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Competition in Japan and the West: Can the Approaches Be Reconciled?

DOUGLAS E. ROSENTHAL AND MITSUO MATSUSHITA

Some Western policy analysts, prominently including Clyde V. Prestowitz Jr. and Karel van Wolferen, are convinced that Japanese culture is fundamentally incompatible with the Western ideological commitment to economic competition.[1] Some Japanese observers, such as Shintaro Ishihara (1989), who would like to see Japan distance itself from the West, share this view. These are sincerely held views on the part of perceptive and knowledgeable observers and should be taken seriously. Indeed, the idea is not a new one, nor is it contradicted by serious scholarship. In her classic study of Japanese national character, *The Chrysanthemum and the Sword,* written during World War II, Ruth Benedict wrote that:

> it is especially important for Americans to recognize that competition in Japan . . . does not have the same degree of socially desirable effects that it does in our own scheme of life. . . . Psychological tests show that competition stimulates us to do our best work. . . . In Japan, however, tests show just the opposite. It is especially marked after childhood has ended, for Japanese children are more playful about competition and not so worried about it. With young men and adults, however, performance deteriorated with competition. Subjects

Douglas E. Rosenthal is a partner in the law firm of Sonnenschein, Nath & Rosenthal in Washington. He served as chief of the Foreign Commerce Section, Antitrust Division, US Department of Justice from 1977 to 1980. Mitsuo Matsushita is a professor of law at Seikei University.

1. A recent study by Prestowitz (1994) concludes that Japan and the United States operate under basically different models of capitalism and that these cultural variations significantly preclude commonalities of economic interest (see also *New York Times,* 10 June 1994, D1, and Karel van Wolferen, *Washington Post,* 26 June 1994, C3).

> who had made good progress, reduced their mistakes and gained speed when they were working by themselves, began to make mistakes and were far slower when a competitor was introduced. (Benedict 1946, 153)

In Japan, as in Germany, the idea of competition generally, and of economic competition in particular, has often connoted something dangerous and unstable—in Japan the word is often preceded by the adjective "excessive" (see Niino 1993, 171-89). In his fascinating study of postwar Japan, William Chapman observes that the bureaucrats of the Ministry of International Trade and Industry (MITI) were genuinely perplexed by the US Occupation Force's imposition of an antitrust law:

> It seemed contrary to everything that had been learned about national economic management during the war. Big companies were efficient producers. The law's "antibigness" feature genuinely confused post war planners, who had first assumed it was part of the Occupation's plan to gain revenge on Japan for having waged war. . . . MITI's top planners discussed antitrust policy as if it were a severe penalty. (Chapman 1991, 103)

Vigorous competition has long been missing and is missing still from many aspects of Japanese economic life. Japanese culture has not traditionally embraced the idea of competition as expressed by Adam Smith. But the same was true of Germany and much of the rest of Europe, well beyond the end of World War II. Must one therefore assume that the Japanese cannot or will not, in the near future, accept competition in some approximation as a norm for economic behavior? Must one assume that Japanese social and economic institutions cannot or will not become more compatible with the stated Western goals of open national markets and substantial consumer sovereignty in an open global trading system? If so, persistent trade conflict and instability of relations between Japan and the West are inevitable. But if these assumptions are wrong—if Japan, the United States, and Europe are at least "reading from the same page" in discussing broadly shared national and international microeconomic goals and concepts—the prospects need not be so grim. We believe the more hopeful is also the more realistic perspective.

There are three main reasons why it will increasingly be possible for American policymakers to engage the Japanese in a constructive dialogue about competition both within Japan and globally. First, there is already greater acceptance of free market ideas in Japan today than is generally understood in the West. Japan does have a meaningful antitrust law, which is increasingly being enforced in ways comparable to Western antitrust laws. Although it means different things to different people, the idea of deregulation in Japan is powerful and pervasive. Neither bureaucrats, business leaders, nor politicians dare *openly* oppose a policy of deregulation, even if privately there is foot dragging. The direction of change in Japan is definitely toward stronger consumer sovereignty, less central planning, consensus on the need to reform a

distribution system that makes goods too costly, and greater transparency in government decision making.

None of this is to deny that there are in Japan certain entrenched ideas, institutions, and practices resistant to competition. Japan's phenomenal postwar rate of economic growth was driven by forced saving and only gradual satisfaction of domestic consumer demand. Many still believe that a continuation of such input-driven growth is possible and desirable. Deregulation will be a serious threat to many presently protected interests. But the new prominence of an alternative deregulatory and more consumer-focused growth model must also be acknowledged.

In 1993, for example, a potentially important Administrative Procedure Act was enacted, aimed at increasing transparency and fairness in the Japanese governmental process. The law sets out basic principles that government agencies must use in awarding licenses to enterprises, and it further provides that "administrative guidance" should not be given beyond the scope of the agency's legal authority, should be employed only after truly voluntary cooperation has been obtained, and should be stated in writing when so requested. In keeping with Article III of the Japanese Constitution, foreign and domestic firms and individuals are to be treated equally in this regard. The Japanese government has announced a deregulatory initiative consisting of some 300 specific proposals. It is hailed by its proponents as a framework for major structural reform to promote competition (*Wall Street Journal,* 29 June 1994, A13). Whether or when this objective will be substantially met, that this is the stated goal shows a shared viewpoint on the validity of regulatory reform and a promise of institutional change.

Second, although Japan has been dramatically more protectionist than either the United States or Europe, progress has been made over the last 10 years in increasing market access, especially for many foreign consumer goods, although less so for durable goods or services. Substantial further progress can and should be made in all sectors. Particular attention should be paid to financial markets and other basic product and (often) services markets regulated by ministries such as those of health, construction, agriculture, telecommunications and posts, energy, and housing, which even now have little incentive to deregulate. The divisions of MITI dealing with basic and intermediate industries have so far continued long-standing protectionist policies, which cannot be reconciled with the agency's self-professed new market orientation (*New York Times,* 9 November 1994, C1). There are institutional reforms already under way, however, which can be promoted to bring change—if Western leaders take them seriously and make it their policy to encourage them. For example, in 1993, for the first time, Japanese courts awarded antitrust damages in private civil cases alleging injury to competition. This contradicts the idea that existing Japanese institutions cannot adapt to Western ideas of competition law and policy. Promoting

the necessary political consensus, removing obstacles to deregulation, strengthening the responsiveness of the political process to consumer interests, and accelerating reform are more problematic. In what follows, we offer several incremental suggestions.

Third, dialogue is possible because Japanese ideas of protection and market regulation are not qualitatively different from corresponding ideas in the West. Protectionism remains attractive to many Westerners today and is the subject of ongoing debate in the United States and Europe. In fact, many so-called traditional Japanese ideas are Western transplants. That the same ideas are constructively debated within all developed countries strongly suggests that they can be constructively debated between Western and Japanese cultures.

"Excessive Competition"

Several general ideas historically embedded in Japanese culture support a wariness about the market mechanism and encourage trust in economic planners to minimize the impact of market disruptions. The market mechanism is the antithesis of central planning. It rewards luck, foresight, and diligence. It identifies winners and losers and often deals harshly with the latter. A Confucian ideal of order and harmony is not easily reconciled with the disorder of an unfettered marketplace (Komiya 1990, 297-301).

Central planning in Japan is perceived to have worked well during the Meiji Restoration of the late 19th century and again during the post-World War II reconstruction. The prestige of being a Japanese civil servant has attracted bureaucrats of a generally high level of ability, who have been educated for careers as administrators and who stay in government for the duration. Given this background, they probably have done better at planning than their US counterparts. Until recently, respect for authority has been a Japanese trait, and Japanese voters and politicians have been willing to cede much authority to senior civil servants.

Such delegation of authority was consistent with US policy toward Japan in the late 1940s and early 1950s. First, fear of the strength of Japanese pro-communist groups and then, after the North Korean invasion of South Korea, the need for a bulwark against the spread of communism in Asia led to US encouragement of Japanese bureaucratic control over a managed Japanese economy with protected home markets (Chapman 1991, chapter 5). The United States did not object when the Ministry of Finance set interest rates on Japanese bank deposits at low levels and limited access to luxury consumer goods, thereby increasing the rate of saving and providing the funds for low-interest loans to Japanese corporations. Many Americans would have the same done

in the United States—if they could have been persuaded to make the sacrifice. Cartelization of Japanese financial institutions was an almost inevitable byproduct of Ministry of Finance planning.

Industry trade associations also promoted cartels. By 1965 there were 1,079 established cartels exempt from the Antimonopoly Law. This is what we get for answered prayers, and US policymakers of both parties share responsibility for turning Japan away from deregulation so as to further US Cold War defense policy. By 1991, however, the number of authorized cartels had shrunk to 248. It is now widely recognized that such cartels tended to be inefficient and to raise prices artificially. Their abolition is now a part of the deregulation program. As we know from US experience, this program will undoubtedly meet resistance both from the industries that have been protected and from the government regulators who will lose the power to control them.[2] However, that does not mean deregulation in Japan will not happen.

American and European policymakers frequently pay lip service to the market mechanism, yet sometimes find the temptations of industrial policy interventions irresistible. The Europeans complain that US cold war defense policy played a major role in protecting and indirectly subsidizing key US defense industries. President Bill Clinton, in a reaction to the distaste of the Reagan and Bush administrations for government targeting of investments in innovative technologies, has been tempted to take a leaf from MITI's book. For example, the United States is now encouraging a joint venture among the Big Three US automakers (excluding the Japanese automakers with closely controlled US manufacturing subsidiaries) to pool their research and development efforts to produce a new, fuel-efficient automobile engine (Reed 1993, 25). In contrast, 25 years ago the Justice Department sued under the antitrust laws to stop such a collaboration to jointly develop a standardized pollution control device (*United States v. Automobile Mfctrs. Assn., Inc., et al.,* 1969 Trade Cas., section 72,907, 1969). If the United States is now willing to promote such central planning, does it not show a shared ambivalence among US and Japanese policymakers about deregulation? Perhaps part of the reason such an abrupt US policy change is under consideration is the US recognition that many Japanese companies have learned very well how to compete effectively in foreign markets and to compete with each other in Japan. Toyota, Nissan, and Honda compete aggressively with each other far more than they cooperate. Nonetheless, some cooperation may facilitate market performance and promote consumer welfare.

This is not the place to belabor the point, but economic competition serves not a single goal but several. The first is economic efficiency in

2. At this writing, a coalition of regulators and the regulated are fighting to block abolition of the US Interstate Commerce Commission, which regulates trucking, busing, and railroads in North America.

the marketplace. Another is fairness of business practices. A third is equality of market access. A fourth is the absence, by definition, of inefficient government regulation. There is a spirited dispute in the United States about whether deregulation should include reduced antitrust enforcement. As antitrust becomes more powerful in Japan, the same debate can be expected there, too. A fifth goal of competition is to discourage excessive concentration of economic power in the hands of a few market participants. A sixth is to restrict collaboration among competitors that facilitates collusion. A seventh is to promote consumer sovereignty by encouraging manufacturers to give consumers the products and services they want. An eighth is to lower costs of production and pass the savings on to consumers.

These goals often conflict. That is why, given imperfect knowledge, some advocates of competition may favor a particular joint venture between competitors while others, equally sincere, oppose it. Important segments of Japanese industry have, it would seem, done extremely well in promoting the seventh goal listed above, and the eighth, in highly competitive markets.[3] In a deregulated and open environment, the competitiveness of firms and the presence of competition in the overall market are positively related. But the fact that the Japanese automobile industry competes aggressively in the West is not sufficient to prove that Japan is committed to competition at home. That commitment is not yet broad or deep. The United States, too, departs from the single-minded pursuit of competition in many economic sectors, but that does not mean that US policy is not basically committed to competition.

If absence of market regulation other than antitrust, absence of market access restrictions, and consumer sovereignty are the core competition values, the United States is exceeded only by Hong Kong in its commitment to competition. Nonetheless, the differences between the United States, Europe, and Japan begin to look more like differences in degree than in kind (even if they remain far apart on the continuum) when one parses different specific indicators of the commitment to competition. Competition values are regularly compromised in the United States and Europe, as in Japan and elsewhere, when they conflict with other important values such as national security, jobs, protection of influential competitors, social fairness, the environment, property rights, and investment targeting. At least it becomes possible to compare, measure, and discuss relative performance when it is on the same continuum. The basic economic and political geography of the modern

3. With respect to goal number eight, however, the large staffs of many Japanese corporations, in which meritorious performance is not specially rewarded, probably reflect a significant excess cost that has yet to be trimmed. The high cost of Japanese labor will probably change that, although some think lifetime employment will be preserved by many corporations, even at great cost.

nation-state, thanks to the end of the Cold War, has never been more congruent.

In the sixth century, Prince Shotoku, a great Buddhist thinker and leader regarded as one of the greatest influences on the Japanese national character, stressed the importance of peace and harmony rather than competition and rivalry. Until recently, many Japanese industrial leaders advocated a philosophy of "live and let live" among competing enterprises, particularly when markets were stagnant or declining. Adopting this business philosophy, protecting jobs, protecting traditional social institutions, and avoiding the determination of clear winners and losers in the marketplace in bad times are seen as more important than economic efficiency and consumer welfare. This explains the Foodstuffs Control Law, which protects Japanese rice farmers; the Large Scale Retail Stores Law, which protects small food shops from the entry of large supermarkets; and the *keiretsu* relationships between Japanese automobile manufacturers and dealers, under which dealers are given de facto guarantees against bankruptcy in times of slack demand, in return for ceding important controls over their operations to the manufacturers.[4]

Yet even with respect to these traditional ideas the situation is changing fundamentally. It may have been appropriate to require sacrifices of consumers, investors, stockholders, and taxpayers when Japan was recovering from the destruction of World War II. But in an affluent society in which Japanese per capita income is now among the world's highest, such policies are widely recognized to be outmoded. There is no longer any reason for the Japanese public to pay the costs of overregulation and excessive consumer prices. The Japanese recession of the past three years, which is continuing, and the sharp rise in the value of the yen have accelerated the appeal of more open markets, at least for consumer goods, which are more directly visible to the consuming public than infrastructure goods.

Contrary to popular lore, it is doubtful that lifetime employment is deeply rooted in Japanese tradition, although it did emerge for perhaps a third of the work force during the postwar period. Lifetime employment was immediately embraced as a mechanism for achieving economic and social stability (Chapman 1991, 109-11). The perceived benefits of lifetime employment promote the idea that corporations are worth preserving, even when they suffer economic distress. If corporations have a

4. Americans, too, remain ambivalent about the benefits provided by the small business and the family farm. This is reflected in some local efforts to blunt the competitive edge of the highly successful Wal-Mart Stores discount chain, and even to try to keep Wal-Mart out of certain rural areas, in the hope of keeping small businesses, which are believed to anchor town communities, viable. Of course, there is a rich religious and philosophical literature in Western culture, reaching back to Saint Thomas Aquinas, debating the Christian morality, social justice, and social costs of broad deregulation and wholesale adoption of the market mechanism (Maritain 1936; Lindblom 1977).

validity independent of their success in the marketplace, there is a justification for limiting opportunities for corporate takeovers by those who would raise stock values at the expense of jobs. Anticompetitive limitations on market exit result. Cross-ownership of Japanese corporations and suspicion of shareholder democracy are thereby justified.

Sometimes, self-imposed limits on market exit can promote innovation and consumer welfare. Kenichi Ohmae tells a revelatory anecdote about the Yamaha Piano Company (Ohmae 1990, 38-41). Pianos were an industry in decline in Japan: there were no prospects for successful competition with low-cost Korean producers. Yamaha was advised, as most American firms would be in Yamaha's situation, to divest. Instead, Yamaha developed a combination of digital and optical technology that could reproduce, on an electronic piano, notes of 92 different degrees of sound volume and duration. This technology permitted the retrofit of a standard piano into an instrument capable of being played by CD-ROM, reproducing in the home the great musical performances of the most celebrated pianists. The company was restored to health. Without management's commitment to the survival of the enterprise, regardless of its near-term market prospects, this innovation might not have happened.

The US corporate shareholders of a Japanese company recently replaced its Japanese chief executive officer. The new boss was willing to pay higher dividends to shareholders rather than accumulate cash for new investments in this mature industry.[5] Such behavior is shortsighted and selfish by traditional Japanese cultural values, although it may be good business for profit-maximizing investors.

Even on this issue, however, there are opportunities for constructive dialogue between Americans and Japanese. Lifetime employment practices in Japan are eroding at the same time that there is an increased American perception that the US merger wave of the 1980s produced an excessively harsh social and economic dislocation. There is renewed thinking about the desirability of giving US business leaders some insulation from Wall Street's focus on short-term profitability. Many Japanese enterprises have satisfied their shareholders for decades with a combination of double-digit sales growth, a steady trend of reduced costs, and annual profits of about 3 percent. As Japanese growth continues to slow, however, profitability should become more important to investors in Japanese enterprises.

A closer look at those Japanese ideas that are supposedly idiosyncratic and incompatible with competition shows that they are also Western ideas, never entirely abandoned in the West. The quotation from Ruth Benedict cited above expresses some of the anxieties of workers in

5. See *New York Times* (17 January 1994, D2), the article that describes the effort by Mobil and Exxon, as joint shareholders of the Tonen Corporation, to replace the president and change basic Tonen corporate policy.

American factories that led to the successful rise of the trade union movement at the beginning of this century. Recent polls of white-collar employees, which show significantly high levels of unhappiness in the American workplace, reveal similar anxieties.

W. Edwards Deming was a successful American management expert before he was discovered by the Japanese in the 1950s—and rediscovered by Americans in the 1970s. According to the Deming management model:

> [T]he fundamental problem of American management is that we are systematically destroying the people who work in the system, both hourly workers and managers alike. Our reward system destroys any possibility of teamwork by incorrectly distinguishing the above average from the below average when the difference is due to chance. . . . [N]o rational person will divulge techniques that lead to superior results in an [competitive] environment of fear. If divulging his methods may lead to someone else getting a higher rating at his expense, he would have to be a fool to cooperate. (quoted in Aguayo 1991, 95)

The Deming model is in partial conflict with the free market model of resource maximization. The tension is suggested by the following Deming maxim:

> End the practice of rewarding business on the basis of price tag. Instead, minimize total cost. Move toward a single supplier for any one item, on a long-term relationship of loyalty and trust. (quoted in Aguayo 1991, 124)

American competition theory suggests that quality is important, but price is important too. Generally, staying with a single supplier for a generation or two has been thought less efficient than encouraging competitive bids among several suppliers, at least from time to time. Deming was no apologist for monopolies: he did favor limiting some types of competition to enhance continuous cost cutting and stimulate innovation in the development of products that would be attractive to consumers. In this aspect of competition, the Japanese became early converts.

Under most versions of Western competition theory until relatively recently, a sole supplier is suspect for its potential to exploit its protected relationship, undisciplined by competition from other suppliers seeking to supplant it. Some US companies, however, such as Boeing and General Motors, have followed Deming's advice, often with success. Ironically, some American enterprises are now asking that US antitrust law be enforced to require Japanese firms to give up long-term sole supplier relationships so that potential new American suppliers can gain market access in Japan. Would Boeing be pleased to be told it had to give up its long-standing long-term supplier policy? We can agree on the need to end Japanese buyer monopolies and to end resistance to buying superior imported nonconsumer goods without imposing

unwanted suppliers on firms facing competition. Such a requirement would not be imposed under US antitrust law today.

Some of Deming's ideas have been popularized by the Boston Consulting Group (BCG). Going beyond Deming's management theories, the BCG has encouraged enterprises, as a long-term profit-maximizing strategy, to seek to be number one or number two in market share in concentrated industries with relatively high entry barriers. This strategy appears to have paid off handsomely for some multinationals, including General Electric. This "American-sourced" philosophy, attractive to firms of various national origins—including Japanese firms—does not unreservedly embrace unbridled competition in perfectly open markets. Instead, it looks to practical positioning as a means of employing market power in competitive but still oligopolistic markets. Although it departs from the traditional free market model, it is not fundamentally irreconcilable with it. Oligopoly markets are much to be preferred over cartelized ones. How to improve competition within oligopoly markets is a continuing concern of competition policy and enforcement everywhere in the world.

"Western" Ideas of Competition Reflected in Japanese Law and Policy

The Japanese Anti-Monopoly Law is comparable to the antitrust laws of other developed nations. Of course, as other chapters in this book indicate, national antitrust laws vary and evolve over time with different emphases. Accordingly, comparability does not mean harmonization. Japanese antitrust law proscribes anticompetitive agreements and monopolizing conduct in the forms proscribed by US antitrust law. It is thought in the West that Japanese merger law is almost nonexistent, since there has been no report of a blocked merger for more than 40 years.

Mergers have, however, sometimes been blocked or restructured by administrative guidance, MITI officials report. The Japan Fair Trade Commission (JFTC) has had a set of merger regulations in place since 1980. These have been effective in precluding mergers in relatively concentrated industries where the merging firms have a combined market share of 25 percent or more. According to MITI officials familiar with the process, it has been almost impossible to clear such a merger up to now. Recently, however, we have been advised that some exceptions have been made. Approval, the regulations notwithstanding, has been based on such criteria as the imminent failure of the acquired party—criteria that would apply under US merger doctrine as well.

The prevention of mergers constituting 25 percent of a market is a reasonable and reasonably significant, if rather blunt, restriction against excessive industry concentration. Surprisingly, therefore, it may reflect

an even more stringent merger enforcement policy than now exists in the European Union, which still primarily blocks mergers causing the formation of monopolies, but not mergers leading to concentration in oligopoly markets. In Canada, which has a relatively small domestic market and relatively open access to US and other imports, mergers leading to a combined market share of 35 percent are generally permitted. Of course, if, as in Japan, foreign market access is often restricted, a general 25 percent rule may not be sufficiently strict. Merger review should also be made more transparent.

The JFTC has announced revised merger guidelines to bring still greater convergence with Western approaches to merger enforcement. Ironically, these "Westernizing" revised guidelines may actually promote concentration by encouraging efficiency-enhancing mergers, where the merging firms have a greater than 25 percent share of relatively concentrated markets—especially if entry barriers are higher to foreign competition. As a matter of explicit policy, the market access of imports should be made highly relevant to whether the JFTC should permit a more relaxed domestic merger policy. US policymakers should watch to see that this happens. By discouraging mergers in sectors where foreign goods and services are excluded, the JFTC may enhance its power to force resisting "patron" ministries to adopt regulatory reforms promoting market access.

Resale price maintenance (RPM) has generally been prohibited under Japanese law, and the JFTC has frequently taken action against RPM arrangements. Of course, even under US law, merger and RPM enforcement can be selective and lax, as was seen during the Reagan years. However, the Supreme Court of Japan has held RPM to be illegal in principle, and the JFTC has announced plans to further strengthen enforcement against such arrangements.

JFTC enforcement of regulations prohibiting bid rigging has only recently become aggressive. New rules announced by the JFTC in July 1994 clarify that bid rigging by construction companies is illegal. For nearly two decades—since the prosecution of the oil distribution cartel after the OPEC oil shock of 1973—there had been no criminal antitrust enforcement. But in 1993, a year of significantly intensified enforcement by the Justice Ministry, assisted by the JFTC, three criminal antimonopoly convictions were obtained.

The first case involved the successful prosecution of both individuals and enterprises for price fixing of "plastic wrap materials." The second involved rigging by several printing companies of bids tendered to the Social Welfare Agency for peel-off seals used on official documents. The Public Prosecutor's Office brought an indictment under the criminal code—which makes bid rigging a crime—against several individuals. At the recommendation of the JFTC, a bid-rigging indictment was also brought under the Antimonopoly Law against the implicated corpora-

tions. Guilty verdicts were returned in both cases. Two individuals received (suspended) jail sentences of 18 and 12 months, and each corporation paid a total of about $200,000 in non-tax-deductible criminal fines and administrative surcharges. In addition, the Social Welfare Agency has brought a civil suit against the criminal defendants under the Government Procurement Law, claiming unjust enrichment. The damages sought are the charges in excess of what "would have been the competitive price." If this suit is successful, the defendants will have faced a JFTC administrative surcharge, civil liability and damages, a permanent injunction, and criminal liability and fines. This is a meaningful enforcement breakthrough.

The chapter by Matsushita in this book indicates that there have been literally thousands of enforcement actions by the JFTC against horizontal price-fixing activity. Although often brought primarily against smaller fish, or against big fish only in small, less economically significant, markets, and until recently usually only calling for an end to the illegal conduct, such enforcement has not been insignificant and has been a meaningful part of Japanese law enforcement for almost 35 years.

In practice, the Antimonopoly Law has not been enforced aggressively against collusion in major industries. It has rarely addressed collusion, through important trade associations or otherwise, among heavy industrial firms or other major Japanese enterprises—especially exporters, importers of key materials, or established, prestigious providers of financial services. Exceptions are the oil cartel cases, the sheet glass case, and a few others. (There have been more than 700 enforcement actions against trade associations in smaller industries, such as the barbers' association.) This omission was properly alluded to in a 1994 speech by Anne Bingaman, US Assistant Attorney General for Antitrust (Bingaman 1994a). She noted (as we did above) that at various points in modern history the Japanese government has tended to use trade associations to further official policy. Such a practice invites at least tacit horizontal collusion and can spill over rather easily into significant overtly collusive agreements.

Access to government regulators means access to standards setters and compliance certifiers. Such access is often dependent on membership in trade associations. Foreign firms frequently find it difficult to gain full membership status and therefore equal access. But these problems are not qualitatively different from those found in other countries, even the United States.[6] The problem is one of determination and

6. See, for example, *American Society of Mechanical Engineers v. Hydrolevel Corp*. 456 US 556 (1982), in which the court held a trade association liable for the anticompetitive acts of its agents acting within the scope of their apparent authority, where the agents, acting for several firms in the industry making low-water fuel cutoffs for boilers, used the association's safety standards to foreclose one firm from the market by keeping it from qualifying to sell its distinctive products.

authority to enforce laws and regulations effectively against politically powerful sectarian interests, not failure to understand competition.

The Japanese Antimonopoly Law addresses anticompetitive expansions of monopoly rights conferred by intellectual property laws. For four decades the JFTC's enforcement policy as to the licensing of patents and know-how between foreign and Japanese firms was to protect and promote domestic industries rather than competition. American and European licensors were required to reduce royalties and limit grantbacks and other restrictions on Japanese licensees. Finally, in 1989, after many years of US objections, the JFTC issued a set of formal guidelines covering licensing of patents and know-how. Although not free of continuing national bias, these guidelines are an improvement. They apply to both international and domestic licensing agreements. The Antimonopoly Law has not been actively applied to prevent unreasonable intellectual property rights claims by Japanese firms in Japanese markets to restrict the innovations of competitors. This is an area where reform is needed. However, it is an area where more vigorous antitrust enforcement is needed in the United States as well—something that Assistant Attorney General Bingaman has promised and that the US Department of Justice has begun to deliver (Bingaman 1994b; see also the consent decrees in the *Pilkington* and *Microsoft* cases).

On rare occasions, Japanese antitrust enforcement can be even more aggressive than US enforcement. The first successful private antitrust action before the Osaka High Court was brought by a small independent company providing maintenance service for Toshiba elevators. It challenged the efforts of the manufacturer's service subsidiary, Toshiba Elevator, to monopolize the aftermarket for maintenance of its own equipment by preventing independent elevator repair companies from gaining access to Toshiba elevator parts. Toshiba Elevator defended its behavior on several grounds, including safety and the claim that elevator maintenance was not a separate market from the sale of elevators.

The parties, in their briefs and in their oral arguments, cited a then-recent decision of the US Ninth Circuit Court of Appeals (in *Image Technical Services v. Kodak*). This US lower court case influenced the decision of the Osaka court to reject the defendant's motion to dismiss the complaint. This decision was rendered before the US Supreme Court upheld the Ninth Circuit's decision in the *Kodak* case. The Supreme Court established the US federal precedent that single-brand equipment service aftermarkets may be separate markets open to monopolization and tying restrictions by a single equipment manufacturer. The fact that this and other Japanese courts, as well as the JFTC, are influenced by US antitrust case precedents in applying Japanese law indicates that US and Japanese approaches to competition can be compatible when one gets down to cases.

During the summer of 1994, a Japanese retailer of cosmetics won an

important victory in Tokyo District Court to enjoin Kao Toiletries Company from successfully terminating its distribution agreement and ceasing to supply it with cosmetics for resale. The plaintiff had violated a policy embodied in the distribution agreement requiring it to sell Kao Cosmetics only to people to whom the cosmetics could be demonstrated and whose questions could be answered on the spot, with the cosmetics only being sold in the shop. Instead, the retailer sold through a catalog at a substantial discount. For the first time, a Japanese court found that evidence of termination upon discovery of mail-order sales was sufficient to prove RPM and to void the distributor cancellation clause in the contract. The court found that the failure to provide service was a mere pretext to punish price cutting and mail-order sales. This case suggests that Japan may be at the point where private antitrust enforcement has become more aggressive than in most of Europe and Canada.

Two institutional reforms could significantly increase the effectiveness of growing antitrust enforcement in Japan. The first is new legislation to make it substantially easier for private parties to obtain preliminary injunctions in private cases brought in Japanese courts. If a plaintiff can show by a preponderance of the evidence that it is being foreclosed from the Japanese market by private collusive or monopolizing conduct, it should get prompt judicial relief—as is sometimes possible in the United States. Preliminary Japanese antimonopoly injunctions should be made at least as easy to obtain as under US law (such suits are successful about 10 to 20 percent of the time). If foreign firms were given the right to seek such injunctive relief, without having to rely on the slower and less certain administrative processes of the JFTC, a tool for importer self-help could be created. Court injunction decisions should be rendered within one year. The potential benefits of such changes, allowing foreign corporations to win access themselves through the courts without being dependent on administrative bureaucrats, could exceed the benefits of 50 bilateral framework negotiations.

We also suggest that the system of appointment of the five commissioners to the JFTC be reformed. From the commission's inception, the chairman of the JFTC has been appointed (by the prime minister, with consent from both houses of the Diet) from the Ministry of Finance. The Ministry of Justice often has a "reserved" seat on the commission, as do MITI and the Ministry of Foreign Affairs. Although we do not object in principle to the appointment of ex-officials of these ministries, the custom of secured seats for retired bureaucrats is not conducive to an independent JFTC engaged in vigorous enforcement. The Antimonopoly Law states that commissioners should have knowledge of law and economics. Strong, well-qualified, and independent candidates should be sought not primarily from among the "old boys" of the ministries, who may sometimes have conflicting interests, but also from the bar, universities, journalism, and commerce.

In recent years, contrary to popular impression, significant elements within MITI, the government agency "responsible" for most of Japanese industry, have become more competition-oriented. Japanese industry needs access to foreign markets. Insufficient responsiveness to foreign pressures promotes protectionism in foreign markets vital to Japanese exporters. Weak demand for foreign goods and services in Japanese markets helps raise the international value of the yen, making Japanese exports less price competitive. High costs of imported raw materials, high domestic labor costs, and inefficient distribution of resources to plants in Japan make Japanese manufactures too expensive abroad. Japanese plants close and Japanese jobs are lost. This is of major concern to MITI.

In 1992 it was MITI that played a leading role in lobbying the Diet to adopt new legislation increasing penalties under the Antimonopoly Law. MITI officials are well schooled in Western economics, many having done graduate work in economics at American universities. Japanese industrial organization economists in MITI, academia, and the private sector see the successes that opening to market forces and deregulation have promoted in South China and in Hong Kong and Singapore. It is increasingly common to encounter Japanese policy analysts who worry that if Japan fails to deregulate promptly and sweepingly it will jeopardize its position of Asian market leadership.

Because the Ministry of Finance does not at present support competition law enforcement or policy, and the Ministry of Justice is less directly concerned, the JFTC needs a freer rein to implement its mandate. We do not propose that MITI take the place of the Ministry of Finance in having the chairmanship of the JFTC reserved for it. We suggest instead independent designation by the prime minister's office of JFTC commissioners who have a market-oriented philosophy and the willingness to exercise authority. We also emphasize the need for less stereotypical thinking on the part of Western authorities and media in dealing with Japanese institutions such as MITI as they evolve.

Ideas Are Changing in Both Societies

Ichiro Ozawa, the perceived power behind the opposition New Frontier Party, has published a bestseller entitled *Blueprint for a New Japan*. His argument that Japan needs to become more like the rational, individualistic West has not come in for much criticism in Japan. Almost every day brings reports of new consumer-oriented initiatives. A new law, for example, will make it easier to sue for product liability (*New York Times*, 8 March 1993, D2). Companies are springing up to sell used computers at substantial discounts, and they are finding customers looking for bargains and willing to forgo the latest models (*Japan Times*, 4 January 1993, 18). There are reports of price wars and increased introduction of cheaper

private brands for food, clothing, and electronic appliances (*Financial Times,* 14 July 1994, 1). Meanwhile editorials call for increasing disclosure in the government's decision-making process (*Japan Times,* 15 December 1992, 20).

One of the themes of this volume is that the American approach to competition law and policy tends to be more absolutist and ideological than the European or the Japanese approach (see, e.g., the chapter by Nicolaides and Rosenthal). For the Japanese, this purported purity and consistency of the US commitment to antitrust and free markets is difficult to understand and accept. Two years ago the Keidanren (the Japanese Federation of Economic Organizations, which speaks for Japanese industry and commerce) was stressing the need for *kyosei*. (*Kyosei* means respecting the values and practices of others while continuing to compete with them aggressively.) The idea was that Japan needed to tone down its aggressiveness and its competitiveness to avoid trade warfare.

Akio Morita, before his recent illness, gave several speeches expressing his shock at the hostility others felt toward what they considered high-handed Japanese business practices (Morita 1992). As a member of Keidanren (the Japanese Federation of Economic Organizations), Morita visited Germany, Belgium, the Netherlands, and the United Kingdom in November 1991. What observers in the West see as coordinated foreclosure of Western products from Japanese markets, Morita and others in Japan see as Japanese excellence (resulting primarily from superiority in engineering) and Japanese producers' greater attention to customer preferences (another form of consumer welfare) winning out competitively in the Japanese marketplace.

When they hear Westerners talk about the need for greater commitment to competition in Japanese economic life, Morita and other Keidanren officials have wondered if this isn't really a complaint that the Japanese have been too successful as competitors, flooding the West with Japanese cars not by dumping them at cut-rate prices, but by producing a superior product at a lower price and being satisfied with lower profits. There is room for debate here. Japan is more closed than many Japanese like to admit. But it is also true that many in the United States fear Japanese competition and want the protection of unbalanced trade laws to restrict it.

For example, some Americans are having second thoughts about the appropriate level of openness to innovation in computer technology. In the past, many Silicon Valley entrepreneurs have been confident in Americans' ability to be world leaders in technological innovation, especially in computer software. As a consequence they have not favored reading intellectual property rights in software patents and copyrights so broadly that competitors were unable to get royalty-free access to their computer codes, especially interface codes. With such access, innovators have often been able to invent around or build upon existing technology to further technological progress.

Recent US policy reflects a loss of this self-confidence. For example, a recent effort by the US government was successful in pressuring Japan into retaining certain restrictive provisions in its existing copyright law. Japanese reformers seeking to promote innovation in the design of computer software had sought to permit competitors to engage in reverse engineering to produce separate, new competing products:

> Many leading American computer and software companies—including Apple, IBM and Microsoft—say . . . that such a change would help the Japanese catch up to American software companies. Washington has adopted this position and has said it views the possible change with "gravest concern."
>
> But another group of companies, led by Sun Microsystems, [has] testified . . . that a revision of law would spur innovation and competition and make it easier for different programs and computers to work together. (*New York Times*, 15 December 1993, D12)

US law on this subject is in flux. However, there are indications that the balance between encouragement of innovation and expression and enforcing intellectual property rights broadly is shifting back toward innovation—not least in the field of computer software copyright. We may thus be asking the Japanese to keep in place a more protectionist domestic law than many courts will now be enforcing in the United States.[7]

Such policy disputes, as well as the numerous ways in which the United States protects certain favored domestic interests in the US market, lead many friendly Japanese to wonder whether the United States is really all that serious about making competition paramount. Some seem sincerely to believe that the US policy of pushing Japan to be more open and market-oriented is transitory, and that the US commitment to strong antitrust enforcement will recede, as it did in the Reagan years.

The dramatic political changes in Japan over the last year and a half have reopened to debate within Keidanren issues of competition and competitiveness, industrial policy, and deregulation. Keidanren is now more committed to (and more outspoken in promoting) deregulation as economically beneficial to Japan, not just as politically expedient. However, some members still disbelieve in deregulation as a spur to economic recovery, notwithstanding the supporting empirical evidence in Europe, China, and elsewhere. Resistance to major market penetration from abroad is not surprising in a period of serious recession.

One of the ironies of US policy focusing so doggedly on getting the

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7. See *Sony Corp. of America v. Universal City Studios, Inc.* 464 US 417 (1984); *Lotus Development Corp. v. Borland Intern. Inc.* 49 F.3d. 807 (1st Cir. 1995), cert. granted, 64 U.S.L.W. 3199 (27 September 1995) (No. 94-2003); *Sega Enterprises Ltd. v. Accolade, Inc.* 977 F2d 1510 (9th Cir., 1992); and *Atari Games Corp. v. Nintendo of America, Inc.*, 975 F2d 832 (Fed Cir., 1992); but see, contra, *Advanced Computer Systems, Inc. v. MAI Systems Corp.* 845 FSupp 356 (E.D. Va. 1994).

Japanese to accept American ideas of competition is that, if it works, others may benefit more than American exporters. Asia now surpasses the United States as Japan's largest export target. In 1993 Japan's trade surplus with Asia exceeded for the first time its trade surplus with the United States. Nonetheless, Japan is a net importer of color televisions, home appliances, and cars, many of them made by Asian transplants of Japanese enterprises. As market access increases in Japan over the next decade, it may well be the Asian exporters who are the primary beneficiaries (*Financial Times,* 15 July 1994, 13). Deregulation may also make Japanese industry even more competitive. If that happens, it will test the Western commitment to competition.

Establishing a successful dialogue between the United States and Japan requires greater constancy and consistency from both sides. To be more effective in persuading Japan that Westerners want more-competitive Japanese markets, the United States and Europe must continue to strengthen their own competition policies and law enforcement. Western neomercantilism understandably undercuts Western credibility in Japan.

Japan has been critical of threatened unilateral extraterritorial US antitrust enforcement, which could be applied against Japanese enterprises in Japan. Since the Sherman Act was passed in 1890 there have been about 40 cases in which US antitrust law has been applied to stop conspiracies or monopolizing conduct foreclosing US exporters from foreign markets. We do not see this enforcement as a serious threat to Japan. US antitrust laws (unlike the restrictive trade laws of the United States and other World Trade Organization member states) seek to promote market access and competition. Antitrust disputes are resolved employing substantially fairer legal safeguards than trade law disputes. For example, Japanese companies have won the two biggest private international antitrust suits so far brought against them in US courts.[8] One was the result of a verdict by a lay jury in Arizona. To the extent Japan develops a strong and responsible domestic antitrust enforcement regime, extraterritorial US enforcement becomes less necessary and less likely. That should be a further incentive to the Japanese government to accelerate the strengthening of Japanese antitrust enforcement. In any event, too much antitrust enforcement by governments is not a problem anywhere in the world today (see chapter by Rosenthal and Nicolaides).

US Policy and Competition in Japan

To promote competition in Japan, the United States must continue to promote competition and open access in the United States. US trade

8. See *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.* 475 US 574 (1986) and *Go-Video Inc. v. Akai Elec. Co., Ltd.* 885 F2d 1406 (9th Cir., 1989).

policy should not undermine antitrust enforcement in the United States or Japan. Early in 1994 it was reported that a high official of the US Commerce Department had met

> individually with the heads of the major Japanese automobile producers in the U.S.—Honda, Toyota and Nissan. Industry sources said that [the official] was seeking some assurance from the transplant companies that they could meet the targets for increased parts purchases that the U.S. is proposing in the framework negotiations.
>
> The U.S. is asking for a Japanese commitment that purchases of U.S.-made parts by Japanese companies will continue to grow at the 1990–94 rate, a figure somewhere between 20 and 30 percent. In addition, the Administration is seeking a commitment by the transplants to increase their domestic content level in U.S.-produced vehicles to that of the Big Three automakers. (*Inside U.S. Trade,* 4 February 1994, 12)

If this report is accurate, the US official may have been attempting to organize a hub-and-spoke quantity-allocation antitrust conspiracy, with himself at the hub. An automobile manufacturer cannot agree with a US government official or, indirectly through that official or the press, with its competitors, to buy fewer parts from Japanese national suppliers and more from American national suppliers. This not only could be a criminal violation of US antitrust law, but could also give Japanese auto parts manufacturers transplanted to the United States, as well as their counterparts located exclusively in Japan, a potential private treble-damage antitrust claim. There would also be potential exposure to lawsuits under state antitrust laws, such as California's, if these pressured purchases resulted in higher retail prices of Japanese cars to US car buyers. Under the law in these states, indirect purchasers have standing to sue. Although the US official might not be held personally liable, if these were the facts, the official could not immunize the three Japanese automobile manufacturers.[9]

In mid-1995, it was announced that the United States and Japan had narrowly avoided a trade war over the sale of US automobiles in Japan and US auto parts in both Japan and the United States. Our assessment of early evaluations of the settlement is that it may not hold over time, as it is not clear that the two sides are in accord about the specifics of the Japanese commitment. It remains to be seen whether this agreement will promote competition and deregulated markets in either the United States or Japan.

Many have criticized the numerical quotas demanded by US trade officials to promote and measure market access in Japan. If the goal is to

9. See *Consumers Union v. Kissinger,* as discussed in American Bar Association (1992, 911-12).

promote deregulation in Japan, one should not demand that Japanese bureaucrats meet numerical quotas. The virtually inevitable response of any bureaucracy in any culture to such a demand, if acceded to, would be to establish market allocation cartels and disrupt free markets. That lesson should have been learned at the end of the American occupation of Japan. Some officials in prior US administrations may have failed to grasp this as well. In 1986 the United States and Japan struck what became implemented as a de facto cartel agreement in semiconductors. It is widely believed that, during the Bush administration, a secret addendum to the Semiconductor Trade Agreement, still in effect, was reached between US and Japanese officials to raise foreign semiconductor exports to Japan to a goal of 20 percent of the Japanese market (*Washington Post*, 7 March 1989, C1). This was intended to be the measure of competitive success.

Apparent Japanese acceptance of this informal numerical target may well have emboldened trade officials in the Clinton administration to try to expand this arrangement, formally, to several other sectors. Japan should never have been pressured to accept numerical targets as goals for the private sector. Such targets may be appropriate for public sector procurement, or in other cases where the buyer is a monopsonist. They should not, however, be more than one crude indicator of performance in open markets. Only a free market can determine what an appropriate competitive market share should be.

According to a recent anecdote, a senior official of the Office of the US Trade Representative was approached by a senior Japanese official seeking to break the US-Japan trade policy deadlock. The Japanese official reportedly asked, "What five reforms from your list of 100 do you need absolutely? As we have done before, I can give you these to avoid a deadlock." The US official is said to have replied, "I need all 100—anything less will not do." Although this story has been used to illustrate the naïveté and impracticality of the US negotiating position, it may illustrate even better a failure on the part of the unnamed Japanese official. If the story is true, the US official was wrong to focus just on targets for Japanese government intervention, whatever the number was, but the Japanese official should not have been trying to conduct "diplomacy as usual." How much Americans sell in Japan should depend primarily upon the free operation of Japanese markets—not the free operation of bureaucrats. The old way of negotiating will not do. True deregulation and market access must be extensive. The US and Japanese governments should be focusing on what they can do to remove government and private restraints to market access—not on regulating that market to greater American advantage.

It is currently suspected in the West that threats of vertical boycotts by Japanese manufacturers who do not want wholesalers or retail chains to stock more foreign imports are having much greater effect in limiting

market access than MITI concedes. So far the JFTC has not been energetic in investigating these charges or in taking effective action where confirming evidence is found. Meaningful improvement in enforcement to address these suspicions is preferable to setting quotas for foreign import purchases by Japanese distributors.

To the extent that a greater push is required to overcome Japanese consumers' suspicion of foreign goods, some import subsidies might be considered. Why not a discount for certain categories of foreign imports, paid for by the Japanese government, for example? Of course this would be a competition "tax" on Japanese domestic firms, but perhaps it is a fair trade-off to promote market access. New entry into Japanese markets is difficult for many reasons. The high cost of land limits the establishment of a network of distribution outlets in Japan. One way of promoting market access would be for the Japanese government, perhaps through the Japan Export-Import Bank or the Japan Development Bank, and the US government, perhaps through the US Export-Import Bank, to lend funds to US automobile manufacturers and others to buy land in Japan for distribution outlets, or to build factories.[10]

Another possibility is to reduce the tying up of blocks of shareholdings in public companies by private agreement so that foreign acquisition of significant stock interests in major Japanese companies becomes easier. This is a problem in the European Union as well, except in England and France.

The encouragement of more dispersed shareholdings, including to foreigners, would be complemented by greater accountability of corporate officials to shareholders generally. Japanese law gives shareholders the right to sue their company's directors for wasting corporate assets through illegal activities. The law provides for both damages and injunctive relief. On 20 July 1994, a group of shareholders of Kajima, a large construction company, filed such a suit, alleging among other things that the firm had paid illegal bribes to government officials and participated in anticompetitive bid-rigging schemes. Effective enforcement of this law would make it more difficult for directors of Japanese companies to engage in illegal activities such as price-fixing.

If the law were strengthened to impose potential liability on the directors of companies victimized by the price-fixing of others, for failing to sue to recover private antitrust damages owed to their companies, private antitrust enforcement would be significantly enhanced. It was

10. After the last paragraph was drafted, it was reported that the Japan Export-Import Bank will lend $300 million to the Big Three US automakers, at a rate of interest below prime (4.4 percent), to produce right-hand-drive cars outside of Japan to sell in the Japanese market. (*Wall Street Journal*, 27 July 1994, A13). It was also reported the same day in the *Nihon Keizai Shibun* that the Japan Development Bank had in the past loaned money to these same companies to build facilities in Japan to facilitate auto parts imports.

the threat of exposure to this liability that led the directors of US electrical utilities to sue General Electric and Westinghouse for damages resulting from their purchases from an electrical turbine and generator cartel prosecuted by the Justice Department in the 1950s.

To the extent that market access is viewed as a problem of microeconomic policy—and to some degree it is—the United States should continue to focus attention on specifically identified structural impediments. Past pressure to redress specific market access barriers, private and governmental, and to modify noncollusive traditional social practices, has made and can continue to make a difference. The difference will be greater, however, if the Japanese government speeds up the dispute resolution process.

The US government should also focus particular attention on helping to promote and monitor nascent Japanese deregulation initiatives. The American deregulatory experience is the most extensive in the world. Some Japanese policymakers will welcome constructive US assistance toward reform. But that US policy assistance should promote deregulation, transparency, and the operation of the market mechanism, not protectionist quotas or other neomercantile bargains designed merely to address the current account imbalance. Instead of criticizing the Structural Impediments Initiative of the Bush administration as misguided, the Clinton administration should devote substantially more resources and more continuous effort to push for specific, targeted regulatory reforms.

It will also help to improve trade relations with Japan if Americans can improve resolution of serious disagreements about what exceptions to the market mechanism are necessary in US society and how they should be adopted, monitored, and limited. The debate between free trade and protectionism, and between deregulation and industrial policy, is an important ongoing debate within both nations, as much as it is a bilateral and multilateral debate. Japanese protectionists and free traders need to participate in this debate. This requires a US policy of engagement, not rejection.

Conclusion

The focus of this chapter has been both more fundamental and less ambitious than merely to offer yet another critique of US and Japanese bilateral trade policy. Nonetheless, it is important to identify what practical steps could be taken now to further competition goals in the bilateral relationship.

We have identified several reform proposals for Japanese competition law and policy. Among these are the following: make competition policy a domestic Japanese political issue, promote massive deregulation, pro-

mote private antitrust self-help litigation through reform of Japanese laws and elimination of judicial delay, have the prime minister's office appoint an aggressive and independent JFTC, and design government-induced incentives to attract foreign investment and imports.

We have also proposed a greater commitment on the part of US government officials to more open US markets, and less restrictive US intellectual property and industrial policy laws—the United States cannot expect to succeed by asking the Japanese to do as it says, and not as it does. We encourage both governments to assign more personnel to the intergovernmental effort to monitor, publicize, and negotiate for more sweeping and meaningful deregulation of Japanese markets and the removal of nontariff barriers.

As Rosenthal and Nicolaides indicate elsewhere in this volume, we think that antitrust enforcers should play a larger role in forming and implementing US and Japanese international economic policy, at least on issues involving trade-offs between competition and such noncompetition goals as enhancing intellectual property rights, protecting jobs, national security interests, and so-called essential forms of continuing government regulation. Reciprocally, trade and commerce officials' views on necessary policy trade-offs that reduce competition must be discussed more openly both in Japan and the United States. US extraterritorial antitrust enforcement against egregious private exclusionary conduct in Japan is preferable to restrictive trade law enforcement, especially unilateral section 301 actions, which are of doubtful legality under international law. Legal standards that we would not impose in the United States under US law should not be imposed on Japanese society because of "national systemic differences." However, competition and consumer welfare cannot and should not always be the overriding policy goal imposed by law on a democratic polity. Choices between competition and protection should be matters of political choice, within Japan, within the United States, and in the US-Japan relationship.

Japanese nationalists may be unhappy at the idea, but it is nonetheless true that the major changes in Japan toward greater competition have been achieved through foreign pressure (*gaiatsu*). It was true in the case of the Meiji Restoration, which created the modern Japanese state, and of the major reforms that followed World War II, including the enactment of the Antimonopoly Law. The Japanese people should admit that every time the United States "bashes" Japan, the Japanese economic system is improved. This points to some defect in the political process in Japan that renders the Japanese legislature unable to initiate major policy changes when these call for sacrifice. This is regrettable. However, the Japanese should acknowledge that trade pressures from the United States have been instrumental in reforming their society in a way that has lessened incompatibility between the United States and Japan.

For two decades Americans have rightfully chided the Japanese for their persistent feelings of victimization, which are wholly inconsistent with Japan's true role as an international economic power. Within the past few years, however, the Japanese people have shown a readiness, finally, to go beyond this traditional defensive attitude. They are seeking a new level of democratic and consumer-oriented self-confidence. This is not the time for the United States and Europe to overreact by themselves assuming the role of defensive, insecure victim. Japan, Inc., is not systematically victimizing the West, any more than the West has victimized Japan over the past 50 years.

Before the pessimists among us conclude, as have Prestowitz, van Wolferen, and Ishihara, that Western and Japanese ideas of capitalism and competition are incompatible, we need to try more persistently to make a renewed commitment both to competition and to transparency and temporal limits when anticompetitive compromises are negotiated, both in the West and in Japan.

We have tried to show that Japanese and Westerners are indeed "reading from the same page." Although that does not assure that the rate of growth of competition in Japan will be swift, it does mean that the timing, pace, scope, and specifics can be joined constructively as both domestic and international policy issues.

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