APPENDIX 4

SUBMISSION OF THE AUSTRALIAN GOVERNMENT TO THE JAPANESE GOVERNMENT ON THE DEREGULATION PROMOTION PROGRAM

The Australian Government welcomes this further opportunity to make a submission to the Government of Japan in preparation for the first revisions to the Deregulation Promotion Program (1998-2000).

Australia sees the announcement of the Deregulation Promotion Program as a demonstration of the Japanese Government's continuing commitment to liberalisation of the Japanese economy. Liberalisation—and the efficiency gains it leads to—has the potential to bring about significant improvement in Japan's economic outlook, particularly in the medium and long term. A more competitive and steadily growing Japanese economy is also an important factor in reviving those economies in the Asian region which have been confronted with financial and economic turmoil over the last twelve months.

A vigorous deregulation program is an essential complement to the Japanese Government's macro-economic policies and can contribute directly to increases in consumer demand.

This submission contains details of regulatory issues which either directly or indirectly affect access to the Japanese market by Australian companies. The Australian Government has previously raised most of these issues with the Japanese Government, either in its submissions to the Deregulation Committee, or in other forums, or directly with the Japanese Government Agencies concerned. Some of the requests have been refined to take into account improvements which the Japanese Government has introduced—Australia welcomes all such improvements.

Australia looks once again to the Japanese Government to continue its efforts to liberalise the Japanese economy and in doing so, to return to a period of steady, sustainable growth. Australia hopes this will allow Australia's trade relationship with Japan to expand and diversify even further.

SUBMISSION OF THE AUSTRALIAN GOVERNMENT TO THE JAPANESE GOVERNMENT ON THE DEREGULATION PROMOTION PROGRAM

CONTENTS

I. HOUSING AND CONSTRUCTION

1. Development of performance-based standards

Problem

Australia notes that the Ministry of Construction (MOC) is working to establish a new regulatory framework by 2000 that accommodates performance based standards. The implementation and subsequent application of these new standards will not automatically address the concerns raised under previous submissions.

Australia would welcome the continued close dialogue on the implementation and application of the new regulatory framework through the Japan Australia Building Housing Committee, including areas such as steel-framed housing.

Request

That the relevant design guidelines and regulations under the Building Standard Law of Japan be amended to ensure that design criteria give effect to the principle that all houses be designed to the same performance-based standards, regardless of construction materials used.

2. International Harmonisation of Standards

Problem

Guidelines issued by Japan's Government Home Loan Corporation (GHLC) require the use of Japan Agricultural Standards (JAS) accredited materials, or materials graded according to North American standards, in order to qualify for GHLC financing.

Given the important role GHLC has in providing housing finance in Japan, the current policy limits access for foreign building products to those which have been accredited with the JAS mark.

Requests

(i) That Japan accept Australian timber grade stamps and quality assurance systems as complying with the GHLC guidelines. Australia is currently conducting a research program that will demonstrate how Australian timbers comply with these guidelines.

(ii) That Japan accept product certification marks from Australian third-party product certification bodies that are accredited under the accreditation rules of the Joint Accreditation System of Australia and New Zealand (JAS-ANZ).

3. Steel-framed Housing

Problem

The Ministry of Construction publication, `Performance Evaluation and Appraisal Standards for Steel House Structures' indicates that steel with a thickness of 0.8mm to 2.3mm will now be considered under Japanese regulations for inclusion in Japanese houses. While this development is welcomed by Australia, Japanese regulations still preclude from consideration many steel structural sections commonly used in Australian framing. Many Australian companies are using new, innovative steel technologies which allow for much lower thicknesses (e.g. 0.4 mm is used in some frames), but exhibit the strength and quality characteristics of much thicker steel.

The above-mentioned publication also states that the 400 N/mm^2 steel grade shall be the standard of strength classification in Japan.

These non-performance-based restrictions decrease the range of cost-effective building materials available to the Japanese builder and consumer, thereby unnecessarily increasing costs.

Requests

(i) That the relevant design guidelines and regulation under the Building Standard Law of Japan stipulating allowable steel frame sections be amended to focus on the *performance of steel sections*, rather than on their thickness.

(ii) That regulations stipulating a 400 N/mm^2 standard strength classification be replaced by a performance-based assessment of steel strength-performance.

II TELECOMMUNICATIONS

Australia welcomes the Japanese Government's efforts to liberalise the telecommunications sector in Japan, but has identified a number of features of the regulatory regime in Japan which make it difficult for new entrants to do business in Japan. Following is an outline of regulatory issues which have made market entry difficult for Australian firms.

1. Requirement to hold two authorisations

Problem

Under the Telecommunications Business Law (TBL) a Type 1 holder provides telecommunications services using facilities established on its own. A Type 2 registration holder provides telecommunications services by leasing circuits and facilities from Type 1 telecommunications businesses.

This means that a Type 1 licence holder may not lease telecommunications lines or circuits to provide its services. To provide Type 1 services where it does not own any circuits, it is necessary for a Type 1 licensee to enter into an interconnection agreement with other Type 1 licensees or to entrust such services to other entities. However, such entrustment may be made only in limited instances set out in Ministry of Posts and Telecommunications (MPT) internal guidelines and requires the prior authorisation of the MPT.

In addition, a single entity may only hold one authorisation, namely, a Type 1 licence or a Type 2 registration.

For new entrants these requirements create market access barriers. Most new entrants would seek to provide services using facilities they would purchase, lease or access from other telecommunications operators. Under the current regulatory regime, such operators would be required to obtain and maintain two authorisations, namely, a Type 1 licence and Type 2 registration (and current regulations would not permit holding both authorisations, in any event).

Request

That Japan eliminate the Type 1/Type 2 distinction, so that a telecommunications operator only had to obtain and maintain one licence. This could be achieved by allowing the holder of a Type 1 licence to carry out all the activities a Type 2 registration holder can, including leasing facilities. The Type 1 licence holder would still be required to establish some facilities of its own but would be allowed greater flexibility in establishing, as opposed to leasing, its facilities. The Type 2 registration could remain unchanged, allowing those operators which do not wish to establish facilities to provide services through the facilities of others.

Alternatively, if the more expansive rights under a Type 1 licence were not granted, it would assist if one entity could hold 2 authorisations, a Type 1 licence and Type 2 registration. Maintaining two separate entities so that each one can hold one authorisation is a significant barrier to entry into the market.

2. Subsequent MPT approvals and requirements

Problem

Under the TBL range of agreements, customer contracts and procedures require either notification to or approval by the MPT prior to the commencement of services. The requirements vary according to the type of authorisation the provider of the services holds. However, these requirement create another administrative layer for operators, and potentially can delay service offering and service innovation.

Request

Australia recommends that the MPT review these requirements and their objectives with a view to reducing and streamlining the requirements.

3. Guidelines not centrally located or indexed

Problem

Australian industry considers that the TBL , and the guidelines issued by the MPT to assist in explaining the TBL are often difficult to understand. Moreover, it seems that-in addition to the written rules - there are a large number of unwritten internal MPT guidelines which are not promulgated.

The MPT guidelines are not centrally located or indexed. Australian industry has often proceeded with its analysis of the TBL, ignorant of relevant MPT guidelines. It has often found out about guidelines from third parties, and at a late stage of its analysis of the TBL.

In addition, Australia would encourage transparency in the review of the TBL and in its implementation. The Australian government recommends that the Japanese Government adopt "notice and comment" procedures for proposed changes to the TBL and its implementation. Such mechanisms should be open to all interested parties, including existing and potential operators and consumers. To ensure that all interested parties are aware of proposed changes, Australia recommends that a variety of notice procedures be used, e.g., web sites, industry circulars, direct notice to registered operators. This should help to ensure that the needs of all interest groups are met and that the regulatory regime encourages innovation, competition and consumer benefits.

Requests

(i) That the guidelines explaining the TBL should be centrally located, indexed, and readily available, e.g., on the MPT web site. It would be helpful if an English version of the guidelines or an index could be provided.

(ii) That the Japanese Government adopt transparent procedures in reviewing the TBL and its implementation.

4. Problems in communicating with the MPT

Problem

The process for communicating with the MPT and seeking industry views on the TBL is costly and causes delays. The MPT usually prefers that formal meetings are arranged at the MPT in Tokyo to discuss issues and lodge documents. Such procedures are especially cumbersome for foreign companies whose regulatory teams are based overseas.

Request

That the MPT provided a telephone, fax or email service where operators could ask questions. This would assist both local and foreign operators.

5. Unclear administrative requirements

Problem

Representatives of Australian companies in Japan have frequently encountered considerable difficulty in obtaining clear advice from the MPT. For example, under the TBL a Type 1 licence holder provides telecommunications services using "facilities established on its own". Australian industry is not certain what "established on its own" means, despite considerable discussion with the MPT. Australian industry has also heard conflicting views on the requirement that an entity may only hold one authorisation. This has created considerable uncertainty in respect of Australian industry's network and regulatory requirements.

In response to inquiries through its local lawyers, the MPT has recommended that Australian carriers submit draft applications for the MPT to review. The MPT would then respond by indicating whether the application is satisfactory or by pointing out what is wrong with it. This is not entirely satisfactory. Operators need to understand the regulatory regime so they can make business decisions about what network infrastructure they require, what services they can provide etc., ahead of submitting a licence application.

Request

That the MPT issue written responses to inquiries. Such responses would assist in clarifying the operation of the TBL. The Australian government acknowledges that a formal written response to all inquiries could place a large strain on MPT resources. However, some capacity for formal responses on key issues would assist operators.

6. Interconnection

Problems

Under the TBL, approval for interconnection arrangements and obtaining a Type 1 licence are interdependent, i.e., you can not obtain one without the other. This requirement causes administrative difficulties.

Under the current interconnect arrangements, NTT requires that operators establish separate interconnect lines for separate services.

Requests

(i) Australia recommends the removal of the interdependency of agreeing interconnect arrangements and holding a Type 1 licence. The same effect could be achieved by providing that an operator could only provide services under an interconnect agreement if it holds a valid licence or registration.

(ii) That the Japanese government permit an operator to establish a single interconnect line with NTT for a range of services. These services would be mixed and then split into separate services at the NTT exchange.

III AGRICULTURAL PRODUCTS

1. Rice

Problem

Australia is concerned at continued difficulties faced in obtaining commercial access to the Japanese market.

Australia acknowledges that Japanese officials have increased the quantity available under the May 1998 SBS tender which allows Japanese consumers greater access to fresh Australian rice. However, this represents only a small proportion of Japan's WTO import commitments (10% of total imports in 1997).

A further increase in the quantity available under SBS tenders conducted early in the Japanese fiscal year and the earlier scheduling of some minimum access tenders would provide benefits for Japan and Australia. It would provide more orderly distribution and allow Japanese consumers access to fresh new season rice twice in the same year. It would also benefit Australia, which is the only supplier with freshly harvested rice available early in the marketing season.

The potential for regular use of imported minimum access rice to meet Japanese Food Aid commitments is also a major concern. While the Australian government appreciates the humanitarian reasons involved, the agreement by WTO members to allow Japan to delay implementation of tariffication of its rice policies during the Uruguay Round was on the expectation that imported rice would gain genuine access to the Japanese market, i.e. private consumers. The use of imported rice for Food Aid shipments without ever having genuine free access to the Japanese market undermines this outcome, and is contrary to the spirit of the Uruguay Round agreement.

Requests

(i) That Japan review its timing, pricing and distribution arrangements for imported rice, particularly under minimum access tenders, to provide a reasonable level of access to the domestic market across the Japanese fiscal year. As part of this process, the Japanese Government should further increase access under SBS tenders conducted early in the Japanese fiscal year.

(ii) That Japan reconsider its policy of using minimum access rice in its food aid program.

2. Sugar

Problem

The wedge between world prices and the Japanese domestic price is supported by the Sugar Price Stabilisation Law, which features levies, a sliding scale of surcharges and rebates. This is used to support domestic prices.

For imported sugar, each importer is required to sell all of the imported sugar to the Agriculture and Livestock Industries Corporation (ALIC) at the average import price current at the time an import declaration is made. Simultaneously, the Corporation sells the same sugar back to the same importer at an adjusted price, after the addition of levies and surcharges, or the deduction of rebates. This places sugar at a price disadvantage compared to non-sugar sweeteners.

Request

That Japan make further general reductions in its domestic target price for domestic sugar through reductions in the tariff, rate of surcharge and rate of levy. This would stimulate Japanese consumption and benefit the Japanese refinery and Australian raw sugar industries.

3. State Trading

Problem

State trading monopsony importers such as the Food Agency have price setting authority (including import mark-ups) and shield consumers from the potential benefits of liberalised trade. Moreover, the Food Agency and, to a lesser extent, the ALIC, continue to administer "in-quota" imports with wide discretionary powers following the Uruguay Round agreements. In particular, these include direct control over all staple foods, including rice, wheat and other grains through the Japanese Food Agency and quota controls (for example, on dairy products) through the ALIC.

The intervention of these agencies in the market place adds an unnecessary barrier between foreign suppliers and the consumer market, and maintains an often large gap between domestic consumer prices and world prices.

Requests

(i) That Japan deregulate further the operations and management of agricultural trade by the Food Agency and, where relevant, the ALIC.

(ii) In the interim, that Food Agency activities should reflect, to the fullest extent possible, prevailing market forces. Specifically, they should take steps to eliminate the gap between domestic consumer prices and world prices.

4. Recognition of further non-quarantine pests

Problem

Australia welcomes changes to the Japanese Plant Protection Law that provide for recognition of non-quarantine pests of plants and plant products. This is consistent with Japan's obligations under the International Plant Quarantine Convention and relevant international phytosanitary standards recognised by the WTO/SPS Agreement.

The legislation currently includes a list of 36 pests, although the Japanese government has recently proposed to add a further 27 pests by the end of this year. Japan's 1998 Deregulation

Promotion Program acknowledged the need to expand further the list of non-quarantine pests. Australia endorses this initiative, and believes that further expansion of the list will assist in relieving unjustified technical restrictions (i.e. unnecessary commodity treatments) currently placed on certain imports of plants and plant products from Australia and elsewhere.

However, Australia believes that the current legal and administrative arrangements for expanding the list are too inflexible. An appropriate administrative mechanism should be adopted to enable the non-quarantine pest list to be updated easily, without requiring a ministerial directive and subsequent changes to the Plant Protection Law. In Australia's case, the plant quarantine law provides for a codified process to be administered by officials in identifying candidate non-quarantine pests. Officials are required to use pest risk analysis procedures, which are technically based, transparent, and subject to comment by interested parties.

Requests

(i) That Japan review the legal and administrative procedures currently used to expand the non-quarantine pest list. Specifically, that Japan remove the requirement for a ministerial ordinance to change the list, and adopt a codified and transparent administrative mechanism for this purpose.

(ii) Australia encourages Japanese officials to use internationally accepted pest risk analysis standards to identify further non-quarantine pests and to examine the current list more efficiently and in a publicly available format.

IV OTHER

1. Access for Australian Thoroughbred Racehorses

Problem

Access to the Japanese market for Australian race horses is restricted in a number of ways, including by the application of discriminatory (non-national treatment) policies by the Japan Racing Association (JRA).

The authority of the JRA to implement such policies stems from a statutory delegation of power by the Japanese government in accordance with the provisions of the Japan Racing Association Law. According to Article 8 of this law, rules concerning implementation of horse racing and registration of horse owners must be approved by the Minister of Agriculture, Forestry and Fisheries. Also, Article 18 (2) of the Horse Racing Act stipulates that the Minister for Agriculture, Forestry and Fisheries may order the JRA to suspend "central horse races" in the case of violation of the Act or the relevant orders under the Act.

JRA policies are in effect government regulations, and as such, should be subject to the same basic principles favouring deregulation and market access which have been announced by the Japanese government.

JRA policies currently limit the number of races which are open to foreign-bred horses. Under these policies, in 1998 foreign-bred horses:

- which were stabled in Japan and which had not raced overseas were only allowed to race in 52% of JRA races ("mixed races"), which should increase to 55% in 1999;

- which had raced outside of Japan were only allowed to participate in 11 races ("international races") per year.

Race horse owners who are not residents of Japan are prevented by JRA policies from registering with the JRA. Under Article 13 of the Horse Race Act, owners who are not registered with the JRA are not able to enter their horses in races organised by the JRA ("central horse races").

Requests

(i) That Japan eliminate all restrictions on foreign-bred racehorses' participating in races controlled by the JRA.

(ii) That the JRA review the rules concerning the registration of racehorses in Japan in order to allow foreign owners to set up and operate stables in Japan. Specifically, that the JRA eliminate the rules preventing non-residents from registering with the JRA and the rules preventing the racing of horses in Japan by non-residents.

2. Legal Services

A: Restriction on advising on third country law

Problem

As a result of recent changes to Japanese legislation, registered foreign legal consultants are permitted to advise on third country law with written advice from foreign lawyers qualified in that third country. These recent amendments were intended to liberalise the rules governing the provision of advice on third country law by foreign legal consultants. However, it is not clear why foreign legal consultants should be subject to any restrictions on advising on third country law to which Japanese lawyers are not subject, particularly as neither may have qualifications in the law of that third country. Accordingly, the conditions for foreign legal consultants to advise on third country law should be made the same as the conditions for Japanese lawyers.

Request

That registered foreign legal consultants be permitted to advise on third country law on the same basis as Japanese lawyers.

B: Experience requirements for foreign legal consultants

Problem

Recent legislative changes reduced the experience required to register as a foreign legal consultant from five to three years, while at the same time reducing the amount of time spent in Japan that would count toward meeting that requirement from two years to one year. In gaining the experience necessary to qualify as a foreign legal consultant, lawyers can benefit from working under the supervision of a lawyer from their home jurisdiction, regardless of whether they are working in their home jurisdiction or elsewhere. For this reason, people attempting to qualify as registered legal consultants in Japan should be given credit for *all* experience gained working under the supervision of a lawyer from their home jurisdiction.

Recent amendments to Japanese legislation permit a foreign lawyer to count toward meeting the experience required to register as a foreign legal consultant the time spent practising the law of the lawyer's home jurisdiction in a third country. Against this background, the one year maximum now permitted for work experience in Japan should be removed, and *all* experience gained working in Japan under the supervision of a lawyer from a person's home jurisdiction should be able to be counted.

Despite these changes, however, it would seem that the additional experience requirements in Japan to practise home country law should be removed, particularly

where there is no such requirement in the foreign legal consultant's home jurisdiction. In the case of Australia, if a lawyer has an unrestricted practice certificate to practise the law of Australia, it does not seem reasonable that there should be further experience requirements to practice that same law, regardless of where that law is being practised.

Requests

(i) That Japan recognise the experience gained in a foreign lawyers' home jurisdiction to acquire an unrestricted practising certificate as sufficient for the purposes of gaining registration to practice the law of that home jurisdiction in Japan.

(ii) Failing such recognition, that where a lawyer applies for registration in Japan to practice law which applies in a foreign country then that lawyer may be credited with experience gained in Japan under the supervision of a lawyer from that foreign country.

3. Financial Services

Problem

Australia welcomed the commitments on market access made by Japan at the conclusion of the 1997 WTO financial services negotiations. However, a number of requests made by Australia remain unaddressed by Japan. There are also existing impediments to competition by foreign firms in the Japanese market which are largely the result of slow and cumbersome Japanese regulatory processes.

Requests

(i) That Japan meet Australia's outstanding requests, and formalise the results of regulatory reform of the financial system including on the following matters:

- Deregulation of foreign exchange controls.
- Moves to remove barriers to banks, securities and insurance companies competing in each others' main business areas. The law to implement these reforms was passed on 5 June 1998 and the reforms will come into effect by the end of March 2001. At present there is some scope for these financial services companies to enter each others' business areas through financial holding companies.
- Moves to lower barriers separating commercial banks, long term credit banks and trust banks. A law which will permit each type of bank to possess subsidiaries that are engaged in other banking business will come into effect from 1 December 1998.

(ii) The Australian government also seeks further improvements to the product approval process. Although it appears that applications are now to be processed within 90 days from the date of acceptance, clear criteria nonetheless need to be developed as to what constitutes "acceptance" in the opinion of the relevant authorities. To date Japan has not responded to this request.

(iii) Finally, that Japan make a real and substantial commitment to competition principles, taking appropriate measures to prevent anti-competitive practices.

4. Fast Ferries

Problem

Approximately 90 per cent of Australian production of high speed aluminium ferries is now exported with Australia holding 40 per cent of the world market.

Despite its success, Australia has sold very few high speed fast ferries to Japan. While it is the leading supplier to the international car ferry market, Australia has not been successful in winning any tenders in Japan in this category. At the same time, Japan has not been able to sell a single domestically-produced car ferry overseas.

The Australian marine industry and the Australian Government obtained significant dispensation from the requirements of the Japanese Maritime Credit Corporation (MCC, as it then was) during 1996-7. While these concessions are welcome, it would appear that non tariff activity in the Japanese market remains.

This is evidenced in non-tariff `disincentives' administered by Japanese regulatory bodies for example:

. no mutually agreed English translation of the Corporation for Advanced Transport and Technology (CATT) quality standards

- difficulties have arisen when relying on translations that the CATT has not verified;

Request

That the CATT provide a standard English translation of all contractual documents, including the relevant quality standards.