Diet that would provide for measures to promote efficient scheduling of hearings and to facilitate litigants' collection of evidence at early stages of litigation.
- B. Strengthen Judicial Oversight over Administrative Agencies. The United States urges that Japan intensify the Office for Promotion of Justice System Reform's comprehensive study of necessary measures to ensure effective judicial oversight of administrative agencies, and make available opportunities for the public to provide timely input into that process, so as to meet Japan's stated goal of taking necessary measures to ensure such effective judicial oversight by November 2004.

## COMMERCIAL LAW

- I. Flexibility in Merger Procedures.** Modern merger techniques, such as triangular mergers and cash mergers, are important in effecting a variety of transactions in international business, and in facilitating corporate restructuring in Japan. The inability under current Japanese law to utilize these merger techniques impedes foreign investment in Japan, denying the Japanese economy the benefits of an in-flow of capital, technology and managerial know-how. To fill this hole in the Japanese legal system, the United States recommends that Japan:
- A. Introduce legislation in the next ordinary session of the Diet to amend the Industry Revitalization Law to enable foreign partners to use triangular merger and cash merger techniques when acquiring Japanese firms pursuant to restructuring plans approved under that law; and
  - B. Make public by the end of JFY2002 the participants and work plan (agenda and time schedule) of the Ministry of Justice's (MOJ's) study regarding introduction into the Commercial Code of triangular mergers and cash mergers (including short form (squeeze out) mergers, and MOJ's plans for soliciting input from the international business and legal communities, with the goal of submitting legislation by FY2004 to address these issues.
- II. Improved Corporate Governance.** Good corporate governance will lead to improvements in the performance of companies, as management strives to maximize shareholder value through increased productivity and sound commercial decisions. Ensuring that management is accountable to shareholders, through disclosure of information necessary for intelligent voting of proxies and encouragement of active shareholder voting, is one of the fundamental aspects of a good corporate governance system. To these ends, the United States urges that Japan:
- A. Require that pension fund managers vote their proxies for the benefit of fund beneficiaries, maintain accurate records of their proxy voting and disclose their policy or guidelines on the voting of proxies;
  - B. Ensure that securities law reports and filings of all publicly traded companies are made electronically, collected in one or more centralized web sites, and made publicly available on a timely basis;
  - C. Require that proxy materials be made available to shareholders at least 30 days prior to the relevant shareholders meeting; and
  - D. Require disclosure of the names of each member of the audit, compensation and nominating committees of a company, to the extent such committees exist, whether each such member is independent and if not independent, the nature of the relationship that makes the member not independent.

## DISTRIBUTION

- I. **Airport Landing Fee Reform.** Landing fees at Narita and Kansai international airports are the world's highest. Lower landing fees will promote a financially healthy airline industry that could in turn help stimulate growth in ancillary industries and the wider economy. The U.S. Government urges Japan to:
  - A. Formulate the level of landing fees in an open and transparent manner, using internationally accepted accounting standards, and based on the actual cost of providing services as per International Civil Aviation Organization (ICAO) recommendations; and
  - B. Negotiate with all airlines in established multilateral fora with the goal being a mutually satisfactory agreement on a meaningful reduction in landing fees.
- II. **Increase *De Minimis* Customs Limit.** The volume of express shipments in Japan continues to increase. The current low *de minimis* level slows the clearance process and results in higher administrative costs. In order to meet the high expectations of Japanese consumers and to facilitate the timely import of small goods and packages into Japan, the United States urges Japan to increase the *de minimis* value in the Customs Clearance Law from 10,000 yen to 30,000 yen (except for designated cargo).
- III. **Expand U-clearance.** Expanding U-clearance capability from Narita (Baraki Terminal) to other bonded warehouses outside airports and abolishing Z-status clearance for Overland Transfer (OLT) material inside airports would lower costs and increase efficiency without compromising the customs clearance process. As long as the integrity of the shipment is maintained, then multiple bonded warehouses should not be necessary. This is costly to carriers (13.9 yen per kilo) and time consuming – burdens that are passed on to the consumer in the form of higher shipping costs. The U.S. Government urges Japan to enable full pre-approval clearance (U-clearance) regardless of carrier used or if transiting multiple bonded warehouses (OLT).
- IV. **Customs Clearance Availability.** Currently, no customs processing takes place after normal working hours. Nonetheless, packages remaining in customs after normal working hours are assessed overtime charges resulting in excessively high user fees. The U.S. Government urges Japan to provide customs clearance availability 24 hours per day and 365 days per year at certain high-volume entry points and to levy overtime charges only if packages are processed after normal working hours.

- V. Expand Simplified Declaration Procedures.** The United States welcomes Japan's continued efforts to simplify its clearance procedures for imported goods. Simplified customs clearance procedures hold the potential to allow Customs officials to focus on other important areas such as inspections and post-clearance investigations. The United States believes further efficiency gains can be made if the simplified customs clearance process is made available to a wider selection of businesses. The U.S. Government urges Japan to allow air carriers or authorized cargo agents to serve as importers of record. Besides yielding additional efficiency gains, this would also reduce concern over the non-payment of duties and taxes, as the carriers and agents would make such payments on behalf of the true importers.
- VI. Pre-clearance Declaration for Air Cargo.** Current procedures mandate that customs declarations for air cargo be made after flights have landed, which results in duplication of work and unnecessary delays. The U.S. Government urges Japan to allow for the processing of pre-clearance declarations for air cargo prior to flight arrival as soon as the required cargo information is filed. Such a policy would speed up cargo shipments, prevent backlogs in customs processing and reduce overflow situations in warehouses.