XI.ANNEX ON TRANSLATION PROBLEMS

A. LIST OF TRANSLATION ISSUES

Issue 1: *"taisaku".*

United States:"*countermeasure*" (used in many contexts e.g., as liberalization, distribution, or promotion *countermeasures*).

Japan:In many contexts, the Japanese word *"taisaku"* should be more appropriately translated as *"measure"* or *"policy in response to."* The English word "countermeasure" has a negative connotation not conveyed by the Japanese original. For example, an expression such as "shou-enerugi (energy-saving) taisaku" is quite common in Japanese, and it would be awkward to translate it into "energy saving countermeasure. ... "] (fn. 11, p. 19 of Japan's First Submission).

Issue 2: MITI's distribution policies as described in the First Interim Report, (US Ex. 64-6, p. 8).

United States: "The First Interim Report identified a central theme that would underlie MITI's distribution policy: the need *to limit competition in distribution in order to create stability and high prices for the benefit of domestic manufacturers*" (para. 78 of the US First Submission).

Japan:"In fact, the [first interim] report notes that only *establishment of appropriate competition conditions would stimulate the modernization of distribution mechanism.* Moreover, the report draws no connection at all between competitive conditions in the distribution sector and the manufacturing sector. Instead, the report noted that vertical integration did not necessarily mean that distribution systems would be rationalized." (fn. 88, p. 45 of Japan's First Submission).

Issue 3: Translation of a quote from the article: Distributors in Tough Environment, The Distribution Structures Continue to Change, Nihon Shashin Kogyo Tsushin, 1 May 1994, (US Ex. 94-10, p. 7).

United States:"In 1994, a Japanese industry journal noted changes in the Japanese film distribution system, such as a revision of the rebate schemes and the opening of more discount stores, but concluded that 'a limit to the expansion of sales channels seems to be appearing' and that 'the actual *network* has not changed much'" (para. 159 of the US First Submission).

Japan:"'Network' should actually be translated as '*net prices*' and the United States has failed to recognize that the first passage actually relates to the camera distribution industry, not to film." (fn. 123, p. 57 of Japan's First Submission).

Issue 4: *"keiretsuka"* as used in the First Interim Report, (US Ex. 64-4).

United States: "... *Keiretsu-nizing* sales channels does not necessarily mean, from a national economic perspective, that each of the distribution structures will be rationalized; the direct objective is said to be to secure and expand the [market share] of individual manufacturers." (First Interim Report, US Ex. 64-6, p. 10).

Japan:"Please note that we do not agree with the US construction of the term 'keiretsu-nizing' as this term can have many meanings depending upon the context. Thus, we have translated this term based upon the proper context, in this case, '*vertically integrating*'" (fn. 139, p. 61 of Japan's First Submission).

Issue 5: *"keiretsuka"* as used in the Second Interim Report, (US Ex. 65-2).

United States:"... For example, manufacturers' increased distribution activities leads to '*vertical keiretsunization*' which can create the harm of a monopoly." (Second Interim Report, US Ex. 65-2, p. 5-6).

Japan:"Again, the US construction of the term 'keiretsunization' is better translated in this case as '*vertical integration*'" (fn. 140, p. 62 of Japan's First Submission).

Issue 6: *"keiretsuka"* as used in the 1971 Basic Plan (US Ex. 71-10).

United States:"Furthermore, due to the late emergence of the distribution sector, manufacturers have advanced [their] control of distribution by '*keiretsu-nizing*'. When this is done excessively, the distribution sector will lose its autonomy, and buying activities are hindered." (1971 Basic Plan, US Ex. 71-10, p. 8).

Japan:"Again, the US construction of the term 'keiretsunization' is better translated in this case as '*vertical integration*'" (fn. 144, p. 63 of Japan's First Submission).

Issue 7:Quote: "(fuji to konika wa) *kourino dankaimade seibishite ikitai tokorono yôdearu*" from: Let's All Have Cameras - Film, Printing Paper Promotion of Trading Normalization Triggered by a Monochrome Photosensitive Materials Price Increase, Zenren Tsuho, December 1967, (US Ex. 67-15).

United States:"The manufacturers are taking this opportunity to start taking action on the distribution channel as well as to strengthen transaction terms with the tokuyakuten. '*[Fuji and Konika] want [distribution] all the way to the retail level*, not just between Fuji's tokuyakutens and resellers, and between Konica's tokuyakutens and resellers." (US Ex. 67-15, p. 3).

Japan:"'*Fuji and Konika want to rationalize transactions all the way to the retail level.*' The US translation implies that Fuji and Konica were trying to vertically integrate, which mischaracterizes the article." (fn. 145, p. 64 of Japan's First Submission).

Japan notes that one source the United States cites to prove its allegation that the distribution policies were designed to encourage single-brand distribution does not support this claim] (Wholesale: So-called Keiretsu-ka Problem - Course Unclear, Nihon Shashin Kogyo Tsushin, 1 November 1967, p. 8, US Ex. 67-14).

Issue 8: Quote: *"ribêto hitotsu wo toriagete miteno gyoukaitoshiteno kankôga dekiagatte ireba dokkinhôno unyôniyori gaishino yukisugi wo chekkudekiru"* from: Draft Standard Contract for Film with Criteria for Standardization of Transaction Terms, Zenren Tsuho, August 1971, p. 5, (US Ex. 71-11, p. 1).

United States:"The article elaborated that 'the guidelines themselves may be described as an attempt to equalize the conditions of competition.' For instance, '*rebates were adopted so that once they become common practice in the industry, the influx of foreign capital may be checked by the application of the Antimonopoly Law*'." (para. 110 of the US First Submission).

Japan:"*the abnormal use of rebates by foreign capital may be checked by the application of the Antimonopoly Law.*' In addition, the US reference to rebates becoming "common practice in the industry" has no basis in the original text. (fn. 152, p. 67 of Japan's First Submission).

Issue 9: Quote: *"masani 'kenzenka' wa susunda"* from: Fuji Film's Result of Stricter Policy on Receivables, Zenren Tsuho, March 1968, p. 5-7, (US Ex. 68-2, p. 1).

United States:"Just as this practice of forcing goods [on tokuyakutens] was ended, ultimately 'Fujifilm tightened its policy on receivables' ... '*Consequently, [Fujifilm's financial] soundness has indeed progressed.* The well established photosensitive materials tokuyakuten have finally been done in." (para. 115 of the US First Submission).

Japan:"The US translation implies that Fujifilm improved its financial position by pressuring the tokuyakuten. A more accurate translation is that '*the soundness of transactions has indeed progressed*." (fn. 163, p. 71 of Japan's First Submission).

Japan notes that the contention in para. 119 of the US First Submission that "shortly after the new transaction terms went into effect, Misuzu's financial situation deteriorated" finds no support in the Zenren Tsuho article cited. (Relationship Between Major Photo Materials Wholesalers and Manufacturers From the Standpoint of Industry's Photo Materials, Zenren Tsuho, June 1968, p. 5-7, US Ex. 68-5).

Issue 10: Reference to: Four Fuji-Group Distributors Reported Unimpressive Results in Spite of Low Interest Rates, Shukan Shashin Sokuho, 24 June 1994, p. 2-4 (US Ex. 94-11, p. 1).

United States:"*Other Japanese analysts have concluded that distributors remain highly dependent on manufacturers.*" (para. 159 of the US First Submission). As one financial analyst wrote when he reported the primary wholesalers' profitability for 1994, "The ratio of net profits to total capital gives out a distressing series of zeros after the decimal point." (fn. 163 of the US First Submission).

Japan:"However, the source cited in support of this proposition states only that *primary wholesalers have low rates of return*, and offers no basis on which to support the US claim." (fn. 164, p. 71 of Japan's First Submission).

Issue 11: The use of quantitative standards by the Large Scale Retail Store Council in making its adjustment determinations according to Article 7 of the Large Scale Retail Store Law, Law No. 80, 24 May 1991, (Japan Ex. C-1; US Ex. 74-4).

United States:"The examination of a new store by the Large Store Council is based upon mathematical formulas for comparing the Commercial Population and large scale retail store Occupation Rate of one city with similar cities. The quantitative approach '*allows the Large Store Council to ration retail space*.' Large Store Council Decision, "Investigatory Procedures for the Adjustment of the Business Activity of Large Scale Retail Stores, 14 November 1991, US Ex. 91-4." (fn. 190, p. 68 of the US First Submission).

Japan:"The standards used by the large Scale Retail Store Council in determining whether to recommend one of these limited adjustments also do not result in a restriction on the opening of large stores. The US wrongfully implies that the use of quantitative standards by the Large Scale Retail Store Council in making its adjustment determinations '*allows [it] to ration retail space*.' These quantitative factors are never determinative. They are simply some of the factors taken into account, along with a variety of quantitative factors in the overall Large Scale Retail Store Law process. (fn. 328, p. 120 of Japan's First Submission).

Issue 12: Reference to the JFTC ad hoc study group report: Concerning the Reevaluation of Government Regulations in the Distribution Sector, Government Regulation and Competition Policy Research Council, JFTC, June 1995, p. 23, (US Ex. 95-11).

United States:"The JFTC Council also found that, as of March 1995, a number of local government bodies were still imposing their own written guidelines on store openings, so-called augmenting or supplementary regulations, which are beyond the scope and requirements of the Large Stores Law, in that they apply to stores with a floor space of less than 500 square meters. It concluded that: 'These excessive regulations and non-transparent administrative guidance on the part of local government bodies and public entities make those planning to open stores continue to bear unreasonable burdens in the form of demands requiring very intricate store opening plans to be submitted and other similar demands.'" (para. 218 and fn. 268 of US First Submission).

Japan:"The United States cites surveys by the MCA and the JFTC ad hoc study group that allegedly document the existence of excessive local restrictions. These surveys, however, are not representative of current conditions. The MCA Survey was conducted in 1995. The JFTC ad hoc study group survey, meanwhile, presented only 3 cases of excessive local regulations. In addition, the United States erroneously translates the JFTC ad hoc study group report, suggesting the report confirmed that many excessive local regulations exists, resulting in a significant burden on store openers." (fn. 329, p. 120 of Japan's First Submission).

Issue 13:Reference to: Concerning Immediate Measures Regarding Notification to Establish Large Scale Retail Stores, Sankyoku No. 36, issued by DG, MITI, 30 January 1982 (US Ex. 82-2, Japan Ex. C-16).

United States:"MITI instituted, through Directive No. 36, a 'prior explanation' requirement to precede the builder's Article 3 Notification, which *obligated the notifier to consult with, and obtain the consent of, local retailers before submitting its Article 3 Notification.* (para. 202 US First Submission).

Japan:Japan cannot find any phrase to that effect in the Circular. (fn. 338, p. 123 of Japan's First Submission).

Issue 14: *"jimotosetsumei"* under the Large Scale Retail Stores Law.

United States:"In 1992, MITI replaced the 'prior explanation' process with a procedure for *'local explanation'*. ... Local explanation was implemented by Directive No. 25 'Guidance for Local Explanation to Those Who Submitted a Notification for New Construction of a Class I Large Scale Retail Store, 29 January 1992'." (para. 213 and fn. 259 of the US First Submission).

Japan:"[Under the Large Retail Stores Law, since 1992] 'all that is required is that the large store planner make a *public briefing* after the Article 3 notification (new store construction) but before the Article 5 notification (new store opening)'." (fn. 340, p. 123 of Japan's First Submission).

Issue 15:Quote from the JFTC Ad Hoc Study Group Report: Concerning the Reevaluation of Government Regulations in the Distribution Sector, Government Regulation and Competition Policy Research Council, JFTC, June 1995, p. 17, (US Ex. 95-11).

United States:"According to the June 1995 report to the JFTC from its Government Regulation and Competition Policy Research Council, the *Large Store Council*s consideration of a large store notification can easily reflect the views of local retailers.' According to this JFTC Council, 'existing local retailers remain influential members of *these organizations*' and even 'consumer and academic representatives *[on the Councils]* have close ties to local retailers'" (para. 228 of the US First Submission).

Japan:"The US misleadingly cites this phrase as to suggest that '*these organizations*' refer to the '*Large Scale Retail Store Council*.' However, the Japanese text of the report clearly shows that '*these organizations*' refer to the '*Chamber of Commerce and Industry*." Moreover, Japan submits that the US insertion "*[on the Councils]*" into the same sentence is erroneous. (fn. 344, p. 124 of Japan's First Submission).

Issue 16: Translation of the Premiums Law, Futo Keihinrui Oyobi Futo Hyoji Boshiho, Law Against Unjustifiable Premiums and Misleading Representation, Law No. 134, 15 May 1962); See Appendix to Issue 16.

United States: US translation of the Premiums Law of 1962 (US Ex. 62-6).

Japan:A number of points were indicated on a copy of the US translation of the Premiums Law by Japan in handwriting. Premiums Law of 1962, Japan Ex. D-1. (fn. 363, p. 130 of Japan's First Submission).

Issue 17: *"kamera-rui"*.

United States:"The JFTC soon acted to protect the camera cartel from competition on premium offers. On October 15, 1965, the JFTC issued a notification entitled, 'Restrictions on Premium Offers in the Camera Industry' ... The camera notification did not clearly distinguish what the term 'related products' meant, nor did it explain whether its prohibition applied only

to premiums connected to transactions directly involving *'cameras and related products'* or any transaction by a covered business ... ." (para. 288 of the US First Submission).

Japan:"The Japanese expression 'kamera-rui' should be translated as the *'camera category'* and not as 'camera and related products'. As a matter of Japanese language it cannot cover photographic film and paper. A leading Japanese dictionary "Dai-Jirin" defines "*rui* (category)" to be a "collection of similar items. Japan Ex. D-68" (para. 457 and fn. 431, p. 158 of Japan's First Submission).

Issue 18:Quote from the Zenren article: Discussion on Progress of Fair Trade Council Focuses on Making Fair Competition Code Fully Known, Zenren Tsuho, August 1987, pp. 16-20, (US Ex. 87-7 and Japan Ex. D-70).

United States:"... application of film and developing and printing was fundamental to securing support for the Retailers Code and the [Camera and Related Products Retailers Fair Trade Council] from the retailers association. '... we first understood photosensitive materials and development printing to also be included. ... It would, '*indeed, have been impossible to persuade Zenren members whose main line of business is development printing to contribute if [the regulations] only [apply to] hardware*." (para. 348 of the US First Submission).

Japan:"Instead it should be translated as follows *'many people expressed the view to the effect that, since [the code] applies only to hardware, it is impossible to persuade members [of Zenren] whose main line of business is developing and printing [to contribute]*'." (fn. 435, p. 160 of Japan's First Submission).

Issue 19:Translation of the editorial: Fair Competition Codes, Sweet Fantasies and Illusions Ought to be Taboo, Shashin Kogyo Junpo, 1 August 1987; See Appendix to Issue 19.

United States: Original US translation in: US Ex. 87-8.

Japan:Version with Japan's corrections: "... A photo industry journal editorial in the US Evidentiary Appendix (Editorial: Fair Competition Codes; Sweet Fantasies and Illusions Ought to be Taboo, Syashin Kogyo Junpo, 1 August 1987, US Ex 87-8), although not quoted in the US submission, appears as if the translation was rewritten in order to blur a main theme of the editorial; who is responsible to the fact that the retailers' code does not cover film and paper?" (fn. 437, p. 161 of Japan's First Submission).

Issue 20:"*teki-hatsu*": quote of statement of a director of the JFTC's Premiums and Representations Office in: "Fair Trade Council Established" Operated by Zenren, Will Respect "Fair Competition Code" - Urgent Need to Make Code Known by October Start, Zenren Tsuho, July 1987, p. 6-11, (US Ex. 87-5, p. 3; Japan Ex. D-82, p. 3).

United States:"The approval of the Code means that the role we play to take *'enforcement actions'* on violations will be left to the Fair Trade Council. If this expectation is not met, [the approval] will have no meaning." (para. 351 of US First Submission).

Japan:"The quotation of a Director of the JFTC (Zenren Tsuho, July 1987) in the US submission erroneously translates *'teki-hatsu' (discovery)* as '*enforcement action*'. Japan Ex. D-82." (fn. 449, p. 166 of Japan's First Submission).

Issue 21: Quote "... sarani kibishiku bunshoniyoru keikokuga hasserareru" from: Don't Give up on Exposing and Forwarding Materials [Regarding Violations] - JFTC Probing Non-Members' 'Representation Violations', Zenren Tsuho, February 1988, pp. 10-11, (US Ex. 88-2; Japan Ex. D-83).

United States:"By the end of last year, the number of 'Code violations' handled by the Fair Trade Council had reached 294 cases. ... Almost all who have received repeated caution or warnings were non-members, that is, while a member's stance is rectified by a verbal caution, *'a more severe warning in writing'* is issued to a non-member."

Japan:"The article in Japanese does not speak of '*more severe warning in writing*', but '*a more strict step issuing a written warning*'." (fn. 451, p. 167 of Japan's First Submission).

Issue 22: Statement by a JFTC official: Suggestions on How the Fair Trade Promotion Council Should Be, Yamada, Director of the Premiums and Representation Guidance Division, JFTC, Zenren Tsuho, May 1983, p. 14, (US Ex. 83-9).

United States:"In May 1983, the Director of the JFTC's Premiums and Representations Guidance Division pressed the Promotion Council to expand its operation into new areas: *'it is of critical importance to develop rules one by one against dumping and loss-leader advertising'*." (para. 325 of the US First Submission).

Japan:"The proper translation should be '*Also, with regard to unjustifiable low prices and bait advertising, it is important to pile up one by one.*' The original Japanese sentence does not refer to any 'rules', To 'pile up' what? is not clear even from the context" (fn. 454, p. 168 of Japan's First Submission).

Issue 23: "*jishu-kisei*" as referred to in "Self-Regulating Measures Regarding Making Business Dealings with Trading Partners Fair" of 22 June 1982, (US Ex. 82-8).

United States: "The domestic photographic industry responded to the JFTC's guidance in June 1982 when it promulgated '*Self-Regulating Measures'* Regarding Making Business Dealings With Trading Partners Fair." (para. 321 of the US First Submission).

Japan:"Japanese word *'jishu-kisei'* means simply '*self-regulation*' and not self-regulating measures'." (fn. 1, p. 6 of Japan's Written Responses to the Panel's Initial Questions).

Issue 24(1):Quote from "Consumer Life and the Fair Competition Codes" (Shohisha no Kurashi to Kosei Kyoso Kiyaku) 1995 edition, All Japan Fair Trade Council Federation, (US Ex. 95-9, p. 2).

United States:"The JFTC will directly regulate those who do not participate in the Codes, *but as long as the Codes are observed and recognized as having been established in accordance with normal business practices,* the JFTC uses the Fair Competition Codes as reference when it applies the law." (para. 360 of the US First Submission).

Japan:"The quote should be translated as '*but when it is recognized that the Codes have been observed and established as normal business practices*'." (fn. 1, p. 12 of Japan's Responses to the Panel's Additional Questions).

Issue 24(2):The quotation from "Fair Competition Code Regarding Representations in the Camera Category Retailers Industry", a JFTC commissioned pamphlet, 1987, (US Ex. 87-1).

United States: "*[B]y virtue of the fact that this Code has been established as normal practice in the photographic industry to be strictly obeyed, the Japan Fair Trade Commission uses it as reference when it applies the Premiums Law to outsiders.*" (para. 360 of the US First Submission).

Japan:"The correct translation should be '*The code, by being strictly observed and established as the normal practices of the photographic industry, is used as reference when the JFTC applies the Premiums Law to outsiders*'." (fn. 1, p. 12 of Japan's Responses to the Panel's Additional Questions).

1.APPENDIX TO TRANSLATION ISSUE 16:

United States: original version [text in brackets]:
Japan: corrected version *[in italics]*

LAW AGAINST UNJUSTIFIABLE PREMIUMS AND MISLEADING REPRESENTATIONS

(Law No. 134 of May 15, 1962)

Amendment: Law No. 44 of May 30, 1972
(First Amendment)

Article 1 (Purpose)

This Law, in order to prevent inducement of customers by means of unjustifiable premiums and misleading representations in connection with transactions of a commodity and service, by establishing special provisions for the Law Concerning Prohibition of Private Monopoly and the Maintenance of Fair Trade (Law No. 54 of 1947), aims to secure fair competition, and thereby to protect the interest of consumers in general.

Article 2 (Definitions)

(1) The term "Premiums" as used in this Law shall mean any [goods] *[article]*, money or other kinds of economic benefits which are given as means of inducement of customers, regardless of whether a direct or indirect method is employed, or whether or not a [prize competition] *[lottery]* method is used, by [a business] *[an entrepreneur]* to another party in connection with a transaction involving a commodity or service (transactions relating to real estate shall be included in this Article and throughout the rest of this Law), and which are designated by the Fair Trade Commission as such.

(2) The term "representations" as used in this Law shall mean advertisement or any other [representation] *[description]* which [a business] *[an entrepreneur]* makes or uses as means of inducement of customers, with respect to the substance of the commodity or service which he supplies or the terms of sale or any other matter concerning the transaction, and which are designated by the Fair Trade Commission as such.

Note:
Clause 1 and Clause 2. "designation" = establishment of premiums and representations under the provisions of Article 2 of Unjustifiable Premiums and Misleading Representations

Article 3 (Restriction or prohibition of premiums)

The Fair Trade Commission may, when it finds it necessary to prevent unfair inducement of customers, limit either the maximum value of a premium or the [sum total] *[aggregate]* amount of premiums, the kind of premiums or method of offering of a premium or any other matter relating thereto, or may prohibit the offering of a premium.

Note:Restriction on Premium Offers by Lotteries or Prize Competition (FTC Notification No. 3 of 1972)
[Restriction on Premium Offers to Businesses (FTC Notification No. 17 of 1967)]
~~*[Restriction on Premium Offers to Businesses (FTC Notification No. 17 of 1967)]*~~
Restriction on Premium Offers to General Consumers (FTC Notification No. 5 of 1977)
Restriction on Premium Offers in Newspaper Industry (FTC Notification No. 15 of 1964)
Restriction on Premium Offers in Chocolate Industry (FTC Notification No. 8 of 1965)
Restriction on Premium Offers in Camera Industry (FTC Notification No. 33 of 1965)
Restriction on Premium Offers in Instant Noodle Industry (FTC Notification No. 11 of 1966)
Restriction on Premium Offers in Curry and pepper Industry (FTC Notification No. 11 of 1967)
Restriction on Premium Offers in Processed Tomato Food Industry (FTC Notification No. 39 of 1967)
Restriction on Premium Offers in Wheat Cleaning Industry (FTC Notification No. 89 of 1968)
Restriction on Premium Offers in Magazine Industry (FTC Notification No. 4 of 1977)
Restriction on Premium Offers in Frozen Bean Curd Industry (FTC Notification No. 40 of 1970)
Restriction on Premium Offers in Chewing Gum Industry (FTC Notification No. 4 of 1971)
Restriction on Premium Offers in Biscuit Industry (FTC Notification No. 36 of 1971)
Restriction on Premium Offers in Soy Sauce Industry (FTC Notification No. 45 of 1977)
Restriction on Premium Offers in Cosmetic Soap Industry (FTC Notification No. 82 of 1971)
Restriction on Premium Offers in Bean Paste Industry (FTC Notification No. 47 of 1977)
Restriction on Premium Offers in Household Electric Appliances Industry
(FTC Notification No. 2 of 1979)
Restriction on Premium Offers in Sauce Industry (FTC Notification No. 3 of 1979)
Restriction on Premium Offers in Margarine and Shortening Industry (FTC Notification No. 4 of 1979)
Restriction on Premium Offers in Match Industry (FTC Notification No. 5 of 1979)
Restriction on Premium Offers in Agricultural Machinery Industry (FTC Notification No. 43 of 1979)
Restriction on Premium Offers in Automobile Industry (FTC Notification No. 44 of 1979)
Restriction on Premium Offers in Liquor Industry (FTC Notification No. 6 of 1980)
Restriction on Premium Offers in Tire Industry (FTC Notification No. 19 of 1980)
Restriction on Premium Offers in Rubber and Synthetic Resins Footwear Industry
(FTC Notification No. 25 of 1982)*

*[This list of JFTC Notifications issued pursuant to Article [13] */3/* is not exhaustive.]

Article 4 (Prohibition of Misleading Representations)

No business shall make such representation as provided for in any one of the following paragraphs in connection with transactions regarding a commodity or service which he supplies:

(i) Any representation by which the quality, standard or any other matter relating to the substance of a commodity or service [shall lead the general consumer to believe that it is] */will be misunderstood by consumers in general to be/* much better than the actual one or than that of other businesses who are in a competitive relationship with the business concerned, and thereby which is found likely to induce customers unjustly and to impede fair competition;

(ii) Any representation by which price or any other terms of transaction of a commodity or service will [lead the general consumer] */will be misunderstood by consumers in general/* to be much more favourable to the [other transacting parties] */customer/* than the actual one or than those of other businesses who are in a competitive
relationship with the business concerned, and thereby which is found likely to induce customers unjustly and to impede fair competition; or

(iii) In addition to those stipulated in the preceding two sections, any representation by which any matter relating to transactions as to a commodity or service is likely to be misunderstood by the general consumer and which is designated by the Fair Trade Commission as such, finding it likely to induce customers unjustly and to impede fair competition.

Note:
Section 3 "designation" Representations on Soft Drinks without Juice, etc., (FTC Notification No. 4 of 1973) Misleading Representations on Country of Origin of Goods (FTC Notification No. 34 of 1973), Misleading Representations on Cost of Consumer Credit (FTC Notification No. 1 3 of 1980), Misleading Representations on Loss-Leader Advertising of Real Estate (FTC Notification No. 14 of 1980), Misleading Representations on Loss-Leader Advertising (FTC Notification No. 13 of 1982).

Article 5 (Public Hearing and Notification)

(1) When the Fair Trade Commission takes action to [limit or prohibit in accordance with] *[effect designation ~~Article 2 (definition) or designation~~]* under the provisions of *[Article 2 of]* Section [3] *[iii]* of the preceding Article (restriction and prohibition of premiums), *[or to limit or prohibit under the provisions of Article 3]* or to change or abolish them, it shall hold a public hearing based on the Fair Trade Commission Rules and shall hear the opinions of the related businesses and the public.

(2) Designation, restriction, prohibition as well as amendment and abolition thereof under the provisions of the preceding clause shall be made by notification.

Note:
Clause 1 "Rules of the Fair Trade Commission" = Rules Concerning Public Hearing Under the Provision of Sec. 5 (1) of Act Against Unjustifiable Premiums and Misleading Representation (FTC Rules No. 2 of June 1, 1962).

Article 6 (Cease and Desist order)

(1) The Fair Trade Commission may, in the event there is an act violating the restriction or prohibition under the provisions of Article 3 (restriction or prohibition of premiums) or violating the provisions of Article 4 (prohibition [on] *[of]* misleading representations), order the [business] *[entrepreneur]* concerned to cease such an act, or to take the measures necessary to prevent the occurrence of the said act, or to take any other necessary measures including making *[the matters relating to]* the implementation of such measures public. Such an order may be issued even when the said violation has already ceased to occur.

(2) The Fair Trade Commission shall, in the event it has issued an order as stipulated in the preceding Clause (hereafter, "Cease and Desist Order"), make a Notification on the said order in accordance with the Rules of the Fair Trade Commission.

(Previous Clause 2 deleted; earlier Clause 3 amended in part and inserted into current Clause 2 (Law No. 89 of November 12, 1993, the Administrative Procedures Law)

Note:
Clause 2 of "Rules of the Fair Trade Commission": Notification on cease and desist orders in accordance with Article 6 (2) of Law Against Unjustifiable Premiums and Misleading Representations; and Article 1 concerning the request for the opening of [adjudgment] *[hearing]* procedure in accordance with the provisions in Clause 8(1) of the Law thereof.

Article 7(Relationship with the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade)

(1) Acts in violation prescribed in [Section] *[Clause]* (1) of the preceding Article shall be deemed to be unfair trade practices as provided for in *~~[the (Relationship with]~~* the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade) for the purpose of applying the provisions of Article 8 (1) (prohibited acts of trade associations) and Article 25 (absolute liability) of the said

Law and, for the purpose of applying the provisions of Division 2 (procedures) [or] *[of]* Chapter VIII (excluding the provisions of Article 48 (recommendation, recommendation decision) of the said Law, such acts shall be also deemed as acts in violation of Article 19 (prohibition of unfair trade practices) of the said Law.

(2) In a decision against acts in violation as provided for in the preceding [Section] *[clause 1 of Article 7]*, "the matters provided for by the first sentence of the said [subsection] *[clause]* may be ordered.

(3) The Fair Trade Commission, in the event it has initiated hearing procedures against acts in violation as provided for by [Section] *[Clause]* (1) of the preceding Article, or it has filed an application under Article 67 (1) (immediate injunction) of ~~*[the Law (Relationship with]*~~ the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade), shall not issue a cease and desist order against the said acts.

Article 8 (Hearing Procedures, etc.)

(1) A person who complains about a cease and desist order may request the Fair Trade Commission to initiate hearing procedures on the act involved in the said order, within thirty days from the day on which the notification has been made under the provisions of Article 6 [(3)] *[(2)]* in accordance with the *[rules of the]* Fair Trade Commission [Rules] ~~*[Rules]*~~.

(2) The Fair Trade Commission shall, in the event a request under the provisions of the preceding clause has been made, initiate hearing procedures on the said act without delay. In this case the provisions of [Section] *[Article]* 50 (4) (date of the first hearing proceeding) of the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade shall not apply.

(3) Except in the case provided for by the preceding clause, the Fair Trade Commission shall not, with respect to an act against which a cease and desist order has been issued, initiate hearing procedures nor file an application as stipulated in [Section] *[Clause]* (3) of the preceding Article.

Note:
Clause 1"Rules of the Fair Trade Commission" = Sec. 2 of the Rules on Notification of Cease and Desist Order under the Provisions of Sec. 6 (2) of the Law Against Unjustifiable Premiums and Misleading Representations Request for Initiation of Hearing Procedures under the Provisions of Sec. 8 (1) of the Law.

Article 9 (Effect, etc. of Cease and Desist Orders)

(1) A cease and desist order (except for the case in which a request was made in accordance with Clause (1) of the preceding Article) shall be, after the period provided for in the said Clause has elapsed, construed as the final *[and conclusive]* decision for the purpose of applying the provisions of Article 26 (restriction on exercise of the right to claim for damages in court and prescription) and Article 90 (iii) (penalties against violations of final *[and conclusive]* decision) of the Law Concerning Prohibition of Private Monopoly and for maintenance of Fair Trade.

(2) In case a decision on an act, for which a request has been made under the provisions of Clause (1) of the preceding Article, has been rendered (excluding a decision dismissing the said request on account of its irregularity) the cease and desist order concerning the said act shall lose its effect.

(3) The provisions of Article 64 (compulsory measures after decision) and Section 66 (2) (cancellation or alteration of decisions) of the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade shall apply mutatis mutandis to a cease and desist order.

Article 9-2 (Instruction by Prefectural Governors)

A prefectural governor may, where he finds existence of violation of either the restriction or prohibition prescribed in the provisions of Article 3 (restriction [and] *[or]* prohibition of premiums) or Article 4 (prohibition of misleading representations), instruct the [business] *[entrepreneur]* concerned to cease such violation, or to publicize the matters relating to the said effect.

Addition of this Article to the Law (law No. 44 of 1972)

Article 9-3 (Request for Measures to FTC)

(1) A prefectural governor may, in a case where the [business] *[entrepreneur]* concerned does not comply with the instruction issued under the provisions of the preceding Article, or in cases where a prefectural governor finds it necessary in order to put an end to any violation as prescribed in the said Article, or to prevent the occurrence of such violation as prescribed in the said Article,request the Fair Trade Commission to take appropriate measures in accordance with the provisions of this Law.

(2) The Fair Trade Commission [shall] *[should]*, when requested under the provisions of the preceding Clause, notify the said prefectural governor of the measures which the Fair Trade Commission has taken with respect to the said violation.

Article 9-4(Collection of reports and inspection, etc.)

(1) A prefectural governor may, where he finds it necessary for an instruction under the provision of Article 9-2 [instruction of prefectural governors] or a request under the provision of [Subsection] *[Clause]* (1) of the preceding [Section] *[Article]*, ask [an] *[the]* entrepreneur *[concerned]* or other entrepreneurs who have business relationship with him to submit a report on the premiums he offers or the representations he makes, or may have his staff enter offices or other places of business of the entrepreneur concerned or [related] *[other]* entrepreneurs *[who have business relationship with him]*, inspect accounting books, documents and other matters, or ask questions of the persons concerned.

(2) The staff who conduct an inspection or ask questions in accordance with the provision of the preceding [Subsection] *[Clause]* shall carry their identification cards and show them to the persons concerned.

(3) The authority under the provision of Subsection (1) shall not be construed as being granted for the purposes of criminal investigation.

Article 9-5(FTC's direction and supervision over prefectural governors)

The Fair Trade Commission may give directions or exercise supervision over prefectural governors with regard to the matters under the provisions of this Law.

Addition of this Article Law (Law No. 44 of 1972))

Article 10(Fair Competition Codes)

(1) [Businesses] */[Entrepreneurs]/* or a trade association may, upon obtaining authorization from the Fair Trade Commission in accordance with the Rules of the Fair Trade Commission, with respect to matters relating to premiums or representations, conclude or establish an agreement or a code, aiming at prevention of unjust inducement of customers and maintaining fair competition. The same shall apply in the event alterations thereto are attempted.

(2) The Fair Trade Commission, unless it finds that an agreement or a code under the preceding [Section] */[Clause]/* (hereinafter referred to as ‚fair competition code„) meets each of the following [paragraphs] */[sections]/*, shall not grant authorization under the preceding [Subsection] */[Clause]:*

(i)That it is appropriate to prevent unjust inducement of customers and to maintain fair competition;

(ii)That it is not likely unreasonably to impede the interests of consumers in general or the related [businesses] */[entrepreneurs]/*;

(iii) That it is not unjustly discriminatory; and

(iv)That it does not restrict unreasonably the participation in or withdrawal from the fair competition code.

(3) The Fair Trade Commission, when it finds that the fair competition code as authorized under [Subsection] */[clause]/* (1) has ceased to meet each paragraph of the preceding [Subsection] */[clause]/* shall cancel the said authorization. [In this case, the provisions of Section 6 (2) (summary hearing for cease and desist orders) shall apply mutatis mutandis.] ~~*/[In this case, the provisions of Section 6 (2) (summary hearing for cease and desist orders) shall apply mutatis mutandis.]/*~~

(4) The Fair Trade Commission, in case it has taken a measure under the provisions of Clause (1) or the preceding Clause, shall make the said measure public by a notification in accordance with the Rules of the Fair Trade Commission.

(5) The provisions of Article 48 (recommendation, recommendation decision) and Article 49 (initiation of hearing procedures), Article 67 (1) (immediate injunction) and Article 73 [(prosecution)] */[accusation]/* of the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade shall not be applied to the fair competition code that has been authorized under Section (1), and to such acts of [businesses] */[entrepreneurs]/* or a trade association as have been done in accordance therewith.

(6) Any person who complains about a measure taken by the Fair Trade Commission under the provisions of [Section] */[Clause]/* (1) or (3) may file an objection with the Fair Trade Commission [in] */[within]/* thirty days from the day on which the notification */[has been made]/* under the provisions of [Subsection] */[clause]/* (4) [was issued] ~~*/[was issued]/*~~. In this case the Fair Trade Commission shall dismiss the said objection, or shall cancel or alter the said measure [through] */[by a decision after taking]/* hearing procedures.

Note:
Clause (1) and (4) "Rules of the Fair Trade Commission" = the Rules Concerning Application, etc. for Authorization of Fair Competition Code under Provisions of Section 10 of the Act Against Unjustifiable Premiums and Misleading Representations Partially amended by Law No. 89 of 1993.

Article 11 (Exemption from the Administrative Complaint Review Law)

(1) With respect to a measure taken by the Fair Trade Commission in accordance with the provisions of this Law, an appeal under the Administrative Complaint Review Law (Law No. 160 of 1962) shall not be made.

(2) A *[law suit relating to a]* request under the provision of Article 8(1) ([adjudgment] *[hearing]* procedures) or a matter that a person may complain about [in accordance with Section] *[under clause]* 6 of the preceding Article *[only]* may be brought [if not] ~~*[if not]*~~ against the decision.

Article 12 (Penalties)

(1) Any person who failed to submit a report or submitted a false report, or refused, obstructed or evaded inspection, or failed to answer or made false answers to the questions, as provided in Article 9-4 (1) (collection of reports, and on-site inspection, etc.) , shall be fined not more than thirty thousand yen.

(2) *[When]* A representative of a [corporation or a representative of either a corporation or an individual, employee or other operator, who violates] *[juridical person, or an agent or any other person in the service of such juridical person or of an individual has violated]* the provision of the preceding [section] *[clause]*, with respect to the business of the said [corporation] *[juridical person]* or said individual, *[the said juridical person or said individual]* shall be fined as provided for in the preceding [section] *[clause]* in addition to the punishment of the offender.

Legislative history: Addition of this section (Law No. 44 of 1972)

2.APPENDIX TO TRANSLATION ISSUE 19:

Editorial: Fair Competition Codes, Sweet Fantasies and Illusions ought to be taboo, Shashin Kogyo Junpo, 1 August 1987, (Japan Ex. D-71; US Ex. 87-8)

United States: original version [text in brackets]:

Japan: corrected version *in italics*

"... The second illusion is one which has arisen from the expectation that photosensitized materials and development printing are [naturally] included with cameras under the codes. *Judging from the simple fact that* [even though] the name of the codes itself-"Fair Competition Code Regarding Representations in the camera *category* [and Related Products] Retailers' Industry" - clearly refers to the "camera *category* [and related products] retailers, *it should be self-evident whether or not* [alone, there seem to be the implication that] photosensitized materials and development printing can [might] be included. Saying that "[This is because] camera shops *always* [must] handle photosensitized materials and development printing as well" is *just* [goes the argument, and this leads to some] quibbling among retailers. Legally, such an interpretation should not be allowed. "*In spite of that, Mr. Eiji Hashimoto, Vice Chairman of the Board, has stirred up expectation by saying that this code naturally includes photosensitized materials and development printing" Such criticism* [The tragedy of this statement itself] was even heard about from the standing board members of Zenren, but *this* [that fact] is rather strange. After all, the codes have already been in working draft from for two years or more. They have prepared the "original bill" including the name, from an early stage and had carried out an investigation concerning the details. It is a fact that *Vice Chairman* [Deputy Director] Hashimoto repeated *statements suggesting that* [this query,] "[Shouldn't] both photosensitized materials and development printing are [naturally be] included.[?]" to the general membership. However, wouldn't it [ultimately] be the job of the executives - namely, the standing board of Zenren - to strictly check *in the process of the preparation of the codes* whether or not these two areas *are* [can be] included as expected ? Organizationally, Zenren and the Fair Trade Promotion Council (FTPC), previously known as *Suishinkyo* [Kotorikyo] but now known as *Kotorikyo* [Suishinkyo]), *which has been working on the formulation of the codes but [the] job of code formulation* [regulation], however, *has involved* [involves] other Zenren *executive* in addition *to Vice Chairman* [Deputy Director] Hashimoto. Moreover, even with Zenren *Chairman* [Director] Kimura's proud claims, "These are codes which we retailers created," it would indeed be strange if Zenren executives (standing board), which have neglected even to check whether or not photosensitized materials and development printing are included, were to blame Vice Chairman [rely only upon Deputy Director] Hashimoto alone.

B.RESPONSES BY THE TRANSLATION EXPERTS

The Panel, in consultation with the parties, has appointed as translation experts:

-Professor Michael Young (Centre for Japanese Legal Studies, Columbia University School of Law, New York, USA); and

-Professor Zentaro Kitagawa (Kyoto Comparative Law Centre, Kyoto, Japan).

The "Procedures for the Resolution of Possible Translation Issues" are discussed in Part I on "Procedural History" (see para. 1.9 *supra*).

The responses by the two experts to the translation issues raised by the parties are contained in the following table (pages 493-526 *infra*).

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1	The word *taisaku* can be variously translated as "measure," "countermeasure," "counterplan," "countermove," etc., depending on the context.	For the reasons explained below "taisaku"' should be translated as "measure."
	The Japanese government is quite correct in pointing out that when the *taisaku* is designed to further some affirmative goal, such as the acceleration of the provision of electrical power, "measure" is probably the most appropriate translation. The same is true when referring to something like "energy conservation measures."	"Taisaku" can mean "countermeasure," however, because "taisaku" has no direct English language equivalent, translation requires consideration of the circumstances. In light of the context here, it is awkward to translate "taisaku" as "countermeasure" because the subject "policy" consists of promoting positive goals of rationalization and market development.
	At the same time, when the *taisaku* is taken in response to something that might either be undesirable in and of itself or might create undesirable effects, then the translation "countermeasure" is probably most appropriate. For example, the Japanese Federation of Bar Associations set up a committee to study and recommend responses to the desire of foreign attorneys to practice in Japan. This committee, a *Taisakui'inkai*, was often translated as a "Countermeasures Committee." *Taisaku* taken in the context of the appreciation of the yen or inflation might also well be translated as "countermeasures."	In different contexts one may appropriately translate "taisaku" as "countermeasure." For example, Japanese speakers may use "taisaku" in expressions such as earthquake countermeasures (jishin taisaku) or pollution countermeasures (kougai taisaku). In the latter cases, "taisaku" connotes a policy "against" something undesirable, or to be contained, such as the ill effects of earthquakes and pollution.
	Of course, to some extent, the appropriate translation may depend on the phraseology. For example, if one is referring to "anti-inflationary" *taisaku*, then the appropriate translation is probably "measures," as in "anti-inflationary measures." If, on the other hand, one is referring to "inflationary" *taisaku*, then the most appropriate translation is "inflationary countermeasure."	
	In short, the critical question is whether the *taisaku* is designed, on the one hand, to advance some cause or interest that is considered generally desirable or, on the other, to counter some unhappy societal or economic developments. In the former case, "measures" is probably the best translation. In the latter case, "countermeasures" is a perfectly appropriate translation.	
	Thus, in the instant case, the critical question is whether the "liberalization" *taisaku* were taken to advance the cause of liberalization or whether the *taisaku* were taken either to slow down or reverse the tendencies towards liberalization or to counter the dislocations that might be occasioned by liberalization. In the former case, "measures" is the appropriate term; in the latter case, countermeasures might more accurate capture the nuances of the term.	
	Without examining every document submitted by both parties, it is impossible to determine definitively whether "measures" or "countermeasures" is the most accurate translation in this particular case. More important than the precise word, however, is the specific content of these measures. That determines whether they are measures to advance the liberalization	

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	and opening of a market or measures to slow down liberalization or counter the dislocations that liberalization might occasion.	
2	I believe the GOJ has mischaracterized this particular issue as a translation problem, when, upon my reading of both the USG and GOJ submissions, that does not appear to be the problem at all. Rather, it seems the parties simply characterize the content of the MITI's First Interim Report differently. Or, put slightly differently, the Parties appear to draw quite different conclusions from the report. The GOJ points to no specific instance in Para. 125, fn 88, where the USG mistranslated something. Rather, the GOJ appears to disagree with the conclusions the USG draws from the report. Allow me to be somewhat more specific.	For the reasons stated below, I am of the opinion that the U.S. statement (i.e., "to limit competition in distribution in order to create stability and high prices.....) does not accurately describe the position of MITI as stated in the cited Japanese language document.
	Based on its reading of the Report, the USG characterizes the report as articulating the central principle that will later underlie MITI's distribution policy, namely, "the need to limit competition in distribution in order to create stability and high prices for the benefit of domestic manufactures." I do not read the USG Submission as suggesting that its precise articulation of this "central principle" is a direct quotation from the First Interim Report or that it is anywhere quoting directly from the report for that precise conclusion. Rather, this appears to be the conclusion the USG draws from its examination of the report. It supports that reading in that same paragraph (p. 21, Para. 78), by offering specific points from the First Interim Report of MITI that the USG believes supports the basic position offered in the first sentence of the paragraph. The USG might have even embellished this point more by highlighting the extent to which the authors of the Report seem concerned about goods being sold "extremely cheaply" and the "wide variety of prices [offered] within the same consumer area" and the failure of all that to bring about rationalization (or perhaps even elicit rationalization efforts by companies -- the Report is slightly ambiguous on this point). But, it does not appear that the USG is quoting directly from the Report in the statement that the GOJ has highlighted.	The document does not mention any policy "to create stability and high prices for the benefit of domestic manufacturers." The term "limit competition" also does not appear in the document. Instead, in the document MITI discusses conditions of "appropriate competition" and focuses generally upon rationalization" issues. Although MITI indicates that vertical integration can result in the establishment of distribution systems, MITI also recognized that vertical integration was not necessarily the best way to rationalize every market,
	The GOJ, on the other hand, asserts that the report draws no connection between competitive conditions in the distribution and manufacturing sector, but rather that it notes only that the "establishment of appropriate competition conditions would stimulate the modernization of distribution mechanisms" and that "vertical integration did not necessarily mean that distribution systems would be rationalized." Of course, the GOJ does not indicate what the Ministry believes to be "appropriate" competitive conditions. But, again, it appears that the GOJ is asserting what it believes is contained in the report, not disagreeing about a precise translation, at least as I read it.	
3	The USG has translated *netto* as "network," while the GOJ insists that the proper translation is "net prices." In this instance, the GOJ is correct. In this particular context, the word *netto* most correctly refers to "net prices," not "network." The word *nettowaaku* is sometimes used to refer to network, but not in this article. This article uses other words to refer to the distribution structure (*ryutsu kozo*) or distribution network (*ryutsumo*). *Netto* refers to net	"Netto" is in Japanese business practices an abbreviation of the English word "net prices."

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	prices or net profits.	
	Regarding the second point, as a technical matter, I believe the GOJ is correct in that the phrase quoted in the USG Submission -- ""a limit to the expansion of sales channels seems to be appearing" (USG Submission, p. 58) -- refers specifically to the distribution industry for cameras. The context of the specific discussion of "expansion" in that paragraph is that of the increase in distribution outlets by camera manufacturers which are opening their own stores. The very next sentence then notes that a "limit to the expansion of sales channels seems to be appearing," thus technically referring to those sales channels that are opened by the manufacturers of camera equipment and those sales channels that compete with such stores.	
3 (contd)	It is not entirely clear, however, that the author believes such sales channels are exclusively limited to camera hardware or that they effect only the pricing patterns of camera equipment. In the remainder of the paragraph, following the phrase in question, the author seems to focus on both cameras and film, thus suggesting that such new outlets (and the concomitant limitation on the increase in such new outlets) also effect the distribution structure for sales for film and other camera related products. Indeed, if anything, the remainder of the paragraph focuses more on film than on cameras.	
	Thus, in sum, a strictly technical linguistic reading of the disputed sentence is that it refers to "sales channels" for cameras. At the same time, the author appears to assert that such sales channels also effect the pattern of distribution and price structure for sales of film and related products. Thus, he may intend to include film, etc., in comment about how limitations in the increase in sales channels are appearing.	
4	The GOJ is certainly correct that the term *keiretsuka* can have a variety of meanings, depending on context. It is most commonly used in two relatively distinct contexts. First and perhaps best known are the groups of loosely affiliated companies that, for the most part, produce distinct products, but, nevertheless, are connected by relatively small amounts of cross-ownership and a common, usually pre-war, history. The myriad companies that bear the Mitsui, Mitsubishi or Sumitomo name are examples of this form of *keiretsu*. These *keiretsu* are often the successors to the pre-war conglomerates or *zaibatsu* that were broken up after World War II. However, unlike the pre-war *zaibatsu* or conglomerates, these companies are not held together by a common holding company which holds large shares of stock in all of them. Rather, they are very loosely affiliated with small amounts of cross-ownership and frequent structured arrangements whereby the Presidents and other officers of the companies gather to network, exchange information and otherwise discuss matters of common interest.	Items 4-6 For the following reasons, the Japanese submissions translation of "keiretsuka" as "vertical integration" more accurately and objectively conveys the meaning of "keiretsuka" in this context.
	The second common usage of *keiretsu* is in reference to a group of companies that are largely in one chain of production, including both up-stream and down-stream producers. Often included in the *keiretsu* of auto manufactures, for example, are up-stream parts	Items 4-6 (contd) "Keiretsu" relationships might include horizontal and

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	producers and down-stream distributors, in addition, of course, to the auto manufacturers themselves.	vertical relationships. "Keiretsuka" means the establishment of such inter-firm or intra-firm relationships. In this document "keiretsuka" does not refer generally to establishment of such relations, but specifically to the establishment of vertical relationships or integration.
		Therefore "vertical integration" is technically the better translation. Also, vertical integration is more easily understandable in an English language document. Outside of Japan the word "keiretsu" may be misunderstood as it is often used in contexts wherein it has negative implications. In the Japanese language document at issue, however, "keiretsu" simply objectively describes a specific structure or organization of firm relationships in the Japanese economy, i.e. vertical integration.
4 (contd)	In normal course, one might be inclined to consider this second type of *keiretsu* as merely a form of "vertical integration" and, to some extent, it is certainly that. However, the companies may be related in a stock ownership way in tighter or looser ways. In some cases, both the up-stream and down-stream companies are largely or exclusively owned by the manufacturer. In other cases, only the down-stream or, on rarer occasions, only the up-stream are wholly or largely owned subsidiaries and the other half of the production stream are bound more by contract and expectation than stock ownership. In these cases, the non-wholly owned subsidiary may still be bound to the main company by some degree of stock ownership, though generally far less than necessary to exercise control. In still other cases, none of the companies may be wholly (or largely) owned subsidiaries of the other. Rather, all are bound more by contract and mutual cooperative expectations, along perhaps with a small amount of cross-ownership of stock, than by complete parent-subsidiary relationship.	I would also like to note that Item 159 (at p.61 of The First Submission of the Government of Japan) could be better translated as: "Vertical integration of distribution channels does not always mean, from the perspective of the national economy, that vertical integration is the best way to rationalize each of the distribution structures."
	It appears that the various reports refer to this second kind of *keiretsu*. Thus, to an extent, the GOJ is correct, in that the reports refer to a rationalization of the distribution system that takes the form of creating more exclusive vertical relationships between manufacturers and distributors (at the wholesale or retail levels or, perhaps, at both). On the other hand, the USG is also correct to an extent because referring to this merely as "vertical integration" may suggest perhaps a degree of parent-subsidiary relationship in terms of ownership and control that is not necessarily inherent in the term *keiretsu*.	
	Accordingly, I think either term entirely appropriate. The term "vertical integration" is acceptable, as long as the Panel understands that the term "vertical integration," when used to refer to *keiretsu*, should not be understood to mean precisely the kind of vertical integration	

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	of which we think when considering vertical integration in most U.S. or Western European economic situations. That is, in this context, "vertical integration" does not necessarily mean wholly-owned subsidiaries or even a situation in which one party exercises substantial control over the other through the exercise of corporate rights inherent in the ownership of certain percentage of the other corporation's stock. It may mean that, of course, but, as described above, it may also mean a much more flexible, loose relationship that may nevertheless be quite exclusive and function fully as an unalterable sole distribution relationship.	
	Alternatively, "keiretsu-nizing" or "keiretsunization" is also entirely appropriate, as long as the Panel understands the range of forms that such distribution cooperation might take, including everything from wholly-owned parent-subsidiary relationships to loose affiliations, based perhaps on relatively small amounts of cross-ownership (though not necessarily), that generate exclusive dealing relationships that are very stable and relatively unalterable.	
5	Having reviewed these materials in both English and Japanese, I refer the Panel to my discussion regarding Item No. 4. I think that same analysis applies to this Item.	
6	Having reviewed these materials in both English and Japanese, I refer the Panel to my discussion regarding Item No. 4. I think that same analysis applies to this Item.	
7	Before I analyze this issue, I would like to note that the First Submission of the Government of Japan seems to cite the wrong article for the relevant translation problem at issue. Footnote 145 states, "The U.S. translates a *November 1, 1967, Nihon Shashin Kogyo Tsushin article* as...." (emphasis added.) However, the relevant section is not in the November 1, 1967 article cited as "Ex. 67-14", but rather seems to be in the December, 1967 (pp. 5-8) article from *Zenren Tsuho*, titled "Let's All Have Cameras - Film, Printing Paper Promotion of Trading Normalization Triggered by a Monochrome Photosensitive Materials Price Increase" (in the "Provisional" English translation).	1) In my opinion, the better translation is: "...want to rationalize distribution channels all the way to the retail level, ...".
	In addition, the GOJ has not cited the precise footnote of the USG Submission in which the USG supposedly cites either of the articles in question. Furthermore, the GOJ does not cite to any particular section of the article(s) which may negate the USG's claim due to any translation errors. Nor does this claim by the GOJ seem to raise a translation issue, at least in the conventional sense. Accordingly, I have not reviewed the GOJ's claim that the article(s) in question do not support the USG claim.	2) Exhibit 67-14 does not support the U.S. allegation that the Government of Japan designed distribution policies to encourage a single-brand distribution system. I find no mention of government policy in this document. Exhibit 67-14 consists of a neutral statement from the perspective of one having business interests in the wholesaler industry. The author has apparently assumed that manufacturers preferred a single brand distribution system, or a distribution system with a few large distributors. The author states that distributors need to focus on the issue of how to successfully do

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		business in such an environment rather than on the issue of whether such a distribution system is good or not.
	Turning to the translation issue, the main question is what Fuji and Konika want; in other words, whether Fuji and Konika want "distribution" all the way to the retail level, as the USG suggests, or whether they want "to rationalize transactions," as the GOJ urges. The original Japanese section does not make apparent the object of the verb, *seibi*, so there is a need to look at the context of the sentence in order to understand which meaning is implied.	
	Before addressing the main question of what the "object" of the clause is, there is need to look at the verb of the clause. The USG translation is phrased so that "want" is the verb of the relevant clause, whereas, the GOJ translation uses the verb, "want to rationalize." The verb in the original Japanese text is *seibi shite ikitai*, which can be translated as, "want to 'adjust' or 'restructure.'" Since the USG and the GOJ do not seem to argue about the translation of *hanbai ru-to no seibi mo*, the subtitle of this section, as "*restructuring* of sales channels as well" (emphasis added), it may be more consistent to use the translation, "restructure" here, too.	
	So, what is it that Fuji and Konika want to restructure? I believe that the author of the article addresses this question in the subtitle of the section: "Restructuring of Sales Channels, as well," or "Also Restructuring of Sales Channels." I think this strongly suggests that the object of restructuring is "sales channels," which is relatively close to the USG translation of "distribution."	
7 (contd)	In addition, as a side issue, there is a question as to Fuji and Konika should be put in brackets or not. In this case, since the subject of the clause is not directly stated, but can nevertheless be inferred from the first part of the sentence, Fuji and Konika should be in brackets, as the USG suggests. Thus, the most appropriate translation would be as follows: "[Fuji and Konika] want to restructure [sales channels] all the way to the retail level..."	
8	I start by noting that the GOJ has slightly mischaracterized the nature of this issue by implying that the phrase they cite from the USG Submission is, in its entirety, a "translation of a journal article...." In fact, the USG Submission directly cites from the translation only the second half of that sentence, "the influx of foreign capital may be checked by the application of the Antimonopoly Law." The first half of the sentence in the USG brief, starting with "For instance," is not in quotation marks and thus does not indicate that the USG is directly quoting from the article. Moreover, the part of the sentence not in quotation marks differs slightly from the provisional translation of the article provided by the USG, further supporting the view that the absence of quotation marks around the first half of the sentence is not accidental, but rather that the USG intended to quote only the second half of the sentence directly from the provisional translation. Accordingly, I will compare not what the GOJ	I would translate the subject text as follows: "Assuming that the trade usage of rebates, as one example, has been established within the industry, excessive practices by foreign capital can be checked by operation of the Antimonopoly Law."

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	mistakenly characterizes as "the U.S. translation", but rather the Provisional translation provided (presumably by the USG) and the GOJ translation contained in Footnote 152 on Page 67 of the GOJ Submission. I do also note, by the way, that even regarding that part of the USG sentence that is contained within the quotation marks is not drawn directly from the Provisional translation, but rather differs slightly. I will note when such differences occur and their relevance.	
	The Provisional translation and the GOJ differ only very slightly with respect to the latter half of the sentence that may be read "~foreign capital may be checked by the application of the Antimonopoly Law." The Provisional translation states that "~foreign capital **could** by checked", while the GOJ translates that phrase as "~foreign capital **may** be checked". In light of the original Japanese, I think "could" is the preferable translation. However, since the USG does use the word **"may"** in the text of its submission as an exact translation, it appears that both the USG and the GOJ agree that "may" is the most appropriate translation. Accordingly, I will use "may" for purposes of this analysis.	
	The USG and the GOJ do disagree on the translation of the phrase immediately preceding the above, the Japanese original of which reads: *gaishi no yukisugi*. Or, more precisely, the parties seem to disagree whether the object of *yukisugi*, which is translated as either "influx" or "excess," is merely *gaishi* ("foreign capital"), as the USG suggests, or something broader, such as "the use of rebates," as the GOJ suggests. (The Provisional translation translates *yukisugi* as "excess," while the USG Submission uses the word "influx." As will be indicated shortly in the text, the GOJ takes a somewhat different approach and thus does not directly dispute the use of either of these words. "Excess" seems a better translation to me, but since the USG uses "influx" in its formal Submission and the GOJ does not offer a different view, I will use the word "influx," rather than "excess.")	
8 (contd)	It is very difficult to resolve this issue because the original Japanese text is very vague and ambiguous. With respect to earlier translation issues, the GOJ has constantly urged the Panel to not fill in missing phrases, words or ideas from the surrounding text, but rather to translate strictly as a matter of word substitution, to the extent possible. The contention seems to be based on the idea that when the USG fills in the missing phrase or word by drawing inferences from the surrounding text, the inference is invariably favourable to the U.S. case and undermines the GOJ's contentions. Taking that particular tack, the USG translation is probably the more accurate, though it requires some refinement. If, on the other hand, we consider the surrounding sentences, it becomes somewhat more difficult to be sure what the author had in mind. Let me examine this sentence from each of those perspectives.	
	Let me start with a somewhat strict translation, based largely on word substitution. The first part of the sentence, as contained in the Provisional translation, reads: "For instance, rebates were planned so that if they were to become common practice in the industry...." I believe a better translation would be: "Even if we take up rebates [for example], if they	

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	become common practice in the industry...." The particular Japanese phrase in question is "~toriagete mite mo" and does not generally suggest, particularly in this context, that such rebates "were" adopted or even "were planned," but rather suggests that we will now take this issue up and examine it for purposes of illustrating some point to the reader. In other words, the author appears to be examining, as an illustrative example, what use might be made of the relevant law (or guidelines, as I will discuss shortly) in the event rebates become common industry practice.	
	Regarding insertion of the phrase "if they become common practice in the industry," the GOJ assertion in Footnote 152 might initially be read as a claim that this phrase is not found in the Japanese original. However, the phrase is clearly found in the Japanese original and is correctly translated much as the USG translates it in the Provision translation.	
	On the other hand, the GOJ might be asserting in Footnote 152 that the USG Submission claims that the article stands for the proposition that "rebates were adopted" and then goes on to give the reason for such adoption, namely, "so that once they become common practice in the industry, 'the influx of foreign capital may be checked by the application of the Antimonopoly Law.'" In this regard, the GOJ may have a more legitimate complaint. The sentence in dispute clearly references "common practice in the industry," but does so in a conditional way, indicating that certain consequences would follow **if** rebates became a common industry practice. In the original Japanese, the sentence in question does not indicate **whether** rebates had or would become a common practice, but rather only examined the possibilities **if** they became a common industry practice.	
8 (contd)	Turning now to the most controversial part of the sentence, whether the "influx of foreign capital" may be checked or "the abnormal use of rebates by foreign capital" may be checked. Taking the approach generally urged by the GOJ in other translation issues, a strict reading of the original Japanese suggests only that the "influx of foreign capital" may be checked. There is nothing else in the sentence like "the abnormal use of rebates." The use of rebates is mentioned only in the context described above. Accordingly, taking this view, the best translation would be: "Even if we take up rebates [for example], if they become common practice in the industry, the influx of foreign capital may be checked by the application of the Antimonopoly Law." (As a minor matter, not directly addressed in either the USG or GOJ claims, I would like to mention that the original English translation of the August 1971 article of *Zenren Tsuho* might be slightly misleading regarding the very last phrase of the sentence in question, which reads: "...the Antimonopoly Law, **a measure that has been devised and put in place**." The original Japanese text reads, *toiu koto kara sakutei sareta mono nano dearu.* The USG translation might be read to suggest that it is the Antimonopoly Law which has been devised and put in place. However, it seems apparent from the sentence immediately preceding that it is the **guidelines** that have been devised and put in place, not the Antimonopoly Law.)	

	At the same time, using a slightly broader, contextual approach to translation, the result might be different. In the context of this sentence and the paragraph within which it sits, it is not entirely clear that the author meant this phrase -- "influx of foreign capital" -- to be read so narrowly. Given that the context of the sentence is the use of rebates and how wide spread they might become, it would not be unacceptable to consider that the thing that might be checked by the Antimonopoly Law is the excessive use of rebates. The principal question then becomes what *gaishi* means in this context. Normally, *gaishi* means foreign capital, but it can occasionally be a short-hand term for foreign investors. Thus, this sentence could be read as follows: "Even if we take up rebates [for example], if they become common practice in the industry, foreign investors going too far [in the use of rebates] may be checked by the application of the Antimonopoly Law." Given that the article is talking mainly about ways to prevent foreigners from coming into the Japanese market and disrupting the settled distribution system by introducing competition within the industry, it is entirely possible to consider that what is to be checked is not, technically speaking, the actual influx of foreign capital, but rather the extensive use of rebates by the foreign investors. I am inclined to think this translation captures the meaning of the Japanese.	
	I make two additional observations, however. First, I think the sentence is very ambiguous and, while I lean to the latter interpretation, it is by no means certain. Second, the GOJ use the word "abnormal" to describe foreign capital's use of rebates. That is not a particular accurate or good translation and I have not used it in the translation, but rather have used "going too far."	
9	The dispute here seems to focus on the difference in interpretation of the object of progression: whether Fuji Film's financial soundness has progressed or whether the soundness of transactions progressed. In this case, the latter interpretation (that of the GOJ) is correct.	Neither (a) nor (b) is entirely correct. The original text states that "soundness' has indeed progressed,". The term "financial" does not appear in the text and the text does not further explain the meaning of "soundness."
9 (contd)	The sentence at issue emphasizes the word *kenzenka*, which means "soundness" or "health," by putting it in quotation marks. Use of these quotation marks suggests that the author is using *kenzenka* in the same context as before. Earlier in the article, in the first sentence of the third paragraph, the author first mentions *kenzenka* by saying, "...*Fuji Firumu ga kaishu oyobi soreni tomonau shukka kenzenka hoko ni ho wo fumidashita....*" (USG translation: "...Fuji Film started to try to improve its receivables and related shipments"). Here, the object of *kenzenka* is the receivables and related shipments. The author then goes on to explain how Fuji Film went about improving the soundness of such transactions in the paragraphs, focusing in the paragraph at issue on the period of payment for receivables. Immediately after describing the shortened time frame for payment of receivables, the author concludes that because of these changes the "soundness" (which is *zenkenka* in brackets) has indeed progressed. In this context, the author is almost certainly referring to the soundness of the receivables and related shipments. The GOJ has combined the improvements of receivables and related shipments and called it "transactions."	
	The GOJ also contends that paragraph 119 of the USG Submission, in which the USG	

	asserts that "shortly after the new transaction terms went into effect, Misuzu's financial situation deteriorated," finds no support in the ***Zenren Tsuho*** article cited in footnote 100, which is the June 1968 ***Zenren Tsuho*** article entitled *Relationship Between Major Photo Materials Wholesalers and Manufactures From the Standpoint of Industry's Photo Materials* [USG translation}. This article does discuss how businesses have reacted to Fuji Film's tightening of credit and also how Fuji Film's assistance has helped some businesses', including apparently, Misuzu's, financial situation to improve. At the same time, it does not state in any explicit way the existence of a direct causal relationship between the new transaction terms and Misuzu's financial deterioration. One might infer that at least some of these companies' financial problems are related to Fuji's changing transactional policies from certain assertions, such as the need for the *tokuyakuten* to undertake more stringent collection procedures because of the change in Fuji's policies. In addition, the author mentions other changes that the *tokuyakuten* must take in response to the general tightening of credit, perhaps implying that these changes are necessary to avoid deterioration in their financial situation or to improve a deteriorating situation, but the author no where explicitly states any casual connection.	
9 (contd)	At the same time, such a casual connection is implied much more strongly in the ***Zenren Tsuho*** article cited in Fn 98 or Paragraph 115 of the USG Submission (*Fuji Film's Result of Stricter Policy on Receivables*, ***Zenren Tsuho***, march 1968, Ex. 68-2). This particular article does not explicitly state$ that Misuzu's financial situation deteriorated shortly after the new transaction terms went into effect, but the author certainly seems to imply that the new transaction terms adversely effected some of the *tokuyakuten* and other business. For example, in the second full paragraph on p. 3 of this article (USG translation), the author notes: "As mentioned in the previous section, in April 1966 Fuji Film made its payment terms for photosensitive materials *tokuyakuten* more strict in an effort to normalize their business relationships. These moves were stepped up in April of last year." The paragraph goes on to note steps Fuji Film took to help businesses that "could not handle the tighter payment deadlines." Then, the very next paragraph starts out: "Some *tokuyakuten* naturally could not keep up with the pace of such a payment cycle. Businesses that were faced with mounting troubles, just as Chuo Photo was (even if this was not what Fuji intended), thus found themselves in dire straits." Thus, the author clearly describes a causal connection between the tightening of payment terms and a deterioration in the financial condition of some of the businesses. He does not mention Misuzu specifically in that paragraph, but that Misuzu might well be included in that group can be inferred by statements the author makes earlier in the article. Specifically, in the last paragraph of p. 2 of the article (USG translation), the author states that Fuji and Konica are "burdened with some of the *tokuyakuten* that have a significant number of problems." He then goes on to note that "[i]n Fuji's case, these used to include Omiya and Ueda, and now Shikijima and Misuzu, who are considered to have been able to continue their [business] activities until now due to special support from the manufacturer...." Thus, it is certainly possible to infer that from the way in which the author has described the general cause of problems in these businesses and the author's specific use	

	of Misuzu as an example of a troubled business that Misuzu's financial deterioration is casually related to Fuji Film's stricter policy on receivables. It is not an absolutely necessary inference, but it certainly seems a legitimate one.	
10	The article in question discusses the low rate of return of four distributors, noting that they have low rates of return despite unprecedented low interest rates and, resultingly, reductions in interest payments. The article does note that security money (or, in the case of Misuzu, long-term deposits) deposited with the manufacturer earns slightly better interest rate than the commercial rate. However, that is the only direct reference to any relationship with the manufacturer or any effect the manufacturer might have on the profitability or operations of the distributors.	The correct answer is Japan's translation.
11	Strictly speaking, this does not appear to be a translation issue, at least in the conventional sense. However, let me address it to the extent possible, while also noting a certain limitation on my ability to address it.	This presents an issue of statutory interpretation rather than translation.
11 (contd)	[[On its face, the Large Scale Retail Store Law does not impose a requirement of an examination of a new store "based upon mathematical formulas for comparing the Commercial Population and large scale retail store Occupation Rate of one city with similar cities" (USG Submission, p. 65, Fn 190). Rather, it requires the relevant authorities to: "...determine the probability that retail business operations at the Type-I or Type-II large-scale retail store in question will impose considerable effects on the business of small and medium-sized retailers in the vicinity...." (Article 7(i), Large Scale Retail Store Law, Ex. 74-4 [USG translation]). At the same time, in making this determination, the relevant authorities are instructed to take "into consideration factors within the vicinity of the Type-I or Type-II large-scale retail store in question...." (*Ibid.*) Such factors include "the scale and trends of the prefectural population, prospect for the modernization of small and medium-sized retailers, and the proximity and current business activities of other large-scale retail stores." (*Ibid.*)	
	This would certainly permit the relevant authorities to compare the size of the current consuming public (and trends in the growth rate of that public) with the size of the current commercial distribution and the size of commercial distribution in the event a large-scale retail store is permitted to open. Moreover, since this list of factors that might be considered is, as a legal matter, illustrative and not exhaustive, there is nothing to prevent the authorities from comparing the consuming population and the occupation rate of the target city with that of similar cities around Japan. Thus, it is clear that such a comparison as that described by the USG in Fn 190 is permitted under the Law.	
	Even at that, however, it important to note that there is nothing on the face of the Law that would seem to make such a comparison dispositive. Rather, the statutorily mandated determination is the "probability that retail business operations at the ...large-scale retail store ...will impose considerable effects on the business of small and medium-sized retailers in the vicinity...." The comparison described by the USG in Fn 190 may be relevant to that determination and certainly may be considered. But, at the same time, other factors may	

	also be considered and, under the statutory scheme, it appears that the Diet anticipated that other factors would be considered. Thus, at a minimum, one can say that on the face of the statute the comparison described by the USG is certainly permitted. At the same time, it does not appear that the Diet anticipated that that comparison would be the only relevant factor. Nor does it appear from the face of the statute that the Diet anticipated that that comparison would be dispositive in and of itself. Still, this does not mean that such a comparison is not made. Nor does it mean that the use of such a comparison, even if not dispositive and even if not used exclusively, would not, as a matter of general practice, have an effect similar to that described by the USG in its Submission.	
	It is impossible to reach any definitive conclusion on this last matter, however, based solely on an examination of the statute. The USG has cited a particular decision which it implies supports its conclusion, namely, "Large Store Council Decision, 'Investigatory Procedures for the Adjustment of the business Activity of Large Scale Retail Stores,' November 14, 1991, Ex. 91-4" [cited in USG Submission, p. 68, Fn 190]. That may support the USG conclusion, but, from the face of the statute alone, it is not possible to reach any definitive conclusion on this point.	
12	The first half of the GOJ complaint about the USG citation -- the degree to which the surveys cited represent current conditions in Japan -- is hardly a translation issue. Both the USG and the GOJ seem to agree that the MA survey is dated 1995. Moreover, the USG also makes clear in both text and footnote that the JFTC citation is dated 1995. Accordingly, there does not appear to be any disagreement about when the surveys were conducted.	Please note that the First U.S. Submission, at para. 218 mistakenly cites the JFTC Council study report at page 23. The correct page is page 25.
		It is not appropriate for me as interpretation expert to comment on whether or not the MA survey and JFTC study report are not representative of current conditions.
	The second half of the GOJ complaint about the USG citation -- that the USG "erroneously translates the JFTC ad hoc study group report, suggesting the report confirmed that many excessive local regulations exist, resulting in a significant burden on store openers" -- is couched in terms of a complaint about the accuracy of translation. However, at least in the materials provided to me, the GOJ does not point to any specific dispositive translation errors.	The U.S. First Submission erroneously cites the JFTC study report. The U.S. First Submission, paragraph 218, states:
	It appears that the parties disagree about what conclusions should be drawn from the survey, rather than about the accuracy of the translation of the survey.	"It [The JFTC Council] concluded that: [T]hese excessive regulations and non-transparent administrative guidance on the part of local government bodies and public entities make those planning to open stores continue to bear unreasonable burdens in the form of demands requiring very intricate store opening plans to be submitted and other similar demands. 269" [Hereinafter I refer to the above conclusion as

		In the original Japanese language text the JFTC Council report only refers to an existing opinion that local regulations are excessive. The JFTC does not conclude therein that such regulations are excessive.
		1) "P", as cited by the U.S. Submission, is not the conclusion of the JFTC Council report. The report only quotes "P," without identifying its source. On the same page of the report, the JFTC Council states "Despite such measures of MITI'S, as "P" is in part being pointed out, it is presumed that some such regulations of their own still remain." (The words "their own" refer to the local government bodies, etc.)
12 (contd)		2) On the same page 25, the JFTC Council report concludes: "Some such local regulations of their own, which exceed the framework of the Large Scale Retail Store Law by controlling the opening of large retail stores, lead to interrupt competition among retail stores and to limit customer's freedom to choose. Therefore, such regulations should not be exercised from the standpoint of competition policy."
13	Strictly speaking, this is not a problem of translation, but rather of what conclusions are most appropriately drawn from the materials in question. The USG has stated in Paragraph 202 of its First Submission that the MITI circular "obliged the notifier to ...obtain the consent of local retailers before submitting Article 3 Notification." The GOJ, on the other hand, has argued that it could "not find any phrase to that effect in the Circular." However, the USG statement is not placed within quotation marks and does not appear to be a translation at all, but rather appears to be the conclusion the USG draws from the MITI Circular. The USG is drawing its conclusions and has stated that conclusion in paragraph 202.	The better answer is Japan's translation
	Turning to that conclusion, the most relevant section of the text states, in Japanese: *todokede mae ni shuttengoteichi no shichoson nado e shuttenkeikaku no naiyo ni tsuite* ***setsumei*** *o okonaugo shido saretai.* The main verb, *setsumei*, is usually translated as "inform" or "explain." Thus, technically read, it appears that the Circular actually guides the notifier to "inform" the local retailers or "explain" to the local retailers before submitting its Article 3 Notification, rather than requiring them to "obtain the consent of the local retailers...."	
	At the same time, it is not uncommon under Japanese administrative practice for the parties involved to understand that the giving of an "explanation" also, to some extent, may	

	entail the obtaining of consent from the parties to whom the explanation is given or, at a minimum, that any reasonable objection of the parties to whom the explanation is given should be accommodated to the extent possible. There is nothing in the Circular that directly states this, however, and the only explicit guidance given in the Circular is to give an explanation or to inform the local retailers.	
	The discussion surrounding Item No. 14 also analyzes this issue in more depth. Please refer to that as well.	
14	As a general matter, *jimoto* is translated as "local" and *setsumei* is translated as "explanation". The USG has combined the two translations. In a casual context, "local explanation" would not be inaccurate. However, in this context, *jimotosetsumei* is used as a legal term within the circular of the Ministry of International Trade and Industry. In other words, the circular is not using the term in its general meaning, but instead, has injected a specific meaning. *Jimotosetsumei* instructs the *shuttenyoteisha* (=store opener) to explain the contents of its store opening plan before the municipal government, the chamber of commerce and industry, or industry and commerce association, small and medium-sized retailers, and consumers in the area.	The US translation is literal, however, Japan's translation is the more descriptive of the two.
14 (contd)	The USG translation as "local explanation" seems to connote a nuance that is slightly different from the context that it is used in here. Local explanation usually refers to an explanation made by the local people or to the local people (probably by a government entity). In this case, it is not the local people that are giving the explanation or a government entity giving an explanation to the local people, but rather the parties filing notifications for Type-I large-scale retail stores that are subject to hold a *jimotosetsumei*.	
	The GOJ urges that "public briefing" is the correct translation. The term "public briefing" in English connotes the inference that the state or other public entity is briefing the public people. It is important to note here that the store opener may not be a public entity. Furthermore, the briefing is addressed not only to the consumers, but also to the municipal government and the other entities listed above.	
	I believe that it is not so important to determine whether the accurate translation of *jimotosetsumei* is "local explanation" or "public briefing", as it is to understand how the word is used in the circular. As long as the meaning of the term is clear, either translation may be fit.	
15		The corrections made by the Japanese Government to the U.S. reference as well as to the U.S. insertion of [on the Councils] are correct.
16		I reviewed the marked sections of the translation of the "Law Against Unjustifiable Premiums and Misleading Representations." My opinions below are limited to address only those issues indicated in the marked document sent to me. I make no comment herein as to

		the general integrity of the translation.
		Throughout the translation at issue the word "hearing procedures" is used. For example, see Articles 6, 7, 8, 10, 11 etc. To be consistent "adjudicative procedures" should be used throughout this translation.
Article 2, Clause 1 Premiums Law	1. ***Buppin:*** The dictionary translation is "an article," "goods," or "commodities." I do not think there is a major difference in this case as to whether one uses the word "article," as the GOJ suggests, or "goods," as translated by the USG. Either would be acceptable as long as one term is used throughout for the sake of consistency. I note, by the way, that the word "commodity" is used in the same paragraph for the Japanese word *shohin*, so it would probably be best not to use that particular word as a translation of *buppin*.	Article 2: Clause 1: The word "buhin" in Japanese should be translated as "article" rather than "goods."
16 (contd)	2. ***Kuji no Hoho:*** The literal dictionary translation of *kuji* is "lottery." The USG translates the phrase as "prize competition method," whereas the GOJ would add the words "lottery or" and thus have it read: "lottery or prize competition method." Again, I doubt there is much difference between the two phrases and I see no problem with translating it as: "lottery or prize competition," which would accommodate the GOJ translation and include the USG translation.	Article 2: Clause 1: The word "prize competition" should be translated as "lottery."
	3. ***Jigyosha:*** The USG translates this word as "business," in contrast to the GOJ's translation as "entrepreneur." To understand fully this word's original meaning, I shall divide it into two parts. *Jigyo* means "business," and *sha* is generally translated as person. When used in a legal context, *sha* is not restricted to natural persons, but may include any juridical person (i.e., corporations) as well. In this particular case, however, I do not think either "business" or "entrepreneur" fully captures the meaning because the law appears to intend to include both businesses and entrepreneurs. In other words, if "business" does not include the concept of the actual business operations, as well as the entrepreneurs who run them, then it is too narrow. If the word "entrepreneur" does not encompass the business entity itself (and its related operational activities), then that is not adequately expansive. However, as long as one understands that the term includes both "businesses" and "entrepreneurs," then I do not think it matters which term one chooses. This analysis applies any time *jigyosha* is used in this law.	Article 2: Clause 1: The word "jigyosha" in Japanese should be translated throughout as "entrepreneur."
Article 2: Clause 2	4. ***Hyoji:*** The term *hyoji* is used twice in Article 2(2). When first used, *hyoji* is translated as "representations" and both the USG and GOJ seem to agree on this translation. The second translation of *hyoji* is at issue here. The USG continues to used the term "representations" as its translation of *hyoji*, while the GOJ now insists on the term "description" as the most appropriate translation. I do not think there is any need to	Article 2: Clause 2: In the original Japanese version, the word "hyoji" or "representation" appears twice - as it does in the literal translation. The word "description" is too narrow; however, "indication" may perhaps be substituted for "representation" in the second line to avoid using

	distinguish the first use of *hyoji* from the second. Therefore, I recommend using the term "representation" for consistency reasons.	"representation" twice.
Article 3	5. ***Sogaku:*** The dictionary translation includes: "total," "sum total," and "aggregate," as just a few of this word's translation. I do not think there is any significant difference in this case.	Article 3: The difference between "aggregate" and "sum total" does not appear to be material. The prior term is perhaps preferable as a matter of style.
16 (contd)	6.***Jigyosha in taisuru keihinrui no teikyo ni kansuru jiko no Seigen*** and ***Kensho ni yoru keihinrui no teikyo ni kansuru jiko no teikyo:*** I cannot be positive from the original text, which does not seem to cite the FTC Notification number, but it appears that perhaps the USG has reversed the first two citations. That is, *jigyosha no...*, the first notification listed in the original Japanese text should correspond to the "restriction on Premium Offers to Businesses," the second listing in the English translation. (N.B.: The USG has translated the word *jigyosha* here as "businesses.") thus, it seems that the USG simply cited the two notifications in different order. Accordingly, I don not think the "Restrictions on Premium Offers to Businesses" should be deleted, but rather the order merely ought to be reversed.	NOTE to Article 3 on Page 226 of Japan Ex D-1: The corrections are right.
Article 4	7. **3** or **13:**The GOJ seems to be correct in asserting that the article in question here is Article 3, not Article 13.	Article 4: Although the parties did not raise the issue, I believe the most appropriate translation of the heading is "Prohibition of Improper Representations."
	8. ***Ippan shohisha ni gonin sareru tame:*** The first issue seems to be whether to translate *ippan shohisha* as "general consumer," as the USG asserts, or "consumers in general" as the GOJ states. I do not understand these two terms to be particularly different in English. Accordingly, I believe either translation would be appropriate. In this case, since *ippan*, which is usually translated as "general," is used to modify *shohisha* ("consumer"), then perhaps the term "general consumer" is technically most accurate and certainly adequately expresses the concept.	Please note that the phrase **"ippan-shohisha"** appears in paragraph 3 of the Article 4 and in other places as well. It could perhaps also be translated as "consumers in general," however, it is not apparent whether or not any material difference exists between the phrase "general consumer" and "consumers in general" in the present context. Further, "general consumer" is the more literal translation.
	The second issue is whether *gonin sareru* is better translated as "shall lead...to believe," as the USG urges, or as "will be misunderstood," as the GOJ suggests. The word *gonin* is generally translated as "misconceive" or "mistake," and has a negative connotation. I believe that the GOJ's translation -- "will be misunderstood" -- better captures that nuance and is perhaps the best translation. Therefore, I think the better translation is: "will be misunderstood by the general consumer to be..." One could also translate it as "shall mislead the general consumer to believe..."	Second, the appropriate translation of the text at issue in lines 3 and 4 is: "will be misunderstood by the general consumer."
	9. ***Torihiki no Aitegata:***	

	The USG translates this phrase as "other transacting parties," while the GOJ urges "customer" as the correct translation. I think neither is precisely correct. The more accurate translation is the "other party in the transaction." The "other party" may well be the "customer," but the original text does not directly so state.	
16 (contd)	10. ***Dainijo teigi <u>moshikuwa</u> senjyo daisango no kitei ni yoru shite <u>moshikuwa</u> daisanjyo (keihinrui no seigen oyobi kinshi) no kite ni yoru seigen <u>moshikuwa</u> kinshi wo shi:*** The issue here is the correct position of the conjunction "or." As underlined above, *moshikuwa*, which is translated as "or," appears repeatedly in one sentence. The USG and the GOJ seem to disagree on whether the FTC takes action "to limit or prohibit under" all the article mentioned (which appears to be the USG view) or whether the FTC takes action "to limit or prohibit under" the provisions of Article 3 only (the GOJ view). It appears that the GOJ is correct. "To limit or prohibit under" modifies the provisions of Article 3 only, and "effect designation" modifies both "Article 2 (definition) and Section 3 of the preceding Article." Thus, the correct translation is: "To effect designation under the provisions of Article 2 (definition) or Section 3 of the preceding Article, **or** to limit or prohibit under the provisions of Article 3. [emphasis added] 11. **Section 3** or **Section (iii):** As a minor point, there seems to be a disagreement on whether to write the number three as "3" or "(iii)." I do not think there is a major difference between the two possibilities, as long as the reader understands the precise section to which the text is referring.	Article 5: The Government of Japan has correctly translated this text as "When the Fair Trade Commission takes action to effect a designation under the provisions of Article 2 or Section (iii) of the preceding Article, or to limit or prohibit under the provisions of the preceding Article..."
	12. **Reference to Article 4 (*Futo na hyoji no kinshi*):** The USG translates this phrase as "prohibition **on** misleading representations," whereas the GOJ uses the word "of" in place of "on." Looking back to the translation of Article 4, the USG had translated the same phrase as "Prohibition **of** misleading representations." Both the USG and the GOJ had agreed on the June 29, 1997 translation of this phrase previously. Thus, I recommend using "prohibition **of** misleading representations" for reasons of consistency.	Article 6: Changes indicated by the Government of Japan are correct. [If the references to the content of provisions are retained then the word "misleading" in the fourth line should be "improper."]
	13. ***Korera no jisshi ni kanren suru koji:*** *Kanren suru* can be translated as "be connected with" or "be related to." The USG translation -- "making the implementation of such measures public" -- seems to exclude the fact that the clause is referring to the "matters relating to" the implementation, as the original text (*jisshi ni kanren suru*) indicates. The GOJ translation -- "making the matters relating to the implementation of such measures public" -- is the better translation in this instance.	
	14. ***Shinpan tetsuzuki:*** Whether we should interpret this as "hearing procedure, " as the GOJ asserts, or "adjudgment procedures," as the USG urges is less important than understanding precisely what a *shinpan tetsuzuki* is. In this case, the text is referring to the quasi-judicial powers given to the Fair Trade Commission. During this process, the FTC certainly conducts a hearing and may render some adjudgment.	The Government of Japan has suggested the word "hearing procedures" in place of the word "adjudgment procedures." The term in Japanese is "shinpan tetsuzuki". I would translate this as "adjudicative procedure." A cease and desist order under the Premium and Representation Act is intended to be an administrative order. The entrepreneur affected by

		the order may demand an "adjudicative procedure" ("shinpan tetsuzuki" in the Japanese language) under Article 8. (Please see Kitagawa, Doing Business in Japan, Vol. 5, Part 9, Paragraph 9.03[5]).
Article 7	15. ***Ko/Jyo/Go:*** The issue is whether to translate *ko* as "section," as the USG does, or as "clause," as the GOJ favours. The GOJ seems to state that *jyo* is "article," *ko* is "clause," and *go* is "section." On the other hand, the USG does not seem to differentiate so clearly among these three terms. Again, as with many other issues in this Item, I do not think it is particularly important which translation is used, so long as there is consistency throughout. The GOJ approach seems to provide adequate consistency (and I note there are places where even the USG translates *ko* as "clause). Thus, I suggest adopting the GOJ approach for purposes of consistency: *ko* = "clause"; *jyo* = "article"; and *go* = "section."	Article 7: Changes suggested by the Government of Japan are acceptable. Also, the reference to "Article 8 (1)" in line 5 should be "Article 8, clause 1, section 5" not "Article 8(1)."
	16. ***Shitekidokusen no kinshi oyobi kosei torihiki no kakuho ni kansuru horitsu:*** The more common translation of this law is: "in the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade," as suggested by the GOJ.	
	17.***Doho daihassho dainisetsu:*** The better translation is: "Division 2 (procedures) of Chapter VII.	
	18. ***Zenjo dai ikko:*** Using the terms mentioned in # 15, supra, I believe the best translation here is "clause 1 of the preceding article," as suggested by the GOJ, rather than "in the preceding section," as the USG urges.	
	19. ***Doko:*** As noted in # 15, for coherency reasons, I propose use of the GOJ translation: "said clause."	
	20. ***Zenjyo dai ikko:*** The best translation is: "Clause 1 of the preceding Article." (Please refer to # 18, supra.)	
	21. ***Shitekidokusen no kinshi oyobi kosei torihiki no kakuho ni kansuru horitsu:*** Please refer to # 16, supra.	
Article 8	22. ***Dairokujo dainiko:*** The correct reference is "Article 6(2), as the GOJ urges.	
	23. ***Koseitorihiki i'inkai kisoku:*** I cannot see any practical or linguistically significant difference between "Fair Trade Commission Rules" and "the Rules of the Fair Trade Commission." Accordingly, either translation seems fine.	Article 8 The difference between the phrase "Fair Trade Commission Rules" and the "Rules of the Fair Trade Commission" for the phrase "kousei torihiki iinkai kisoku" does not seem material as long as it is used consistently throughout the translation.

	24. ***Daigojyujo daijonko:*** As noted in # 15, for the sake of consisteney, I recommend the GOJ translation: "Article 50(4)."	
16 (contd)	25. ***Sanko:*** For reasons of consisteney, I recommend the GOJ translation of "Clause (3)." (Please see # 18, supra.)	In (2) The word "Section" should be "Article." In (3) "Section" should be "clause."
Article 9-1	26. ***kakutei shita shinketsu:*** In a legal context, *kakutei* is often translated as "final," as suggested by the USG, or "irrevocable," and occasionally as "final and conclusive," as urged by the GOJ, as well. Since addition of the words "and conclusive" seems to satisfy the lawyer's penchant for verbosity more than for precision, I doubt it matters very much in this context whether "and conclusive" is added. At the same time, precisely because it does not seem to add to, or change the meaning very much, it can be added to the phrase without harm to the meaning.	Article 9-1 In Section (i) the Japanese language the word at issue is "kakutei shita hanketsu." The correct translation should be "final and binding."
	27. ***Kakutei shita shinketsu:***Please see # 26, above.	
Article 9-2	28. ***Oyobi:*** The dictionary translation of *oyobi* is usually "and." At the same time, in the legal context, when *oyobi* is used, it usually indicates that something may fall under, or be controlled by either or both the categories joined together by the word *oyobi*. The linguistic accommodation of that concept in English is sometimes "and/or," which is not a bad translation of the true meaning of *oyobi* in the phrase in question.	Article 9-2: The changes indicated by the Government of Japan are acceptable.
	29. ***Jigyosha:***Please see # 3, supra.	
Article 9-3	30. ***Jigyosha:*** Please see # 3, supra.	Article 9-3: Again, the change to Section 1 is correct.
	31. ***Suru mono to suru:*** This phrase is probably best translated as "should," as the GOJ suggests, rather than "shall," as urged by the USG. Normally, the language of requirement, command or obligation in Japanese law is *shinakereba naranai* or some variation of that grammatical form, which would be translated as "shall." When urging or recommending, the form *...mono to suru* is more commonly used. Since this form is used in this sentence, the GOJ translation of "should" is preferable	With respect to Section (2) the word "should" is not the literal translation. The appropriate translation here should be "The Fair Trade Commission, when requested notifies the said prefectural governor
Article 9-4	34. ***Ikko:*** For consistency's sake, I recommend "Clause (i)," as the GOJ suggests, rather than "Subsection (i)," as the USG translates it. See # 15, supra.	Article 9-4: The suggestions of the Government of Japan are correct with the following exception.
	35. ***Zenjyo:*** I recommend this be translated as "the preceding **Article**," as the GOJ suggests, rather than	

	"the preceding **Section**," as urged by USG. See # 15, supra.	
16 (contd)	36. ***Togai jigyosha:*** The word *togai* is generally translated as "the said" or "the relevant." Use of the word "concerned," as urged by the GOJ is close enough.	
	37. ***Sono mono to sono jigyo ni kanshite kankei no aru jigyosha:*** The GOJ urges first that the word "other" be used, instead of "related," as the USG suggests. In point of fact, the Japanese version does not use words that directly correspond to either "other" or "related." At the same time, it is clear that the entrepreneurs about which the law is speaking are not the "concerned" or "said" entrepreneur, but rather the **other** entrepreneurs who have a relationship with the said entrepreneur or business. Thus, insertion of the word "other" seems appropriate, and, in all events, a better word to use than the word "related," which is used by the USG. Accordingly, I recommend use of the word "other" before entrepreneurs, as suggested by the GOJ.	Delete the phrase "related entrepreneurs" from line 8 and insert "of entrepreneurs having relations with such entrepreneurs."
	38. ***Sono mono to sono jigyo ni kanshite kankei no aru jigyosha:*** The GOJ has urged inclusion of the phrase "who have business relationship with him" after "entrepreneurs," while the USG has left that phrase out. Though this is a slightly awkward (and not entirely complete translation of the phrase), the USG has nevertheless used precisely this translation to translate exactly the same phrase earlier in the sentence. Thus, the GOJ suggestion that it also be included here, where the Japanese text is identical, is entirely appropriate and should be accepted.	
	39. ***Zenko:*** For reasons discussed in # 15, supra, I recommend the GOJ translation of "Clause," rather than the USG translation of "Subsection."	
	40. ***Daiikko:*** For reasons discussed in # 15, supra, I recommend the GOJ translation of "Clause," rather than the USG translation of "Subsection."	
Article 10	42. ***Jigyosha:*** Please see discussion relating to # 3, supra.	Article 10: Changes suggested by the Government of Japan are correct with the following exceptions:
16	43. ***Zenko:*** For the reasons discussed in # 15, supra, I recommend adoption of the GOJ translation of "the preceding **Clause**," rather than the USG translation of "the	

(contd)	preceding **Section**."	
	44. ***Kakugo:*** For the reasons discussed in # 15, supra, I recommend adoption of the GOJ translation of "each of the following **sections**," rather than the USG translation of "each of the following **paragraphs**."	
	45. ***Zenko:*** Please see # 42, supra.	
	46. ***Jigyosha:*** Please see discussion regarding # 3, supra.	
	47. ***Daiikko:*** For the reasons discussed in # 15, supra, I recommend adoption of the GOJ translation of "under **Clause** (i)," rather than the USG translation of "under **Subsection** (i)."	
	48. ***Zenko:*** For the reasons discussed in # 15, supra, I recommend adoption of the GOJ translation of "the preceding **Clause**," rather than the USG translation of "the preceding **Subsection**."	
	49. The phrase crossed out by the GOJ -- "In this case, the provisions of Section 6(2) (summary hearing for cease and desist orders) shall apply mutatis mutandis." -- is not found in the original text of the law provided.	
Article 10-5	50. ***Kokuhatsu:*** The word *kokuhatsu* is variously translated in the dictionary as "prosecution," as the USG urges, and as "accusation," as the GOJ suggests, as well as "indictment," "charge," and even "complaint." In this particular context, however, I believe the word "accusation" best captures the meaning. In Article 73 of the Anti-monopoly law, the FTC is required, upon the finding of evidence of a violation of that law, to go to the Prosecutor General and perform a *kokuhatsu*. In this context, the FTC does not have actual prosecutorial power, but rather that is vested in the procuracy. Accordingly, what the FTC is doing is making a "report" or filing a "complaint" of a violation of the law. Thus, the word "accusation" is probably more accurate than "prosecution," which implies an action directly against the alleged malefactor.	1. Article 10, Clause (5). With respect to the reference after Article 73 "(prosecution)", Article 73 both refers to an accusation by the FTC and, in clause 2, a prosecution by the public prosecutor. Therefore, both the words "prosecution" and "accusation" could be inserted.
	51. ***Daiikko:*** For reasons discussed in # 15, supra, I suggest the GOJ translation of "Clause (i)," rather than the USG translation of "Section (i)."	
	52. ***Jigyosha:*** Please see discussion of # 3, supra.	
Article 10-6	53. ***Daiikko:*** For reasons discussed in # 15, supra, I suggest the GOJ translation of "Clause (i)," rather than the USG translation of "Section (i)."	Article 10, Clause (6).
16 (contd)	54. ***Inai ni:*** Use of the word "within," as the GOJ suggests, rather than "in," as translated by the USG, probably conveys the meaning slightly more accurately.	Article 10, Clause (6) Neither translation is precise. Delete the words between "in" on line 3 and "issued" on line 5. Insert

		"within thirty days from the day of a notification under the provisions of Clause (4).
	55. ***Ga atta hi kara:*** The GOJ insertion of the phrase "has been made" adds clarity and is entirely consistent with the Japanese. It is appropriate and to be preferred.	
	56. ***Daiyonko:*** For reasons discussed in # 15, supra, I suggest the GOJ translation of "Clause (4)," rather than the USG translation of "Subsection (4)."	
	57. ***Shinpan Tetsuzuki wo hete, Shinketsu wo motte:*** In this context, the GOJ translation -- "by a decision after taking" -- is to be preferred to the USG translation of "through." (However, one might prefer the word "conducting," as opposed to "taking.")	
Article 11	58. ***Daihachijo daiikko no kitei ni yoru seikyu mata wa zenko dairokko no moshitate wo suru koto ga dekiru jiko ni kansuru utae:*** In this context, the phrase "*...ni kansuru utae"* is correctly translated as "a lawsuit relating to" or "a lawsuit regarding...," as the GOJ suggests. Moreover, as the GOJ suggests, this phrase modifies the request, etc., so it is a lawsuit only that may be brought to challenge the decision. Moreover, as the GOJ also suggests, at the end of the sentence, the better translation is "may **only** be brought against the decision," rather than the USG translation of "may be brought **if not** against the decision."	Article 11: Clause (2) The phrase "A lawsuit relating to" should be inserted. Again, "adjudgment procedures" should be "adjudicative procedures" not "hearing procedures." The word "only" should be inserted.
	59. The GOJ translation of "under Clause" is preferred over the USG translation of "in accordingly with Section."	The change from "in accordance with" to "under" does not appear material.
Article 12	60. In Article 12 (2), the GOJ translation is technically more accurate and I recommend it in all respects.	Article 12: Changes suggested by the Government of Japan are correct with the exception that "individual" should be "person."
17	In this context, *kamera-rui* is probably most correctly translated as "kinds of cameras" or "types of cameras." It might also be translated as "classification category of cameras," which, I think, relatively closely approximates the translation contained in the GOJ Submission, namely, "camera category."	The better explanation is Japan's translation.
17 (contd)	As a general matter, when the suffix *-rui* is attached after a word in Japanese, it generally means "kind" or "class" or, in the scientific sense, "species" or "genus." Thus, in science, when the suffix *-rui* is attached to some type of animal or insect, such as a frog or spider, it generally means the genus of frog or the genus of spider. It would not generally include things "related" to the frog or the spider, but rather only different kinds, types or "genus" of spiders.	

	In other situations, the word *rui* generally means "of this kind" or "of this type." Thus, if you were referring to records, the use of the word *rui* or the suffix *-rui* would generally mean records "of this type" or "of this kind." In customs classifications as well, the Japanese suffix *-rui* generally means types or kinds of that particular product, not things related to that product.	
18	I believe the most accurate translation of the disputed sentence is: "... the majority opinion was that it is impossible to persuade members [of Zenren] whose main line of business is developing and printing [to contribute] if [the code] only [applies to] hardware." The GOJ is correct that the author is reporting what a "majority" of the people were expressing as their opinion. (That is the part of the sentence in Japanese that reads as follows: *to itta iken ga tasu atta*.) On the other hand, the critical phrase is *Haado dake dewa*, which, in the context of the paragraph and the sentence itself is better translated as "**if**," rather than "**since**," "[the code] only [applies to] hardware." In particular, the earlier sentences indicate that executives "first" understood that the code would also include photosensitive materials and developing and printing and that with that understanding, they were able to persuade members of Zenren to contribute. The next sentence, as I have translated it above, then logically follows. Indeed, the translation suggested by the GOJ would not logically follow. Within the sentence itself, moreover, the construction *dewa* suggests "if," rather than "since." *Dewa* can sometimes mean "since," but its much more common usage is "if."	My interpretation of the relevant text is as follows: The business association, whose members are from the camera, film and development printing business, is responsible for its Fair Competition Code. Since the Code applies only to hardware, debate arose in a meeting of this business association with respect to contributions made by members whose main line of business is photosensitized materials or development printing. The meeting concluded by confirming that the scope of the Code in the future should expand to photosensitized materials and development printing.
19	1."naturally": The literal translation would not include the word, "naturally".	I believe the following translation to be accurate. "The second illusion is one which has arisen from the expectation that photosensitized materials and development printing are also included in the camera category under the Code. Judging from the simple fact that the title of the Code itself - "Fair Competition Code Regarding Representations in the Camera Category Retailers 'Industry" - clearly reads the "Camera Category Retailers," one should understand whether or not photosensitized materials and development printing are to be included.
19 (contd)	2."Even though": The literal translation would not include "even though". Nor does *judging from the simple fact that* seem the best translation. Rather, the more accurate translation is: "Even if you only look at...."	Saying that "[This is because] camera shops always handle photosensitized materials and development printing as well" is just quibbling among retailers. Legally, such an interpretation should not be allowed. "Nevertheless, Mr. Eiji Hashimoto, Vice Chairman of the Board, has stirred up expectation by saying that this Code naturally includes photosensitized materials and development printing."

	3."Category" or "and related products": As I have analyzed before, "kamera-rui" refers to "kinds of cameras," or "types of cameras." Even further support for this proposition is found in the fact that if the USG translation, "and related products" is used, much of the discussion of the second illusion in this editorial loses its meaning.	It is strange that the standing board members of Zenren blamed him for such a statement. After all, the Code had already been in working draft since two or more years ago. From an early stage they had prepared the original draft, including the title, and carried out an investigation concerning the details. It is true that Vice Chairman, Mr. Hashimoto, repeated statements to the general members "that both photosensitized materials and development printing are naturally included."
	4."it should be self-evident whether or not" or "alone, there seem to be the implication that": I believe a more accurate translation is: "it seems one should be able to tell whether or not". This translation, while not precisely that urged by the GOJ, is probably closer to the GOJ's translation than that of the USG. The latter translation, that of the USG, suggests that the passage is implying that photosensitized materials and development printing would be included, yet, in the original text, it does not talk about whether the inclusion or exclusion is implied.	Wouldn't it be the job of the executives - namely, the standing board of Zenren - to strictly check in the process of preparation of the Code whether or not these two areas can be included as assumed?
	5."Can" or "might": In this case, "can" would be the literal translation of the text, "sare eruka douka."	Organizationally, Zenren and the Fair Trade Promotion Council (FTPC, previously known as Suishinkyo, but currently as Kotorikyo) has involved other Zenren executives in addition to the Vice Chairman Hashimoto. Moreover, with Zenren Chairman, Kimura's proud claims, "this is a Code which we retailers created," it would indeed be strange if Zenren executives (standing board), which neglected even to check whether or not photosensitized materials and development printing are included, were to blame Vice Chairman Hashimoto alone."
	6."This is because": I suggest that this phrase suggested by the USG be omitted although it really does not seem to affect the content of the sentence. "This is because" seems to suggest that the quote is referring back to the material previously discussed by the author of the editorial. Since there are ellipses at the end of quote, it is unclear what the retailers are referring to.	

19 (contd)	7."Camera" or "camera": Should the quote begin with "camera", then the word should be capitalized. If not, the word should be in lower case.	
	8."always" or "must": The literal translation of "kanarazu" is in question. The dictionary translation is "certainly", "surely" or "always". Thus, I suggest the translation, "always". "Must" can also mean "is required to" and can connote different nuances not existing in the original text.	
	9."just" or "goes the argument, and this leads to some": I prefer the GOJ translation of "just." The original text does not mention that "this leads to some", but rather seems only to refer to the fact that it is "just quibbling among retailers."	
	10."In spite of that, Mr. Eiji Hashimoto, Vice Chairman of the Board, has stirred up expectation by saying that this code naturally includes photosensitized materials and developing printing." or "Nevertheless, Deputy Director Eiji Hashimoto, has stirred up expectations by his comment, 'Naturally, the code should include photosensitized materials and development printing.'"	
	Issue 1: "In spite of that" or "nevertheless": "nimo kakawarazu" can be translated either way.	
	Issue 2: "Vice Chairman of the Board" or "Deputy Director": Vice Chairman is probably slightly more literal. *Riji* is often translated as Board and Mr. Hashimoto is second in command of the *Riji*. Accordingly, Vice Chairman of the Board is perfectly adequate.	
	Issue 3: "expectation" or "expectations": I believe the USG translation of "expectations" is the more appropriate translation because the retailers may have more than one expectation.	
	Issue 3: "Naturally": In this case, "naturally" directly modifies "includes".	
	Issue 4: "Includes" or "should include": "Includes" is probably the better translation because the original Japanese text says, "fukumeta."	
	Issue 5: Should Mr. Hashimoto's statements be in quotes or not? The original text uses quotation marks when he speaks, so I would set off his remarks in quotation marks, as the USG has done.	
	Therefore, I consider the following the most appropriate translation on the disputed points: "In spite of that (or Nevertheless), Mr. Eiji Hashimoto, Vice Chairman of the Board, has stirred up expectations by saying, "The code naturally includes photosensitized materials and developing printing."""	
	Please note, by the way, Mr. Hashimoto seems to be making an assertion, rather than asking a question, so a period, rather than a question mark, seems most appropriate.	

19 (contd)	11."such criticism" or "the tragedy of this statement itself": The GOJ and the USG have translated the phrase *~to ia hinan ga* in different ways. The dictionary translation of *hinan* includes "criticism" or "blame." In this case, the GOJ has asserted that *to ia* means "such." I believe this is accurate since *to ia* refers directly to the previous clause in quotations. Accordingly, "such criticism" is an acceptable translation.	
	12."this" or "that fact": The dictionary translation of *kore*, the word in dispute, is "this" or "this one," so I suggest that the GOJ's translation -- "this" -- be used in this instance.	
	13."Vice Chairman" or "Deputy Director": For the reasons discussed in No. (10), issue 2, I would use "Vice Chairman."	
	14."statements suggest that" or "this query": The issue is how to translated *kano hatsugen*. *Hatsugen* is usually translated in the dictionary as "utterance," speaking," speech," or "observation." Since Mr. Hashimoto seems to be making a statement, at least in his original quotation, rather than asking a question, the word "query" does not seem entirely apt. At the same time, the particular grammatical structure used in this case can suggest that "questions like" or something to that effect. Accordingly, it could be "query". I believe the preferable translation is "statement," however, as long as it is understood that *hatsugen* refers to Mr. Hashimoto's earlier comments.	
	Furthermore, while *kano* can be translated as "questions like," as discussed above, in light of the nature of Mr. Hashimoto's first declaration, I think "statement" is the best translation and therefore the word *kano* would imply in this case that Mr. Hashimoto is "suggesting" the statements in question. Therefore, "statements suggest that" seems an appropriate translation.	
	15."Shouldn't both ...naturally be included?" or "Both ...are included.": As mentioned earlier, Mr. Hashimoto's remarks appear to be affirmative statements, at least when originally made, and thus considering this a statement, rather than a question, seems most appropriate. In that case, the text would not begin with "Shouldn't" and would not end with a question mark. As also discussed above, however, given the grammatically form used, it could certainly be otherwise and one cannot categorically state that "Shouldn't" and the question mark are incorrect. The second question is whether "naturally" is in the sentence. The word in question is *touzen* and is generally translated as "justly," "properly," or "naturally." Accordingly, the word "naturally" should be included as the USG suggests, and, I believe, the best translation is: "Both ...naturally are included."	
	16."ultimately": The issue in this case appears to be the best meaning of the word *hatashite*. USG has translated it as "ultimately," while the GOJ appears to have left it out altogether. The word does have meaning and content. Accordingly, I would include it in the sentence. At the same time, I do not think "ultimately" is the best translation. *Hatashite* is often translated as "After all" or "As a matter of fact," or "In reality." I think any of those translations would be appropriate, especially the first two, rather than "ultimately."	

19 (contd)	17."in the process of the preparation of the codes": The issue is how to translate *sono katei de*. The USG does not seem to translate this phrase. *Katei de* should be translated as "in the process of ~." It is more difficult to determine the precise matter to which *sono* is referring. The context surrounding this phrase refers to the preparation of the codes, especially the eight sentence in the relevant paragraph (Provisional translation, English). Accordingly, it seems that *sono* refers to the "preparation of the codes," as the GOJ as asserted.	
	18."are" or "can be": The relevant Japanese text is *dekiruka douka*, which usually connotes a meaning of possibility. Accordingly, I believe the USG translation of "can be" is more correct in this instance.	
	19."which has been working on the formulation of the codes" or "which is advocating the codes": It is very difficult to follow the precise disagreement the GOJ has with the USG on this point. I see two points of major disagreement. First, the GOJ seems to have left out the phrase that refers to the two organizations as being "completely separate entities." If that omission is intentional, then the USG translation is clearly correct. The text specifically states that these two entities are "completely" "separate." The main point, however, seems to be the translation of *kiyakuka wo susumete kita*. By itself, this phrase is probably susceptible to either of the proffered translations. As a general matter, I believe the most comfortable translation of *susumete kita* is "has proceeded with". This is in large part because the previous text (eighth sentence of the relevant paragraph of the Provisional translation of the USG) refers to the process of the formulation of the code. Thus, I would suggest the following translation: "which has proceeded with the formulation of the codes". If the GOJ has other disagreements with the USG's translation, it must make those much clearer than it has in its current Submission before I can offer any opinion.	
	20."has involved" or "involves": The relevant Japanese text reads *kakawatte kita*, a very in the perfect tense. Thus, the GOJ translation is more accurate in this case.	
	21."executive" or "members": The word in question, *yakuin*, generally refers to someone in a position of authority or responsibility. Thus, the term "executive" or "official" is probably a more accurate translation.	
	22."Vice Chairman" or "Deputy Director": Please refer to No. (10), issue 2.	
	23."Chairman" or "Director": For the same reasons I am inclined to use the word "Vice Chairman," when referring to Mr. Hashimoto, I would use the word "Chairman" here, though the difference is not particularly great.	
	24."blame" or "rely only upon": The Japanese verb, *semeru* can be properly translated as "blame." It is usually used in a negative context and generally does not mean to "rely upon," as suggested by the USG. The correct translation is "blame."	
20	The word *teki-hatsu*, as used in the instant context, is not a term of art in legal parlance.	Neither "enforcement action" nor "discovery" seem

	In dictionaries, it is most commonly translated as "exposure" or "disclosure," though sometimes it is also translated as "prosecution." In casual conversations, it is commonly used in the context of "exposing" the truth, "revealing" some crime or otherwise "laying bare" the facts. At the same time, it is sometimes used, in a casual sense, to refer to a prosecution or, more broadly, especially when attached to the word *ihan* ["illegality"], to the entire process of addressing a crime or an illegal act, covering everything from exposure of the crime or act to arrest to prosecution and sometimes even punishment.	entirely appropriate. I would translate "teki-hatsu" as "condemn or condemnation".
	Thus, given that this statement was apparently made in the context of a presentation by a JFTC official to a non-legal specialists audience, it is certainly possible that the audience would understand (and perhaps the official even meant) the entire range of enforcement activities of the JFTC were now being relegated to the Council.	
	At the same time, it is possible that the official had a somewhat narrower meaning in mind, a meaning more in accord with the practices of the JFTC and extra-legal enforcement activities and mechanisms sometimes used by the JFTC. In this context, the term begins to take on a somewhat more specific meaning. But, that meaning is not precisely in accord with the usage urged by either the USG or the GOJ.	
	The GOJ urges use of the word "discovery" as the correct translation. In a casual sense, that is not necessarily an inaccurate translation of the word, when the word has its meaning of exposure or disclosure. Revealing or exposing the facts is a form of "discovery" in the broad, non-legalistic sense. At the same time, the term "discovery" in English is generally used in a somewhat more legalistic sense. In this more legalistic sense, it generally means a relatively formal process whereby one party to a legal proceeding is able to secure from the other party information relevant to the lawsuit or action filed or defended by the first party. When contemplating "discovery," one generally thinks of a somewhat orderly, legalistic process whereby a party is forced to disgorge a certain amount of information in the context of legal proceedings, but under various protective legal colourings. While the word *teki-hatsu* is certainly associated with exposure or disclosure, it generally does not mean disclosure in the technical legal sense described immediately above.	
20 (contd)	The USG suggests "enforcement action" as the appropriate translation. Again, that might be relatively close to what the JFTC official was suggesting. At the same time, that usage of the word also needs to be qualified. The JFTC has formal legal enforcement powers and can bring a formal legal action against an allegedly offending party. In these actions, the JFTC might seek various remedies, including orders to refrain from taking the offending action, to pay a fine, or to take other remedial actions. In extreme cases, the JFTC may even seek to impose criminal liability. As a general rule, these more formal legal proceedings are not called *teki-hatsu* and thus use of the word "enforcement action" to cover *teki-hatsu* may not be the most appropriate translation. Moreover, it is not at all clear that the JFTC can commit to a non-governmental entity (or, most probably, even to another government entity) the formal legal enforcement powers that have been relegated to it by statute. Thus, the official was probably not suggesting that this private organization -- however much the government did or	

	did not participate in its creation -- should (or even could) be given the formal statutorily mandated enforcement powers of the JFTC.	
	Nevertheless, there is some validity to the USG attempt to translate *teki-hatsu* as "enforcement action" in part because of the broad, general usage of this word described above, but, in much more important part, because, on occasion, the JFTC uses the threat or the reality of exposure to encourage allegedly offending parties to alter their behaviour to comply with the various competition policy laws and regulations. This form of public exposure or public disclosure is used on some occasions by the JFTC and often with relatively good effect. This kind of public disclosure or exposure is often called *teki-hatsu*, at least in common conversation, and, while not a formal legal enforcement action, it is often a substitute for just such an action and done with precisely the same intent, namely, to force, through embarrassment and public pressure, an allegedly offending party to change its behaviour in a way that will bring it in compliance with Japanese competition laws, regulations and policies.	
	While there is certainly some ambiguity in the statement of the JFTC official quoted in the article, it appears that the activities he anticipates the relevant association to undertake are, at a minimum, the bringing of such activities to the attention of the JFTC and, more likely, public disclosure or exposure of the activities of non-complying companies. I believe this most accurately captures the meaning of what this JFTC official probably meant when he used the term *teki-hatsu*.	
21	The two principal issues in dispute between the GOJ and the USG on this particular point appears to be: (1) whether it is the warning that is "more severe," as the USG translation suggests, or whether it is the step of issuing the written warning that is " more strict," as the GOJ translation would have it; and, (2) whether the best word to describe the warning or the step of issuing the warning is "severe," as the USG has translated it, or "strict," as the GOJ has suggested in its translation.	I would translate this text as: "a more serious step of issuing written warning."
	Turning to the first issue, the most appropriate translation is **"more severely [or more strictly] warn by means of a written warning**." The form in the sentence is clearly the adverbial form and thus "more strictly" or "more severely" clearly modifies the action of issuing the warning.	
21 (contd)	Regarding the second issue, in major dictionaries the word in question -- *kibishii* -- is variously translated as "severe," "strict," "stern," "rigorous," "hard," "harsh," "stringent," etc. In regard to a penalty, sometimes the word "Draconian" is also used. There is really no way to know whether the author, had he been perfectly fluent in English, would have used "severe" or "strict." It is probably sufficient to note that the word has a connotation of being much more harsh, stringent or rigorous. Whether "strict" or "severe" is the precisely proper analogue, no one has any way of knowing or saying with any certainty.	
22	Let me first address three points that I believe are somewhat less important in this context	The sentence at issue is much more vague in the

	and perhaps not even seriously at issue in regard to this particular phrase. First, the USG uses the phrase "dumping," while the GOJ uses the phrase "unjustifiable low prices." While that particular Japanese word can appropriately be translated as "unjustifiable low prices," as the GOJ does, it is also fair to say that the description in the article of the activities covered by the word certainly seems to be what we generally consider "dumping" in U.S. parlance. In all events, whether one calls it "dumping" or "unjustifiable low prices," the point is essentially the same. This word describes that set of pricing activities that the JFTC considers illegitimate and thus appropriate targets of regulatory activity. Either word can be used as long as one understands it to mean the illegitimate pricing activities described earlier in the article.	original Japanese language than the U.S. translation would seem to indicate. On the other hand, the translation by the Government of Japan is not easily understandable. The misunderstanding here arises from the fact that the meaning of the original Japanese language sentence itself is vague. It is necessary to construe what the author intends should be done from the text and the context at hand. My comments are as follows.
	Second, the USG uses the word "loss-leader advertising," while the GOJ describes such advertising with the word "bait advertising." Again, there is not much to choose between these two translation. Nevertheless, perhaps the USG translation is to be slightly preferred for the following reason. In considering the English translation of this term, it is important to recall that the JFTC official did indicate that all such advertising was automatically inappropriate. Rather, such advertising may be appropriate when quantities of the loss-leader item are unlimited; or when amounts are limited and the advertisement clearly so specifies; or when customers can purchase only limited amounts of the item and the advertisement clearly indicates that limit. These are very rough examples and may require much more qualification in practice, but the main point is relatively simple: some advertising of this type may not be a problem from the perspective of preventing anti-competitive practices. To the extent the term "bait advertising" carries the connotation in English that such advertising is always unacceptable, then in this particular case it might be slightly misleading. The USG translation of "loss-leader advertising" is more useful because it does not inevitably carry a connotation of complete unacceptability of the advertising practice in question.	First, it does not appear, as the U.S. First Submission indicates, that the author could have intended to say that "rules" should be developed. According to the article there are three options: (1) rules; (2) operational standards to be used by the JFTC in executing rules; and (3) business practices with respect to fair competition. It is my understanding that the author refers to business practices rather than rules. This interpretation is supported by the fact that rules already exist with respect to such practices. The author appears to take the opinion that the JFTC should pile-up experience in actually confronting instances of unjustifiable low prices and loss leader advertising. The original text does not explain what this actually means in concrete terms but appears to intend that the JFTC should deal with concrete cases based upon experience in a step-by-step approach.
	Third, the USG starts the phrase with "Nevertheless," while the GOJ uses the term "Also." I would be inclined to start the sentence with "Also," rather than "Nevertheless," because the sentence does not convey a negative or disjunctive meaning, as the word "Nevertheless" may convey. Moreover, "nevertheless" is usually translated as *nimokakawarazu*, and has a connotation of "nevertheless" or "notwithstanding," while the Japanese words used in this sentence convey the sense of "Also" or "and."	Second, the U.S. Submission indicates "dumping and loss-leader advertising" and Japan's Submission translates this as "unjustifiable low prices and bait advertising." These items belong to the category of "unfair business practices" found in Chapter 1, Article 2, Section 9 and which are designated as such by the JFTC in its General Designations
22 (contd)	The much more critical question raised by the GOJ, of course, involves whether the phrase in question specifically mentions "rules" or not. As a matter of precise language, the GOJ translation of the sentence in question is undoubtedly more accurate and the GOJ is quite correct that the phrase in question nowhere uses the word "rules."	As a matter of substantive law, concepts known in the U.S. as "dumping and loss-leader advertising" do not necessarily overlap with the concepts of "unjustifiable low prices and bait advertising" as prescribed under Japanese law.
	At the same time, the GOJ says that it is "not clear even from the context" what should be piled up. On that point, I think the context of the paragraph and the articles provides more	

	guidance than the GOJ suggests. The sixth and seventh full paragraphs of the article (USG translation) make clear that one must think about the nature, purpose and effect of sales below cost to determine whether they are unjustifiable, whether they undermine the competitive order by generating excessive competition and whether they should be "subject to regulation." In fact, in the seventh paragraph, the author explicitly states: "The question is what will be determined as being dumping." In the eighth paragraph, the author also states:	
	"The question is how the standards for using [the Premiums Law] will turn out." In the sentence immediately preceding that one, moreover, the author notes that: "...the establishment of standards to use [the Premiums Law] must be installed as quickly as possible." All of these indicate that the principal inquiry is the precise content of these various terms, or, in other words, the precise content of the rules or standards that will govern this behaviour.	
	The last sentence of the eight paragraph (the paragraph immediately preceding paragraph the question) also makes clear the necessity of developing the standards for use of the Premiums Law to address "loss-leader advertising." The first sentence of paragraph nine then says that sales practices and competition must be based on rules. The next sentence then mentions one set of standards or regulations for "normalizing transactions," namely, those of the photo industry itself.	
	We then come to the sentence in question in which the JFTC official says that it is of vital importance or imperative to build up one by one something regarding "unjustifiable low prices" and "loss-leader advertising." It takes very little imagination in this context to understand that he is referring to the development of standards or examples of what kinds of prices are "unjustifiably low" and what kinds of "loss-leader advertising" is inappropriate. The sentence is admittedly not a model of clarity, but it is very easy to infer that some sorts of examples or standards regarding the practices under discussion need to be developed one by one.	

II.Translation Problems pointed out in:
"Written Responses to the Initial Questions by the Panel to Japan (17 April 1997)" and "Written Responses to Additional Questions By the Panel to Japan (18 April 1997)"

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23	p. 6, Fn 1: re: *Jishu-kisei* The issue is whether to translate *jishu-kisei* as "self-regulating measures" as the USG asserts, or whether "self-regulation" is more appropriate as the GOJ states. Speaking generally, *jishu-kisei* can be translated either way. "Self-regulation" may be more appropriate when the surrounding context is referring to self-regulation as a "concept," whereas, the translation, "self-regulating measures" may be the better choice when the context seems to talk about "specific measures" of self-regulation.	[ITEM 1] The better answer is Japan's translation.
24(1)	The principal issues between the USG and the GOJ are the following: (1)The object of what has been recognized: whether it is *recognized* that the Codes have been observed and established as normal business practices, as the GOJ asserts, or whether it is *recognized* as having been established in accordance with normal business practices, as the USG urges; and, (2)Whether the phrase, *baai ni wa* is more accurately translated as "but as long as" as the USG claims, or as "but when" as the GOJ suggests; and, (3)Whether the phrase, *toshite* is more accurately translated as "in accordance with" as the USG claims or as "as" as the GOJ suggests. In all three cases, while alternate translations are also possible, if forced to choose between the USG and GOJ translation, the GOJ translation is generally technically more accurate.	
24(1) (contd)	(1) As to the first issue, the USG has asserted that, *kigaku no naigo ga junshu sare* (the first phrase in the original Japanese text) stands independently, and that the word "recognized" only modifies what has been "established". The GOJ, on the other hand, argues that both "observed" and "established" are modified by the word, "recognized," and thus the phrase in question should read: "it is recognized that the Codes have been observed and established as normal business practices." In other words, the GOJ views "recognized" as having a distributive function so that it carries over to both phrases (e.g., "observed" and "established") seen in the original Japanese text. In this regard, I believe the GOJ is correct. The context of this sentence is a discussion of direct regulation by the JFTC of those who do not participate in the Codes, so-called "Outsiders." In particular, the disputed phrase explains when the JFTC will use the Code as a guide or reference point regarding application of the law. Thus, naturally read, the "but" clause refers to conditions that must prevail for the JFTC to use the Code as a reference	(1) The correct translation should be "but as long as the Codes are observed and recognized as having been established as normal business practices".

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	point when applying the law. Therefore, it is when the JFTC recognizes that both the Codes have been both observed and established as normal business practices that "the JFTC uses the Fair Competition Codes as reference when it applies the law."	
	(2) Regarding the second point, I believe that the correct translation is "but when," as the GOJ asserts, or, in the alternative, "but in case(s) where~." The USG translation, "but as long as" is not incorrect if the context of the sentence seems to emphasize those parts of the sentence that follow the disputed phrase. However, even in this context, usually, "but as long as" would be the direct translation for *ni kagiri*; and, in the circumstance of the instant case, "but when" or "but in the case(s) where~" seems to be the better choice.	
	(3) Lastly, *toshite* usually is translated as "as," "for," "by way of," or "in the capacity of." The USG translation, "in accordance with" is more commonly translated from the phrase, *~ni icchi shite* or *no touri ni*. In this case, it seems appropriate to use the GOJ translation of "as."	
24(2)	In this case, the key issue seems to be how to translate *~koto ni yotte*. The original Japanese text seems to use *~koto ni yotte* to mean "if" or "by." The USG translates this as "by virtue of the fact that" or more like "because". This seemingly suggests that the Code has already been established as normal practice in the photographic industry and that the Code has been strictly obeyed (or observed). However, from the surrounding text, it appears that the Code has not yet been obeyed (or observed) or established, and that it is defining a new or somewhat different standard of conduct for the industry.	(2) This is a question of to whom this Code should apply. I would translate this sentence as follows: "If this Code is observed and is established as the normal business practices of the photo industry, then the JFTC will refer to this Code in applying the Premiums Law to outsiders.
24(2) (contd)	At the same time, even the GOJ translation does not make entirely clear that it is through the process of strict observance and establishment that the Code develops the characteristics that result in the JFTC's using the Code as a reference point when applying the Premiums Law to outsiders. As long as one understands this point, however, then the GOJ translation is adequate and probably slightly closer to the mark than the USG translation. That is, the GOJ uses the word "by," and as long as one understands that use of that word in this context implies that "observing" and "establishing" are two conditions which need to be met before the JFTC applies the Premiums Law to outsiders, then use of the word "by" is acceptable.	
	Another small issue is whether *kore ga junshu sare* should be translated as "to be strictly obeyed," as the USG has asserted, or as "being strictly observed" as the GOJ has claimed. First, the dictionary translation of "junshu" is "obeyed", "observed", or "followed." It does not make much difference which word one uses here, but I may support "observed" here for consistency reasons. (We had translated "junshu" as "observed" in Part 1 of this question.)	

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	Second, on the more critical issue, I believe that *kore ga junshu sare* should be seen as an independent phrase here, as the GOJ has interpreted it. The USG asserts that the "Code has been established...to be strictly obeyed." This shows a causal relationship between "established" and "obeyed". However, I believe that the more appropriate relationship of the two verbs are that of conjunction, and the GOJ translation, "by being strictly observed and established as the normal practices of the photographic industry" adequately expresses these two conditions. This is consistent with the discussion of the dispute phrase in **Part 1** of this particular Item, discussed above.	
	For the latter half of the sentence, I believe that the USG translation is more accurate because the USG identifies "who" is using the Code as reference, whereas, in the GOJ translation, the subject becomes clouded. I believe the precise language of the sentence and the context in which it sits allows a fairly clearly identification of the subject. The USG translation more accurately reflects this aspect of the sentence.	
	Thus, the best translation here would be: "The Code, by being strictly observed and established as the normal practices of the photographic industry, will be used as reference by the JFTC when it applies the Premiums Law to outsiders."	