

Dear Ambassador Kantor:

I have the honor to refer to a series of consultations between the Government of Japan and the Government of the United States of America regarding the flat glass sector in Japan, held in the area of Implementation of Existing Arrangements and Measures under the "Joint Statement on the Japan-United States Framework for a New Economic Partnership" (hereinafter referred to as the "Framework").

As a result of these consultations, the Government of Japan and the Government of the United States of America each has decided to implement the measures in the attached document, "Measures by the Government of Japan and the Government of the United States of America Regarding Flat Glass" (the "Measures").

The Government of Japan reaffirms the principles of the Framework, including the principle that the Measures are to be taken on a most-favored-nation' basis.

It is my Government's view that this letter and the attached Measures and your letter of confirmation in reply together reflect our shared views of the respective measures that each Government is to take, beginning as of the date of this letter and lasting until the end of 1999, at which time the two Governments will decide whether it is necessary to continue the Measures.

Yours sincerely,

/s/

Takakazu Kuriyama
Ambassador of Japan

MEASURES BY THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA REGARDING FLAT GLASS

I. GOAL 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.
- (2) To accomplish these goals with respect to the Japanese flat glass sector, the Government of Japan and the Government of the United States of America ("United States") each has decided to take the measures in this document, "Measures by the Government of Japan and the Government of the United States of America Regarding Flat Glass" (the "Measures"), recognizing the need to substantially increase market access for competitive foreign flat glass manufacturers making efforts to export flat glass to Japan, regardless of their capital affiliation.

II. MEASURES BY THE GOVERNMENT OF JAPAN

(1) Import Promotion Measures

The Government of Japan will take measures to improve further market access for foreign flat glass, including:

- a. providing, or facilitating the provision by others of reasonable assistance to foreign flat glass manufacturers holding trade events or participating in exhibitions in Japan;
- b. promoting, from time to time, trade missions by distributors¹ to foreign manufacturers aimed at enhancing awareness of the capabilities of foreign manufacturers and expanding business relationships;
- c. expanding, subject to the approval of the Diet to enhance the Financing for Improvement of Import System, the availability of low-interest loans by the Japan Development Bank for the construction or investment in distribution or cutting facilities for foreign flat glass in Japan;
- d. facilitating contacts between foreign flat glass manufacturers and Japanese contractors, architectural design firms, distributors, glaziers, and fabricators, and also facilitating

¹ "distributors" means wholesalers, including wholesalers that are called special agents as well as those that operate as glaziers.

expanded business relationships between foreign flat glass manufacturers and Japanese distributors, glaziers, and fabricators"; and

- e. arranging and sponsoring a seminar, or taking other appropriate steps of similar or greater effectiveness, to explain to Japanese glass manufacturers, distributors, glaziers, and fabricators the measures and the goals of the Measures.

(2) Measures Regarding Insulating and Safety Glass

- a. The Government of Japan will actively promote use of safety and insulating glass windows and other energy conservation windows in Japan, in residential and commercial buildings, including through the following measures and any other measures that the Government of Japan may consider appropriate, which will not include modification of the Building Standard Law or the Law Concerning the Rational Use of Energy:
 - i. The Government of Japan will amend the energy conservation standards for housing in a manner that promotes increased use of insulating glass, taking into account the need to review and as appropriate revise the standards in each region of Japan. Currently, the Ministry of Construction ("MOC") is studying appropriate amendments to existing standards. The new standards will be designed to be non-discriminatory in effect, and MOC will receive and, if reasonable, take into account comments on the standards expressed by foreign and domestic interested parties, including glass manufacturers associations.
 - ii. As an energy-saving incentive, the Government of Japan, through the Government Housing Loan Corporation, provides supplementary low-interest loans to home-owners throughout Japan whose homes meet certain standards for the use of insulating materials, including insulating windows.
 - iii. The Government of Japan provides, through governmental banks including the Japan Development Bank, low-interest financing to Japanese parties using insulating glass in commercial buildings.
 - iv. The Government of Japan welcomes the efforts of the High Performance Glass Promotion Conference to promote the use of insulating and safety glass, through such activities as preparing informational materials, holding seminars, and other activities. The Government of Japan facilitates and supports the activities of the Conference, and expects the Conference to increase its activities to promote the use of insulating and safety glass.
- b. In order to examine the energy conservation effect and other effects of insulating glass, the Government of Japan, within a reasonable time period, will adopt and carry out model projects which use insulating glass. The model projects will be selected from among projects which meet the following two requirements:

- i. The model projects must be head office building construction projects of the central government, local joint-use office building construction projects of the central government, or national university building construction projects, national hospital building construction projects and/or post office building construction projects, the last three categories of projects being in the cold regions, which covers about fifty percent of the national land²; and
- ii. The model projects must be projects under the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works (the "Public Works Action Plan") (projects employing open competitive bidding procedures and valued above the threshold of 4,500,000SDR) commissioned by the central government.

In these model projects, a commissioning entity will request that the bidders collect, or that the bidders request the subcontractors to collect, on a positive and fair basis, price information from many competitive suppliers handling foreign flat glass, and that the bidders report the number of such suppliers whose price information the bidders have taken into account in determining their cost estimation for the model projects.

(3) Measures Regarding Private Sector Construction

- a. The Government of Japan confirms that it is the policy of the Government of Japan to promote increased competition in the procurement of glass for construction projects including large scale construction projects, and the Government of Japan welcomes that glass for construction projects is to be procured based on non-discriminatory technical and performance specifications and competitive commercial terms and conditions. Accordingly:
 - i. The Government of Japan would welcome the establishment by each major glazier and major architectural design firm of a contact point where glass suppliers are able to conduct sales activities, and the Government of Japan will take appropriate steps to inform such glaziers and architectural design firms of this view.
 - ii. The Government of Japan welcomes fair, non-discriminatory, and serious consideration by glaziers and architectural design firms of the use of competitive foreign flat glass, and the Government of Japan will take appropriate steps to inform such glaziers and architectural design firms of this view.
- b. The Government of Japan annually will hold an import promotion conference with a view to facilitating the import of construction materials including flat glass by major general contractors and major specialty contractors.

(4) Measures Regarding Government Funded Construction

² Although certain model projects are planned for the cold regions, this does not mean that insulating glass can be effective only in cold regions.

- a. Each central government or quasi-governmental entity (each "entity") listed in the Public Works Action Plan that has its own building design division will establish in that division a contact point where flat glass manufacturers including foreign flat glass manufacturers will be able to explain their products.
- b. In each procurement of construction services covered by the Public Works Action Plan, each entity will include in its published procurement notice an announcement of major construction materials to be required, including flat glass. In accordance with the Public Works Action Plan, each entity will publish the winning general contractor's name as soon as possible after it decides the winner.
- c. In each tender documentation for a construction service procurement covered by the Public Works Action Plan (other than procurement by quasi-governmental entities)³, it will be stated, in a noticeable manner, that the entity expects the general contractor awarded the bid and subcontractors to select construction materials and equipment including flat glass for the project on a non-discriminatory basis with proper consideration given to competitive business offers from foreign flat glass manufacturers.

(5) Measures Regarding Diversification of Supply Sources

- a. The Government of Japan is pleased to note that most of the largest Japanese flat glass distributors have issued a statement through the distributors association (Flat Glass Wholesalers Association of Japan) publicly announcing the intent of these companies to broaden their supply base for flat glass, based on the principle of open, competitive and non-discriminatory procurement or use of flat glass.

This statement reveals the intent of each distributor to:

- i. broaden its supply base to include additional foreign and domestic manufacturers on a non-discriminatory basis;
- ii. form additional supply relationships with those foreign and domestic suppliers which make competitive offers, regardless of capital affiliation;
- iii. increase its purchases or use of glass from competitive suppliers, including suppliers other than traditional suppliers, which offer better terms than the traditional suppliers;
- iv. set forth specific steps to increase its purchases from competitive suppliers which offer better terms, such as establishing contact points which can be used by foreign and domestic manufacturers, and holding meetings with potential

³ Although not covered by the tender documentation requirement above, successful bidders and their subcontractors are expected to procure on a non-discriminatory basis in the projects of the quasi-governmental entities covered by the Public Works Action Plan.

suppliers; and

- v. promote increased use of safety and insulating glass, for example through participation in seminars and the activities of the High Performance Glass Promotion Conference.
- b. The Government of Japan is willing to discuss the issues related to the statement in subsection a. with the distributors and the issues related to the statements in subsection d. with the manufacturers.
- c. The Government of Japan annually will compile and make available upon request to interested foreign governments copies of the public announcements of the statement provided to the Government of Japan.
- d. The Government of Japan is also pleased to note that each of the three Japanese flat glass manufacturers has issued a statement publicly announcing that it recognizes the statement' announced by the distributors (above) of their intent to broaden their supply base for flat glass, based on the principle of open, competitive and non-discriminatory procurement or use of flat glass.

Each manufacturer's statement :

- i. reaffirms that distributors are free to purchase from any supplier, including foreign flat glass manufacturers, regardless of capital affiliation;
- ii. reaffirms that after-transaction progressive rebates are not being used and prices are set at the time of sale;
- iii. recognizes that distributors may diversify their sources of supply; and
- iv. recognizes that it is appropriate for distributors to seek additional relationships with competitive foreign and domestic suppliers.

(6) Measures Regarding Competition Policy

- a. The Government of Japan recognizes that, in June 1993, the Japan Fair Trade Commission ("JFTC") made public the results of its survey on the flat glass industry. That report points out, among other things, that in the Japanese flat glass market, which is highly oligopolistic, each manufacturer has adopted a parallel marketing setup mostly composed of de facto exclusive agents and that this seems to be one of the factors that discourages suppliers other than those manufacturers from entering into the market. At the same time, this setup seems to have the aspect of facilitating oligopolistic concerted conduct among those manufacturers.

The report notes that among a variety of reasons mentioned by distributors for not

carrying imported glass, a small number of distributors indicated concerns that their handling of imported products might affect their business relationship with existing manufacturers.

Although the JFTC did not find any Antimonopoly Act ("AMA") violations as a result of its survey, it pointed out several practices to be addressed by the Japanese manufacturers from the competition policy viewpoint. The JFTC recognizes the efforts of the relevant companies to address these practices, and will observe so that such practices continue to be addressed by such companies.

- b. The Government of Japan affirms its commitment to prevent and eliminate anticompetitive practices in all industries, including the flat glass sector.
- c. The JFTC affirms its commitment to effectively enforce and strictly apply the AMA in all industries, including the glass sector, against matters that, in light of market structure and other factors as appropriate, can be remedied or otherwise addressed under the AMA, as provided in all the relevant Chapters of the AMA.
- d. Any person, including foreign flat glass suppliers, may report to the JFTC suspected violations of the AMA. The JFTC will review such reports promptly and will take appropriate steps to address such suspected violations depending on the content and reliability of the information.
- e. Under Article 28 of the AMA, the JFTC is to perform its duties independently.

III. MEASURES BY THE GOVERNMENT OF THE-UNITED STATES

- (1) The Government of the United States encourages the efforts of U.S. flat glass manufacturers to :
 - a. respond to Japanese user and distributor requirements, if not different from those required of Japanese manufacturers, to increase sales in Japan;
 - b. understand the Japanese business environment in pursuing sales activities in Japan; and
 - c. develop business relationships with Japanese flat glass users, agents, and distributors.
- (2) The Government of the United States welcomes the efforts of U.S. flat glass manufacturers to engage in appropriate promotional activities to familiarize Japanese flat glass users, agents, and distributors with foreign flat glass products.
- (3) The Government of the United States will support the efforts of U.S. flat glass suppliers to take advantage of the Measures taken by the Government of Japan.

- (4) The Government of the United States, as appropriate, will supply information to U.S. flat glass suppliers based on the advice given by the Government of Japan with regard to the actual conditions of Japanese market.
- (5) The Government of the United States, as appropriate, will collect objective information from U.S. flat glass suppliers and convey it to the Government of Japan.
- (6) The Government of the United States will hold an annual trade show, which will include flat glass, in Japan.

IV. ASSESSING IMPLEMENTATION OF THE MEASURES

(1) Data Collection

- a. The Government of Japan will provide the following information on an annual basis:
 - i. sales (volume and value) of flat glass in Japan;
 - ii. imports (volume and value) of flat glass into Japan, in the aggregate and by country of export;
 - iii. sales (volume and value) in Japan of insulating glass and safety glass; and
 - iv. the total value of both construction-related foreign and domestic flat glass procured by general contractors which have voluntarily established "Contact Points"⁴.
- b. The Government of Japan annually will conduct a survey of distributors and a survey of glaziers, which may be responded to on a voluntary basis, to collect the following data for the distributors and separately for the glaziers. The Government of Japan will provide the results of the surveys in aggregate form.
 - i. the number of distributors and glaziers that deal in or use imported flat glass, by the scale of the share of imported flat glass in the total volume and value dealt in or used, as shown in Annex 1;
 - ii. the percentage (by volume and by value) of flat glass procured or used that is imported, and the percentage of flat glass that comes directly or indirectly from manufacturers other than the traditional supplier of the distributor or glazier;
 - iii. the incidence and extent of any material differences between foreign and domestic manufacturers in the price, delivery term, packing method, defective rate,

⁴ Contact Points" means contact points described in the Appendix of the letter of January 19, 1994 from Ambassador Kuriyama to Secretary Brown.

delivery lot variety of goods, payment condition, after-sales service, technical services for flat glass, and number and quality of sales offers;

- iv. in the case of glaziers, the reason why individual glaziers dealt in or used, or did not deal in or use foreign flat glass (similar to the data collected in the MOC survey reported in June of 1994); and
 - v. volume and value of purchases from foreign and domestic suppliers.
- c. The Government of Japan annually will survey Japanese glass manufacturers to collect data on the volume and value of flat glass that they import into Japan, in the aggregate and by major regions (i.e., North America, North Asia, East Asia, and South Asia). The Government of Japan will provide the results of the survey in aggregate form.
- d. Before the issuance of the above surveys, the Government of Japan will make the survey design available to interested foreign governments for their comments.
- e. The Government of Japan will conduct an annual questionnaire survey of foreign owned or controlled⁵ flat glass suppliers doing business in Japan (the "respondents"). The survey, which may be responded to on a voluntary basis, will be to collect the following data for each respondent on an annual basis:
- i. sales (volume and value) of flat glass in Japan;
 - ii. sales (volume and value) of insulating and safety glass in Japan;
 - iii. the number of sales staff and the value of sales per sales person;
 - iv. the situation of sales activities, including availability of product catalogs in Japanese;
 - v. number and capacity of warehouses and processing facilities;
 - vi. the number of sales calls and visits on existing or potential new customers, and the number of sales calls and visits per sales person; and
 - vii. the quantity of sales of foreign flat glass used in the building projects covered by the Public Works Action Plan, and of that, the quantity used in such projects where general contractors with "Contact Points" are awarded the contracts; and the quantity of sales of foreign flat glass used in building projects valued above the threshold of 4,500,000 SDR and not covered by the Public Works Action Plan.

⁵ The meaning of the term "foreign owned or controlled" is to be determined by applying the relevant laws and regulations of Japan.

At least 30 days before issuing 'the questions to the respondents, the Government of Japan will provide the questions to interested foreign governments for their comments. The Government of Japan will consult closely with such governments regarding the questions, and will consider carefully any comments from these governments. The Government of Japan actively will work to promote responses by foreign suppliers to the surveys, and through appropriate means will request that other parties encourage the foreign suppliers to respond.

- f. For each of the data collection surveys, the Government of Japan promptly will aggregate the results of the survey and provide the aggregated results to each interested foreign government. In the case of the survey of foreign suppliers, the Government of Japan will provide to an interested foreign government information necessary to understand the year-to-year comparability of the data. However, as for the survey responses, the Government of Japan will not disclose company-specific information that is not already made publicly available, because the Government of Japan considers such information "secret" within the meaning of the National Public Service Law (kokka komuin ho) (although the Government of Japan recognizes that the Japanese courts ultimately may determine whether specific information is "secret" within the meaning of this law).

(2) Objective Criteria

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 the Measures.

a. Qualitative Criteria:

- i. efforts by the Government of Japan to facilitate or promote actions ' by manufacturers, architectural design firms, distributors, and glaziers, as described in the Measures;
- ii. efforts by the Government of the United States to facilitate or promote actions by U.S. flat glass suppliers described in the Measures;
- iii. diversification of Japanese distributors' sources of supply to include new competitive suppliers, without any discrimination based on capital affiliation;
- iv. efforts by foreign suppliers to increase relative competitiveness and utilize market opportunities created as a result of the Measures;
- v. adequacy of the number and capacity of warehouses and processing facilities;

- vi. changes in opportunities for foreign flat glass suppliers to provide flat glass in the building projects covered by the Public Works Action Plan where general, contractors with "Contact Points" are awarded the contracts;
 - vii. active promotion by the Government of Japan of the use of insulating and safety glass;
 - viii. changes in market characteristics and business practices in Japan resulting in the elimination of problems that affect market access, if any;
 - ix. market conditions, including exchange rates; and
 - x. the implementation of all other measures of the Measures.
- b. Quantitative Criteria:

Toward the goals of the Measures:

- i. change in the extent to which Japanese distributors and glaziers deal in or use imported flat glass, regardless of the capital affiliation of the supplier, recognizing that token dealings or use does not demonstrate diversification of supply sources based on competitive offers;⁶
- ii. change in the sales and market share of foreign flat glass in Japan;
- iii. change in the sales (volume and value)" of insulating and safety glass in Japan;
- iv. change and percentage change in the number of sales calls and visits by foreign manufacturers in Japan; and
- v. change and percentage change in the number of sales staff.

V. CONSULTATIONS

The Government of Japan and the Government of the United States will meet annually, and at any time upon request of either Government, to review implementation of the Measures and to discuss as necessary other issues regarding the flat glass sector. Such consultations will be held until the end of 1999, at which point the two Governments will decide whether it is necessary to continue the consultations.

⁶ It is recognized that such diversification of supply sources occurs progressively in light of commercial considerations.

ANNEX 1

IMPORTED FLAT GLASS/
TOTAL FLAT GLASS
DEALT IN OR USED

NUMBER OF COMPANIES

	<u>Total By Rank*</u>	<u>Top 50</u>	<u>Top51-100</u>
Less than 1%	X	X	X
From 1 to 5%	X	X	X
From 5 to 10%	X	X	X
From 10 to 20%	X	X	X
More than 20%	X	X	X

*Rank based on total value of flat glass dealt with in or used by each company as reported in its survey questionnaire response.

Dear Ambassador Kuriyama :

I am pleased to receive your letter of today's date and the "Measures by the Government of Japan and the Government of the United States of America Regarding Flat Glass" (the "Measures") attached thereto.

I wish to confirm that the views expressed in your letter and the attached Measures are shared by my Government, and that your letter and the attached Measures and this reply together reflect our shared views of the respective measures that each Government is to take, beginning as of the date of this letter and lasting until the end of 1999, at which time the two Governments will decide whether it is necessary to continue the Measures.

Sincerely,

/s/

Michael Kantor
United States Trade Representative