

**GENERAL AGREEMENT
ON TRADE IN SERVICES**

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Interim Group on Financial Services

COMMUNICATION FROM JAPAN AND THE UNITED STATES

Measures by the Government of the United States and the
Government of Japan regarding Insurance

In response to the request made during the meeting of the Interim Group on Financial Services on 12 October 1994, the attached communication¹ is circulated by the delegations of Japan and the United States for the information of participants.

Groupe intérimaire des services financiers

COMMUNICATION DU JAPON ET DES ETATS-UNIS

Mesures prises par le gouvernement des Etats-Unis et le
gouvernement du Japon en matière d'assurance

Donnant suite à la demande formulée au cours de la réunion du 12 octobre 1994 du Groupe intérimaire des services financiers, les délégations du Japon et des Etats-Unis ont fait distribuer aux participants, à titre d'information, la communication ci-jointe.¹

Grupo Provisional sobre Servicios Financieros

COMUNICACIÓN DEL JAPÓN Y DE LOS ESTADOS UNIDOS

Medidas adoptadas por el Gobierno de los Estados Unidos y
el Gobierno del Japón con respecto a los seguros

En respuesta a la solicitud formulada durante la reunión del Grupo Provisional sobre Servicios Financieros del 12 de octubre, las delegaciones del Japón y de los Estados Unidos distribuyen a los participantes la comunicación¹ adjunta, para su información.

¹English only/Anglais seulement/Inglés solamente.

MEASURES BY THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF THE UNITED STATES
REGARDING INSURANCE

11 October 1994
Washington, D.C.

As a result of consultations under the Joint Statement on the Japan-United States Framework for a New Economic Partnership regarding measures in the insurance sector, the Government of Japan and the Government of the United States each has decided to implement the measures on insurance described herein.

Takakazu Kuriyama
Ambassador of Japan

Michael Kantor
United States Trade
Representative

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I. PURPOSE AND GENERAL POLICIES

(1) The goals of the Framework are to deal with structural and sectoral issues in order substantially to increase access and sales of competitive foreign goods and services through market-opening and macroeconomic measures; to increase investment; to promote international competitiveness; and to enhance bilateral economic cooperation between the United States and Japan. To accomplish these goals with respect to the insurance sector, this document, "Measures by the Government of Japan and the Government of the United States Regarding Insurance" (the "Measures"), has been adopted. It addresses reform of relevant government laws, regulations, and guidance which have the effect of substantially impeding market access for competitive foreign goods and services, and significant improvement in market access for competitive foreign insurance providers* and intermediaries.

(2) Each Government reaffirms its commitments related to insurance in the Code of Liberalization of Capital Movements and the Code of Current Invisible Operations, adopted by the Organization for Economic Cooperation and Development.

(3) Each Government reaffirms its commitment to the principles of national treatment and most-favoured-nation treatment, and its commitments related to insurance in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations.

II. RECOGNITION OF JAPANESE INSURANCE SECTOR REFORM

(1) Both Governments recognize that the Government of Japan currently is in the process of preparing for the reform of insurance sector laws and regulations based on recommendations contained in a June 1992 Report by the Insurance Council, established under Article 8 of the National Government Organizations Law (*Kokka gyosei soshiki ho*). The Legislative Study Group under this Council deliberated on the legal aspects of the reform, and, based on the Legislative Study Group Report, the Council submitted its report to the Minister of Finance in June, 1994. The Government of Japan intends to submit such legislation to the Diet in 1995.

(2) The Government of Japan has informed the Government of the United States that the reform is being conducted based on the following three principles contained in the Insurance Council's recommendations:

- (i) Promoting competition and enhancing efficiency through deregulation and liberalization;
- (ii) Preserving soundness of business; and
- (iii) Ensuring fairness and equity in business operations.

(3) Unless otherwise specified in the Measures, measures in Section IV below which are closely related to matters under consideration in connection with the Government of Japan's insurance sector reform efforts are to be implemented upon implementation of insurance reform legislation. All measures in the Measures pertaining to domestic legislative action are subject to, and do not prejudice, deliberations by the Japanese Diet.

*In the Measures, "insurance provider" means one who is licensed to engage in insurance business.

(4) Notwithstanding the above, the Government of Japan is prepared to implement the other measures in the Measures by administrative means, independently of insurance reform legislation.

- (i) Measures referencing the Administrative Procedures Law ("APL") (*Gyosei tetsuzuki ho*) will be implemented according to the Government-wide schedule for implementation of that law. The Government of Japan has explained to the Government of the United States that implementation of this law with respect to the insurance sector currently is expected by November 1994.
- (ii) All other measures will be implemented expeditiously, in advance of insurance sector reform legislation where possible.

III. TRANSPARENCY AND PROCEDURAL PROTECTIONS

(1) Both Governments welcome passage of the APL in the 128th Diet session, which has the purpose of ensuring fairness and enhancing transparency of administrative operations, and thereby contributing to the protection of the rights and welfare of citizens, by establishing common procedures for dispositions, administrative guidance, and the processing of filings.

(2) Compilation, Publication and Standardization of Measures of General Application

- (a) The Government of Japan confirms the following, pursuant to the APL, with regard to the provision of insurance in Japan:
 - (i) Standards relating to licensing to provide insurance and approval of new products and rates will be compiled, published and made available to the public, unless it causes undue hindrance to administration;
 - (ii) Administrative guidance that is delivered orally, upon request, will be delivered in writing, unless it causes undue hindrance to administration;
 - (iii) When conducting the same type of administrative guidance on a multiple number of persons with the same set of conditions and to achieve the same administrative purpose, an administrative agency should stipulate in advance, according to each case, the items which are common to those administrative guidances, and should make it public unless such publication causes undue hindrance to administration.

(b) Under (i), (ii), and (iii) of 2(a) above, "undue hindrance to administration" is intended to be used only in exceptional circumstances.

(3) Harmonization of State Regulation

- (a) Taking note of principles of federalism under the United States Constitution, recognizing that insurance has been regulated at the state government level since the beginning of insurance regulation in the United States, and further recognizing the provision of the McCarran-Ferguson Act that "the business of insurance... shall be subject to the laws of the several States," the Government of the United States welcomes efforts by the National Association of Insurance Commissioners ("NAIC") to promote the harmonization of state insurance regulation, through such steps as its Accreditation Programme and the preparation of model insurance laws.

- (b) The Government of the United States notes that under the Accreditation Programme, the NAIC selects an independent team of auditors to review the compliance of states with the laws, regulations, and regulatory and organizational practices contained in the NAIC accreditation standards. The team reports to the NAIC, which determines whether a state qualifies for accreditation under the standards. Currently, 37 states are accredited by the NAIC through this programme.
 - (c) The Government of the United States notes that NAIC Model Laws are designed to facilitate legislative and regulatory action on common problems among the states and are intended to save duplication of effort on the part of the states. Some models are adopted by all or most of the states, so there is a harmonizing effect. Some models serve as guidelines which the states may adopt, utilize or amend to fit their individual needs. Certain models have been identified as being of such import that their adoption is necessary for states to be accredited pursuant to NAIC financial regulation standards.
 - (d) The Government of the United States encourages the NAIC to continue its efforts to work with state governments on these programmes.
- (4) Developer's benefit
- (a) "Developer's benefit" means a benefit granted, for a certain period, to a developer of an original product, under which approval is not given to certain products proposed by competitors.
 - (b) The Government of Japan confirms that a developer's benefit currently does not exist in the non-life insurance sector in Japan.
 - (c) The Government of Japan will specify the scope and period of exclusivity under the developer's benefit, in the event that such benefit is introduced in the future. "Scope" includes the standards for determining when a proposed product is sufficiently different from an existing product so as not to affect the developer's benefit applicable to the existing product.
- (5) Administrative Appeals
- (a) The Government of Japan confirms the applicability of the Administrative Appeals Inquiries Law ("AAIL") (*Gyosei fufuku shinsa ho*) and the Administrative Case Litigation Law ("ACLCL") (*Gyosei jiken sosho ho*) to all "dispositions" (including approvals for a license to provide insurance and approvals of new products and rates) of general application relating to the provision of insurance in Japan. A general description of AAIL and ACLCL procedures is set forth in Appendix I.
 - (b) On 30 June 1994, the Japan Fair Trade Commission ("JFTC") issued Guidelines Regarding Administrative Guidance. These guidelines state that an administrative agency should not issue administrative guidance that induces conduct that is inconsistent with the Anti-Monopoly Act ("AMA"). Any person that has received administrative guidance may seek the views of the JFTC as to whether the person's conduct proposed to be taken in response to the administrative guidance is inconsistent with the AMA.

(6) Advisory groups

When the Government of Japan establishes, or regularly seeks recommendations from, in a manner indicative of a formal advisory role for, any council, association, committee, group or similar organization with a purpose or function relating to the provision of insurance, which includes the participation of members of the private sector, the Government of Japan will strongly request the entity to allow interested foreign insurance providers and intermediaries established in Japan, and associations or other organizations representing such companies, to attend its meetings and submit statements to it to the extent possible.

(7) Participation in industry groups

(a) In Japan, foreign insurance providers can join all trade associations such as the Life Insurance Association, and the non-life rating associations. Both Governments welcome the fact that the Marine and Fire Insurance Association of Japan amended its articles of incorporation in January 1994, so as to enable foreign insurance providers to join the Association.

(b) The Government of Japan confirms that the Life Insurance Association, the Marine and Fire Insurance Association, the non-life rating associations and other similar organizations accord foreign insurance providers and intermediaries rights, privileges, and opportunities equal to those accorded to domestic firms subject to similar fees and other obligations, in accordance with the rules set by the organizations. Such rights, privileges and opportunities include rights, privileges and opportunities regarding representation and governance of the associations.

(8) Access to insurance regulatory information

(a) With respect to the insurance system reform now in process, the Insurance Council has been hearing opinions of foreign insurance providers, and the Insurance Department of the Ministry of Finance ("MOF") has been exchanging views from time to time with foreign insurance providers.

(b) The Government of Japan will ensure that foreign as well as domestic insurance providers and intermediaries are accorded meaningful and fair opportunities to be informed of, comment on, and exchange views with officials regarding measures relating to or affecting the provision of insurance in Japan.

(c) With respect to regulatory changes in the insurance sector that the Government of Japan may undertake from time to time following the completion of the regulatory reform now in process, foreign insurance providers will be accorded access to information by the Government of Japan on a national treatment basis that affords fair competitive opportunities. The following steps will further this objective:

(i) The establishment by the MOF of a list of foreign insurance providers, as well as organizations representing such providers, that have expressed an interest in regular communication;

(ii) Regular meetings with, and the provision of advance information to providers or organizations on the list, to the extent that similar exchanges take place with domestic insurance providers and organizations;

The Government of the United States will encourage foreign insurance providers and their representative organizations to take advantage of the opportunities for communication provided by the MOF.

(9) Procedural protection for notifications and applications

- (a) Recognizing that the Japanese courts ultimately may determine whether specific information is "secret" within the meaning of the National Public Service Law (*Kokka komuin ho*), the Government of Japan confirms that it considers "secret" information to include information in connection with applications or notifications for insurance licenses, products, or rates that is generally available to the public, and that such information is protected by the duty of Government officials under that law not to disclose secret information, except when they are legally required to disclose it.
- (b) The Government of Japan confirms that no limit, in law or in practice, exists on the number of new licence or product approval applications (including rate, form, and other types of product approval applications) that an insurance provider may submit at one time, and that no requirement or regulatory practice restricts an insurance provider from submitting additional applications based upon whether the Government of Japan has completed its review of that provider's previous applications.
- (c) The Government of Japan confirms that an insurance provider is not required to coordinate its notifications or applications for licences or product or rate approvals, or to consult regarding such notifications or applications, with any other insurance providers, industry associations, or other third parties that have, or whose members have, a competitive interest or potential competitive interest in such notifications or applications. The Government of Japan notes that, under current law, when an insurance provider submits an application for a rate for a type of product for which a non-life rating association calculates rates (i.e., not including a "special" rate), the Government of Japan may advise the insurance provider to inquire with the non-life rating association.
- (d) The Government of Japan confirms that the acceptance, processing, or approval of a notification or application for a licence, product or rate may not be conditioned or delayed based on whether the insurance provider consults, or coordinates its notification or application with any other insurance provider, industry association, or other third parties that have, or whose members have, a competitive interest or potential competitive interest in such notification or application. The Government of Japan notes that, under current law, when an insurance provider submits an application for a rate for a type of product for which a non-life rating association calculates rates (i.e., not including a "special" rate), the Government of Japan may advise the insurance provider to inquire with the non-life rating association.

(10) Self-regulatory organizations

- (a) The Government of Japan confirms the following with regard to "self-regulatory organizations" in the insurance sector, including those described in the Legislative Study Group Report (such as the Life Insurance Association, the Marine and Fire Association):
 - (i) Membership in such organizations is voluntary, and their operations are conducted in accordance with their respective association rules and by-laws,

and the Government of Japan will not delegate any authority to such organizations.

- (ii) The purpose of stipulating in the proposed law provisions regarding self-regulatory organizations is to clarify and make transparent the scope of their operations and their supervision by the MOF under the proposed law.
- (iii) The Report does not recommend that:
 - the legislation direct self-regulatory organizations to conduct operations that are in conflict with the AMA; or
 - the legislation exempt or immunize those self-regulatory organizations from the AMA.

The Government of Japan is respecting the above in formulating the bill to be submitted to the Diet.

- (iv) The guidance, recommendations, "investigation or research surveys" (*chosa*), and solution of complaints by such organizations described in the Report are advisory and/or voluntary. Insurance providers may comply with or participate in such actions as a matter of choice, but may not be sanctioned by the organizations, directly or indirectly, for not complying or not participating. However, it is noted that such organizations' rules or by-laws may maintain the right to deny or revoke membership, or take other less stringent measures, against members that do not meet the organizations' ethical standards indicated in their rules or by-laws.
 - (v) The Government of Japan, through the MOF as the responsible supervisory agency for the insurance sector, will strongly recommend that such organizations' activities be conducted in an open, non-discriminatory, and transparent manner, and not unreasonably impede free business activities. In addition, the MOF will treat applications and other requests by non-members no less favourably than applications or requests from members.
- (b) The JFTC will continue to vigorously deal with violations of the AMA by trade associations, including self-regulatory organizations, in all industries including those in the insurance sector, and will continue to monitor their activities.

IV. DEREGULATION MEASURES

(1) Product and rate approval

- (a) As regards the regulation of insurance products and rates, although it is desirable from the users' standpoint that less expensive and better products be provided through promoting competition and enhancing efficiency, it is also necessary to maintain appropriate prudential measures such as to ensure a stable supply of products, ensure fairness by an insurance provider among similarly-situated policyholders, preserve the solvency of the industry, and protect consumers and other claimants against default, fraud, and deception.

- (b) The Government of Japan has informed the Government of the United States that it intends to deregulate the Japanese insurance system, including liberalization of the approval process for insurance products and rates, in a step-by-step manner, with appropriate phase-in measures where necessary, while clarifying the direction of reform. Within the broader context of the reform, the specific purpose of product and rate liberalization is to promote competition and enhance efficiency among insurance providers for the benefit of Japanese consumers, allowing product differentiation and distribution based on the needs and demands of the policyholders.

Specifically, the following measures are to be taken with the schedule described in (c).

- (i) The Government of Japan will expedite and simplify the application review process for the approval of insurance products and rates, through such steps as reducing examination requirements and time periods, introducing expedited approval review systems such as "file and use" systems, and other possible steps. Under the expedited approval system, when an insurance provider applies for the approval of a product that is essentially the same as a product already approved for another insurance provider, the MOF will review the application on an expedited basis. Under the file and use system, the MOF will approve certain products as eligible for file and use. Subsequently, any company which the MOF has approved to write that product may introduce changes to the product on a file-and-use basis, i.e., the company may file the product changes with the MOF and then begin using the changed product after a certain short time period unless disapproved.
- (ii) With regard to rates for non-life insurance products, the current system includes fixed rates, banded rates, benchmark rates, and free rates. The Government of Japan will expand the types of products or categories of risk for which benchmark or free rates are used, to the extent possible consistent with appropriate policyholder protection and the fair application of other appropriate and reasonable prudential measures.
- (iii) A foreign insurance provider will be permitted to use statistical and other data collected outside of Japan to support its application for the approval of a product in Japan, if deemed relevant by the regulatory authority on a case-by-case basis.
- (iv) The two Governments recognize that the Insurance Council has recommended the introduction of a "notification system" for the review and approval or disapproval of insurance rates and products, for product lines or categories of risk for which problems are less likely to arise from the viewpoint of policyholder protection. The Government of Japan intends to submit to the Diet a proposal that implements, or allows for administrative implementation of, a notification system for specific product lines or categories of risk. If the Diet allows for administrative implementation of a notification system, the Government of Japan will implement the notification system for specific categories of risk.
- (c) The implementation of the above measures will be as follows:

First Stage: Measures relating to (b)(i), (ii), and (iii) will be implemented before the implementation of the insurance system reform legislation, and where possible, within 1994. For example:

- a file and use system will be applied to credit card theft and burglary insurance, boiler insurance, and machinery insurance;
- data collected outside of Japan will be allowed to support an application for approval of long-term disability insurance products;
- the expedited approval system will be applied to the approval of products essentially the same as products already approved;
- benchmark rates will be applied to earthquake rider written on industrial fire insurance and free rates will be applied to windstorm and flood rider written on industrial fire insurance; and
- with respect to the special discount rate applicable to the large commercial risks of fire insurance, the minimum threshold amount will be decreased and the discount rate will be significantly expanded.

Second Stage: The notification system will be introduced upon implementation of the insurance system reform legislation. At this stage, notification will be applied to certain large commercial risks, including risks regarding hull, cargo, and aviation. As for lines that remain under the prior approval system, there will be further expansion of the scope of the file and use system, further expansion of benchmark rates and free rates, and consideration of the expanded use of comprehensive policies and expedient approval of specific requests. For example:

- the file and use system will be applied to computer comprehensive insurance, movable comprehensive insurance, and directors and officers liability insurance;
- benchmark rates will be applied to bankers blanket insurance;
- free rates will be applied to travellers check comprehensive insurance;
- the MOF intends to introduce the "advisory rate" system for large commercial fire insurance;
- the MOF intends to decrease the minimum insured amount of the large commercial fire insurance policies to which the deductibles rider can be attached and adjust the relevant schedule accordingly.

Third and : Application of the notification system will be expanded to other
Subsequent categories of risk as deemed appropriate by the Government of Japan
Stages including rent credit and other credit insurance, within a reasonable
time after implementation of the insurance system reform legislation.
Following this, there will be further deregulation of products and rates
with respect to measures not covered above, as deemed appropriate
by the Government of Japan, with no category of risk necessarily
excluded from possible deregulation.

- (d) With regard to mutual entry** of life and non-life insurance companies into the "third sector," the MOF intends not to allow such liberalization to be implemented as long as a substantial portion of the life and non-life areas is not deregulated, taking into account the fact that dependency of some medium to small and foreign insurance providers on the third sector is high, and that these medium to small and foreign insurance providers have made the efforts to serve the specific needs of consumers in the third sector. Furthermore, with respect to new or expanded introduction of products in the third sector, it is appropriate to avoid any radical change in the business environment, recognizing that such change should depend on medium to small and foreign insurance providers first having sufficient opportunities (i.e., a reasonable period) to compete on equal terms in major product categories in the life and non-life sectors though the flexibility to differentiate, on the basis of the risk insured, the rates, forms, and distribution of products.
- (2) Licensing of insurance providers and intermediaries
- (a) The Government of Japan confirms that applications for licences to provide insurance will be processed pursuant to laws pertaining to administrative procedures, including the APL.
- (b) The Government of Japan will make utmost efforts to stipulate the standard review period concerning application for start-up licences and make it available to the public.
- (c) Upon the arrival of an application, the Government of Japan will begin review without delay.
- (d) In the case of a disapproval, the Government of Japan will make utmost efforts to provide the reasons for disapproval.
- (e) The Government of Japan intends to, as a part of the insurance system reform, provide in laws or regulations the standards regarding start-up licences, including the requirements regarding the applicant's financial base and the qualifications of its management, taking into account similar requirements applicable to other financial sectors.

**"Mutual entry" means the ability of life insurance companies to introduce existing, new or modified rates, products, or riders in the third sector currently allowed to non-life insurance companies, and the ability of non-life insurance companies to introduce existing, new or modified rates, products, or riders in the third sector currently allowed to life insurance companies.

- (f) The Government of Japan notes that a foreign insurance provider is not required to introduce an insurance product not yet offered in Japan as a condition for the approval of an application to provide insurance in Japan.
 - (g) Recognizing principles of federalism, the long history of state regulation of insurance in the United States, and the McCarran-Ferguson Act, and noting the concerns of regulators who seek to further increase internationalization of their insurance markets while addressing prudential concerns, the Government of the United States:
 - (i) Welcomes that the NAIC in October 1993 adopted a model law on the initial entry of non-United States insurance providers without their prior establishment in another state, and the Government of the United States encourages the NAIC to continue and as appropriate intensify its efforts with relevant state authorities with regard to this issue;
 - (ii) Would welcome consideration by the NAIC, if appropriate, of the issue of the time period for review of licensing applications of insurance providers, from the perspective that regulatory authorities should make administrative decisions on completed applications of insurance providers within a reasonable time; and
 - (iii) Welcomes efforts by the NAIC to review with the states the question of citizenship requirements for the boards of directors of foreign insurance providers, and the Government of the United States encourages the NAIC to continue and as appropriate intensify its efforts with relevant state authorities with regard to this issue.
 - (h) The Government of Japan has raised with the Government of the United States its concern that different state regulations for foreign insurance providers on lines of products permitted, trustee assets requirements, deposit requirements, remittance ceiling and reinsurance trust funds affect foreign insurance providers' ability to enter the insurance market of the United States.
- (3) Insurance brokers
- (a) It is the role of insurance brokers to try to help users to select insurance products which best fit the users' needs, serving as intermediaries between the users and insurance providers.
 - (b) The Government of Japan expects that the introduction of a brokerage system will provide insurance consumers with objective advice on insurance products. The objective of brokers differs from that of life and non-life insurance agents. The Government of Japan expects the introduction of a brokerage system to result in a diversification of distribution channels and the promotion of sales competition in the Japanese insurance market.

Accordingly upon the passage of necessary legislation as part of the insurance system reform, it will be possible for insurance brokers to establish and to provide insurance in Japan, subject to the fair application of appropriate and reasonable prudential measures, including those concerning the financial capability of indemnification and the prohibition of concurrent broker and agent operation.

(4) Postal insurance

- (a) With regard to the current legal structure concerning the provision of insurance in Japan by the Ministry of Posts and Telecommunications ("MPT"), the Government of Japan confirms that:
- (i) Such insurance is provided pursuant to law, independent of laws governing the provision of insurance by private insurance providers in Japan;
 - (ii) Currently, the law authorizes the MPT to offer 11 basic insurance products, and the MPT offers a total of 25 variations of these 11 basic products. The law also authorizes the MPT to offer riders attached to such products;
 - (iii) Approval from the Diet is required to expand or change the insurance products or riders offered by the MPT except for limited alterations within the scope of the products or riders authorized in the law; and
 - (iv) The insurance system reform now in process, which addresses the private sector, is separate from, and does not itself involve, amendment of the law regarding provision of insurance by the MPT. Therefore, completion of the reform process itself will not lead to the expansion of the insurance products or riders which the MPT is authorized by the Diet to offer.
- (b) The MPT will ensure that foreign insurance providers in Japan are accorded, upon request, meaningful and fair opportunities to be informed of, comment on, and exchange views with MPT officials regarding the formulation of proposals to seek from the Diet an amendment to the law to expand, or change, the insurance products primarily regarding sickness, injury or nursing coverage.

(5) Cross-border transactions

- (a) The Government of Japan intends to, as part of the insurance system reform, liberalize cross-border insurance transactions concerning aircraft of Japanese registration and ships of Japanese registration for international transport.
- (b) With respect to space launching and freight (including satellites), necessary measures will be taken independent of the insurance systems reform.
- (c) The Government of Japan has scheduled reservations with respect to its commitments related to insurance in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, such as a reservation on insurance contracts on goods being transported within Japanese territory.

V. GOVERNMENT CORPORATIONS

- (1) The Government of Japan will encourage public corporations listed in Appendix 2 to permit foreign insurance providers access to their insurance programmes and to ensure allocation of premium shares among participating insurance providers according to fair, transparent, non-discriminatory, and competitive criteria.

(2) The Government of the United States has scheduled a reservation with respect to its commitments related to insurance in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations regarding the fact that branches are not permitted to provide surety bonds for United States federal government contracts.

VI. COMPETITION

(1) Private analysis of market conditions

(a) The Government of Japan reaffirms that there are certain aspects of economic rationality of *keiretsu* relationships. However, noting the concern of foreign insurance providers, first, that certain aspects of business relationships referred to as "*keiretsu*" relationships may give rise to anti-competitive business practices, negatively affect foreign direct investment, and promote preferential group trade, and second, that "case agents" may substantially impede access to the Japanese insurance market for competitive foreign insurance providers, the two Governments will request domestic and foreign insurance providers to:

- (i) Discuss the issue of "*keiretsu*" relationships and jointly select an independent research organization to conduct a study of the extent and effects of intra-*keiretsu* transactions in the Japanese insurance market; and
- (ii) Discuss the issue of case agents and, if deemed necessary, include this issue in the study to be conducted by the independent research organization.

(b) The two Governments will request foreign and domestic insurance providers to instruct and allow the independent research organization to analyse "*keiretsu*" relationships as appropriate to the Japanese insurance market and as appropriate to ensure a comprehensive, useful, and rigorous study of that market.

(c) The two Governments will request foreign and domestic insurance providers to report to the two Governments by 15 December 1994, the name of the independent research organization that will conduct the study. The two Governments expect the study to be completed by 1 April 1995, and they will request foreign and domestic insurance providers to make every possible effort to realize this expectation.

(2) JFTC study

Upon implementation of the insurance reform legislation, the JFTC is prepared to conduct a study of the Japanese insurance market within a reasonable period of time from the competition policy viewpoint, taking into account such factors as the developments observed since the implementation of the insurance reform legislation, the private sector study mentioned above and other relevant issues, as appropriate.

(3) Enforcement measures

(a) The Government of Japan confirms its commitment to strictly enforce the AMA, in all industries including the insurance sector, against practices that, in light of market structure and other factors as appropriate, constitute violations of the AMA, such as private monopolization, unreasonable restraints of trade, or unfair trade practices.

- (b) The Government of Japan, while noting the Report by the Insurance Council, will review, by Fiscal Year 1995, AMA exemptions stipulated in the Insurance Business Law.

(4) Article 28 of the AMA

Both Governments understand that, under Article 28 of the AMA, the JFTC is to perform its duties independently.

VII. CONSULTATIONS

The Government of Japan and the Government of the United States will meet annually, or at any time upon request of either Government, to review implementation of the Measures, and to discuss as necessary other issues regarding insurance.

VIII. ASSESSING IMPLEMENTATION OF THE MEASURES

(1) Data collection

The following information on Japan will be provided on an annual basis:

- (a) The number of approvals of new products, new rates, and licenses to provide insurance, in the life and non-life sectors, as well as the number of approvals of new third sector products which primarily deal with sickness, injury or nursing coverage, for:
 - (i) Foreign insurance providers; and
 - (ii) Japanese insurance providers.
- (b) The ratio of approvals (the number approved compared to the number of applications or notifications) for new products, new rates, and licences to provide insurance, in the life and non-life sectors, as well as the ratio of approvals for new third sector products which primarily deal with sickness, injury or nursing coverage, for:
 - (i) Foreign insurance providers;
 - (ii) Japanese insurance providers; and
 - (ii) All insurance providers.
- (c) Total insurance premiums, in the life and non-life sectors, for:
 - (i) Foreign insurance providers; and
 - (ii) All insurance providers.

The following information on the United States will be provided on an annual basis:

- (a) The number of states accredited in the NAIC accreditation programme;
- (b) Description and account of NAIC harmonization proposals including model laws; and

- (c) Total insurance premiums, in the life and non-life sectors, for:
 - (i) Foreign insurance providers; and
 - (ii) All insurance providers.

For the purpose of data collection, "foreign insurance provider" means an insurance provider 50 per cent or more owned by foreign shareholders, including those in branch form.

(2) Assessment

Assessment of the implementation of the Measures, as well as the evaluation of progress achieved, will be based on the overall consideration of the following qualitative and quantitative criteria. These qualitative and quantitative criteria will be considered as a set, and no one criterion will be determinative of the assessment of the Measures, or the evaluation of progress achieved. These criteria do not constitute numerical targets, but rather are to be used for the purpose of evaluating progress achieved toward the goals of the Framework and the goals of this sector, as set forth in Section I.

(a) Qualitative criteria

- (i) Transparency and availability of standards and measures in Japan, and meaningful and fair opportunities for foreign insurance providers in Japan to be informed of, comment on, and exchange views with officials regarding matters related to the provision of insurance and to attend meetings and submit statements to advisory groups;
- (ii) Prompt and fair review of applications and notifications in Japan, including without being required or advised to coordinate with or disclose information to other insurance providers or intermediaries;
- (iii) Efforts by the Government of the United States to encourage the NAIC regarding United States market issues addressed in the Measures, including issues regarding the review of applications for licenses;
- (iv) Changes that address impediments to market access in Japan, if any, arising from certain aspects of market conditions and business practices;
- (v) Efforts by foreign insurance providers and intermediaries to utilize new opportunities created by the Measures; and
- (vi) The implementation of other measures in the Measures.

(b) Quantitative criteria

From the viewpoint of addressing significant improvement in market access for competitive foreign insurance providers:

- (i) Change and rate of change, from one reporting period to the next, in the number and ratio of approvals for new or modified products and rates in the life and non-life sectors in Japan, for foreign and Japanese insurance providers;

- (ii) Change and rate of change, from one reporting period to the next, in the value of premiums by foreign insurance providers in Japan, in the aggregate and in market subsectors as appropriate; and
- (iii) Change and rate of change, from one reporting period to the next, in the share of total insurance premiums for foreign insurance providers to those for all insurance providers in Japan, in the aggregate and in market subsectors as appropriate.

APPENDIX 1

Outline of the Administrative Appeals Inquiries Law (Law No. 160 of 1962) and
the Administrative Case Litigation Law (Law No. 139 of 1962, as amended).

- (1) Under the Administrative Appeals Inquiries Law ("AAIL"), any person aggrieved by an order, omission or ruling of any administrative agency may file a complaint against the agency, and may obtain review and remedy of any illegality or abuse of discretion. The types of such complaints are complaints for objection, examination, and re-examination.
- (2) An administrative agency is obligated to give notice as follows:
 - (a) When an administrative agency issues an order in writing, it must give notice to the person or persons addressed in the order that they may file a complaint, and it must give notice of the administrative agency with which, and the period during which, such a complaint may be filed.
 - (b) Upon request by a person not directly addressed in an order but having an interest in the order, the administrative agency must give notice to such person of the information specified in paragraph (a).
 - (c) In the event that an administrative agency fails to give the notice required under paragraph (a) or (b) and the person entitled to file a complaint files it with an agency other than the agency responsible for examining the complaint (the "examining agency"), the agency that issued the challenged order must transfer the complaint to the examining agency.
- (3) When a complaint is filed, the examining agency is required to:
 - (a) Examine whether the complaint meets the requirements for examination and, if it does, commence examining the matter;
 - (b) Allow the person who has filed the complaint and any intervenor, among other things, to produce documentary evidence and make oral arguments; and
 - (c) Render in writing its decision and the reasons for it, and affix its name and seal impression thereto.
- (4) Further, under the Administrative Case Litigation Law ("ACLL"), if any person's specific right or interest is infringed by any illegal order or abuse of discretion by any administrative agency, that person may file a claim with a court and seek judicial review.
- (5) With respect to the insurance sector in Japan, the complaint for objection must be filed with the Ministry of Finance in accordance with the AAIL. Following a decision by the Ministry of Finance on the objection, the person who filed the complaint for objection may file an appeal of the decision to a court for judicial review, without following any further administrative procedures such as "examination" or "re-examination" pursuant to the AAIL and ACLL.

APPENDIX 2

Government Corporations

- (1) The Government Housing Loan Corporation
- (2) The Pension Welfare Service Public Corporation
- (3) The Housing and Urban Development Corporation
- (4) The Okinawa Development Corporation
- (5) The Employment Promotion Corporation