

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

December 7, 2005

Launched by President George Bush and Prime Minister Junichiro Koizumi in 2001 under the U.S.-Japan Economic Partnership for Growth, the Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) promotes economic growth and open markets by focusing on sectoral and cross-sectoral issues related to regulatory reform and competition policy. Now in its fifth year, the Initiative continues to play a central role to further strengthen trade and economic relations between the United States and Japan.

The United States welcomes Prime Minister Koizumi's continued efforts to reform the Japanese economy, which have helped put Japan on a growth trajectory and created greater opportunities for trade and investment. The United States also welcomes the good work of both the Council for the Promotion of Regulatory Reform and the Headquarters for Promotion of Special Zones for Structural Reform, which have been strong and effective advocates of regulatory and structural reform.

The recommendations included in this year's submission place an emphasis on reform measures in key sectors and cross-cutting areas and are intended to support economic growth and further open markets in Japan. In addition, the United States continues to make a special effort to focus on issues Prime Minister Koizumi and his Administration have identified as important areas for reform, such as telecommunications, information technologies, intellectual property rights, medical, agriculture, privatization, and competition policy.

The United States is providing the proposals included in the Summary of Recommendations and the Annex to the Government of Japan to serve as the basis for discussions over the coming months in the High-Level Officials Group and the Working Groups established under the Regulatory Reform Initiative. These Groups will in turn develop a fifth 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 four years of this Initiative, private-sector representatives periodically 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 months to continue to integrate the private sector in this Initiative.

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

TELECOMMUNICATIONS

Japanese consumers continue to adopt advanced telecommunications technologies and services at a rapid pace. In 2005, Japan had over 20 million subscribers for broadband Internet access by the end of June and 37 million third-generation (3G) mobile phone subscribers by the end of August. In addition, the Ministry of Internal Affairs and Communications (MIC) registered 10 million Voice Over Internet Protocol (VOIP) subscribers by the end of September this year. In particular, the United States commends Japan for stimulating competition in the oligopolistic mobile phone market by providing spectrum licenses to three new market entrants, who are expected to begin services in 2006. The new licenses bring opportunities for U.S. investment and equipment in Japan's growing telecom market, and new market entrants promise to ease the high mobile per-minute charges for Japanese consumers.

The United States, however, cautions Japan to ensure a competitive environment for the new market entrants as they deploy the necessary mobile network infrastructure. Furthermore, competition policy in the wireline voice market, which is shifting from analog-based communications to Internet Protocol, must continue to encourage innovation while balancing the market dynamics between the dominant carriers owned by NTT and the competitive carriers. Though recognizing the enormous progress made by regulatory reform over the past five years, the United States urges MIC not to allow NTT to undermine the safeguards that established intra-company competition in 1999.

Building on the progress achieved in the previous year, the United States also suggests that the Telecommunications Working Group continue to invite experts from government and the private sector to provide their perspectives on new and mutually important technology issues.

SUMMARY OF RECOMMENDATIONS

- **Regulatory Independence:** Take steps to transfer regulatory functions to an independent agency not under ministerial authority, and eliminate legal requirements for the government to own shares of NTT.
- **Mobile Termination Rates:** Investigate if rates for termination to dominant mobile carrier networks are set at reasonable, competitive levels, and ensure competitive neutrality in retail rate setting.
- **Transparency and Technology Choice:** Increase public participation in MIC's regulatory and policy decisions, and institute a clear policy of technology-neutral spectrum licensing.
- **Spectrum Policy:** Ensure that Japan's spectrum management policies and practices (such as licensing, allocation, testing, and fees) are more transparently administered, promote greater innovation, competition, and efficient spectrum use (in both the licensed and license-exempt areas), and adhere to technology-neutral principles.
- **Maintaining Competition Safeguards:** Prevent abuses by carriers with market power as technologies and services move towards "convergence."
- **Equipment Certification:** Conclude a Mutual Recognition Agreement between the United States and Japan that would facilitate more efficient trade in telecommunications products, and streamline Suppliers' Declaration of Conformity procedures.
- **Wireline Interconnection:** Require separate cost-oriented rates for NTT East and West, eliminate the cross-subsidy of interconnection revenue, and ensure competitive neutrality in the use of the universal service fund.

INFORMATION TECHNOLOGIES

Since 2001, the various e-Japan Strategies and Programs have effectively promoted the use of IT and e-commerce throughout Japan's economy by removing regulatory barriers and placing increased emphasis on private-sector input and leadership in the development and implementation of IT and e-commerce policies. Japan's forthcoming New IT Strategy will set goals for both the government and private sectors to facilitate the creation of advanced IT infrastructures and greater use of IT and e-commerce. The First Information Security Basic Plan, scheduled for release in early 2006, will emphasize a growing need for information security policy. Japan will also conclude an extensive review of its Copyright Law by FY2007. These and other efforts will have many significant repercussions on businesses and other organizations operating in Japan, on Japanese consumers, and on cross-border online transactions. This year's recommendations are designed to support Japan's goals to promote greater IT and e-commerce use.

SUMMARY OF RECOMMENDATIONS

- **IT and E-Commerce Policymaking:** Ensure the development and implementation of the New IT Strategy promotes private sector leadership and self-regulation; reaffirm the importance of technology neutrality in IT standards-setting as well as in Japan's IT policies in Asia; and ensure Japan's IT and e-commerce policies are compatible with international practice.
- **IPR Protection:** Strengthen protection of intellectual property rights by extending the term of protection for sound recordings and other works; implement stronger measures to stop online piracy of digital content; and increase cooperation with the United States to promote greater protection and enforcement of IPR worldwide, especially in Asia.
- **Online Security:** Implement Japan's Privacy Act transparently and consistently, review and correct inconsistencies between guidelines, clarify guidelines' mandatory or voluntary nature, and publish information about violations and corrective actions; work closely with the private sector and other governments to combat online nuisances; vigorously enforce the Anti-Spam Law; remove legal barriers related to the Telecommunications Business Law in order to allow ISPs to use new technologies to filter and block spam; and continue to openly seek private-sector input on government information security requirements.
- **E-Commerce and Online Services:** Permit e-notification; ensure the private sector plays a central role in developing online-related financial legislation, ensure such legislation is compatible with international practice, and coordinate IT-related financial reforms across government; and promote technology neutrality and private-sector input in efforts to increase the use of e-medicine.
- **Government IT Procurement:** Implement reforms for government IT procurement, focusing on ways to foster transparency and competition in bidding; set clear limits on liability in contracts; promote wider dissemination of the benefits of new IP created through government-sponsored projects; protect rights to IP incorporated into procurement deliverables; and increase IP training for procurement officers.

MEDICAL DEVICES AND PHARMACEUTICALS

Japan is considering major changes to its healthcare system as it confronts the financial challenge of funding medical care for a rapidly aging society with a shrinking tax base. Japan spends about one-third of its healthcare funds on people aged 70 and over. The increased burden of caring for the elderly will contribute significantly to an expected doubling of medical spending in Japan between 2006 and 2025. Given the significant benefits Japan derives from the vast array of cutting-edge products manufactured by U.S. medical device and pharmaceutical companies, it is important for the Japanese Government to provide these companies with ample and meaningful opportunities to offer public input into the development of healthcare reform as it unfolds.

The United States also urges Japan to reform its reimbursement pricing and regulatory systems for medical devices and pharmaceuticals to sustain the long-term fiscal viability of the healthcare system, provide patients with rapid access to innovative products, and foster the development of even more advanced products. The Japanese Government should ensure its reimbursement pricing system promotes the introduction of products that provide long-run cost savings by reducing the need for surgeries and long hospital stays. Japan also should ensure its reimbursement system fosters clinical trials and R&D. In addition, its regulatory system should facilitate faster introduction of new products. Of the leading 100 global medicines, only 73 are available in Japan. For medical devices, slow approvals leave Japan with devices that are less advanced than those available in other countries. The United States urges the Japanese Government to take steps to ensure the Pharmaceuticals and Medical Devices Agency (PMDA) achieves its goal of increasing the efficiency of medical device and pharmaceutical reviews. The increased user fees that manufacturers are paying to fund PMDA operations should be disbursed to increase the staffing and expertise of the agency, which should lead to faster reviews and approvals.

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- **Pricing Reform:** Ensure that any changes to the reimbursement pricing system for medical devices and pharmaceuticals recognize the value of innovation and the important role of the market; and use premium-pricing rules to foster the development and introduction of advanced products that enhance and save lives.
- **Regulatory Reform:** Speed reviews and approvals of medical devices and pharmaceuticals by using performance metrics to improve the efficiency of Japan's regulatory system; help enable PMDA to increase its expertise; take steps to increase the attractiveness of conducting clinical trials in Japan; and improve the system for ensuring the quality of manufacturing processes.
- **Blood Products:** Develop a reimbursement pricing system that accounts for the special characteristics of that industry and that is not based on the pharmaceutical model; and allow U.S. companies fair access to marketing and manufacturing opportunities.
- **Nutritional Supplements:** Increase the transparency of the regulatory system for and deregulate the sale of nutritional supplements.
- **Cosmetics:** Deregulate the sale of cosmetics and quasi-drugs.

FINANCIAL SERVICES

The U.S. Government welcomes Japan's continued progress in improving regulatory transparency and removing barriers to foreign and domestic competition. Regulatory reform and improved accounting standards, together with steady improvements in the professionalism and expertise of the Financial Services Agency since its establishment in 1998 have contributed to notable changes in Japan's financial sector. U.S. and other foreign-owned firms have increased their presence in Japan's financial markets, which have in turn become increasingly global in terms of standards and diversity of participation.

We encourage Japan to continue its progress in establishing clear and consistent regulation and supervision of financial institutions, in line with international standards and best practice. It is also important that Japan use the forthcoming Investment Services Law and other vehicles to continue to eliminate unnecessary regulatory barriers to competition, consistent with the objectives of ensuring safety and soundness as well as consumer protection. A more efficient and competitive financial sector can play a crucial role in strengthening Japan's long-term economic growth potential.

SUMMARY OF RECOMMENDATIONS

- **Financial Regulatory Transparency:** Build on recent progress in expanding the body of written interpretation of financial law by expanding the scope of regulatory issues eligible for clarification through the no-action letter process, steadily increasing the number of "reference cases" published on the FSA web site to provide examples of FSA interpretations, and establish other vehicles to provide written interpretations of Japan's financial laws; and continue active use of the public comment procedures and other efforts to seek input on financial laws and regulations from foreign and other private firms and business associations.
- **Non-Bank Finance:** Modernize the legal framework for non-bank consumer and commercial finance to provide a clear basis for the enforceability of loan receivables, in order to increase the supply of credit available to consumers and small businesses.
- **Credit Bureaus:** Create a legal and regulatory framework for a credit bureau system that will foster greater sharing of personal credit information among bona fide lenders by providing for fair, open access to full-file credit information.
- **Trust Bank Law:** Allow foreign bank branches to engage in trust and banking businesses concurrently, on equal footing with domestic banks under the Concurrent Operation Law.
- **Financial Conglomerate Regulation:** Eliminate ambiguity of the FSA Guidelines for Financial Conglomerate Supervision by establishing materiality thresholds to determine the entities potentially subject to the guidelines.
- **Defined Contribution Pensions:** Foster expanded use of corporate Defined Contribution (DC) pension programs through measures including: increasing the tax deductible contribution limit allowing employee contributions, and providing for limited early access to funds.
- **Investment Trusts:** Harmonize the regulatory framework governing investment advisory and investment trust management activities; allow mergers and reduce obstacles to the early termination of investment trusts.

COMPETITION POLICY

A well-structured competition policy – supported by a strong and effective Antimonopoly Act (AMA) and enforcement policy – will provide great benefits to Japanese consumers and the business community, and will promote the health and dynamism of the Japanese economy. The United States welcomes the significant improvements to Japan’s competition policy regime by the 2005 amendments to the AMA and looks forward the effective implementation of those amendments. One key to effective implementation is ensuring that the business community and the public have confidence that Japan Fair Trade Commission (JFTC) enforcement actions are applied in a fair and transparent manner. Further, despite improvements to the AMA, recent events have demonstrated that bid rigging – often aided by government officials – continues to be a significant problem in Japan that needs to be addressed more aggressively. Bid rigging injures Japanese taxpayers and the economy by raising costs for government projects, preventing needed restructuring in important sectors, harming efficient bidders, and undermining confidence in the government and in the benefits of competition.

To improve further Japan’s competition regime, the United States recommends that Japan take the following measures:

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- **Strengthening the Effectiveness of Antimonopoly Enforcement:** Maximize the effectiveness of JFTC’s leniency program by ensuring application requirements do not encourage firms to delay their applications and by clarifying JFTC’s policy on confidentiality of such applications; heighten AMA compliance by encouraging tougher sentencing of AMA violators, using JFTC’s new investigating powers to strengthen criminal enforcement, and adopting or revising JFTC enforcement guidelines to promote AMA compliance; and strengthen JFTC’s staff capabilities and resources by improving economic analysis capabilities of JFTC personnel.
- **Improving Reliability and Fairness of JFTC Procedures:** Establish clear criteria for staying the execution of JFTC cease-and-desist and surcharge orders; provide proposed recipients of such orders with effective opportunities to make arguments in their defense, including by providing access to the evidence on which the order is based; allow proposed recipients of warnings to submit evidence and arguments in their defense prior to issuance of the warning; and provide opportunities for foreign firms and organizations to submit views to the AMA Basic Issues Study Group.
- **Addressing Bid Rigging:** Adopt an administrative leniency program within the Ministry of Land, Infrastructure and Transport (MLIT) that will encourage companies to report bid rigging; effectively implement the measures announced by MLIT in July 2005 to prevent recurrence of bid rigging, including by lengthening the minimum suspension of designation period for repeat offenders and establishing within the Ministry of Justice procedures for government lawsuits to recover damages suffered from bid-rigging practices; maximize the number of projects in which competitive bidding is used; and strengthen measures to address conflicts of interest created by the *Amakudari* system.

TRANSPARENCY AND OTHER GOVERNMENT PRACTICES

The United States continues to address a broad range of issues under Transparency and Other Government Practices with the aim of proposing to Japan ways to create a more transparent, fair, and accountable regulatory system. Japan took welcome steps this year to revise its Public Comment Procedures (PCP). As the effectiveness of these revisions remains to be seen, the United States continues to make recommendations to improve PCP implementation.

Two notable additions to this chapter this year include recommendations related to public input into policy development and foreign translations of Japanese laws. Given the often significant role of advisory councils (*shingikai*) and other government-commissioned study groups in Japanese policy development, the United States recommends measures to increase their transparency and provide greater opportunities for public input into deliberations of these groups. In addition, the United States welcomes Japan's initiative to translate laws into foreign languages and proposes measures to help ensure this useful initiative is as effective as possible. This year's submission to Japan also includes proposals to promote full implementation of the APEC Transparency Standards in the Asia-Pacific region, recommendations in support of the innovative Special Zones program to promote deregulation, and steps to facilitate the removal of regulatory barriers to the import of agricultural goods.

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- **Public Comment Procedures (PCP):** Ensure and evaluate the effectiveness of recent changes to the PCP, making further revisions if recent reforms still provide insufficient opportunities for meaningful public input into the policymaking process.
- **Foreign Translations of Japanese Laws:** Continue consulting with the foreign business community in Japan in both the planning process for and the translations of Japanese laws; and ensure allocation of sufficient resources for timely translations.
- **APEC Transparency Standards:** Work jointly with the United States to achieve full implementation of the APEC Transparency Standards in the Asia-Pacific region.
- **Special Zones for Structural Reform:** Continue to emphasize transparency, market entry and expeditious nationwide application of successful deregulation measures; encourage foreign participation by publishing important zones information in English.
- **Public Input into Policy Development – Advisory Groups:** Increase the transparency of government-sponsored advisory groups and provide meaningful opportunities for input from all interested parties.
- **Public Input into the Development of Legislation:** Accelerate opportunities for public input into draft legislation during the developmental stage and prior to submission to the Diet.
- **Bank Sales of Insurance:** Ensure the bank sales channel for insurance products is fully liberalized no later than the end of 2007.
- **Insurance Cooperatives:** Secure a level playing field between private companies and all cooperatives (*kyosai*) that offer insurance; and initiate a review of regulated *kyosai* to develop level-playing field reforms.
- **No Action Letters:** Enhance the effectiveness and increase the usage of Japan's no-action letter system.
- **Government Practices Relating to Agriculture:** Remove regulatory barriers that impede the import of agricultural goods.

PRIVATIZATION

Prime Minister Koizumi's efforts to restructure and privatize Japan's public corporations continue to be of considerable interest to the United States. If implemented vigorously, these reforms can have a major impact on the Japanese economy, stimulating competition, and leading to a more productive use of resources.

In this regard, the United States particularly welcomes Japan's initiative to reform and privatize Japan Post. The United States has long called for the elimination of tax and other advantages Japan Post has over U.S., Japanese, and other private companies in Japan's banking, insurance, and express delivery markets. Japan has established a framework to make important progress in this direction with passage of legislation by the Japanese Diet in October 2005. As Japan makes preparations to implement these reforms, it is key that all necessary measures are taken to fully realize the legislation's principle of establishing equivalent conditions of competition between Japan Post and the private sector. It is also important that the preparatory process and implementation of these reforms be fully transparent to all interested parties.

Highlights of this year's recommendations on privatization are:

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- **Level Playing Field for Postal Savings and Insurance:** Ensure Japan Post is required to meet all tax, regulatory, and legal obligations that are applied to private sector companies, and that Japan Post is also subject to the same supervisory standards and treatment.
- **Adequate Disclosure:** Require Japan Post entities to implement full disclosure and accounting requirements on a level sufficient to demonstrate that unfair cross-subsidization does not occur among the new Japan Post businesses as well as between these businesses and the new public successor corporation for postal savings and postal life insurance.
- **Conditions of Competition and New Products:** Ensure a level playing field is in fact created in Japan's banking and insurance sectors before the postal financial institutions are permitted to introduce new lending services, underwrite new or altered postal insurance products, and originate non-principal-guaranteed investment products.
- **Level Playing Field for Express Delivery:** Ensure that Japan Post and its affiliated international distribution services be clearly separated from the universal mailing service; apply the same tax obligations to the Postal Service Company and to private companies; apply the same customs clearance procedures for mail and packages handled by Japan Post as those applied to private express carriers; and ensure effective disclosure of the Postal Service Company.
- **Full Transparency and Inclusiveness:** Take steps to make the preparatory process for the Japan Post reforms fully transparent, including providing meaningful opportunities for interested private-sector parties to exchange views in a timely way with related government officials as well as members of related Government-commissioned advisory committees and study groups. In addition, ensure Public Comment Procedures are fully utilized with respect to implementing regulations, guidelines, Cabinet and other orders, and other measures.

LEGAL SYSTEMS REFORM

A legal environment that is conducive to providing efficient international legal services to domestic and foreign companies and individuals will contribute significantly to the health of Japan's economy. One of the key factors in ensuring that companies and consumers in Japan have access to cost-effective, timely, and integrated legal services is the assurance of freedom of association between foreign lawyers and Japanese lawyers (*bengoshi*). The 2003 amendments to the Foreign Lawyers Law were a welcome and important step in that direction, but they will have a beneficial impact on the Japanese economy only if they are implemented by both the Ministry of Justice (MOJ) and the Japan Federation of Bar Associations (*Nichibenren*) with the liberalizing spirit that imbued the 2003 legislation. In addition, other impediments to the provision of efficient international legal services remain to be addressed. For example, restrictions on the ability of foreign law firms to establish multiple branch offices in Japan impede the ability to meet the legal service needs of Japanese consumers. Moreover, current rules discourage those foreign lawyers with a long-term interest in providing international legal services in Japan from becoming registered foreign lawyers (*gaiben*).

To improve the legal environment for the provision of international legal services, the United States recommends that Japan take the following measures:

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- **Ensuring Freedom of Association for Foreign Lawyers:** Take action, including through continued discussions between the Ministry of Justice and the Japan Federation of Bar Associations (*Nichibenren*) and other necessary measures, to ensure that the rules and regulations of *Nichibenren* and the local bar associations are consistent with the letter and liberalizing spirit of the Foreign Lawyers Law with regard to freedom of association between foreign and Japanese lawyers, and do not discriminate against foreign lawyers.
- **Permitting Professional Corporations and Branches:** Submit legislation to permit foreign lawyers to form professional corporations on the same basis and with the same benefits as *bengoshi* professional corporations; and submit legislation to allow foreign law firms and their *gaiben* partners in Japan to establish multiple branch offices in Japan without being required to form a separate Japanese legal professional corporation.
- **Easing Minimum Qualification Criteria for Foreign Lawyers:** Amend the Foreign Lawyers Law to permit all of the time that foreign lawyers spend practicing the law of their home jurisdiction in Japan to be counted toward the three-year experience requirement for qualification as a *gaiben*.

COMMERCIAL LAW

A modern commercial law regime that facilitates domestic and cross-border merger and acquisition transactions will promote efficient restructuring across the economy and maximize shareholder value to the benefit of investors. An important component of a modern commercial law regime is rules that permit and facilitate the use of modern merger techniques and tender offers. Another important component is strong corporate governance mechanisms, since they have been shown to have a positive impact on business performance, leading to more efficient operations and corporate structures, higher returns to shareholders and, ultimately, to a healthier economy. One of the most important preconditions for a good corporate governance system are mechanisms that encourage and facilitate the active exercise of shareholder rights, including active participation by both institutional and small shareholders in proxy voting and accessible legal mechanisms to provide oversight of management and shareholder decisions. The United States welcomes the measures already taken by Japan to modernize its Commercial Law and to encourage active proxy voting by institutional investors. However, more efforts are required if Japan's commercial law system is to encourage increased investment in Japan, more efficient operations by corporate managers, and higher returns to shareholders.

For these reasons, the United States urges Japan to take the following measures:

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- **Promoting Efficient Restructuring and Shareholder Value:** Implement rules allowing triangular merger techniques in a manner that permits the use of shares listed on major international exchanges and that includes clear and predictable rules for tax deferral; facilitate efficient tender offer bids by allowing offers to be made conditional on reasonable requirements and by requiring corporate boards to state their views, based on fair and impartial analysis, on whether stockholders should accept or reject tender offers; facilitate corporate conversions to consolidated companies (*godo kaisha*); and simplify assertion of appraisal rights by dissenting shareholders.
- **Promoting Good Corporate Governance:** Promote active proxy voting by institutional investors by requiring government pension fund managers to disclose their proxy voting policies, adopting a fiduciary duty on private pension fund managers to exercise proxy voting rights for the benefit of fund beneficiaries, and taking action so that investment trust managers are obliged to disclose publicly their actual proxy voting records; eliminate disincentives to proxy fights by allowing corporate boards to reimburse shareholders for the expenses of successful proxy solicitations; facilitate proxy voting by encouraging stock exchanges in Japan to revise their rules to ensure effective and efficient exercise of proxies, including through use of electronic voting; and extend the statute of limitations for court challenges of unlawful special shareholder resolutions.
- **Protecting Foreign Firms Legitimately Doing Business in Japan:** Amend Company Law to ensure that foreign firms doing business legitimately through branch offices are not subject to the prohibitions and liabilities set out in Article 821.

DISTRIBUTION

Lowering costs and increasing efficiency throughout the distribution system can contribute significantly to strengthening Japan's economy, benefits consumers, and creates a more competitive business environment in this sector. While the United States welcomes recent reductions in landing fees at Narita Airport, some new fees were introduced and others increased. (Narita landing fees remain among the highest in the world.) There are many additional concerns about airport fees, including the lack of access to information regarding large expansion projects at Japan's airports, which has raised questions about efficiency and how these projects will be financed. Transparency is also a concern with changing operating rules at Haneda Airport.

The United States is also placing a focus this year on several other areas under Distribution. First, while the United States notes steps taken by Japan in recent years to improve customs clearance procedures, it urges Japan to co-locate Customs officials with express carrier customers and allow Nippon Automated Cargo Clearance System (NACCS) users to declare express items at any convenient Customs office. Second, the United States is urging Japan to relax regulations in regard to the number of trucks private express companies must have in local areas to start package delivery service to those localities. Third, the use of credit, debit, and ATM cards is expanding at a rapid rate worldwide, but continued low card acceptance at both traditional merchants and ATMs in Japan inconveniences Japanese residents and discourages tourism. The United States continues to urge Japan to further promote the use of credit and debit cards by businesses and as payment for government services. Fourth, Japan's current Road Transport Vehicle Law (RTVL) procedures cannot reasonably accommodate auto leasing companies and other owners of large numbers of vehicles. The United States continues to urge Japan to consider changes to the RTVL to facilitate registration and title transfer procedures.

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- **Airport Landing Fee Reform:** Assure transparency in the setting of fees, and reduce fees. sector parties can be informed of and comment on proposed rule changes at Haneda Airport.
- **Airline Sales Distribution:** End the practice of enforcing a 70 percent low pricing band on tickets sold by airlines.
- **Customs Procedures:** Take additional steps to streamline customs procedures.
- **Airport Construction and Operations:** Establish a mechanism to ensure Narita Airport's project to extend runway B and other capital improvements at airports move forward in a transparent way, and that the concerns of U.S. and other carriers are taken into account; and establish a mechanism by which carriers and other interested private-
• **Credit/Debit Cards:** Further increase acceptance of credit and debit cards as payment for goods and services, and mandate compliance with international standards for retail banking and ATM security.
- **Road Transport:** Streamline changing fleet vehicle registrations and registering title transfers.

ANNEX

TELECOMMUNICATIONS

I. Promoting Regulatory Independence, Transparency, and Technology

Neutrality/Choice. The Ministry of Internal Affairs and Communications (MIC), which combines regulatory oversight and policy promotion for the telecom sector, has long had difficulty shielding the regulatory decision-making process from partisan influences. By developing and implementing policies in a more transparent manner and adhering to the principle of technological neutrality in this regard, MIC will lessen the perception that its decisions provide disproportionate benefits to larger companies with historical ties to the government – at the expense of new entrants.

- A. To foster regulatory independence, the United States urges Japan to:
 - 1. Develop a plan for moving regulatory functions from the purview of a ministerial agency subject to direct political control to a fully independent governmental organization; and
 - 2. Eliminate any requirements that the Japanese Government own a specified amount of NTT shares and that foreign shareholding or a management role in NTT be restricted.

- B. To foster greater transparency in policymaking and revision of telecommunications regulations, the United States urges MIC to:
 - 1. Open the selection process for Government-sponsored study groups such that any interested stakeholder, foreign or domestic, is given the opportunity to participate;
 - 2. Ensure that all public comment periods are a minimum of 30 days; and
 - 3. Provide interested parties with opportunities to comment on or reply to the public comments that have been submitted before the policies or regulations are finalized.

- C. To ensure that service providers can introduce innovative technologies, the United States urges Japan to:
 - 1. Institute a clear policy of technology neutral licensing, separating, to the maximum extent possible, operator choice of technology from the spectrum assignment and service license process; and
 - 2. Ensure that it will not unduly promote, mandate, or favor specific technologies such as those developed through cooperative agreements with other countries.

II. Strengthening Competitive Safeguards on Dominant Carriers. In 2001, Japan established a framework for “asymmetrical regulation,” with stricter requirements on designated dominant carriers that control bottleneck facilities. In 2004, MIC further deregulated competitive carriers by abolishing the Type I/II classification system. However, as telecom services migrate to IP (Internet Protocol)-based networks and “convergence” becomes a reality, MIC should resist attempts to rollback the requirements on dominant carriers. The United States recommends that Japan continue to secure a competitive environment for the telecom sector that does not hinder new market entrants, competitive carriers, and foreign equipment suppliers.

A. Dominant Carrier Regulation and Competition Safeguards. As part of the competition policy review that MIC began in October 2005, the United States urges Japan to respond to changing market conditions by:

1. Maintaining structural separation in the NTT Group company, to ensure that the NTT group does not exploit wireline/wireless convergence to undermine competition;
2. Ensuring that proposals to relax dominant carrier requirements adhere to objective benchmarks for evaluating the state of competition in the telecom sector;
3. Developing policies that promote cross-platform competition for telecom/broadcasting convergence on IP-based networks; and
4. Conducting an open forum on NTT’s reorganization plan, taking into due consideration the principle of promoting intra-company competition as enshrined in the 1999 revision to the NTT Law.

B. Procurement. The United States urges Japan to continue ensuring fair procurement by dominant carriers such as the NTT regional companies by:

1. Providing a period for public comment on the appropriateness of renewing obligations under the U.S.-Japan Network Channel Terminating Equipment (NCTE) Agreement as modified in the Third Report to the Leaders;
2. Examining NTT’s current system of limiting participation at earlier stages of development and commercial trials of new technologies, if large-scale deployment of standardized technologies is expected;
3. Ensuring that any MIC policy recommendations for technical requirements for next-generation infrastructure are subject to an open and transparent process; and

4. Opening procurement by the Japanese Government of telecommunications services, including VOIP, to any supplier, including foreign operators, on a non-discriminatory basis.
- C. Wireline Interconnection. Keeping in mind that the current LRIC model will expire in 2008, and to ensure a competitive playing field under changing market conditions, the United States urges Japan to:
1. Require NTT East and West to each set a cost-oriented interconnection rate, consistent with Japan's WTO obligations, taking into account differing costs of the respective regions; and, as necessary, permit differential interconnection rates between the regional carriers, taking into account dangers of (and methods to prevent) anti-competitive price squeezes;
 2. Consider transitioning to a bill-and-keep cost-recovery mechanism for the broadest possible range of network access functions offered by NTT; and
 3. Eliminate the use of interconnection revenue as a source of cross-subsidization between NTT East and West, based on the activation of the revised universal service fund mechanism.
- D. Universal Service. The United States urges Japan to ensure that the universal service program is implemented in a competitively-neutral manner that gives all eligible operators meaningful opportunities to access funding, and does not simply result in further strengthening NTT's dominance of local service.

III. Promoting Competition in the Mobile Sector and the Efficient Use of Spectrum.

Consistent with Japan's vision of a "ubiquitous network society," the United States recommends that Japan increase flexibility and transparency in its spectrum policy, and apply principles of network and competition policy to the mobile sector.

- A. Mobile Termination Rates. Keeping in mind that Japan has committed, in its Telecommunications Business Law as well as in the 2002 Regulatory Reform Initiative's Report to the Leaders, to ensuring competitive interconnection rates for dominant wireless networks, the United States urges Japan to:
1. Institute an objective and transparent means for evaluating whether mobile wireless termination rates are set at levels that reflect the principle of cost-orientation under efficient management, and to provide a clear basis for arbitration if commercial negotiations fail;
 2. Institute competitive neutrality for wireline carriers seeking to interconnect with mobile operators by eliminating the default right of mobile carriers setting the retail rate; and

3. Analyze NTT DoCoMo's dominant position in the mobile sector and the degree to which existing mobile carriers exert oligopolistic market power in the sub market for call termination.

B. New Market Entrants. With Japan's licensing of three new market entrants for the 1.7GHz and 2GHz bands, as well as additional opportunities through leasing, the United States urges Japan to take strong significant steps to ensure a level playing field for the new companies, including addressing such issues as:

1. Facilitating roaming on incumbent networks for reasonable rates;
2. Ensuring sufficient access to towers and tower sites;
3. Analyzing incumbents' unused spectrum, determining criteria to identify "warehousing" (hoarding), and taking steps to eliminate it; and
4. Facilitating the ability of licensed operators to lease, sub-lease, and exchange spectrum with other service providers, by creating a secondary market.

C. Spectrum Allocation For New Technology. The United States urges Japan to:

1. Begin a public process of identifying, allocating, and setting proposed assignment dates, as soon as possible, for spectrum that can be used for innovative wireless LAN (Local Area Network) technologies, fixed and mobile MAN (Metropolitan Area Network) services and other non-standardized technologies;
2. Consider, where feasible, making spectrum available for such technologies on an unlicensed consumer usage or "license-exempt" basis;
3. Refrain from instituting privileged spectrum rights exclusively for preferred users (e.g., home-entertainment equipment makers) when shared use would be possible; and
4. Review procedures for obtaining test licenses with a view to streamlining the process, making it more transparent, and establish procedural safeguards that prevent incumbent companies from hindering the testing of competing technologies.

C. VOIP Over Mobile. The United States recommends that Japan take immediate steps to create a flexible regulatory framework for Internet Protocol-based mobile communications that allows both new and incumbent operators technology choice and ensures that the licensing process is timely, objective, and transparent.

IV. Promoting Trade in Telecommunications Equipment. The United States and Japan have already taken positive steps towards facilitating more efficient trade in

telecommunications products through mutual recognition of testing and certification requirements. Technology is evolving at a rapid pace, and it has become essential to reduce the “time-to-market” as much as possible to keep up with demand for advanced technologies and services. The United States recommends that Japan work towards streamlining its certification process for telecom equipment, to benefit both domestic and foreign equipment makers.

A. MRA. The United States proposes that the Governments of the United States and Japan conclude a Mutual Recognition Agreement (MRA) for requirements relating to conformity assessment of telecommunications equipment so that the agreement will take effect by the end of CY2006.

B. Review of Japan’s Conformity Assessment Requirements. With a view towards removing burdensome requirements that do not reflect the technological realities of the global marketplace, the United States recommends that Japan seek industry feedback in a transparent manner on its conformity assessment system, including:

1. Updating the Suppliers’ Declaration of Conformity (SDoC) system, which was established in 2003, with particular attention to industry’s experience, to make SDoC an efficient and attractive alternative to third-party certification; and
2. Adopting a “family approval” approach for radio type approval procedures that allows modifications to radio equipment certifications without requiring a new type approval registration.

V. **Removing Regulatory Impediments to Advanced Technologies and Services.** The United States looks forward to enhancing the Telecommunications Working Group dialogue by inviting experts from government and the private sector as guest speakers to share their views on timely topics mutually agreed upon by both governments. In particular, the United States welcomes the opportunity to continue the regulatory challenges in both countries of introducing new technologies and services, such as Software Defined Radio (SDR) or Broadband Over Power Lines (BPL, also known as Power Line Communication or PLC).

INFORMATION TECHNOLOGIES

I. IT and E-Commerce Policymaking. The various e-Japan Strategies and Programs have effectively promoted the use of IT and e-commerce throughout Japan's economy to benefit individuals, create more efficient e-government, and foster high value-added business activities. In particular, Japan has made significant progress in promoting the use of the Internet for electronic transactions. To ensure that its policies continue to foster a vibrant IT sector, the United States urges Japan not to over-regulate or hinder e-commerce and related activities.

A. New IT Strategy. The IT Strategic Headquarters (ITSH) is currently drafting Japan's New IT Strategy, which is scheduled for release in winter 2005-2006. The New IT Strategy will set goals for 2010, for both the government and private sectors, to facilitate the development of advanced IT infrastructures and greater use of IT and e-commerce in Japan. This far-reaching strategy will likely have many repercussions on businesses and other organizations operating in Japan as well as Japanese consumers. The United States urges Japan to develop and implement the New IT Strategy in a manner that promotes private-sector leadership and self-regulation in IT and e-commerce by:

1. Soliciting public comments on the New IT Strategy before its final release;
2. Ensuring any Cabinet orders, ministerial ordinances, guidelines, or other measures prepared to implement the Strategy or its policy goals also are open to public comments, that a minimum period of 30 days is provided for comments, and that comments received are seriously considered and reflected as appropriate in the final measures and actions that are implemented; and
3. Ensuring any implementation of the recommendation by the e-Japan Evaluation Expert Committee that the New IT Strategy "select and concentrate sectors" does not stifle private sector innovation or market entry.

B. Private-Sector Input. Japan has confirmed on several occasions the importance of private-sector input in the development and implementation of IT and e-commerce policies. Given the complexities and emerging nature of these sectors, it is critically important that a diverse range of views is sought out in any relevant study groups.

C. Technology Neutrality. In the 2005 Report to the Leaders, Japan stated the importance of implementing laws, regulations, and guidelines related to IT in a manner that strives not to unduly promote, mandate, or favor specific technologies (technology neutrality), in order to provide maximum flexibility and encourage innovation in the private sector. The United States urges Japan to:

1. Strengthen its resolve in this regard by reaffirming the importance of private-sector leadership in IT-related standards setting; and
 2. Ensure adherence to technology neutrality as it pursues implementation of proposals and policies laid out in the ITSH's September 2004 "Basic Concept on IT International Policy Centered on Asia" and related sections of the IT Policy Package 2005.
- D. International Compatibility. The speed, convenience, and low cost of the Internet have made cross border e-commerce an integral part of international trade. This makes it essential for trading partners to have compatible e-commerce policies and regulations. The United States therefore urges Japan to ensure that its IT and e-commerce policies and regulations are compatible with international practice.

II. Strengthening the Protection of Intellectual Property Rights. Japan is currently undertaking an extensive review of its Copyright Law that is set to conclude by FY2007. Consistent with the goals contained in Japan's IP Policy Promotion Plan and the mutual interest of both our countries, the United States urges the Government of Japan to adopt the following recommendations:

- A. Copyright Term Extension. Extend Japan's terms of copyright protection for sound recordings and all other subject matter protected under the Copyright Law in alignment with the current global trend 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 copyright infringement by adopting a statutory damages system that will act as a deterrent against infringing activities, ensure that right holders are fairly compensated for the losses suffered by infringement, and enhance judicial efficiency by eliminating the costly and difficult burden of having to establish and calculate actual damages or profits.
- C. Protection of Digital Content. Build on the progress the Japanese Government has achieved in strengthening the protection of digital content and preventing online piracy by:
 1. *Effective Government Oversight*. Implementing measures to ensure that all government agencies and public institutions effectively prevent and punish the unauthorized reproduction, making available, or transmission of pirated copies of works or any other infringing activities on government-supported IT resources;
 2. *ISP Liability*. Comprehensively monitoring and strengthening current measures to prevent digital content piracy (especially improving the

Internet Service Provider Liability Rules), as these rules do not provide sufficient means for all right holders to effectively combat infringement;

3. *Online Piracy.* Adopting and implementing standards for secondary liability for copyright infringement that will provide necessary protection of digital content on the Internet;
 4. *Private-Use Exception.* Narrowing the scope of the private-use exception so that activities with implications beyond the home, such as downloading copyrighted works from peer-to-peer networks, are not permitted without the authorization of the right holder;
 5. *Temporary Copies.* Further clarifying the scope of protection for a temporary copy and refraining from adopting exceptions to the reproduction right as it applies to temporary copies until the clarification is definitive;
 6. *Technological Protection Measures (TPMs).* To help stem the dramatic increase in digital piracy, enhancing the scope of protection for TPMs and improving remedies for violations of those protections; and
 7. *End-User Piracy.* Clarifying the knowledge requirement in Article 113(2) of Japan's Copyright Law to ensure that all forms of end-user piracy are prohibited.
- D. Book Piracy. Effectively enforce Japan's Copyright Law to prevent illegal reproduction of books, especially on university campuses.
- E. Education Exception to Copyright Law. Ensure the education exception in Article 35 of Japan's Copyright Law does not conflict with normal exploitation of copyrighted works and does not unreasonably prejudice the legitimate interests of right holders.
- F. IP Strategic Program and Intellectual Property Policies. In implementing its IP Strategic Programs and other IP policies, the United States urges the IP Strategy Headquarters (IPSH) and the Japanese Government to ensure that:
1. Any Cabinet orders, ministerial ordinances, notifications, guidelines, or other IP-related measures 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 as appropriate in the final measures and actions that are implemented; and
 2. The implementation of the measures and policy goals is in compliance with international obligations, standards, and norms.

- G. Improving U.S.-Japan Cooperation on Intellectual Property Rights Protection and Enforcement. The United States and Japan have been cooperating with greater frequency to promote increased protection and enforcement of intellectual property rights around the world, and especially in Asia. This cooperation should continue and be expanded bilaterally and regionally, and in multilateral fora.

III. Promoting Online Security. Fraudulent and malicious activities are a growing threat to e-commerce, e-government, and online transactions across the globe. The increasing number of cyber attacks and the interdependence of global information networks place responsibility on all nations to respond to the challenge of promoting online security. Japan is taking strong and proactive steps in this regard, and its forthcoming New IT Strategy and First Information Security Basic Plan, both due out in winter 2005-2006, will include an even greater focus on these areas. Public and private-sector policies that protect personal privacy, address online fraud, and promote secure government information systems can contribute to greater online security and expand IT and e-government use within Japan, and foster domestic and international e-commerce. These policies should emphasize private-sector leadership and technology neutrality, stress public/private cooperation in addressing problems, and be compatible with international practice. They should also include cooperation with other governments where appropriate.

- A. Privacy. The Act on the Protection of Personal Information (Privacy Act) went into effect in April 2005. Ministries have released implementation guidelines to help companies comply with the Privacy Act. The United States urges Japan to:
1. Continue to implement the Privacy Act in a transparent manner by collaborating with relevant parties to hold a third privacy seminar for all interested individuals in Tokyo in 2006 to raise awareness, answer stakeholders' questions, and encourage compliance with the Act and its implementing guidelines;
 2. Clarify whether guidelines are mandatory or voluntary to help businesses understand and meet their legal obligations. Ideally, guidelines would include only those provisions that are intended to be mandatory for all companies subject to their jurisdiction. If voluntary guidelines are necessary, Japan should also clarify that failure to adhere to voluntary guidelines will not result in penalties to firms. Guidelines should state explicitly at the outset the mandatory or voluntary nature of the provisions contained within;
 3. Ensure all Ministries review the effectiveness of their implementation guidelines on an annual basis and make any necessary changes to ensure their effectiveness and consistency throughout government;
 4. Ensure that any revised guidelines are developed in a transparent manner, including at least a 30-day public comment period and an appropriate

amount of time for Ministries to consider those comments received before finalizing the guidelines. The revision of guidelines should also be coordinated among all relevant Ministries;

5. Establish a system to publish information about violations and corrective actions, to clarify and educate companies how to comply with the Privacy Act; and
6. Ensure each Ministry that has released privacy implementation guidelines establishes procedures to enforce those guidelines consistently and fairly.

B. Online Nuisance, Deceptive Practices, and Fraud. A rising tide of malicious activity has developed and diversified, including phishing, pharming, zombies, trojans, botnets and other malware, posing an increasing threat to online behavior. While generating unwanted costs, these forms of online malfeasance also dilute consumer confidence in online transactions, requisite for the successful growth of e-commerce. The United States commends the Japanese Government for amending the Law on Regulation of Transmission of Specified Electronic Mail (Anti-Spam Law) to include direct penalties, for studying issues such as spam and phishing, and for the Information Security Policy Council (ISPC)'s calls to address new online threats. The United States urges Japan to:

1. Work closely with the private sector in a transparent manner to encourage a balanced approach to combating spam, phishing, and other online fraud featuring the use of industry-appropriate technology, best process practices, and consumer education;
2. Vigorously enforce the amended Anti-Spam Law;
3. Remove legal barriers related to the Telecommunications Business Law that inhibit Internet Service Providers' use of new technologies to filter and block spam;
4. Implement any online fraud-related laws, regulations, and guidelines in a manner that strives not to unduly promote, mandate, or favor specific technologies; and
5. Work closely with the Government of the United States to share information and collaborate to best address rising issues of online fraud. This includes cooperating with the United States to ensure a successful anti-phishing, spam, and online fraud conference with relevant stakeholders in April 2006 to raise awareness, highlight best practices, and promote public-private partnerships to counter online hazards.

C. Government Information Security. The United States continues to welcome Japan's efforts to improve and ensure the security and reliability of government

information systems. In 2005, Japan took significant steps to strengthen its ability to meet these goals by establishing the National Information Security Center (NISC) and giving it a key role in creating government-wide information security standards and guidelines.

1. NISC released for public comment documents related to its draft “Uniform Standards for Information Security Measures of Government Organizations (First Overall Version for December 2005)” on October 17, 2005. The United States recommends that NISC:
 - a. Carefully assess feedback received, consult with those who submit comments for further clarification, if necessary, and take adequate time before releasing the final documents to incorporate suggestions as appropriate when these result would in improved standards or processes; and
 - b. Make available to those interested a summary of the main issues raised in the comments received, as well as an indication of NISC’s response or actions taken.
2. The United States commends NISC for planning to assess its government information security requirements over the next several years through a cycle of “Plan Do Check Act” which includes the introduction, evaluation, and review of standards and guidelines. The United States recommends that NISC:
 - a. Use Public Comment Procedures and other methods of soliciting input from the public on all government computer security requirements it issues, whenever possible;
 - b. Promote consistent implementation of minimum information security requirements by all Ministries; and
 - c. Ensure that procurement of IT products or services to meet Japan’s government information security requirements is fair and transparent for all domestic and foreign vendors.
3. The United States understands that the Information Security Policy Council (ISPC) has stated the need to strengthen the security of local government computer systems, and that MIC and the Cabinet Secretariat would review these governments’ “safety standards and guidelines.” If Japan decides to provide guidance to local governments, the United States urges Japan to encourage them to use those security requirements issued by NISC for the central government, to promote consistency.
4. The United States recommends that Japan and the United States seek ways

to continue to exchange information and experiences to improve both countries' efforts to secure their government information systems.

IV. Promoting E-Commerce and Online Services. The IT Policy Package 2005 placed increased emphasis on promoting the use of IT and e-commerce in areas closely related to the welfare of individual citizens. These areas included medical services and IT for Japan's aging society. The forthcoming New IT Strategy will likely place a focus on these areas as well. Japan also is continuing to promote the greater use of IT in sectors such as financial and government services. To promote and facilitate online services in Japan, the United States urges the Japanese Government to take the following steps.

- A. e-Notification. Permit e-notification under the Money Lending Business Law.

- B. IT-Related Financial Reforms. The Financial Services Agency (FSA)'s December 2004 Program for Further Financial Reform stated that the relative importance of Internet transactions has increased while, compared to other countries, Japan's financial institutions have fallen behind in IT investments and IT costs remain high. As part of its reform program, the FSA is seeking to promote the strategic use of IT to strengthen the competitiveness of Japan's financial institutions and further develop financial infrastructure. To achieve these goals, the United States urges Japan to:
 - 1. Reaffirm the private sector's central role in expanding the usage of IT in financial transactions through the development and deployment of innovative technologies and that the government should work closely with the private sector when developing any related legislation. Specifically, Japan should ensure that any legislation concerning e-banking, electronic fund settlements and payments, online financial transactions, or other online-related financial legislation is developed in a transparent manner with input from all interested parties, including technology providers;
 - 2. Ensure that any such legislation is compatible with international practice, so as to facilitate and promote cross-border online financial transactions;
 - 3. Study and implement appropriate measures to ensure the transparency of financial institutions' IT investments; and
 - 4. Ensure that the FSA works closely with the ITSH and relevant Ministries so that Japan's IT-related financial reforms are consistent with Japan's other IT and e-commerce regulations and policies, so as to provide predictability to the private sector.

- C. e-Medicine. The Government of Japan has stressed the need to promote the use of IT in healthcare services to enhance quality and efficiency. The IT Policy Package 2005 highlighted the plans of various Ministries to formulate and implement measures designed to help Japan rapidly introduce IT solutions for

items such as personal medical records, processing systems for receipts, orders, and claims, and remote medical care. The United States welcomes Japan's commitment to e-medicine and urges it to:

1. Ensure that all relevant laws, ordinances, guidelines, and standards are, to the extent practicable, technology neutral; and
2. Provide all interested parties with opportunities to present their views on proposed policies and rules related to e-medicine through transparent, open, and inclusive processes.

D. e-Accessibility. Demand is rapidly growing for technologies that make IT more accessible to the elderly and individuals with disabilities. Millions of people around the world have disabilities and their numbers are expected to increase as the populations of many countries age. The United States encourages Japan under this Initiative to engage in bilateral discussions aimed at facilitating a better understanding of our respective work and priorities in the area of e-accessibility.

V. Promoting Procurement Reforms for Information Systems. Since 2001, the Government of Japan has taken steps to reform procedures for central government procurement of information systems. These measures have been recognized as necessary to accomplish goals such as discouraging anticompetitive behavior, procuring high-quality information systems at reasonable costs, stimulating innovation and competition among vendors, and promoting transparency and fairness in government procurement. The U.S. Government supports these goals, which the Government of Japan's Inter-Ministerial Task Force for Information Systems Procurement (Task Force) outlined in the memorandum of agreement on government procurement for information systems (memorandum) it issued in March 2002, and revised most recently in March 2004.

- A. The results of a survey carried out by the Task Force in December 2004 indicated that many reforms contained in the memorandum have not yet been fully implemented by all Ministries. The United States urges the Task Force to continue to monitor the Ministries' efforts to implement the memorandum's reforms and direct them to complete this process as soon as possible. In particular, the United States recommends the Task Force urge all Ministries to:
1. Complete reviews of rules for participation in bidding and adopt changes that increase flexibility and promote competition;
 2. Develop and introduce contracts for information systems procurements that clearly define and set appropriate limits on responsibilities for liability between the government and vendors;
 3. Devise measures to promote the wider dissemination of the benefits of intellectual property (IP) created through government-sponsored development of information systems;

4. Increase training for government procurement officers in IP issues related to government procurement through use of Procurement Skill Standards or other measures to improve expertise;
 5. Finish setting rules for investigations of extremely low-priced bids; and
 6. Ensure that the online database for information systems procurement the Government of Japan created in 2004 (<http://cyoutatujirei.e-gov.go.jp>) is an effective tool to enhance transparency and fairness. To accomplish this, Ministries should:
 - a. Regularly contribute all necessary information about individual procurement cases to the database; and
 - b. Analyze this information and publish results to help identify trends in information systems procurement, such as changes in the ratio of competitive versus negotiated contracts, use of multi-year contracts, and adoption of bid evaluation methods such as life-cycle cost and Overall Greatest Value Method (OGVM).
- B. To further improve the government procurement process for information systems, the United States urges the Government of Japan to:
1. Work to shorten, to the extent practicable, time lags between the date a winning bidder is chosen and the date the contract is actually signed; and
 2. Encourage government procurement officers to be as flexible as possible in allowing vendors to take steps to protect their rights or the rights of third parties to preexisting IP that is incorporated into procurement deliverables.

MEDICAL DEVICES AND PHARMACEUTICALS

- I. Changes in Japan's Healthcare System.** The Japanese Government is considering major changes to its healthcare system. The U.S. Government urges Japan to provide industry, including U.S. industry, with ample and meaningful opportunities to express its views regarding changes in the healthcare system to the Council on Economic and Fiscal Policy and other Japanese Government and advisory bodies working on this issue.
- II. Medical Device and Pharmaceutical Pricing Reform and Related Issues.** The Japanese Government is considering revisions to its reimbursement pricing system for medical devices and pharmaceuticals. The U.S. Government encourages Japan to ensure that any changes to its reimbursement pricing system recognize the value of innovation, a key goal of the Japanese Government's policy papers known as the Visions. The U.S. Government urges Japan to:
- A. Provide industry, including U.S. industry, with ample and meaningful opportunities to express its views on revisions to the reimbursement pricing system to the Council on Economic and Fiscal Policy (CEFP) and other Japanese Government and advisory bodies working on this issue. Ensure proposals and implementation measures are consistent with Japan's policy to recognize the value of innovation and the important role of the market.
 - B. Take the following steps to increase recognition of the value of innovative medical devices and pharmaceuticals:
 - 1. *Pharmaceuticals.*
 - a. Implement on a trial basis from April 2006 to April 2008 a flexible pricing method for new drugs that ensures that the full scope of their value can be evaluated and rewarded based upon data from applicants. Ensure that this trial method does not replace the current system for setting prices for new drugs. Base this trial method on transparent interaction between applicants and pricing officials and create an independent appeals mechanism;
 - b. Raise the minimum premiums to the following levels: 80 percent for "innovative," 30 percent for "usefulness 1," and 10 percent for "usefulness 2." Eliminate the monetary limits for oral and injectable drug premiums;
 - c. Ensure that the Foreign Price Adjustment (FPA) rule for pharmaceuticals will not be altered in a way that would harm U.S. industry. Eliminate the cap of twice the comparator price. Assign to each of the four prices used in the FPA calculations a weight based on sales in the respective country and establish a price floor of 100 percent of the weighted four-country average;

- d. Abolish the re-pricing criteria for market expansion based on the sales of a product or its comparator for both a product's initial indication and for additional indications; and
- e. Assess the effectiveness of the system implemented on a trial basis in FY2005 under which applicants have been allowed to make presentations at certain Drug Pricing Organization meetings.

2. *Medical Devices.*

- a. Eliminate the Foreign Average Price (FAP) rule for medical devices before the biennial price revision scheduled for April 1, 2008. Use a reimbursement mechanism based on market factors in Japan. Consult with companies affected by the reimbursement mechanism to determine how it operates. While the FAP rule remains in effect, take the following steps: apply it only to categories covered by the 2004 FAP price revisions; adopt a weighted average system; maintain the rules regarding maximum price reductions; change the multiplication factors to reflect the characteristics that result in differences in cost structures in other markets; consult fully with U.S. industry on price data collection; and use only industry-supplied data for price recalculations; and
- b. Take the following steps to improve the C1 and C2 pricing systems:
 - i. Form a task force with industry, including U.S. industry, to develop clear criteria for C1 eligibility and premiums. Provide a provisional C1 price immediately after regulatory approval when C1 designation is requested. Award C1 prices to products that significantly improve aspects such as treatment, diagnosis or management of disease; and compliance; ease of use; recovery times; long-term outcomes; and cost effectiveness;
 - ii. Form a task force with industry, including U.S. industry, to develop a value-based methodology for C2 products based on individual assessment of products, economic outcomes, quality of life, safety, efficacy, and other factors. Establish periodic listing of C2 products at least four times a year; and
 - iii. Develop performance goals for C1 and C2 approvals that will facilitate an increase in the number and percentage of such approvals and that will ensure the fastest possible

processing of such applications.

- C. Take steps to improve the evaluation of the clinical value of diagnostics (including in vitro-diagnostic reagents and imaging equipment), and reimburse such products at levels that fully reflect their clinical value. Consult with industry, including U.S. industry, regarding the categories of test that are considered to have added clinical value. Establish an IVD subcommittee in Chuikyo.
- D. Take measures to ensure the adoption of innovative medical devices and pharmaceuticals under the Diagnosis Procedure Combination (DPC) system.
- E. Implement a system for restoring to the patent term additional time to compensate for a New Drug Application to be approved.
- F. Consult closely with the pharmaceutical industry, including non-Japanese local firms, on the Intellectual Property Strategy Headquarters' consideration of proposals on strengthening intellectual property protection for pharmaceuticals.
- G. In the short term, set reimbursement price levels for blood products that compensate manufacturers for the costs incurred in implementing revisions to the Pharmaceutical Affairs Law in 2003. In the longer term, develop a reimbursement pricing system for blood products that accounts for the unique characteristics of that industry and that is not based on the pharmaceutical model.

III. Medical Device and Pharmaceutical Regulatory Reform and Related Issues. The establishment of the Pharmaceuticals and Medical Devices Agency (PMDA) in 2004 and the implementation of major Pharmaceutical Affairs Law (PAL) changes were designed in part to improve Japan's review times of drugs and medical technology. PMDA, however, has encountered difficulties in achieving faster reviews and making other improvements to Japan's regulatory system. Improvement of Japan's regulatory system will allow Japanese patients to gain greater access to new, innovative products. The U.S. Government urges Japan to take the following steps to improve PMDA and Japan's regulatory system:

- A. Use the performance metrics agreed upon by PMDA and the U.S. drug industry to facilitate faster drug reviews and discussions with industry on improving the review system.
- B. Enhance PMDA's ability to hire qualified reviewers from the private sector by changing PMDA's restrictions on hiring reviewers who formerly worked in the pharmaceutical industry.
- C. Provide the U.S. drug industry with meaningful opportunities to discuss its ideas in the MHLW subcommittee and PMDA study group on clinical trials. Ensure PMDA schedules consultations with companies within 90 days of a request by

taking steps such as using “paper consultations” when face-to-face meetings are not needed and providing consultation points to sponsors before face-to-face consultations.

D. Take the following steps to improve medical device reviews:

1. Streamline reviews of approved products that have undergone partial changes in design, materials, manufacturing, or other areas by developing in consultation with industry, including U.S. industry, a decision tree to clarify when approval or notification is required. Establish a mechanism whereby applications for partial change approval may be submitted while previous partial change applications are already under review;
2. Ensure PMDA attains its goals for increasing the number of medical device reviewers, and ensure all reviewers are experts in their areas of responsibility;
3. Include in PMDA’s annual reports goals for improvement and details on how PMDA is using revenues from user fees to improve the review process in the next fiscal year; and
4. Eliminate the backlog of unprocessed applications by July 1, 2006.

E. Take the following steps concerning foreign clinical trials for medical devices:

1. Accept evidence of the manufacturer’s or applicant’s evaluation of clinical safety and performance and conformity with Japan’s regulatory requirements conducted outside of Japan. Refrain from requiring clinical trials to be conducted in Japan when relevant evidence gathered outside Japan is available. Inform applicants when supplemental clinical evidence from studies in Japan is required and provide applicants with a scientific and statistical rationale; and
2. Refrain from requiring applicants to provide Japanese regulators with data submitted to foreign regulators that have not been gathered in accordance with Japanese requirements unless those data bear directly on device safety or efficacy.

F. Take the following steps regarding Quality Systems:

1. Recognize that medical device manufacturers’ quality systems are designed to ensure the safety and efficacy of the final product and that quality system audits of factories provide all necessary information. Refrain from seeking information from third parties;
2. Recognize there is no link between the level of quality assurance and the

risk level of a device; and

3. Accept GMP audit certification that has been granted by FDA or a notified body if evidence of the certification is received within 12 months of the submission of an application in Japan.
 - G. Develop criteria based on international standards to determine when medical device manufacturers will be required to provide information on raw materials and what information will be required.
 - H. Accelerate adoption of medical device standards, based on international standards, to ensure lack of such standards does not delay reviews.
 - I. Establish extended shelf life for new medical devices based on the widely acceptable justification of accelerated age testing, and refrain from requiring real-time data as a condition of submission.
 - J. Modify requirements for biocompatibility test data and other test data to bring them in harmony with globally accepted standards and practices.
 - K. Review the policy on updating of medical device Shonin granted before April 1, 2005, with a view toward eliminating any unnecessary burdens on manufacturers and on PMDA's review resources.
 - L. Permit manufacturers to establish protocols that guarantee provision of "instructions for use" to every professional customer by means other than paper.
 - M. Consult with industry, including U.S. industry, on the conditions under which patient self-monitoring devices, such as self-monitoring blood glucose products, may be sold over the counter.
- IV. Blood Products.** The U.S. Government urges Japan to treat U.S. companies fairly and transparently by allowing them fair access to marketing and manufacturing opportunities.
- V. Nutritional Supplements.** The U.S. Government urges Japan to:
- A. Increase transparency of the regulatory system by publishing and making available lists of acceptable solvents, residues, and manufacturing processes; publishing testing methodologies; and establishing appropriate quantity limits.
 - B. Allow educational and informational statements on labels and in advertising.
 - C. Reduce duties for nutritional supplements to the same level as duties for pharmaceuticals containing the same ingredient.
- VI. Cosmetics and Quasi-Drugs.** Cosmetics and quasi-drugs are also regulated under the

Pharmaceutical Affairs Law (PAL). The U.S. Government urges Japan to:

- A. Allow companies to differentiate their products and make efficacy claims for cosmetics and quasi-drugs based upon verifiable data. Eliminate current advertising restrictions on efficacy claims and replace such restrictions with a general prohibition on false or misleading claims as determined from the viewpoint of a reasonable consumer.
- B. Work closely with industry, including U.S. industry, to identify and eliminate regulatory requirements for cosmetic ingredients and quasi-drugs that impose excessive administrative burdens, are inconsistent with regulatory regimes in other developed countries, and do not enhance product safety, efficacy, or quality. Reduce standard lead-times for regulatory processing.
- C. Improve the transparency of the regulatory process by publicly disclosing administrative guidance provided by MHLW to local authorities responsible for enforcing PAL provisions and by allowing industry, including U.S. industry, to participate in advertising review meetings. Provide detailed information about specific regulatory requirements and registration procedures in a timely manner.

FINANCIAL SERVICES

- I. Specific Measures.** The Government of the United States commends the Government of Japan on its progress on financial services regulatory reform and calls on Japan to continue such reforms, including the following measures:
- A. Modernize the legal framework for non-bank consumer and commercial finance to provide a clear basis for the enforceability of loan receivables, in order to increase the supply of credit available to consumers and small businesses.
 - 1. Revise Article 17 and 18 of the Money Lending Business Law (MLBL) to provide for disclosure requirements that can be practically and simply met by money lending companies, including those offering open-end revolving credit and transactions on third party ATMs or the Internet;
 - 2. Recognize customer privacy preferences by allowing, at the customer's option, MLBL disclosure requirements to be satisfied by electronic notice; and
 - 3. Promote regulatory transparency and stability in the lending sector by eliminating "grey zone" interest liability and adopting internationally accepted principles for balancing the protection of debtor and creditor interests in personal bankruptcy proceedings.
 - B. Create a legal and regulatory framework for a credit bureau system that will foster greater sharing of personal credit information among bona fide lenders. Fair, open access to full-file credit information not only facilitates sound credit underwriting and provides safeguards against excessive lending, it also increases the supply of credit available to consumers and small businesses.
 - C. Put foreign bank branches on an equal footing with domestic banks by allowing them to engage in trust and banking businesses concurrently, pursuant to Article 1, Paragraph 1 of the Concurrent Operation Law.
 - D. Eliminate ambiguity of the FSA Guidelines for (private sector) Financial Conglomerate Supervision by:
 - 1. Establishing a materiality threshold of size or activities of regulated entities that would subject a group to the Guidelines; and
 - 2. Establishing a clear materiality threshold or other objective test for intra-group transactions and transactions involving unregulated entities that may potentially be subject to reporting obligations and administrative actions under the Guidelines.
 - E. Foster expanded use of corporate Defined Contribution (DC) pension programs

by:

1. Increasing the tax deductible contribution limit;
 2. Allowing employee contributions (for example, employee matching of employer contributions);
 3. Allowing early access to funds before age 60 in specified circumstances; and
 4. Allowing investment advice to be made available to participants.
- F. Harmonize the regulatory framework governing investment advisory and investment trust management activities and eliminating inconsistencies or duplication.
- G. Allow mergers and reduce obstacles to the early termination of investment trusts, in order to permit investment managers to combine and diversify investments, which would result in a reduction of both risk and cost to investors.
- H. Create a plan to adopt ISO standards for retail banking security and align ATM security standards with global triple DES security mandate by July 2007.

II. Transparency. The U.S. Government encourages the FSA to maintain the recent progress in enhancing financial sector regulatory transparency through continued active use of the no-action letter system and the public comment process, and by continuing to solicit input from private firms in drafting financial sector laws and regulations. In that spirit, the United States suggests the following additional measures to enhance the transparency of financial regulation and supervision:

- A. The United States welcomes the recent FSA efforts to enhance the effectiveness of the no-action letter system, including the active solicitation of input from U.S. and other foreign firms, on how best to improve the system. In addition to continuing those efforts, the FSA should consider the following measures to further improve the no-action letter system.
1. Draw upon the United States' recommendations for enhancing the government-wide no-action letter system as laid out in sub-section VIII of the "Transparency and Other Government Practices" chapter of these recommendations.
 2. Expand the scope of eligible issues upon which interested parties may submit no-action letter requests beyond plans for "new products or services" to include requests for clarification of the laws and regulations governing existing products or services.

- B. The U.S. Government recommends that the FSA adopt new programs to complement the no-action letter system as vehicles for expanding the body of written interpretations of Japanese financial laws and regulations. Such interpretations reduce uncertainty as to what financial products and services are prohibited under Japanese law, and thereby increase the scope for innovation by financial services providers. To that end, the U.S. Government recommends that the FSA take the following steps:
1. Build on the progress made with the recent publication on the FSA web site of ten “reference cases” providing examples of FSA interpretations of Japan’s financial laws and regulations by steadily increasing the number of such cases published.
 2. Establish other vehicles to provide written interpretations of Japan’s financial laws even when an interpretation has not been formally requested. Possible models for providing such interpretations include the SEC’s “Telephone Interpretations” web page or its “Staff Legal Bulletin” and “Staff Accounting Bulletin” systems.
- C. The FSA’s active solicitation of input from private, including foreign, firms in the process of drafting the Investment Services Law has been a major step in the process of enhancing regulatory transparency in Japan’s financial sector. Seeking such input also reduces the risk of adverse unintended consequences of financial laws and regulations. The United States welcomes those efforts and looks forward in the coming months to continued dialogue among the FSA, the Financial System Council, foreign and domestic financial firms, and interested governments and industry associations.
- D. The U.S. Government also welcomes the FSA’s continued active use of the public comment process and other steps to enhance the transparency of FSA Rulemaking Procedures and the implementation of new or revised FSA regulations and ordinances, and other efforts to solicit input from affected parties.
- E. The United States also welcomes the Japanese financial authorities’ close working relationship with private sector financial industry associations, such as the American Chamber of Commerce in Japan and the International Bankers Association, that fully represent the views and the expertise of their members.

COMPETITION POLICY

I. Strengthening the Effectiveness of Antimonopoly Enforcement. A properly structured competition policy – supported by a strong and effective antimonopoly law and enforcement policy – will provide great benefits to Japanese consumers and the business community, and will promote the health and dynamism of the Japanese economy. In this regard, the United States welcomes the significant improvements to Japan’s competition policy represented by the 2005 amendments to the Antimonopoly Act (AMA). In order to ensure these improvements are implemented and supported in the most effective manner, the United States urges Japan to:

A. Maximize the Effectiveness of JFTC’s Leniency Program.

1. Clarify the requirements for perfecting leniency applications to ensure that deadlines for submitting necessary information, including translation requirements for foreign language materials, do not encourage potential applicants to delay their applications.
2. Clarify the policy of the Japan Fair Trade Commission (JFTC) on the confidentiality of leniency applications and the disclosure of information and documents submitted in support of leniency applications, so as to assure potential applicants that their identity will be kept confidential and that information they submit to the JFTC will not be used against them in other legal proceedings.

B. Heighten AMA Deterrence and Compliance.

1. Signal its expectation and desire for tougher sentencing of individuals convicted of AMA violations by submitting legislation to the Diet that would lengthen the maximum criminal sentence for individuals that engage in unlawful cartel activities to five years imprisonment.
2. Implement JFTC’s new investigation powers for cases likely to result in criminal accusations in a manner that strengthens overall criminal enforcement of the AMA.
3. In order to promote AMA compliance, review the desirability of adopting new AMA enforcement guidelines, or amending existing guidelines, to ensure that JFTC enforcement policies reflect the best economic and legal understanding of appropriate competition law enforcement.

C. Strengthen Staff Capabilities and Resources.

1. Continue to strengthen the economic analysis capabilities of JFTC staff and employ those capabilities in all aspects of the JFTC’s work.

2. Continue to increase the staff and budget of JFTC substantially and steadily.

I. Improving Reliability and Fairness of JFTC Investigatory and Administrative Procedures. AMA enforcement will be most effective where the business community and Japanese consumers have confidence that JFTC enforcement actions are applied in a fair and transparent manner. In order to ensure the utmost confidence in JFTC investigative and administrative procedures, the United States recommends that Japan:

- A. Stay of Execution of Elimination Orders. Establish clear criteria for JFTC granting a request to stay the execution of a cease and desist order pending review of the order by JFTC hearing examiners or by a court, to ensure that such orders do not cause irreparable harm to the subjects of the order.
- B. Review of Evidence and Opportunity to Rebut. Ensure that the proposed recipient of a cease and desist order or surcharge payment order will be given access to all of the evidence on which the proposed order is based, and that such recipient will have sufficient time to rebut such evidence and to make arguments in its defense prior to the issuance of such an order.
- C. Opportunity to Present Defense in Proposed Warning Cases. Introduce a system that will allow proposed recipients of warnings (and similar measures) against suspected infringement of the AMA, Act Against Unjustifiable Premiums and Misleading Representations, or Act Against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors to submit evidence and arguments in their defense prior to the issuance of such warnings.
- D. AMA Basic Issues Study Group.
 1. Ensure the agenda and discussions of the AMA Basic Issues Study Group under the Cabinet Office examining JFTC procedures continue to be publicly disclosed, and provide an opportunity for interested foreign parties and organizations to submit their views to the study group.
 2. Publish an interim report on the work of the Study Group, invite public comment on that interim report, and publish all comments submitted on the website of the Study Group.

II. Addressing Bid Rigging. Recent events have demonstrated that bid rigging, often aided by government officials, continues to be a significant problem in Japan. Bid rigging injures Japanese consumers, taxpayers and the economy by raising costs for government projects, preventing needed restructuring, harming efficient bidders and undermining confidence in the government and support for a culture of competition in Japan. In order to effectively address bid rigging, the United States urges Japan to:

- A. Administrative Leniency. Adopt a Ministry of Land, Infrastructure and Transport (MLIT) administrative leniency program to encourage companies to cease their participation in bid-rigging conspiracies and to report the bid rigging to the proper authorities, such as a program that would reduce or eliminate suspension of designation, and possibly other administrative sanctions, for the first company that comes forward to report its participation in a bid-rigging conspiracy.
- B. Administrative Penalties. Implement measures announced in the July 2005 report of the MLIT Bid Rigging Recurrence Prevention Countermeasure Study Committee to prevent bid rigging. Specifically:
1. Lengthen significantly the minimum period of suspension of designation for companies that have twice been found to have engaged in bid rigging within a 10 year period.
 2. Implement the decision to claim damages against firms that engage in bid rigging, even when the contract does not contain the special liquidated damages clause, by establishing with the Ministry of Justice a procedure for claiming in court the damages suffered by the Government of Japan from such bid-rigging practices.
- C. Competitive Bidding. Maximize the number of projects in which competitive bidding is used, and ensure that firms, whether Japanese or foreign, are not disqualified from bidding based on the location of their head office or branch offices.
- D. Conflicts of Interest — *Amakudari*. Strengthen the measures recently taken by MLIT to address conflicts of interest created by the *Amakudari* system – including prohibiting senior officials from accepting job offers at firms receiving contracts from the ministry for five years after retirement – by prohibiting all officials of MLIT and their related organizations, regardless of their position, from accepting jobs within an appropriate period after retirement from any companies receiving contracts from the ministry.

TRANSPARENCY AND OTHER GOVERNMENT PRACTICES

- I. Public Comment Procedures (PCP).** The annual survey of PCP implementation released by the Ministry of Internal Affairs and Communications (MIC) in September 2005 demonstrates the shortcomings of Japan's PCP implementation prior to its incorporation earlier this year into the Administrative Procedure Law. In more than half the cases, Japan's Ministries and Agencies were still soliciting public comments for periods shorter than 30 days, a practice that has seriously limited the ability of interested parties to submit comprehensive and thoughtful input. While welcoming the recent amendment of the Administrative Procedure Law to improve the PCP, the United States urges Japan to seek ways to make this important mechanism more effective. Specifically, the United States urges Japan to:
- A. Take concrete steps to ensure the spirit of the revised PCP is adhered to, including compelling Ministries and Agencies to:
 - 1. Provide minimum 30-day public comment periods unless there is a genuinely urgent need to do otherwise;
 - 2. Seriously consider public views submitted and incorporate them into final regulations where appropriate;
 - 3. Require the publication of draft regulations at the earliest possible time to allow interested parties sufficient time to analyze issues and prepare meaningful public comments; and
 - 4. Provide sufficient time between the closing of a comment period and the finalizing of regulations so that comments can in fact be incorporated.
 - B. Thoroughly evaluate the effectiveness of the recent changes in the Administrative Procedure Law intended to improve the PCP, publicly report the findings of that evaluation, and provide opportunities for the public to comment on any such results.
 - C. Actively and expeditiously seek further changes to PCP implementation requirements if the recent revisions provide insufficient opportunities for the public to input into the policymaking process in a meaningful way.
- II. Foreign Translations of Japanese Laws.** The United States welcomes Japan's initiative to translate laws into foreign languages, which will help improve the business climate for foreign companies, and could serve as a model for developing countries pursuing legal reform. To ensure transparency and effectiveness of this initiative, the United States urges Japan to:
- A. Continue close consultation with the foreign business community in Japan (including with regard to any relevant committees overseeing the process), not

only in the planning phase but also as the Ministries and Agencies follow through with the translations they plan to undertake; and

- B. Ensure allocation of sufficient resources to complete the translations in a timely manner.

III. APEC Transparency Standards. APEC leaders have agreed to a package of transparency standards for a range of trade and investment areas. The United States and Japan have worked closely to create these standards. Accordingly, the United States and Japan should work jointly to achieve full implementation of the APEC Transparency Standards in the domestic legal regimes of countries in the Asia-Pacific region.

IV. Special Zones for Structural Reform. The U.S. Government continues to support regulatory reform in Japan through the establishment of the Special Zones for Structural Reform. The United States is pleased to note that since the approval of the first 57 zones in 2003, the total number has grown roughly 10 fold. The United States urges Japan to continue to administer this initiative transparently while placing a focus on expanding market entry opportunities and expeditiously applying zone measures nationwide. The United States also urges Japan to encourage foreign participation in the zones initiative by publishing in English on the Internet a comprehensive list of current zones, progress on zone applications, and updated zone information.

V. Public Input into Policy Development – Advisory Groups. Advisory councils (*shingikai*) and other government-commissioned study groups are often accorded a significant role in Japanese policy development. While membership lists and meeting minutes may be publicly available, the process of creating these councils and study groups remains opaque, and non-members are not uniformly offered meaningful opportunities to provide input into these groups’ decision-making processes. The United States therefore urges Japan to increase the transparency of advisory councils and other government-sponsored working groups by:

- A. Providing published, publicly accessible notice of the intent to form such councils and groups prior to their creation, as well as the process for developing them;
- B. Creating a centralized, publicly accessible electronic list of all advisory committees and their members;
- C. Seeking open nominations for council and group membership whenever possible and permitting all interested parties to participate in such councils and groups to the greatest extent possible;
- D. Providing ample and meaningful opportunities for all interested parties to provide input into policy formulation throughout the deliberations by such councils and groups; and
- E. Providing ample advance public notice prior to council and group meetings to enable interested parties to attend.

VI. Public Input into the Development of Legislation

- A. The United States recommends that Japan's ministries and agencies accelerate the practice of providing greater opportunities for interested parties to be aware of and comment on draft legislation in the early stages of its formation.
- B. With specific regard to future legislative renewals of the Life and Non-Life Policyholder Protection Corporations, the United States urges that these efforts are undertaken in a transparent manner, including providing meaningful opportunities for input by interested parties, and that establish a more efficient, sustainable safety net system before the current system expires.

VII. Bank Sales of Insurance

- A. The United States urges Japan to ensure that the postponement of the next phase of liberalization of the bank sales channel for insurance products to December 2005 does not affect the timetable to achieve full liberalization by December 2007.
- B. The United States urges Japan to take measures to ensure that rules preventing inappropriate sales tactics to enhance consumer protection are developed and implemented in a transparent manner, with timely opportunities for input from interested parties, and in a manner that is fair by not favoring one product or services supplier over another.
- C. The United States also welcomes the Financial Services Agency's plan to review, prior to December 2007, the 10 million yen ceiling on third sector insurance products that smaller banks may sell to certain related companies. The United States urges Japan to eliminate this ceiling as it unfairly disadvantages third sector insurance service suppliers.

VIII. Insurance Cooperatives. Insurance cooperatives (*kyosai*) provide a range of insurance products that compete directly with the private sector and occupy substantial market share in the Japanese insurance market. Some *kyosai* are regulated by government agencies other than the insurance regulator, the Financial Services Agency. Some *kyosai* have not been regulated at all. The lack of a uniform regulatory regime for *kyosai* undermines the ability of the Government of Japan to provide companies and policyholders with a sound, transparent regulatory environment, and affords the *kyosai* significant business, regulatory and tax advantages over their private sector competitors. A number of these *kyosai* continue to take advantage of this advantageous situation to expand their market presence and product offerings. The United States therefore urges Japan to take the following steps:

- A. Create a level playing field between *kyosai* and their private sector competitors by subjecting all *kyosai* to the same laws, level of taxation, safety net contribution

requirements, reserve requirements, standards and regulatory oversight as their private sector counterparts.

- B. With specific regard to “regulated *kyosai*,” conduct a government-wide study by mid-2006 that reviews their current situation and that examines, among other issues, the sales practices of *kyosai* that effectively target the unspecified public. The review should also examine the differences in regulatory treatment and supervision among these regulated *kyosai* as well as between them and private sector insurance providers.
- C. With respect to “unregulated *kyosai*,” the United States welcomes the initial measures taken by Japan, through amendment of the Insurance Business Law, to require these *kyosai* in principle to be made subject to regulation and supervision of the Financial Services Agency. The United States also requests that a thorough and rigorous review of this new system be undertaken in an open and transparent manner, and that this process lead to consistent treatment between *kyosai* and private sector insurance suppliers within a five-year period.

IX. No Action Letters. The United States recommends that Japan take further steps to enhance the effectiveness and increase the usage of Japan’s no-action letter system, which provides regulated firms with an opportunity to seek clarification of an administrative agency’s interpretation of laws and regulations. Measures that would contribute to a more effective no-action letter system include:

- A. Giving Japan’s no-action letter system, which was established under a Cabinet Decision, the force of law by incorporating its requirements into the Administrative Procedures Law (APL).
- B. As an interim step, providing by Cabinet Decision more detailed government-wide guidelines to administrative agencies as to the requirements governing the agencies’ individual no-action letter systems, and setting a timetable for those agencies to set up their no-action letter systems. Specific steps should include:
 - 1. Establishing a single “window” at each agency to receive no-action letter requests.
 - 2. Adopting measures to promote more active use of the no-action letter system, including:
 - a. Outreach efforts by administrative agencies to inform firms in regulated industries that they can seek clarification of Japan’s laws and regulations via the agency’s no-action letter system;
 - b. Announcing that groups of firms and/or industry associations can submit NAL requests on behalf of specific firms; and

- c. Establishing internal systems to encourage agency staff to actively solicit no-action letters from individual firms and other interested parties that seek informal oral interpretations of laws and regulations on issues that are matters of settled policy.
- C. Establishing both government-wide and agency-specific fora for seeking private sector input as to how to improve the no-action letter systems of the various government administrative agencies.

X. Government Practices Relating to Agriculture. As detailed in the October 2005 Report to Leaders, Japan took meaningful steps in 2005 to adopt a more internationally accepted plant quarantine system based on the International Plant Protection Convention (IPPC) standards for official control and risk analysis. The results of these steps, however, remain to be seen.

- A. To demonstrate that Japan is seriously implementing the IPPC standards on official control and risk analysis on a regular and routine basis, the United States urges Japan to expeditiously finalize its review of the status of eight pests, particularly lettuce (the United States has already provided the Ministry of Agriculture, Forestry, and Fisheries, or MAFF a list of these pests).
- B. The United States also urges Japan to cooperate to undertake a joint pest risk assessment on other pests/commodities of priority interest to the United States.

PRIVATIZATION

- I. Privatization of Public Corporations.** The United States continues to take interest in Prime Minister Koizumi's efforts to restructure and privatize Japan's public corporations. As reform of the public corporations advances, the United States continues to urge Japan to:
- A. Conduct 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 reforms have meaningful opportunities to provide input, such as through use of the Public Comment Procedures and through meaningful opportunities to participate in advisory councils that deliberate and make recommendations on the reforms.
- II. Japan Post.** The United States welcomes Japan's initiative to reform and privatize Japan Post. The United States recognizes that, if implemented vigorously, this reform effort can have a major impact on the Japanese economy, stimulating competition and leading to a more productive use of resources. The implementation of a fully market-oriented reform is also necessary to eliminate the long-standing advantages that Japan Post has been accorded over U.S., Japanese, and other private companies. The Japan Post legislation passed by the Diet in October 2005 establishes a framework for progress in these directions. As preparations are made to implement these reforms, it is important that all necessary measures are taken to fully realize the legislation's principle of establishing equivalent conditions of competition between Japan Post and the private sector. It is also important that the preparatory process and implementation of these reforms be fully transparent to all interested parties.
- A. Level Playing Field for Postal Savings and Insurance. The United States welcomes confirmation by Japan that the new postal savings bank and postal insurance corporations, from the outset of the privatization process in October 2007, will no longer be allowed to offer products that carry special government guarantees and that they will be required to meet the same tax, legal, and regulatory obligations and, along with the Post Office Corporation, be subject to the same supervision as private sector companies. In addition to ensuring that these above-mentioned measures are fully implemented, the United States urges Japan to take the following additional steps to clearly and fully achieve a level playing field between Japan Post and private sector companies:
 - 1. Implement adequate measures to ensure that business relationships, finances, management, and ownership among the four privatized postal service suppliers and with the holding company are fully separated and disclosed (including the clarification of profits and losses), and, in addition, ensure full independent supervision of these businesses is conducted by the relevant governmental agencies to ensure these relationships and transactions are truly arms-length.

2. Ensure the Incorporated Administrative Agency Management Organization for Postal Savings and Postal Life Insurance (Public Successor Corporation) regularly and fully reports transactions and financial relationships with the new postal businesses, observes rigorous corporate accounting rules, and, prior to the beginning of the transition period, is made subject to a valuation of its assets, liabilities, and reserves by independent auditors.
3. Ensure that private sector firms are given equal access to compete for Japan Post distribution of financial products, and that the selection of these companies is conducted in a non-discriminatory and transparent manner.
4. Take appropriate action sufficient to dispel public perceptions of implicit government guarantees on new postal savings and postal insurance products, with particular care taken prior to the full divestiture of government shares in the postal insurance and savings businesses.
5. Take appropriate measures, including rigorous enforcement of the Antimonopoly Act, to ensure that the Post Office Company, Postal Savings Bank, and Postal Insurance Company do not use their market power to restrict competition.
6. Take necessary steps to ensure the Regional-Social Contribution Fund will be administered transparently, including sufficient and periodic public disclosure of the cost allocation methodology, cost and revenue data used to make these calculations, and the distribution of funds. In addition, take any other necessary steps to prohibit any benefits from accruing unfairly to the privatized postal service suppliers but not to other domestic and foreign service suppliers.
7. Ensure that supervision of Japan Post by the Financial Services Agency (FSA) is conducted from the beginning of the transition period on the same basis and according to the same laws, regulations, procedures and standards as other domestic and foreign private financial companies and distributors of FSA-regulated financial products.

B. Conditions of Competition and the Introduction of Products. The United States welcomes mention in the Government of Japan's outline for legislation in April 2005 that equal footing (with the private sector) will be a factor in GOJ decisions about permitting expansions in the scope of Japan Post's business. In that regard, the United States urges Japan to ensure a level playing field is actually created between the postal financial institutions (both existing institutions and, from October 2007, the new institutions) and private financial institutions before the postal financial institutions are permitted to introduce new lending services, new or altered insurance products underwritten by the postal insurance business, and

the origination of non-principal-guaranteed investment products by the postal savings business. Achieving a level playing field includes having taken the steps identified in Section A above.

C. Level Playing Field for Express Carrier Services. The United States urges Japan to promote fair and free competition in the express carrier sector as privatization unfolds by ensuring establishment of a level playing field. The United States urges Japan to ensure that Japan Post and its affiliated international distribution services be clearly separated from the universal mailing service and that both services are conducted in a transparent manner. Specifically, a level playing field needs to be achieved in Japan's express delivery services market – including for mail delivered under both Japan Post's universal mailing service and Express Mail Service (EMS) – by ensuring:

1. Effective supervision of the Postal Service Company by the Ministry of Land Infrastructure and Transport under freight transportation laws and ordinances and by the Ministry of Internal Affairs and Communications under postal laws and ordinances, depending on the business activity;
2. Application of the same tax obligations to the Postal Service Company as those applied to private companies;
3. Application of the same customs clearance procedures for mail and packages handled by Japan Post as those applied to private express carriers. Specifically, the United States urges Japan to ensure that mail delivered under EMS follows the “duty declaration” system and not the “duty assessment” system that Japanese regulations currently apply to EMS mail. In addition, Japan Post should be required to pay equal costs for customs clearance, including NACCS charges and the costs for application document preparation. Furthermore, Japan should ensure it applies all safety and security laws and regulations to Japan Post letters in the same manner as to documents carried by private express carriers; and
4. Maintenance of present measures regarding public disclosure of the status of profit and loss according to current categories; and requiring the Postal Service Company to disclose the status of profit and loss according to the categories of postal services business and other, newly privatized business areas – including domestic and international logistics businesses – to the same standards of Generally Accepted Accounting Principles required of other private companies.

D. Inclusiveness and Transparency. The United States welcomes confirmation by Japan that the preparatory process and implementation of the reforms of Japan Post will be undertaken in a transparent manner. In addition to providing timely and meaningful opportunities for private sector interested parties to exchange views with relevant officials on matters pertaining to these reforms as well as to

the existing postal financial institutions, the United States urges Japan to take the following steps to ensure that the preparation and implementation of these reforms is fully transparent and inclusive of the views of various interested parties:

1. Ensure meaningful opportunities are provided to interested private sector parties, including U.S. and other foreign companies, to participate in and actively contribute to deliberations by committees or components of such committees convened by the Government of Japan, including the Postal Services Privatization Committee (PSPC), on issues relating to the preparatory and transitional phases of Japan Post privatization that may impact the private sector.
2. Ensure balanced representation for the PSPC, including appointing representatives of private sector financial service suppliers, including foreign service suppliers, operating in Japan.
3. Fully utilize meaningful Public Comment Procedures with respect to implementing regulations, guidelines, Cabinet and other orders, and other measures established for matters pertaining to Japan Post, and furthermore ensure that all public comments are fully considered and, where appropriate, incorporated into draft measures before they are finalized.

LEGAL SYSTEMS REFORM

- I. **Ensuring Freedom of Association of Foreign Lawyers.** Freedom of association between foreign lawyers (*gaiben*) and domestic lawyers (*bengoshi*) is a key factor in ensuring that Japanese consumers of legal services have access to cost-effective, timely and integrated legal services. The 2003 amendments to the Foreign Lawyers Law, which became effective in April 2005, are an important step in this direction. In order to build on that progress, the United States urges that Japan take action, including through continued discussions between the Ministry of Justice (MOJ) and the Japan Federation of Bar Associations (*Nichibenren*) and other necessary measures, to ensure that the rules and regulations of *Nichibenren* and the local bar associations are consistent with the letter and liberalizing spirit of the Foreign Lawyers Law and do not discriminate against foreign lawyers.

- II. **Permitting Professional Corporations and Branches.** The United States welcomes the fact that MOJ is diligently studying whether to permit *gaiben* to form professional corporations and is also evaluating the practical considerations that must be addressed if foreign lawyers were to be permitted to establish branch offices of their law firms without forming a separate Japanese legal professional corporation. The United States urges Japan to complete these studies by the end of FY 2005 with a view to submitting legislation to the Diet that would:
 - A. Permit *gaiben* to form professional corporations on the same basis and with the same benefits as *bengoshi* professional corporations; and
 - B. Allow foreign law firms and their *gaiben* partners in Japan to establish multiple branch offices in Japan of such law firms without being required to form a separate Japanese legal professional corporation.

- III. **Easing Minimum Qualification Criteria for Foreign Lawyers.** In order to encourage foreign lawyers with a long-term interest in Japan to seek qualification as a *gaiben*, the United States urges Japan to amend the Foreign Lawyers Law so that all of the time foreign lawyers spend practicing the law of their home jurisdiction in Japan – whether in a joint enterprise, domestic law firm or other legal environment – will be counted toward the three-year experience requirement.

COMMERCIAL LAW

I. Promoting Efficient Restructuring and Shareholder Value. A modern company law regime that facilitates, rather than impedes, domestic and cross-border merger and acquisition transactions will promote efficient restructuring across the economy and maximize shareholder value to the benefit of investors both large and small. Important components of such a modern regime include rules permitting and facilitating the use of modern merger techniques, tender offers and corporate reorganization, as well as the maintenance of appropriate mechanisms to safeguard the rights of minority shareholders. The United States welcomes Japan's efforts to modernize its commercial law regime by amending its Company Law in 2005, which included provisions that will introduce modern merger techniques and permit important corporate reorganization. To ensure these measures are implemented and supported in a manner that brings Japan closer to international trends in this area, the United States urges Japan to:

II. Implement Modern Merger Techniques

- A. Promulgate Ministry of Justice regulations implementing the Company Law that would have the effect of permitting without significant restriction or procedural hurdles (such as listing on a stock exchange in Japan) the use of shares listed on the major international exchanges as consideration in triangular merger transactions with Japanese public companies.
- B. Ensure that such proposed regulations are published for public comment, in accordance with the Public Comment Procedure, and that foreign governments and interested parties are afforded ample and meaningful opportunities to provide comments on the draft regulations before they are finalized.
- C. Implement, well in advance of the effective date of the relevant provisions of the Company Law, regulations on the tax treatment of triangular mergers that provide clear and predictable rules regarding the availability of tax deferral benefits with respect to these mergers and that facilitate these tax deferral benefits in appropriate cases.

III. Facilitate Efficient Tender Offer Bids

- A. Amend the Securities Exchange Law, or take other necessary action, to allow tender offer bids to be made conditional on certain reasonable requirements, such as no material changes in the financial situation of the target company, stock splits, withdrawal of anti-takeover defenses, etc. or to allow tender offer bids to be modified in response to such changes.
- B. Adopt a regulation of the Financial Services Agency (FSA) establishing a requirement or fiduciary duty on board members of publicly traded target companies to state the Board's views, based on a fair and impartial analysis, on whether the stockholders should accept or reject tender offers or to state that the

Board has decided to remain neutral or otherwise is unable to take a position on such offers.

- C. Facilitate Conversions to New Corporate Forms. Provide in the Cabinet Ordinance or Ministerial Ordinance of the Company Law a mechanism by which companies may convert their corporate form from a limited liability company (*yugen kaisha*) or joint stock company (*kabushiki kaisha*) into a consolidated company (*godo kaisha*) by the effective date of the law.
- D. Make Appraisal Rights More Effective. Simplify procedures and valuation methods to facilitate the assertion of appraisal rights by dissenting shareholders in all relevant types of M&A transactions.

IV. Protecting Foreign Firms Legitimately Doing Business in Japan. Recent amendments to the Company Law have created tremendous uncertainties as to the potential liabilities of foreign companies legitimately operating in Japan through branch offices. To avoid having such foreign companies incur high costs in changing their business structures to avoid the risks of liability created by such amendments, the United States strongly urges Japan to amend the Company Law, before it comes into effect in May 2006, to make clear that foreign firms doing business in Japan through branch offices that are duly registered under the Company Law and are complying with applicable regulatory and tax laws are not subject to the prohibition of engaging in business in Japan and the liabilities of their directors and officers set out in Article 821.

V. Strengthen Good Corporate Governance. The strengthening of corporate governance mechanisms has been shown to have a positive impact on business performance, leading to more efficient operations and corporate structures, higher returns to shareholders and, ultimately, to a healthier economy. One of the most important preconditions for good corporate governance systems are mechanisms that encourage and facilitate the active exercise of shareholder rights, including active participation by both institutional and small shareholders in proxy voting and accessible legal mechanisms to provide oversight of decisions that are not consistent with law. The United States welcomes the measures already taken by Japan to encourage active proxy voting by pension funds and investment trusts. In order to further improve corporate governance systems in Japan, the United States recommends that Japan:

- A. Promote Shareholder Value through Active Proxy Voting by Institutional Investors.
 - 1. Revise the Government Pension Investment Fund's (GPIF's) Investment Management Policy to require disclosure of fund manager proxy voting policies.
 - 2. Announce by Spring 2006 the conclusions of the Ministry of Health, Labor and Welfare's study of whether it should adopt a specific fiduciary duty on private pension fund managers to actively evaluate whether to

exercise proxy voting rights of the pension fund, based on the best interest of fund beneficiaries.

3. Report on the specific steps taken by FSA to encourage the Investment Trust Association to require members to publicly disclose their actual proxy voting records, and the response of that Association.
- B. Eliminate Disincentives to Proxy Fights. Ensure that corporate boards have the authority, without the board members being subject to legal liability, to decide to reimburse shareholders for the solicitation expenses incurred in the course of pursuing successful proxy initiatives that had previously been opposed by the Board.
 - C. Facilitate Proxy Voting. Encourage the Tokyo Stock Exchange (and other stock exchanges in Japan) to enhance corporate governance of its listed companies by reviewing, and where appropriate, revising its rules to ensure the effective and efficient exercise of proxies by shareholders of its listed companies, including through the use of electronic voting wherever possible, taking particular account of the growth in the number of foreign shareholders in companies listed on such exchanges, the need to promote the exercise of proxies by such shareholders, and the conclusions of the Corporate Value Study Group.
 - D. Strengthening Court Review of Special Shareholder Resolutions. Amend the Company Law to lengthen the current three-month statute of limitations for filing shareholder lawsuits challenging the legality of special shareholder resolutions, particularly with respect to those that will affect the principle of equality of shareholder rights.

DISTRIBUTION

- I. **Airport Landing and User Fees.** The United States urges Japan to improve the business and tourism climate in Japan and help boost the economy by:
 - A. Immediately reducing landing and user fees at Kansai International Airport, which would benefit both Japanese consumers and industry;
 - B. Opening the formula used to calculate landing fees at Japan's international airports to public comment; and
 - C. Ensuring the landing fee calculation at all airports is transparent both for domestic and international flights, and includes only those costs associated with the use of airport runways and facilities, as prescribed by IATA.
- II. **Airline Sales Distribution.** Japan is one of very few countries that enforces the IATA Minimus 70-percent low pricing band on tickets sold by airlines, preventing them from offering competitive discount fares. Ending this practice would stimulate travel by giving the public access to a wider array of fares with greater control of their travel choices and help reach Japan's goal of increasing inbound tourism. It would also create a competitive market for Internet and other published airline ticket sales. The United States urges Japan to end this practice and proposes that further discussion to this end be held in air services negotiations between the appropriate authorities.
- III. **Airport Construction and Operation.** Narita Airport recently started an ambitious set of construction projects to extend its runway B to allow for use by larger aircraft. The process for planning and financing this has not been fully transparent, and a detailed breakdown of the budget has not been made available. As a result, many carriers, not only from the U.S., are concerned this project has increased in scope and may be inefficient and unprofitable. While the United States applauds NAA's recent reduction of landing fees (although this was offset somewhat by other fee changes), there is widespread concern that fees will be raised again in the future to fund this expansion and that the expansion may not be carried out in the most economical way. There are similar concerns with construction at other airports.
- IV. **Haneda Airport Operations.** The project to construct a fourth runway at Haneda Airport, to be completed by 2009, will provide needed new slots to the Tokyo area. The planned internationalization of Haneda, however, has moved forward without adequate transparency. The United States urges Japan to create a mechanism by which carriers and other interested private-sector parties can be informed of proposed rule changes, expansion plans, curfews, and other changes at Haneda, and provide such information in a timely manner to allow for comment on any proposal before it has been finalized. In particular, the lack of transparency has created concern over two issues: (1) A perimeter for allowable international flights has been proposed, but it is unclear how wide this perimeter would be and carriers from what countries it would include; and (2) Any proposed changes in operating hours that may affect U.S. carriers in the future should be

handled in a transparent manner, with a full explanation of their justification, and with adequate time to comment upon them during the decision-making process.

- V. Customs Prior Reporting Requirements.** On November 9, 2005, the Ministry of Finance (MOF) announced it would introduce a bill that would revise the Customs Law to require all aircraft and ships to submit detailed information on passengers and cargo prior to arrival in Japan. The current Customs Law only requires the submission of the same information at the time of border entry. MOF's plan would require aircraft and vessel captains or their airlines and shipping companies to submit the prior reports. The Government of the United States urges the Government of Japan to provide adequate time for carriers to comment on the plans as they are developed; broaden reporting authority to allow prior notification on cargo from all relevant parties, including freight forwarders; and ensure any such requirement cover all carriers and categories of cargo, including any postal carrier and mail delivered under the EMS (Express Mail Service) Cooperative.
- VI. Customs Declaration.** The United States urges Japan to allow Nippon Automated Cargo Clearance System (NACCS) users to declare express items at any convenient Customs office, rather than limiting them to the office where the cargo is physically stored. Because customs clearance is already performed on-line through NACCS, allowing declarations to be processed at a customs office separate from the cargo location would improve the efficiency of express carrier operations and move shipments more quickly to their destinations in Japan.
- VII. Co-location of Customs Officials.** We urge the Government of Japan to allow Japanese customs officials to work in the bonded areas of express carriers. Article 35 of Customs Law allows Customs officers to work in express carriers' bonded facilities, and doing so would improve processing efficiency at a time when the number of express items entering Japan is rapidly increasing. It would also help prevent illegal imports and exports.
- VIII. De Minimis.** The United States urges Japan to increase the Customs Law *de minimis* limit from its currently low 10,000 yen level to a more reasonable 30,000 yen in anticipation of a rise in the MOF consumption tax. This change would reduce workloads for both Customs and express carriers alike and reduce customs clearance time.
- IX. Express Carrier Vehicle Requirements.** Japanese law requires private express companies to have at least five trucks in one local area in order to start package delivery service to that locale. The regulation is not only a disincentive for private companies but also exempts Japan Post, whose vehicles can travel anywhere in Japan without restriction under the banner of providing universal mail service. The United States urges Japan to relax this requirement.
- X. Facilitation of Credit/Debit Card and ATM Services and Acceptance.** The use of credit, debit, and ATM cards is expanding at a rapid rate worldwide, and in the United States, Europe and Canada, 90 percent of all merchants accept credit or debit cards and

over one-third of all purchases are made with these cards. Low card acceptance at both traditional merchants and ATMs in Japan inconveniences Japanese residents and is also a common complaint of foreign visitors to Japan. In the spirit of the e-Japan II initiative and Prime Minister Koizumi's goal of doubling Japan's inbound tourists from overseas by 2010, the United States urges Japan to:

- A. Further promote the use of credit and debit cards by businesses and as payment for national and local government services;
- B. Work to open Japanese bank ATMs to international ATM networks; and
- C. Continue to strictly enforce laws and regulations relating to credit card fraud.

XI. Revision of the Road Transportation Vehicle Law. To facilitate registration and title transfer procedures, the Office of the Trade and Investment Ombudsman (OTO) recommended in March 2005 a review of the Road Transportation Vehicle Law (RTVL) and its implementation. Current procedures are aimed at individual owners of single vehicles and cannot reasonably accommodate the large number of changes in registration and title transfers made by auto leasing companies and other owners of large numbers of vehicles, such as would occur as the result of a corporate name change or when vehicles are transferred as part of a corporate merger. The United States therefore urges the Japan to consider changes to the RTVL that would:

- A. Allow registered owners of fleet vehicles to change fleet vehicle registrations and register title transfers independently of the registered user's application for change of the description in the certificate of vehicle inspection;
- B. Eliminate the need for the owner to present the original certificates of vehicle inspection at the time of application; and
- C. Allow these changes to be made in a more reasonable time frame using a computerized online system.

XII. Laws Affecting Large Scale Retail Stores. The United States welcomed Japan's passage of legislation in 1998 repealing the Large Scale Retail Store Law as a significant improvement to the establishment, operation, and expansion of large retail stores in Japan. Steps are currently under consideration within Japanese ministries, however, that may tighten or place new restrictions on the ability of retailers to open larger stores that meet consumer needs. The United States urges Japan to ensure that its initiatives to revitalize urban areas do not result in new regulations or other measures that limit the ability of retailers to open large scale stores in urban, suburban, and rural areas.