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UNWELCOME IMPORTS: RACISM, SEXISM, AND FOREIGN INVESTMENT

William H. Lash III*

INTRODUCTION

From the acquisition of Rockefeller Center's radio tower to the purchase of the manicured greens of Pebble Beach golf course, foreign direct investment in the United States has captured the attention and imagination of the U.S. public and its elected officials. Many Americans do not welcome the current wave of foreign direct investment, despite the stated pro-investment policy of the current administration and past U.S. policy. Responses to foreign direct investment have included legislative action to stop or limit foreign direct investment and an uproar of angry voices calling for protectionism. Such responses challenge the view that foreign direct investment benefits the United States. Critics of foreign direct investment often raise national security as a reason for barring foreign direct investment in many industries. While this national debate rages, certain voices are being

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ignored in the chorus calling for restrictions on foreign direct investment. Because racism and sexism are common in many countries, U.S. minorities and women face a particular threat that such attitudes may be brought to the United States by foreign investors. Foreign investors with racist and sexist views discriminate against minorities and women in hiring and business relationships, denying them the opportunity to share in the benefits of international investment.

This article will address the problems minorities and women face from Japanese foreign direct investment. This article focuses on Japanese direct investment because the rapid rise in Japan's direct investment in the United States, combined with a record of discrimination by Japanese firms in Japan and abroad, makes Japanese investment the best example of the problems addressed in this article. However, the discriminatory attitudes described here may well be held by other foreign investors, and therefore, the legislation proposed later in this article addresses a broader problem.

Part I will discuss racism and sexism in Japan. Analysis of Japanese attitudes toward minorities and women in Japan can shed light on the types of attitudes, and perhaps indifference to discrimination, that the Japanese bring with them to their U.S. investments. Part II will discuss the manifestations of Japanese racism and sexism in the United States. Part III will propose conditioning new foreign direct investment in the United States upon approval by an interagency committee of a plan by the investing corporation to provide employment, training, and promotional opportunities for groups that have historically been the victims of discrimination. In addition, under this proposal foreign investors who already have investments in the United States and who are found in violation of Title VII of the Civil Rights Act of 1964, the Comprehensive Anti-Apartheid Act of 1986, the antiboycott regulations of the Export Administration Act of 1979, or other similar legislation will face scrutiny before being allowed to make further investments in the United States.

or takeovers of U.S. firms by foreign persons if they threatened to impair “national security.” Exon-Florio lapsed in November of 1990, but there have been recent moves to reauthorize and expand it further. See infra note 287.

9. Recently, discrimination cases have also been brought by non-minority U.S. employees who assert that they have been passed up for promotion or fired and replaced by Japanese employees. See infra action against Ricoh Corporation, p. 127. While this article focuses on problems faced by U.S. minorities and women, proposed legislation might also address national origin discrimination against all Americans.


I. DISCRIMINATION IN JAPAN

A. Racism in Japan

No discussion of discrimination in Japan can begin without a brief examination of Japanese history and Japan's view of foreigners. The Japanese have long prided themselves on having a homogeneous culture. Many prominent Japanese political and business leaders point to their homogeneity as a reason for Japan's rapid economic successes. Based perhaps on a combination of geography and national policy, the Japanese historically have had little exposure to foreign cultures. Europeans, primarily Portuguese merchants and missionaries, first visited Japan in the 1540s. The Japanese maintained an intermittent pattern of contact and trade with Europeans for nearly a century before Japanese leaders determined that Western influences, particularly Christianity, presented a threat to Japanese culture. From 1638 until 1853, Japan closed its borders to the outside world. In 1853 Japan opened its ports and borders at the insistence of Commodore Matthew Perry who was accompanied by one-fourth of the U.S. Navy. By 1858 the threat of combined British and U.S. naval power succeeded in opening Japan's borders to a series of trade treaties with Western States.

Thus, Japan did not have extensive foreign relations nor did it...
enter into treaties with foreign states from the 700s to the 1850s. Currently, language and Japanese ethnocentrism contribute to the cultural barriers between Japan and the world.

Japanese xenophobic attitudes are somewhat ironic considering that the Japanese were not the original inhabitants of Japan. Japan was originally occupied by the Ainu, a group that is physically and linguistically distinguishable from the Japanese. The Ainu now reside predominantly in Hokkaido, in northern Japan, and remain, as do other ethnic groups in Japan, the victims of discrimination. Approximately 24,300 Ainu live in Hokkaido, and the majority of Ainu report discrimination. Although the Japanese have imposed assimilation on the Ainu, the Ainu are discriminated against in marriage and employment.

1. Japanese Discrimination Against the Burakumin

Perhaps the most historic victims of discrimination in Japan are the Burakumin or "hamlet people." The continuing discrimination against the Burakumin may be the most indicative sign of Japanese tolerance of, and indifference toward, widespread discrimination. The Burakumin are ethnic Japanese who are the victims of a caste system steeped in Buddhism and Shintoism. Shintoism was formerly the

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19. Japanese is spoken only in Japan and the inability of many foreigners to read and write Japanese poses many communication problems. An additional source of tension and misunderstanding between Japan and other States is the Japanese belief of cultural uniqueness. Kang, supra note 14, at xxii. Because many Japanese believe that they are a culturally unique people, they also assume that non-Japanese cannot comprehend this culture. Id.

20. Takashi Oka, Japanese Claims of Homogeneity Backfire, CHRISTIAN SCI. MONITOR, Nov. 7, 1986, at 1. The word ainu means “human being” in the Ainu language. The Ainu are believed to be genetically linked to the Urals and Siberian Taiga regions. The Ainu physically are more hirsute, have flatter faces, deeper-set eyes, and longer noses than the Japanese.


23. Prime Minister Nakasone stated, “There are no minority races in Japan and therefore there is no discrimination . . . . The Ainu people have already intermingled with the Japanese people.” Id. In the 1970s, the Ainu Liberation Movement engaged in a series of terrorist bombings. However, these attacks were apparently made by Japanese radicals and not by the Ainu. FOREIGN AREA STUDIES, THE AMERICAN UNIVERSITY, JAPAN, A COUNTRY STUDY 274 (Frederica M. Bunge ed., 1983).

24. Reischauer, supra note 15, at 36. Burakumin translates into “‘hamlet people,’ a contraction of ‘people of special hamlets,’ “ referring to the villages where the Burakumin live. Id.

25. Until relatively recently, the majority of Japanese denied that the Burakumin were in fact ethnically Japanese. In a survey conducted by the Japanese government in 1965, 70% of the Japanese respondents indicated that they believed that the Burakumin were not Japanese and that they constituted a distinct and different race. MIKISO HANE, PEASANTS, REBELS AND OUTCASTES: THE UNDERSIDE OF MODERN JAPAN 139-40 (1982).
national religion of Japan. A key tenet of Shintoism requires ritual cleansing and purification of people, places, and things. Shintoism considers human and animal corpses as impure, and the persons who deal with their disposal as unclean. Similarly, Buddhism condemns the taking of lives and the killing of animals. With the introduction of Buddhism to Japan in the sixth century, tasks such as the execution of criminals, the butchering of animals, and the tanning of leather were classified as unclean. During the Tokugawa Era the ancestors of today’s Burakumin drifted into these roles and were shunned by the rest of Japanese society. Burakumin faced discrimination in marriage and housing, and were denied all but the most menial employment. Also during this era many Japanese villages adopted Jim Crow-type segregation of the Burakumin. Burakumin were not allowed to eat, drink, or bathe with peasants; to purchase land without the permission of village officials; to borrow money; or to “step out of line.” Peasants who had relations with the Burakumin faced ostracism or punishment.

After the restoration of the Meiji Emperor in 1868, the Burakumin were to be fully integrated into Japanese society under a plan similar to that proposed for newly freed slaves during the Reconstruction Period in the United States. The promises proved to be short-lived, however. Japanese peasants were not prepared to accept

26. Shinto, “the way of the Gods,” is one of Japan’s three major religions (along with Buddhism and Christianity). Shinto features several gods and the deification of national leaders who are worshipped at shrines. “Ritual purity” and “a sense of awe and reverence before nature” are two of the central aspects of Shinto. Reischauer, supra note 15, at 42. Shinto is unique to Japan and under the earlier Japanese constitution of 1889 was considered the national religion of Japan. SIK, supra note 18, at 178.
27. HANE, supra note 25, at 140.
28. Id.
29. Id. at 190; Reischauer, supra note 15, at 36.
30. HANE, supra note 25, at 140.
31. The period from 1603 to 1868 is known as the Tokugawa Era in Japanese history. The Tokugawa Era is named after the Tokugawa family, who ruled as shogun or military leaders during this period. In 1601, Tokugawa Ieyasu consolidated his power over the other warring lords, establishing his capital in Tokyo. The Tokugawa Era is known as Japan’s feudal period. The period was characterized by a rigid social class system with samurai or warriors at the top, followed by farmers, artisans, merchants, and the Eta or Burakumin. NISH, supra note 15, at 67; FRANK K. UPHAM, LAW AND SOCIAL CHANGE IN POSTWAR JAPAN 5, 11 (1987).
32. Id. at 79.
33. HANE, supra note 25, at 144-45. Burakumin could not even enter the home of a peasant, wear geta (traditional Japanese sandals), or comb their hair in typical Japanese fashion. UPHAM, supra note 31, at 79.
34. UPHAM, supra note 31, at 79.
35. The Meiji Emperor ruled Japan from 1868-1912, after the decline of the Tokugawa Era. During this period (named after the Emperor Meiji), Japan made the rapid move from isolation to industrialization and modernization. The first Japanese constitution, as well as Japanese laws and views on issues such as nationality, were formed during this era. Id. at 14, 69.
the Burakumin into society. Twenty-six thousand Japanese peasants rioted in Okayama in May 1875. The peasants demanded a return to the Tokugawa Era treatment of the Burakumin, complete with the segregation and humiliation of the Burakumin.36 Eighteen Burakumin were killed, eleven seriously injured, and approximately 400 Burakumin homes were burnt to the ground during this demonstration by the peasants.37 In a later anti-Burakumin pogrom in June 1875, 100,000 Japanese peasants rioted in Fukuoka and burned approximately 2,200 Burakumin homes.38 To fuel expansionist government plans, the Meiji government promoted the view that the Burakumin were descended from Korean slaves.39

Currently, although numbering close to 3 million, the Burakumin are subject to discrimination of a most pervasive and pernicious nature. Burakumin are denied opportunities to enter leading universities and are not hired by many corporations.40 Detective agencies maintain and compile books and computerized lists tracking Burakumin families. This data is shared with and among Japanese corporations so that they can continue their discrimination against the Burakumin.41 Japanese parents keep their children from playing with Burakumin children. Even inanimate objects, such as religious icons, are not brought into Burakumin communities for fear of contamination.42

Faced with such widespread discrimination, many Burakumin must take low-paying jobs.43 Burakumin are two times more likely

36. HANE, supra note 25, at 144.
37. Id.
38. Id.
39. Wagstyl, supra note 21, at 17. Like slaves in pre-Civil War America, the lives of Burakumin were treated as less valuable than the lives of Japanese. A notable example comes from a murder trial in the 1800s where a man who killed a Burakumin was not executed because he had killed only one Burakumin and not seven. The nineteenth century Japanese court asserted that one “ordinary Japanese was worth seven Buraku.” John Saar, Japan’s Outcasts Fight Back, WASH. POST, June 12, 1977, at B5.
40. Although universities in Japan are said to have an ethnically blind admissions policy, fewer Burakumin attend higher educational institutions. See Wagstyl, supra note 21, at 17.
41. Clayton Jones, Japan’s Invisible Minority Rejects Life on the Margins, CHRISTIAN SCI. MONITOR, Jan. 9, 1991, at 6, 7. It was not until the 1970s that the existence of these records was discovered by the Burakumin. These lists identify Burakumin family names and districts. See WILLIAM J. HOLSTEIN, THE JAPANESE POWER GAME 55 (1990). For a Burakumin to succeed in Japan, he must disguise his identity, clear his tracks to his family, and sever all ties with the Burakumin society. Id.
42. See Jones, supra note 41, at 6.
43. Burakumin are often employed in recycling and selling used tires and junk. HOLSTEIN, supra note 41, at 55. Many, however, remain employed in the leather tanning industry which first caused their degradation. In fact, the Japanese government often points to the “Burakumin problem” when faced with demands from trading partners to open the shoe and tanned leather markets to foreign importers. The Burakumin remain a facile scapegoat for the Japanese government to this day. See EEC/Japan: No Movement on High Japanese Tariffs, European Report, Oct. 17, 1990, § V., no. 1622, at 4, available in LEXIS, Nexis Library, INTL File; see also Ja-
than other Japanese to be dependent on social security.\textsuperscript{44} Faced with such dismal prospects, many Burakumin commit suicide.\textsuperscript{45}
Burakumin also often reside in slums of wooden shacks, sometimes without electricity, on the outskirts of prosperous Japanese cities.\textsuperscript{46} For example, the beautiful, ancient, former capital city of Kyoto is home to a Burakumin ghetto of substandard housing as well as imperial palaces and shrines.\textsuperscript{47}

There have been some efforts made to improve the situation of the Burakumin. A Burakumin antidiscrimination organization, the Burakumin Liberation League (BLL), was organized in 1922. The Japanese government has made attempts to improve the situation of the Burakumin. For example, in 1969 the Japanese government initiated a series of steps known as\textit{dowa} (assimilation).\textsuperscript{48} Although\textit{dowa} projects improved housing opportunities for the Burakumin,\textit{dowa} has proven to be of limited success. Statistics show that Burakumin levels of literacy, employment, health, and economic security remain below those of the average Japanese.\textsuperscript{49} Yet despite the persistence of substandard conditions for the Burakumin, the Japanese government announced that in March 1992 the\textit{dowa} plan will be terminated.\textsuperscript{50}

Burakumin leaders assert that the\textit{dowa} program should not only be extended, but also expanded further. The BLL seeks enactment of a new law that would criminalize discrimination against the Burakumin.\textsuperscript{51} BLL officials also support the institution of an antidiscrimination program in Japanese schools.\textsuperscript{52}

\textit{pan’s "Untouchables" Center of Trade Dispute with EC, Reuters Library Report, July 13, 1990, available in LEXIS, Nexis Library, REUTER File.}

\textsuperscript{44} Wagstyl, supra note 18, at 17. Some early studies reveal that 60\% of all unemployed people in the Japan of the 1960s were Burakumin. \textit{Jon Halliday, A Political History of Japanese Capitalism} 231 (1975).

\textsuperscript{45} Saar, supra note 39, at B3. The despair caused by this cruel discrimination is evidenced by the case of Michie Nakamura. Ms. Nakamura is a Burakumin woman who was jilted by her lover of six years. The relationship was severed due to the pressure of her lover's family, who were aghast at the idea of his marriage with a Burakumin. Upon being rejected by her lover, Ms. Nakamura killed him. \textit{Id.}

\textsuperscript{46} Wagstyl, supra note 21, at 17.

\textsuperscript{47} See Holstein, supra note 41, at 55. According to a 1963 Japanese Ministry of Welfare report, although 20\% of all Japanese families lived below the poverty line (then $0.45 per day), the population density in Burakumin villages was ten times greater than that of other villages in Japan and the per person income in Burakumin villages was a mere one-twentieth that of neighboring villages. \textit{Halliday, supra note 44, at 231.}

\textsuperscript{48} Jones, supra note 41, at 7.

\textsuperscript{49} Id. at 7.

\textsuperscript{50} Dowa has cost the Japanese government more than $26 billion over the past 23 years. \textit{Id.}

\textsuperscript{51} Id.

\textsuperscript{52} Id. at 7. Like many minority groups, the Burakumin do not entirely agree on how best to remedy the situation. While the BLL seeks a more activist campaign to eliminate discrimination, some Burakumin are not comfortable with the attention that the BLL is bringing to the situation.
The persistence and tolerance of discrimination by the Japanese against other Japanese, like the Burakumin, shows that discriminatory attitudes have not merely been imposed from the outside, and suggests a reason to be wary that such intolerant attitudes may be brought with the Japanese to their investments in the United States.

2. Japanese Discrimination Against Koreans

Ethnic Koreans constitute a significant percentage of Japan’s small minority population. Japan-born Koreans are descendants of Koreans brought to Japan in bondage during World War II. To this day, they remain the victims of discrimination. Japan-born Koreans are forced to register as foreigners, to carry alien identification cards, and to be fingerprinted by the government. Koreans in Japan are denied employment by the civil services and many corporations. These Koreans, most of whom have worked and paid taxes in Japan their entire lives, were until recently denied benefits under the Japanese national pension plan. Housing opportunities for Japan-born Koreans are also restricted by many landlords in the already expensive Japanese housing markets.

Japan-born Koreans have attempted to deal with this discrimination through denial and assimilation. The majority of the 677,000 Koreans in Japan have been forced by societal pressure to use Japanese names in their day-to-day lives, in a drastic denial of their Korean heritage. Such attempts to quietly assimilate into Japan’s closed society usually fail. Japanese employers and prospective in-laws support a virtual industry of hundreds of investigators who check into the ethnic backgrounds of applicants and potential spouses to ascertain the

They support an optimistic plan of quiet and gradual assimilation into Japanese culture. The problem with that strategy is that if the Burakumin do not call attention to their situation, it will be difficult to establish evidence of their numbers and the discrimination against them. Id.

53. Many Japan-born Koreans are the descendants of Koreans pressed into service during Japan’s colonization of Korea from 1910 to 1945. During World War II, Korean men were brought to Japan as slave labor and Korean women were imprisoned in brothels for the Japanese military. Robert Whymant, Courage of Korean Girl Who Peeled Off Japanese Disguise, DAILY TELEGRAPH, May 24, 1990, at 12.

54. Id.


56. See Whymant, supra note 53, at 12.

57. In Japan, even wealthy Koreans are the targets of racism. One Korean businessman who purchased a golf membership in an exclusive Japanese club was urged to join under a Japanese name. After his Korean identity was discovered, the club pressured him to resign his membership. Despite obtaining a refund from the club, the Korean businessman instituted an action alleging discrimination, in order to publicize this injustice. The family now finds itself the target of a harassment campaign. HOLSTEIN, supra note 41, at 51.
existence of any Korean ancestry. In fact, to gain Japanese citizenship, Japan-born Koreans must formally surrender their Korean identity; although recently, on the urging of South Korean President Roh Tae Woo, the Japanese government has promised to spare Korean residents the indignity of fingerprinting and to grant them permanent residence in Japan.

3. Japanese Discrimination Against Other Asians

Other Asian minorities in Japan also suffer from widespread discrimination. For example, Pakistani workers in Japan are the targets of racism in many sectors of Japanese society. The ethnic and religious differences between the Pakistanis and the Japanese are at the heart of the discrimination. The Japanese National Police Agency’s International Research and Training Institute for Investigation published a 179-page report cautioning Japanese police about special problems when dealing with Pakistani suspects. The report, circulated to regional police offices, noted that “[s]ince [Pakistanis] have a unique body odor, the detention and interrogation rooms will stink.” Japanese police were also cautioned that “[i]t is absolutely necessary to wash your hands after questioning or detaining [Pakistanis] because many of them suffer from contagious skin diseases.”

After the report was disclosed by a Japanese newspaper, the Police Agency apologized to the Pakistani Embassy in Tokyo, claiming that the document’s goal was to “‘raise awareness’ about people from an unfamiliar culture.” Japanese police asserted that the regional offices needed to learn more about Pakistan.

The police are not the only Japanese officials to make discriminatory remarks about the Pakistanis. For example, the mayor of Kawaguchi, a Japanese industrial city, reportedly announced that “Japanese people could bump into Pakistanis at night because of their dark skin.”

58. Id.; Whymant, supra note 53, at 12.
59. This practice has been defeated in court by one Japan-born Korean. See Whymant, supra note 53, at 12.
60. Id.
62. Id. at A20.
63. Id. Japanese Police officials acknowledged that the report “was badly worded.” Id. Any questions about the wording of the report, however, must be secondary to concerns with the content of the document. The report condemned the religious tenets of the Pakistanis, claiming that Pakistanis “lie in the name of Allah” and are quick to anger when unknowingly fed pork. Id.
64. Id. Mayor Yoji Nagase maintains that his comments were not indicative of racial prejudice against Pakistanis. Id.
Pakistanis are also subject to discrimination in hiring and often can find work only in jobs with unsafe and unsanitary working conditions, and without employer-provided health benefits.\(^6\) Instead of taking steps to ameliorate the situation, however, the Japanese government has responded with a new immigration law requiring workers from Pakistan and Bangladesh to have visas.\(^6\) The racist goals of the new law are made abundantly clear by the statements of a senior Foreign Ministry official; this official stated, "[i]f we let in Asian laborers, it could destroy the homogeneity of Japanese society."\(^6\)

Change may be coming, however. In order to improve their situation, Asian workers have joined forces with Japanese social and political activists to form the Cooperation of Asian Laborers for Liberation.\(^6\)

4. Japanese Anti-Semitism

Although there are only approximately 150 Jewish families in Japan,\(^6\) the Japanese have been accused of anti-Semitism.\(^7\) These allegations stem from books like Masami Uno's *If You Understand the Jews, You Will Understand the World.* This best seller has been assailed by Jews as "a diatribe of antisemitism" which "praises Adolph [sic] Hitler."\(^7\) Uno asserts in his book that Jews are seeking to destroy the Japanese economy as part of a global Zionist conspiracy of world domination.\(^7\)

\(^{65}\) Pakistanis have been denied employment opportunities due to the mistaken beliefs of some Japanese that "there are a lot of communicable diseases . . . among Pakistanis." *Id.* See also HOLSTEIN, supra note 41, at 53.

\(^{66}\) The new law also requires presentation of a visa before a worker may be employed and establishes criminal penalties for employers who violate this law. Schoenberger, *supra* note 61, at A20.


\(^{68}\) HOLSTEIN, *supra* note 41, at 53. The Cooperation of Asian Laborers for Liberation combats discrimination that workers face in housing and problems they have obtaining proper medical attention. Nobuki Omori, head of the Cooperation of Asian Laborers for Liberation, points out that part of the problem with foreign workers in Japan is the lack of a Japanese commitment to assimilate these workers into Japanese society. *Id."


\(^{70}\) Professor David G. Goodman of The University of Illinois links Japanese anti-Semitic views with the negative portrayals of Jews by Christian missionaries visiting Japan in the 1870s. Goodman also asserts that the first Shakespearean play translated into Japanese was *The Merchant of Venice*, which has long been considered anti-Semitic. David G. Goodman, *Reason for Concern in Japanese Anti-Semitism* (letter to the editor), N.Y. TIMES, Mar. 25, 1987, at A26.


\(^{72}\) Stern, *supra* note 69, at 17. Uno places notable "Jewish" families like the Rockefellers, Morgans, DuPonts, and Mellons at the heart of the conspiracy. "Jewish" leader and former
Other popular books in Japan assert that Jews have caused the U.S.-Japan trade disputes, AIDS, and the Chernobyl disaster, and that Jews run world finance. For example, a book entitled *Find the Hyde of Dr. Jekyll*, by Takashi Hirose, asserts that the late Armand Hammer and other prominent Jews were behind the Chernobyl disaster as part of a financial conspiracy.

Evidence of anti-Semitic biases has also surfaced in the words of Japanese leaders. Japanese Minister of Posts and Telecommunications Masaaki Nakayama stated that “Jews own all the ‘seven sisters.’ They control agriculture in America and the international precious metals market. Both George Bush and Michael Dukakis are related to Jews.” A member of the Japanese Diet, Eisaburo Saito, has written a book entitled *The Secret of Jewish Power to Control the World.*

Interestingly enough, the Japanese largely do not feel that these comments and publications are anti-Semitic. For example, the president of McDonald’s in Japan, Den Fujita, boasts that he is the “Jew of Ginza.” Mr. Fujita is also the author of *Jewish Business Methods: Controlling the Economy of the World.* In this book, Fujita alleges that the world economy is “being ravaged by a pack of Jews.” Fujita maintains, however, that his countrymen should strive to emulate those business techniques he identifies as “Jewish.”

Ryohei Murata, Japanese Ambassador to the United States, attributes Japanese anti-Semitism to the Japanese people’s “almost total lack of knowledge” of Jewish religion or culture. The Japanese For-
eign Ministry has prepared a fact sheet detailing "The American Jewish Problem" to provide information to its citizens.79

This apparent lack of knowledge gives no comfort to Jews, however, especially in light of Japanese corporations' secondary boycott of Israel and tertiary boycott of firms that do business with Israel.80 Until very recently neither Toyota nor Nissan sold products to Israeli firms. Toyota furthermore reportedly abandoned a joint venture with Ford in 1981 due to the Arab League's boycott of Ford. Toyota's decision was reputedly in response to boycott threats from Kuwait, Saudi Arabia, and Iraq.81 Finally, in the spring of 1991, Toyota announced that it would sell cars in Israel.82

Similarly, after a visit to Israel by the Japanese Foreign Affairs Minister, Takakazu Kuriyama, the Israeli Police inquired if NEC Corporation would sell it fingerprinting machines. NEC officials replied, "We have a policy not to trade with Israel."83 NEC joins Sansui Electric Company, C. Itoh & Company, Nippon Steel Corporation, Honda Motor Company,84 Sumitomo Corporation, Mazda Motor Corporation, Matsushita Electrical Industrial Company, Mitsui & Company, Hitachi, Ltd., Toshiba Corporation, and Fuji Photo Film Company in boycotting Israel.85 Furthermore, the Japan External Trade Organization (JETRO),86 which has offices in fifty-seven nations, does not have an office in Israel.87 Despite Japan's large economic presence in the Middle East, no Japanese Prime Minister had visited Israel until

79. Stern, supra note 69, at 18.
80. Japan is extremely dependent on imported oil from Arab States. The Arab oil embargo of the early 1970s caused great economic distress in Japan, threatening both the operation of many Japanese industries and the economic gains that Japan had made since the 1960s. Reischauer, supra note 15, at 372. Fear of future oil embargoes is the most convincing explanation for Japan's support of the Arab League boycott of Israel.
81. See Jews, Japan, Boycotts and Bigotry, supra note 76, at 13.
82. Doron P. Levin, Toyota to Sell Cars in Israel, Officials Say, N.Y. Times, Apr. 11, 1991, at D1. Toyota officials maintain that they previously did not sell in Israel because Toyota lacked the resources to do so, and not because Toyota was complying with the Arab boycott. Id. The Toyota cars to be sold in Israel will come initially from Japan. Id.
84. Honda's U.S. subsidiary sells cars to Israel, taking advantage of the U.S.-Israel Free Trade Agreement which lowers tariff barriers between the two countries. Levin, supra note 82, at D5.
86. JETRO is a Japanese government organization established in 1958 to facilitate and promote Japanese international trade. JETRO activities include "market research, data dissemination, export and import promotion, and overseas public relations work." Brief for the Japan External Trade Organization at 2, Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S. 176 (1982) (No. 80-2070). JETRO offices are located worldwide. Id. at 2.
1988. In addition, the Japanese government denies landing rights to El-Al, the national airline of Israel.

5. Japanese Discrimination Against Black and Hispanic Americans

Perhaps no minority group has been pilloried more by comments by Japanese leaders than black Americans. Blacks were largely unknown in Japan until World War II and the U.S. occupation of Japan. In the postwar era, the United States gave Japan a new constitution and the means to rebuild. However, the United States also gave Japan a subtle and pernicious export: racism towards blacks. The Japanese observed segregated facilities for black American G.I.s. U.S. films and television programs spread other stereotypes of blacks.

Blacks in Japan do not face the same type of racism that confronts them in many places in the United States. In Japan, however, the prejudice against blacks consists of a barrage of suspicion and ridicule. Blacks must deal with discrimination in housing and employment. They are also the targets of an insensitive and racist corporate community. For example, until recently, Japanese companies sold "Darkie" toothpaste in Tokyo, in a tube adorned with the smiling image of a black minstrel.

Indeed, the Sambo stereotype, long abandoned in America, is quite popular with Japanese companies and consumers alike. Sanrio Corporation, a Japanese manufacturer of gifts and toys, caused a whirlwind of resentment by blacks with its popular beach wear featuring Sambo. Sanrio racked up over $11 million in sales from these products in 1987. Sanrio pulled the Sambo products from its line in response to criticism from blacks in America and Japan. Kazuo

88. Prime Minister Sosuke Uno's decision to visit Israel was met with intensive lobbying by Arab ambassadors in Tokyo. Uno announced that his planned visit did not indicate a shift in "Japan's pro-Arab Middle East Policy." Stern, supra note 83, at 18. However, in the United States, representatives of the Uno administration characterized this visit as a "milestone in Japan-Jewish relations." Id.

89. See Jews, Japan, Boycotts and Bigotry, supra note 76, at 13.


91. Id.


94. Greenwald, supra note 90, at 25. Sanrio Corporation's Sambo product line featured Sambo and his sister Hanna — black dolls with exaggerated lips. Id. The Sambo sales campaign included the following racist message: "When I'm hungry there's no stoppin' me. I'll be up a palm tree pickin' coconuts before you can count to three (An' I can count way past three too!)." See Dorothy Gilliam, Japan: Ignorance or Racism?, WASH. POST, Aug. 1, 1988, at D3.

95. Greenwald, supra note 90, at 25. This established that while crime may not pay, racism does — and quite handsomely.
Tomatsu, a spokesman for Sanrio, stated, "We were making a summer item, and we designed it to be kawaii [cute]. We deeply regret that we lacked consideration in regard to minorities in the United States."96 After withdrawing the offensive items from its 3,000 stores, Sanrio donated $600,000 worth of toys and other merchandise to children in the United States.97

The use of Sambo is not limited to Sanrio Corporation. Yamato Mannequin Company manufactured black mannequins with distorted Sambo-like features. In response to a study by Yamato which determined that the mannequins represented "new sexiness, kawai [cuteness] and fresh energy," these mannequins were placed in dancing poses.98 Blacks in Tokyo are also insulted by the "Chibi Kuro Sambo" (Little Black Sambo) Inn. The restaurant features waitresses with dreadlocked hair dressed in red gingham smocks serving from a menu including "little black fried chicken" and "little black potatoes." The owner, like Sanrio and Yamato Mannequin, relies on claims of kawaii (cuteness) as a defense of her blatant insensitivity.99

The Sambo stereotype is not restricted to Japanese advertising and products. Singer Lionel Richie, during an appearance on a Japanese TV show, stormed off the set after learning that his Japanese backup singers were performing in minstrel black-face.100

Another example of racist attitudes comes from the pages of New York Now, a Japanese magazine published for Japanese visitors to New York. A map of the city enclosed in the magazine uses an illustration of a black woman wearing a bandanna to denote Harlem.101 Harlem Assemblywoman Geraldine Daniels assailed the map, stating, "[t]his mammy image of Harlem citizens is despicable and offensive," while questioning whether the blatant insults were a result of igno-
rance or arrogance.¹⁰²

In addition, similar to the ways that Jews are vilified in Japanese popular literature, Japanese authors dehumanize and stereotype blacks. For example, Eimi Yamada’s novel *Bedroom Eyes*, winner of the Bungei Prize for new Japanese writers in 1985 and the 1987 Naoki Prize for literature in Japan, features a Japanese protagonist who describes her black lover as “a dirty thing” with “close to a rotten smell” who gives her “a feeling of superiority.”¹⁰³ Negative images of blacks are also supported in Japanese business novels. In many of these novels, blacks are portrayed as “streetwise, rioting, stealing or drugged.”¹⁰⁴

Recently, an increasing number of interracial relationships have upset some Japanese leaders to the point that they are certain that “the sun ‘will surely set’ on Japan when these people become the mothers of the next generation of Japanese.”¹⁰⁵

Japanese racism towards blacks also may be evidenced by the scathing comments of several prominent Japanese political figures. For example, in 1986 then-Prime Minister Yasuhiro Nakasone contrasted Japanese intellectual achievement with the United States and noted, “Japan is now a highly educated and fairly intelligent society. Much more so than America, on the average. In America, there are quite a few black people, Puerto Ricans and Mexicans. On the average, it is still very low.”¹⁰⁶

Similarly, Michio Watanabe, a former Finance and Trade Minister and then-Chairman of the Policy Research Council of the Liberal Democratic Party of Japan, felt compelled to insult black Americans when contrasting U.S. society with Japanese society. Watanabe criticized U.S. savings and consumption practices and blamed rising

¹⁰². Id.

¹⁰³. Kate Elwood, *Sexual Stereotypes Affect Racial Attitudes*, JAPAN ECON. J., Nov. 3, 1990, at 10. “Every night on base you’ll see young women waiting to pick up a black man,” states one wife of a U.S. serviceman. Id. In this article, a Japanese woman reveals that she views black men as “a straight tool (to relaxation)” and “pure amusement.” Id. (parentheses in original).


¹⁰⁵. Elwood, supra note 103, at 10. Japanese women engaging in relationships with black men have been compared to prostitutes by national political leaders and have been denounced for their licentious ways. Id.

household debt problems on black Americans. Watanabe commented that

[i]t[hey use credit cards a lot. They have no savings, so they go bankrupt. If Japanese become bankrupt, they think it serious enough to escape into the night or commit family suicide. But among those guys over there are so many blacks and so on, who would think nonchalantly: "We're bankrupt, but from tomorrow on we don't have to pay anything back. We just can't use credit cards any more." 107

Watanabe apologized and retracted his earlier words, stating, "I made misleading and inadvertent remarks, though in no sense did I ever imply any racial discrimination." 108 Mr. Watanabe's comments were condemned as inaccurate and illogical in an editorial by the Nihon Keizai Shimbun, a leading Japanese newspaper. 109

Most recently, the Japanese Minister of Justice, Seiroku Kajiyama, stated that foreign Asian prostitutes in Japan threaten the community in the same way that "[b]ad money drives out good money, just like in America where the blacks came in and drove out the whites." 110 Prime Minister Toshiki Kaifu quickly apologized for his cabinet minister's remark, stating, "It was gravely inappropriate and I regret that such a statement was ever made." 111

Minister of Justice Kajiyama, however, initially attempted to parry criticism of his comments: "I intended to say that we must take measures to solve this problem. I did not mean to talk about racial issues." 112 Later, Kajiyama's clarification became an apology. While admitting that his remarks may have been "inappropriate and wrong," he stated that they were "not at all related to racial discrimination." Kajiyama opined that "[i]n Japan, there is no discrimination against any races." He blamed any apparent insensitivity on the fact that Japan "may not have a rich sensitivity toward racial questions" due to a lack of "experience in communicating and intermingling with different nationalities." 113

The scathing remarks of Nakasone, Watanabe, and Kajiyama did not go unnoticed by Americans. Nakasone's disparaging remarks

108. Id.
109. Id. The editorial noted that "[m]aking a general statement that all black people are nonchalant about their life plans is very crude. [Watanabe] should know from Prime Minister Nakasone's intellectual level incident that the sensitivity toward racial issues in the United States is very keen." Id.
110. Kunii, supra note 67.
111. Id.
Unwelcome Imports

Unwelcome Imports sparked a boycott of Japanese goods by the League of United Latin American Citizens (LULAC). Jesse Jackson threatened a boycott of Japanese products by black Americans in response to Nakasone’s comments and also expressed his concerns directly to Nakasone. In April 1987 a delegation from the Congressional Black Caucus visited Japan and met with Nakasone, admonishing him for his comments and reminding Nakasone of the purchasing power of black Americans. Nakasone visited the United States in May of 1987 and met with the Congressional Black Caucus.

The Hispanic Caucus visited Japan in August of 1987 and also met with Nakasone. Nakasone apologized to the Hispanic community for his comments, stating that he recognized the importance of the Hispanic community in America and stressing that his remarks were misunderstood. Representative Esteban Torres, the Hispanic Caucus delegation head, expressed his opinion that “Hispanic-Americans are willing to put aside their disappointment over the Japanese Prime Minister Yasuhiro Nakasone’s derogatory remarks on their education level and take this opportunity as a time for a new opening.”

Watanabe’s slurs were similarly criticized by other U.S. political leaders. A diverse, bipartisan group made up of twenty members of Congress delivered a response to Watanabe’s comments and informed Nobuo Matsunaga, the Japanese Ambassador to the United States, that they were “deeply offended by the racist depiction of blacks.”

114. Boycott, UPI, Dec. 12, 1986, available in LEXIS, Nexis Library, UPI File. LULAC instituted the boycott to force Nakasone to retract his statements. Id.


116. See Nakasone Hopes for Better Relations with U.S. Blacks, Kyodo News Service, Apr. 13, 1987, available in LEXIS, Nexis Library, INTL File. Nakasone told the Congressional Black Caucus delegation that Japanese firms were trying to increase communications with U.S. minorities and requested that the Caucus communicate more frequently with the Japanese embassy in the United States. Id.

117. Thornton, supra note 106, at A23. According to the late Rep. Mickey Leland (D-Tex.), “[o]bviously the Prime Minister has been made very sensitive about the concerns of ethnic minorities in this country.” Id. The Nakasone meeting with the Caucus was part of two days of meetings with President Reagan to discuss lowering tariffs on Japanese goods. Id.

118. Nakasone Apologizes to Hispanic-Americans for Racial Slight, Reuters Library Report, Aug. 28, 1987, available in LEXIS, Nexis Library, REUTERS File. A retraction of the Nakasone comment was sought by Hispanic leaders, not an apology. The unsolicited apology was not accepted because, according to G. Ruben Jauregui, president of the LATIN Business Association, “[w]e thought it should be left untouched.” Id.


120. Gilliam, supra note 94, at D3.
Members of the Congressional Black Caucus joined forces with two Japanese-American members of Congress to lambast the blatant insensitivity of Watanabe's comments. Representative Robert Matsui (D-Cal.) explained,

This is not an issue that only the black community is concerned about. This is an issue that all Americans must and have to be concerned about when you have a great power such as the nation of Japan showing the kind of insensitivity that we've seen over the last few years.121

Kajiyama's comments drew the greatest amount of attention from Americans and U.S. political leaders. The Congressional Black Caucus sought the resignation of Minister Kajiyama122 and the U.S. House Foreign Affairs Committee condemned Kajiyama's statement.123 The NAACP instituted an "informational picket line" at the Japanese embassy in Washington, D.C.124

With Kajiyama's comments as the focal point of their criticism of Japanese racism, twenty-three members of Congress tackled the comments of Nakasone, Watanabe, and Kajiyama in a concurrent resolution expressing outrage "regarding racially offensive remarks by officials of the Japanese Government."125 This resolution notes that the "continuing reprehensible comments by officials of the Japanese Government are clear evidence of the deep, pervasive and fundamental racism endemic in that country's government."126 The resolution cites the contributions of the United States and of black Americans to Japan's postwar development and the role of black troops in the Persian Gulf in protecting interests vital to Japan as well as the United States.127 The resolution acknowledges the past apologies of Kaifu and Kajiyama but nonetheless observes that "despite these words of...

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121. Robert Shepard, Blacks Angry over Japanese Practices, UPI, Aug. 3, 1988, available in LEXIS, Nexis Library, UPI File. Representative Norman Mineta (D-Cal.) stated, "[T]he racism now on display in Japan angers me." Id. Mineta said, "What angers me more is the reluctance to learn from their own mistakes ... a reluctance in Japan to accept the fact that the products we're citing here today and the underlying attitudes which they embody are racist and offensive." Id. Representative Mineta's statement on Watanabe's comments were made in tandem with the Sanrio Corporation's Sambo line controversy.


123. Les Payne, With Japan, Stereotypes Cut Two Ways, NEWSDAY, Oct. 21, 1990, available in LEXIS, Nexis Library, NEWSDY File. Representative Charles Rangel (D-N.Y.) led the attack on Kajiyama, decrying that racist comments are "a national sport of Japan." Id.

124. Robert C. Toth, Blacks Pressing Japanese to Halt Slurs, Prejudice, L.A. TIMES, Dec. 13, 1990, at A5. After ending the "informational picketing," the NAACP suspended plans for a mass demonstration against Japan. However, Benjamin L. Hooks, Executive Director of the NAACP, stated, "This is far from being a closed issue." Id.


126. Id. at 2.

127. Id. at 2-3.
apology, the United States Congress has witnessed little evidence on the part of the Japanese Government to recognize the gravity of the situation and to initiate actions to combat the insensitive stereotyping of African Americans.”

After determining that “the vitality of our economic relationship necessarily depends upon a basis of mutual respect which cannot be fostered in a climate of racism and antagonism,” the resolution concludes as follows:

[I]t is the sense of Congress that (1) the President should request an official apology to all Americans, in particular African Americans, from Prime Minister Toshiki Kaifu, for the remarks of Justice Minister Seirouku Kajiyama, (2) immediate and direct action be taken by Prime Minister Toshiki Kaifu and his administration to combat the racist attitudes which prevail among Japanese Government and corporate officials and to engage in an aggressive educational initiative to expose and enhance the understanding of the Japanese people regarding the positive elements of multiethnic and multiracial societies, and (3) as one of the world’s leading democracies, the Government of Japan should demand of its officials the highest level of respect for the diverse peoples of the world.

Minister of Justice Megumu Sato succeeded Kajiyama in December of 1990 and promptly announced a campaign to improve sensitivity to minorities and human rights. Sato pledged to hold a series of symposia, lectures, and advertisements to promote understanding of minority concerns. Minister Sato also promised to support the proposal of legislation that will protect Korean and Taiwanese residents from deportation and help them to establish permanent residency in Japan, and also to cease the fingerprinting of Japan-born Koreans.

B. Sexism in Japan

Although Japan has at various times in its history been led by women, at present, women are the victims of discrimination in the corporate culture of Japan. Even women who have degrees from prestigious universities are often shut out of managerial positions and

128. Id. at 3.
129. Id. at 3-4.
131. Id.
132. Notable Japanese women historical leaders include the Empress Jingo (200-69 A.D.), Empress Suiko (592-628 A.D.), Empress Jito (687-97 A.D.), Empress Gemmyo (707-15 A.D.), and Empress Shokutu (764-70 A.D.), who also ruled as Empress Koken (749-58 A.D.). These women are credited with the spread of Buddhism, establishing the first legal code (the Taiho Code of 701), and leading troops into Korea. JANE CONDON, A HALF STEP BEHIND: JAPANESE WOMEN OF THE ‘80S, at 2-3 (1985).
relegated to typing and serving tea.\textsuperscript{133}

This change in the role of women is due in part to the rise of neo-Confucian thought through the years. During the Tokugawa Era,\textsuperscript{134} Confucian writings placed women in roles subservient to men and boys. The book, \textit{Onna Daigaku} (Great Learning for Women), details the lowly position of women in the Tokugawa Era, specifying a woman's chores and duties.\textsuperscript{135}

During the Tokugawa Era, infanticide of female babies was commonplace, demonstrating the low value Japanese society placed on female life.\textsuperscript{136} Even after the Meiji Restoration,\textsuperscript{137} women workers were often oppressed, and typically sold to "labour-bosses" by male family members.\textsuperscript{138} Although the Japanese government prohibited the selling of women and girls in 1872, brokers continued to purchase women to be indentured servants, prostitutes, and \textit{geishas} well into the twentieth century.\textsuperscript{139} The few fortunate women who were able to obtain educations typically went unrewarded in Japanese society.\textsuperscript{140}

Although forced labor and infanticide have ceased in Japan, the negative view of women has not changed. One example is a comment by then-Director General of the Cultural Affairs Bureau, Miura Shumon. Mr. Shumon noted in an article that the rape of "modern young women" who have declining morality is "not so bad."\textsuperscript{141}

Given this perception of a woman's role in society, it is not surprising that Japanese women face discrimination in employment. Women applicants at one large Japanese employer are evaluated according to blatantly biased hiring standards. The secret hiring guidelines for the Japanese bookstore chain Kinokuniya Shoten designated the following women unsuitable for employment: "divorcees, women who belong to

\begin{itemize}
  \item \textit{Michigan Journal of International Law} [Vol. 13:1
  \item relegated to typing and serving tea.\textsuperscript{133}
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\textsuperscript{134} \textit{See supra} note 31.

\textsuperscript{135} \textit{See} \textit{Japan: The Shaping of Daimyo Culture} 1185-1868, at 43-44 (Yoshiaki Shimizu ed., 1988). According to the \textit{Onna Daigaku}, a woman "must sew her father-in-law's and mother-in-law's garments and make ready their food. Ever attentive to the requirements of her husband, she must fold his clothes and dust his rug, rear his children, wash what is dirty, be constantly in the midst of her household, and never go abroad but of necessity . . . ." \textit{Id.} at 44.

\textsuperscript{136} \textit{Condon}, \textit{supra} note 132, at 3.

\textsuperscript{137} \textit{See supra} note 35.

\textsuperscript{138} \textit{Halliday}, \textit{supra} note 44, at 54, 63.

\textsuperscript{139} \textit{Hane}, \textit{supra} note 25, at 208, 210-11. Brokers openly advertised their willingness to purchase women and girls. During the famine of 1934, thousands of women were sold into service as prostitutes, \textit{geishas}, and sake-waitresses who slept with customers. \textit{Id.}

\textsuperscript{140} Carol Gluck, \textit{Japan's Modern Myths} 168 (1985). Educated women in the late Meiji Era were not considered good marriage candidates and were viewed as "less prepared for their role as 'good wife, wise mother,','" and as "females not suited to the countryside." \textit{Id.}

political or religious groups, women who respect passionate artists such as Vincent Van Gogh . . . , women living in rented rooms and daughters of professors or wives of teachers.”

Japanese women are not able to use their ability to the utmost in the workplace. Female college graduates are often limited to employment as “office ladies” or “OLs.” Despite their educational accomplishments, these “flowers of the office” greet visitors, tidy desks, and perform tasks that do not require any responsibility. As well, these “office ladies” are typically shunned by men. Prestigious firms like Nomura Securities select office ladies on the basis of their appearance in addition to their professional ability. Nomura office ladies are drilled by former Japan Air Lines stewardesses in bowing, walking, smiling, telephone etiquette, tea service, and sitting. According to an internal company training memorandum, Nomura office ladies are “taught to serve men” and, in a manner similar to the Burakumin of old, may not even drink tea in the presence of Japanese men. Instead, Nomura women workers “must drink [their tea] in the washroom, not in public.”

Women at every level of professional life are subject to employment discrimination in Japan. An example of this occurred in May 1985, when then-Deputy Foreign Minister Mayumi Moriyama was barred because of her sex from playing in a semiannual tournament between the Foreign Ministry and the Tokyo Ambassadors at the prestigious Koganei Country Club. Although Foreign Minister Shintaro Abe withdrew from the tournament because his deputy was snubbed, he permitted the tournament to continue due to “its friendly nature.” Ms. Moriyama angrily stated, “In Japan, golf is often con-

142. Exposure of an In-house Document From a Leading Japanese Bookstore Has Drawn Attention to Japanese Management’s New Secret Weapon: Women, Kyodo News Service, Mar. 11, 1983, available in LEXIS, Nexis Library, INTL File. The secret document also prohibits the hiring of “ugly women,” “short women—those less than 140 centimeters,” and “women with spectacles.” Id. The document was revealed by a Japanese union group. Approximately 60% of the Kinokuniya Shoten labor force is women. Id.

143. For a detailed discussion of the role of “office ladies,” see JON WORONOFF, JAPAN’S WASTED WORKERS 125-28 (1985).

144. See DANIEL BURSTEIN, YENI: JAPAN’S NEW FINANCIAL EMPIRE AND ITS THREAT TO AMERICA 173 (1988). According to Burstein, the Nomura Securities personnel office, sensitive to the long hours its male employees must work, hires attractive women as “office ladies” to provide male workers with prospective spouses and dates. Id. at 173-74. See also ALBERT J. ALLETZHAUSER, THE HOUSE OF NOMURA 188 (1990).

145. ALLETZHAUSER, supra note 144, at 190.

146. Id.


148. Id. Officials of the Koganei Country Club offered no apologies and claimed that they would similarly bar Queen Elizabeth or Margaret Thatcher from playing on weekends (weekdays are the only days women may play at the club, which has no women members). Id.
nected with work. As a career woman, I can't overlook this discrimination."

The Moriyama incident occurred one month after Japan's Equal Employment Opportunity Law went into effect. Japan ratified the U.N. Convention on nondiscrimination against women on June 26, 1985, five years after the Japanese government signed the convention. The Japanese Equal Employment Opportunity Law "requests" that Japanese firms make efforts "to provide women with equal opportunities in hiring, promotion, training, fringe benefits, retirement and termination." The new law states that the Japanese government should "endeavor" to assist the return to the workplace of women who left to raise families.

Perhaps the most significant development for employed Japanese women is the newly revised Labor Standards Law. Women employed as supervisors or managers or in skilled positions will now be permitted to work overtime and on holidays. Japanese women may now legally work underground and in dangerous or harmful jobs, as long as they are not pregnant or nursing. The Equal Employment Opportunity Law also extends maternity leave for women workers to eight weeks, and permits women to bring actions in district court for violations of these provisions.

Notwithstanding these new laws, Japanese women substantially trail their male counterparts in educational and employment opportunities. As of 1988, the percentage of Japanese women attending four year colleges was 14.4%. This is less than half of the percentage of Japanese men in four year colleges, which was 35.5%.

149. Id.
152. Id. The Equal Employment Opportunity Law is the result of compromise between conservatives and the Japan Socialist Party. As a mark of this uneasy truce, the law fails to mandate actions to end discrimination and merely encourages employers to take various steps. Unlike the counterpart U.S. law, there are no sanctions for companies that violate the Japanese law. Id. However, Moriko Yamamoto of the Women's Bureau of the Ministry of Labor stated that "[s]omeday [the Japanese] law will be changed and may include punishments." Id. at 16.
153. Id.
154. Id.
155. Id.
156. STAFF OF JOINT ECONOMIC COMM., 101ST CONG., 2D SESS., STUDY PAPERS ENTITLED JAPAN'S ECONOMIC CHALLENGE 261 (Comm. Print 1990). These numbers, albeit still low, represent a marked improvement according to recent studies. In 1985 it was reported that only 2.8% of Japanese women had graduated from four-year colleges. The percentage of men at this time was 13.5%. The increase in Japanese women college students vis-à-vis male students is encouraging. Id.
remain underrepresented in Japanese management and comprise only 6.6% of all Japanese managers.\textsuperscript{157} As a response to the new laws, many Japanese firms may adopt a two-tiered employment system for college graduates. There is concern, however, that the new two-tiered systems will merely result in men entering the managerial track, with opportunities for training and promotion, and women entering a clerical track, with little or no opportunity for training or promotion.\textsuperscript{158}

It is questionable whether Japanese leaders are truly committed to equality for women. For example, in a speech given on February 9, 1988, then-Prime Minister Noboru Takeshita recommended that the social status of women be improved. During a question-and-answer period after this speech, Takeshita questioned the likelihood of his party running women candidates in the next election because, he maintained, “physical strength is required by members of the House of Representatives.”\textsuperscript{159}

There are signs of improvement, however. In July 1990 the Tokyo District Court awarded 96 million yen to a class of eighteen women in a landmark sex discrimination case.\textsuperscript{160} This litigation took ten years to wind through the Japanese courts, but the court finally held that the female employees of the Social Welfare Medical Treatment Compensation Fund had been unlawfully denied promotion in violation of Article 14 of the Japanese Constitution.\textsuperscript{161} The three-judge panel also held that the employer's actions violated the Labor Standards Law, which bars employers from gender-based salary discrimination. Unfortunately, the court’s decision failed to grant the plaintiffs’ demands for promotion and lost compensation in the amount of 110 million yen.\textsuperscript{162}

On the same day the decision was announced, forty women members of the Japanese Diet—all of whom were members of the opposition party to the ruling Liberal Democratic Party—petitioned the government to create a Women Affairs Department at the Cabinet level.\textsuperscript{163} The petition followed the appointment of Sakutaro

\textsuperscript{157} Id. This number represents less than 1% of the women in the Japanese workforce. Id.
\textsuperscript{158} Id. at 266.
\textsuperscript{159} \textit{Takeshita Calls for Improvement in Women's Status}, Kyodo News Service, Feb. 9, 1988, available in LEXIS, Nexis Library, INTL File.
\textsuperscript{161} Id.
\textsuperscript{162} Id. Approximately half of the Fund's 6,000 employees are women, and it is estimated that 290 women were unfairly denied promotion by the Fund. Id.
Takahashi, a man, as head of the Women's Bureau.\textsuperscript{164}

Thus, evidence of discrimination against racial and ethnic minorities in Japan, such as the Ainu, the Burakumin, the Koreans, the Pakistanis, Jews, and black Americans, including the popular press's image of such minorities, and the lack of opportunities for women and the poor treatment of women, indicates that racist and sexist attitudes are widely accepted in Japan and may be brought with the Japanese to their investments in the United States.

II. DISCRIMINATION IN THE UNITED STATES BY JAPANESE FIRMS

A. Racism

Despite the high visibility of its investments, Japan has only recently become one of the world's leaders in foreign direct investment.\textsuperscript{165} When Japanese firms make direct investments in the United States, they bring with them capital, technology, and Japanese business practices.\textsuperscript{166} Given the level, nature, and amount of discrimination present in Japan, it seems likely that Japanese firms would export sexist and racist attitudes and policies when they invest in the United States.

1. Japanese Discriminatory Site Selection and Hiring Practices

A study by the Southern Growth Policies Board chronicles the growth of Japanese investment in the southern United States and reports a nineteen percent annual growth rate in Japanese-created employment opportunities for the period 1977 to 1988.\textsuperscript{167} While the southern United States is known to have lower production costs than other parts of the country and to have a large black population, the author of the study, Douglas Woodward of the University of South Carolina, concludes that Japanese site selection in the South is based on factors other than production costs. Woodward maintains that Japanese racism deters them from building plants near areas with

\textsuperscript{164} Id. The Yomiuri Shimbun, one of Japan's major daily newspapers, hailed the appointment, stating that "the nomination of a man [to the Women's Bureau post] indicates the ministry's goal of strengthening the administration for women by involving more men in it." Id.

\textsuperscript{165} Daniel I. Okimoto, Outsider Trading: Coping with Japanese Industrial Organization, in THE TRADE CRISIS: HOW WILL JAPAN RESPOND? 85, 103 (Kenneth B. Pyle ed., 1987). Japan is the world's third leading foreign investor, surpassed only by the United States and the United Kingdom. Id. The United States is the leading site of Japanese foreign investment. Id.

\textsuperscript{166} William J. Holstein et al., Mighty Mitsubishi is on the Move, BUS. WK., Sept. 24, 1990, at 98. This article details the growing influence in the United States of several Japanese keiretsu, which are closely knit conglomerates or groups of companies, focusing on the Mitsubishi keiretsu.

\textsuperscript{167} Moonlight and Bonsais, ECONOMIST, July 7, 1990, at 30.
large black populations.\textsuperscript{168}

Similarly, a study of Japanese auto plants in the United States reveals that Japanese firms build plants away from areas that have substantial black populations.\textsuperscript{169} Robert E. Cole and Donald R. Deskins, in a study on black hiring at four large Japanese auto plants in the United States, identify “a consistent pattern” of Japanese plants being constructed at least thirty miles from the nearest black population center.\textsuperscript{170}

According to the Cole and Deskins study, although blacks account for 10.5\% of the population in the hiring area of the Honda plant in Marysville, Ohio, only 2.8\% of that plant’s workers are black.\textsuperscript{171} The Nissan plant in Smyrna, Tennessee has a workforce that is 14\% black while the area’s population is 19.3\% black. Similarly, the Mazda facility in Flat Rock, Michigan is located in an area that has a black population of 29\%, yet the firm’s labor force is only 14.1\% black.\textsuperscript{172} Only a General Motors-Toyota joint venture (NUMMI) in Fremont, California earned high marks for minority hiring, with a work force that is 23\% black and 28\% Hispanic.\textsuperscript{173} According to the Cole-Deskins study, the NUMMI facility “has achieved an enviable reputation for quality and productivity.”\textsuperscript{174}

The Japanese pattern of choosing plant locations to avoid significant minority populations has also been described by Dennis Des Rosiers, a Canadian auto industry consultant who has assisted Japanese auto manufacturers in site selection. According to Des Rosiers, [the Japanese] ask for profiles of [the] community by ethnic background, by religious background, [and] by professional makeup . . . . There’s aspects (sic) that they like. They like a high German content. Germans have a good work ethic—well-trained, easy to train, they accept things

\textsuperscript{168} Id.


\textsuperscript{170} Holusha, supra note 169, at A28. A spokesman for the Japanese manufacturers challenged the study, claiming that the decisions were made because “land was available, there was good road and rail transportation, it was near the supplier base and there was an available workforce.” Id.


\textsuperscript{172} Holusha, supra note 169, at A28.

\textsuperscript{173} Cole & Deskins, supra note 104, at 14. The authors of the study, while applauding the G.M.-Toyota hiring successes, note that the hiring practices were established by a collective bargaining agreement. Id.

\textsuperscript{174} See id.
During their study, Cole and Deskins were told by one official of a Midwestern state, who had wooed Japanese investment to his state, that "many Japanese companies at the time specifically asked to stay away from areas with high minority populations."176

A Nomura Securities brochure touting Oregon as a site for Japanese investment because the state has a low minority population is another example of blatant Japanese racism in site selection.177 California is similarly recommended by JETRO as a site for investment because the state has large numbers of Asians, promising "high quality employees."178

Japanese firms have frequently been the target of employment discrimination actions. Honda paid approximately $6 million in a 1988 settlement of an Equal Employment Opportunity Commission (EEOC) investigation of racial and sexual discrimination occurring between 1983 and 1986 at the Marysville, Ohio facility.179 In addition to the cash settlement, Honda hired over 350 blacks and women who had earlier been denied employment.180 Honda paid a settlement in 1987 of $460,000 in back pay to eighty-five people in connection with an EEOC investigation of age discrimination.181 After paying these settlements, Honda prepared an internal report on U.S. racial issues. The Honda report cited Japanese investment in South Africa and the absence of Honda minority dealership programs.182 Honda Vice President for North American Operations, Tetsuo Chino, has vowed that


176. Cole & Deskins, supra note 104, at 18. This problem of minority avoidance in site selection is not solely a practice of foreign firms. During discovery for a recent civil suit, correspondence of the defendant surfaced in which it had told an industrial development expert that it wanted to locate in an area where the minority population was under 33%. Industrial recruiters and researchers in several states, notably Mississippi, Georgia, and Alabama, have concurred that this was and still is a practice used by a number of firms. Reginald Stuart, Business Said to Have Barred New Plants in Largely Black Communities, N.Y. TIMES, Feb. 15, 1983, at A14.

177. James B. Trecce, What the Japanese Must Learn About Racial Tolerance, BUS. WK., Sept. 5, 1988, at 41. This brochure was rewritten after Nomura discovered that some Americans might consider the brochure offensive. Id.

178. Cole & Deskins, supra note 104, at 18. Cole & Deskins report that a possible reason that the Japanese prefer California as a site of investment is their desire to replicate the successful work and labor conditions found in Japan. Id. Japanese investment is essential to and actively sought after by many states. Tennessee Governor Ned McWherter recently stated, "[Japan] is what our future is all about." Carla Rapoport, The Big Split, FORTUNE, May 6, 1991, at 38, 40.


Honda will hire more women and blacks.\textsuperscript{183}

Similarly, Nissan paid ninety-two people $600,000 to settle an EEOC investigation in 1989. The ninety-two individuals (women, blacks, Hispanics, and people over forty years of age) alleged that they had been denied employment, denied promotion, or had been terminated on the basis of their race, sex, or age.\textsuperscript{184}

Another Japanese company that has been investigated by the EEOC is Recruit Company. Recruit operates two employment agencies in the United States: Recruit USA and Interplace/Transworld Recruit.\textsuperscript{185} The EEOC, assisted by former Recruit staffers, uncovered a "shocking pattern of race, sex, national origin, and age discrimination."\textsuperscript{186} According to the EEOC, the Recruit operation utilized code words to designate the preferred race of a job candidate. For example, the notation "see Adam" on a Recruit document means send the client a white man, while "talk to Haruo" designates a preference for a Japanese candidate.\textsuperscript{187} On March 11, 1991, the EEOC filed suit against Recruit for sex, race, national origin, and age discrimination.\textsuperscript{188}

Similarly, Hitachi Consumer Products of America was charged by the California Fair Employment and Housing Department with race discrimination in hiring. California investigators found a Hitachi work force that was 50% Asian and 25% black in Compton, California, in an area where 75% of the residents are black and only 1.7% are Asian.\textsuperscript{189}

Recently, in a questionable action, Japan-based Ricoh Corporation dismissed a group of midlevel managers and workers at a San Jose, California plant as part of a reduction of its workforce. Despite this reduction, however, no Japanese managers or employees were laid off.\textsuperscript{190} EEOC investigators have determined that the incident at the California Ricoh facility "was tainted with national origin bias," and that less-qualified Japanese employees had been retained or promoted in lieu of qualified U.S. employees.\textsuperscript{191} The EEOC also concluded that the dismissed Ricoh plaintiffs had reasonable cause to warrant legal

\textsuperscript{183} Id.
\textsuperscript{184} Iwamitsu, supra note 181, at 13.
\textsuperscript{186} Id.
\textsuperscript{187} Id.
\textsuperscript{191} Id.
Other Japanese firms that face lawsuits alleging race or national origin discrimination include Fujitsu Systems of America, Dai-Ichi Kangyo Bank, and Matsushita-Quasar. Even video-game giant Nintendo finds itself the defendant in a race discrimination action filed by twenty-six black Americans in Seattle, Washington.

Lawsuits have been multiplying so rapidly that Congress has become interested in investigating how well foreign-owned companies comply with equal opportunity and non-discrimination laws. The House Government Operations Subcommittee on Employment and Housing held hearings in August 1991 on the topic. Several former employees of Japanese-owned firms testified. One employee of Toyota Technical Center, who had been employed there for ten years, was denied promotion to general manager of administration because, he alleges, he had opposed differential treatment of U.S. staff. He noted that the firm had created dual management positions in which a U.S. and a Japanese employee filled the same position, and the U.S. employee reported to the Japanese employee.

Another employee, a black woman, testified that she was fired after eighteen months with Sanwa Bank of California. Her supervisor reportedly told her “the reason blacks [can’t] get ahead [is] because [blacks are] lazy.”

NEC Corporation was criticized by Representative Tom Lantos (D-Cal.), who chairs the subcommittee, for having only one U.S. citizen out of seven top employees and only one minority employee out of 170 middle managers.

2. Japanese Discriminatory Lending Practices

Foreign-owned banks presently control approximately 21.5% of all U.S. banking assets, including 58% of all bank assets in New York and 33% of all bank assets in California. Given the business prac-
tices developed above, it is not surprising to see that Japanese-owned banks in the United States engage in discriminatory lending practices. In addition to being sued by a former employee for race and national origin discrimination in hiring, Dai-Ichi Kangyo Bank of Japan, the largest bank in the world, has been charged with discriminatory lending practices. Former employees of the bank reported that bank policy required loan officers to treat any loan application by a Hispanic person as "high risk," despite proven ability to pay or adequate collateral.\footnote{See Hock, supra note 193, at 1. Dai-Ichi Kangyo officials are also alleged to have characterized a loan with a U.S. government guarantee as high risk due to their perception that the U.S. government was bankrupt. \textit{Id.}}

The allegations of discriminatory lending at Dai-Ichi Kangyo come at the same time as allegations of "redlining" by other Japanese banks. "Redlining" refers to a commercial lending practice of marking certain geographic areas as "too risky" for loans.\footnote{\textit{Id.}} Recently, the San Francisco-based Greenlining Coalition\footnote{The Greenlining Coalition is a diverse community-action group founded in 1979. See George Dean \textit{&} Robert Gnaizda, \textit{Greenlining: An Equal-Opportunity, Grass-Roots Antidote to Redlining}, L.A. TIMES, May 13, 1990, at M5.} urged Japanese banks in California to make appropriate commitments and develop a nondiscriminatory lending policy.\footnote{\textit{Id.} Under the Community Reinvestment Act of 1977, as a condition of merger approval banks must lend their funds in the areas where their depositors reside. 12 U.S.C. §§ 2901-05 (1989).} As a result, when Japanese-controlled California First purchased Union Bank, the new entity subsequently invested some $42 million in depressed areas. The bank also agreed to name minorities and women to its board.\footnote{Dean \& Gnaizda, supra note 203, at M5.} In 1989 Union Bank made $59 million in loans to low-income projects and developments.\footnote{Jan Shaw, \textit{Banks Discover Reinvestment Act Not To Be Ignored}, S.F. BUS. TIMES, Apr. 2, 1990, at 11. The Bank of Tokyo owns 77\% of Union Bank.} Robert Gnaizda, legal counsel to the Greenlining Coalition, claims these loans are a victory for the Coalition, but bank officials deny that their decision was influenced by the Coalition.\footnote{Dean \& Gnaizda, supra note 203, at M5.}

The Coalition’s efforts seek bank adherence to the Community Reinvestment Act of 1977 (CRA) which mandates that "[f]ederal financial supervisory agencies assess the institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution."\footnote{12 U.S.C. § 2903 (1988).} Federal regulators are required to "take such
record into account” when evaluating “application[s] for a deposit fac-
cility” by financial institutions. The goal of the CRA is to “require
each appropriate Federal financial supervisory agency to use its au-
thority when examining financial institutions, [and] to encourage such
institutions to help meet the credit needs of the local communities in
which they are chartered.”

Under the CRA, federally-chartered banks are evaluated by the
Office of the Comptroller of the Currency, while state-chartered
Federal Reserve member banks and holding companies are evaluated
by the Federal Reserve. CRA compliance by state-chartered banks
and savings banks that are not members of the Federal Reserve is
monitored by the Federal Deposit Insurance Corporation, while
CRA compliance by savings associations and savings and loan holding
companies is monitored by the Office of Thrift Supervision. CRA
compliance is evaluated under five categories: ascertainment of com-
munity credit needs; marketing and types of credit offered and ex-
tended; geographic distribution and record of opening and closing
offices; discrimination and other illegal credit practices; and commu-
nity development. The financial institutions are assigned ratings of
outstanding, satisfactory, needs to improve, or substantial noncompli-
ance based upon their CRA evaluations. These written evaluations
and ratings may be disclosed to the public.

Given the increased focus on CRA compliance and the visibility of
international lenders, it was not surprising that the U.S. operations of
Mitsui Bank Ltd. came under the scrutiny of federal regulators and
the Greenlining Coalition. The Coalition maintains that Mitsui
Bank has been unwilling to lend to minorities in violation of
the CRA. On February 22, 1990, representatives of several

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209. Id.
215. See Federal Financial Institutions Examination Council Uniform Interagency Commun-
ity Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised As-
217. Id. For a detailed analysis of the CRA, see Robert C. Art, Social Responsibility in Bank
Credit Decisions: The Community Reinvestment Act One Decade Later, 18 PAC. L.J. 1071 (1987);
see also Warren W. Traiger, Federal Community Reinvestment Act (CRA) Compli-
ance (1990), available in Westlaw, JLR file.
218. Dean & Gnaizda, supra note 203, at M5.
219. Peter F. Blackman, Bank Merger May be Affected by Lending Protests, L.A. Bus. J.,
community-action organizations protested the proposed merger of Mitsui Bank and Mitsui Manufacturers Bank and urged the Federal Reserve to block this transaction.\textsuperscript{220} Activists also picketed the offices of Taiyo Kobe Bank, Mitsui’s merger partner.\textsuperscript{221}

Mitsui representatives stated that the bank “has met its CRA obligation and has a good record of meeting community credit needs.”\textsuperscript{222} According to Jerry W. Johnston, president of Mitsui Manufacturers, “[the bank] lend[s] basically to small- and medium-sized businesses . . . [which] are as important a credit need to serve as single-family mortgage lending.”\textsuperscript{223} Johnston believes that Japanese banks are unfairly targeted by protestors and community groups who focus on the size of the bank’s international operations “even though CRA has no extraterritorial authority.”\textsuperscript{224} Johnston asserts that “[t]he activists are asking Mitsui to take deposits out of Japan and lend here, and that exactly fits the definition of redlining, which the CRA was originally directed against.”\textsuperscript{225} Mitsui, nevertheless, agreed to meet with the Coalition and other activists and admitted that its CRA compliance could be improved.\textsuperscript{226}

Although the Federal Reserve approved the transaction permitting Mitsui to acquire the New York trust unit of Taiyo Kobe Bank, Mitsui was put on notice of its failure to comply with the CRA.\textsuperscript{227} The Federal Reserve noted that Mitsui’s application to convert the New York trust unit of Taiyo Kobe Bank into a bank would warrant a review of Mitsui’s CRA noncompliance.\textsuperscript{228} True to its word, the Federal Reserve announced a hearing to review CRA compliance in December 1990.\textsuperscript{229} The Greenlining Coalition applauded this action by the Federal Reserve. According to the Coalition’s Executive Director, John Gamboa, this was only the second public hearing granted by the Federal Reserve although over 300 public hearings had been requested

\textsuperscript{220. Id. The Federal Reserve has the power to review proposed mergers of banks and to assess compliance with the CRA. Id.}
\textsuperscript{221. Jill Stewart, Activists Oppose Bank Merger, L.A. TIMES, Feb. 23, 1990, at B3.}
\textsuperscript{222. Blackman, supra note 219, at 3. Mitsui Bank points out that it donated $1 million to the California Community Reinvestment Corporation (CCRC). The CCRC is a consortium of 46 banks, capitalized at $100 million, that operates as a blind lending pool offering loans below the market rate. Seventy to seventy-five percent of the CCRC’s loan portfolio is targeted at low-income housing. Id.}
\textsuperscript{223. Id.}
\textsuperscript{224. Id.}
\textsuperscript{225. Id.}
\textsuperscript{226. Id.}
\textsuperscript{227. Sam Zuckerman, Fed Faults CRA Record of Mitsui, AM. BANKER, Mar. 30, 1990, at 2.}
\textsuperscript{228. Id.}
\textsuperscript{229. See Linda Corman, Fed Sets Rare Open Hearing on Mitsui Unit’s CRA Steps, AM. BANKER, Dec. 20, 1990, at 2.}
Simultaneously, the House Banking Committee, chaired by Representative Henry B. Gonzalez (D-Tex.), announced a planned hearing on CRA compliance. Mitsui President Johnston denounced the hearings, stating, "I think it's in the nature of a political circus." While Mitsui maintained this disdain even after the hearings, claiming they "did not find [the hearing] terribly edifying," Federal Reserve representatives believe the meetings were quite informative.

Representatives of the New York-based Taiyo Kobe altered its initial cold-shoulder response and consented to meet with the New York Reinvestment Alliance over the CRA compliance issue. Yasuo Takata, First President of Taiyo Kobe, asserted that the decision to meet with the Alliance was not motivated by the specter of Federal Reserve hearings. Although no agreement was reached by the parties regarding Taiyo Kobe's lending policy, Mr. Takata stressed that "[Taiyo Kobe was] trying to keep in contact with [the Alliance]."


In drawing attention to discriminatory Japanese business practices, it is logical to also cite the paucity of minority-owned Japanese car dealerships and electronics franchises. Eddie Williams, Director of the Center for Political and Economic Studies of Washington, D.C., states that there are only six minority-owned Japanese car dealerships. Williams echoes the earlier observations of Jesse Jackson. Jackson, while visiting Japan in 1986, informed Prime Minister Nakasone and officials of Toyota that "[the United States] essentially

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230. Fed Orders Public Hearing to Examine Japanese Banks' Performance Under CRA, Banking Rep. (BNA), No. 25, at 1019 (Dec. 24, 1990). Bob Moore, Federal Reserve spokesman, acknowledged that these hearings were rare, but compared the process to "something along the lines of a town meeting in New England, a chance to look at the issues." Id.


232. Id.

233. See Teresa Carson, Community Relations: Open Meetings Suit Activists But Bankers Have Doubt, AM. BANKER, Apr. 15, 1991, at 5. Mitsui President Johnston reported that "there was very little in the way of factual material presented." Id.


235. Id.

236. Id.

237. Id.

238. Toth, supra, note 124, at A6. The National Association of Minority Automobile Dealers reports that there is only one minority owner of a Nissan dealership in the United States. This constitutes 0.1% of the total number of Nissan dealers in the United States. Cole & Deskins, supra note 104, at 19. Out of all the Association's 250 dealership members, only 20 imported car dealerships are owned by blacks. Treece, supra note 100, at 41.
Unwelcome Imports

[has] no black [Japanese] auto dealerships or electronics dealerships."\(^{239}\) Jackson charged Japanese firms with the "redlining" of minority firms, accusing the Japanese of demonstrating "total insensitivity to the legitimate business quests" of U.S. women and minorities.\(^{240}\) Jackson threatened a black boycott of Japanese goods unless a "new relationship" was created.\(^{241}\)

4. Japanese Insensitivity Regarding Apartheid

Japanese trade with and investment in South Africa is another source of complaints for many Americans and is further evidence of Japanese racist attitudes. Japan is currently the largest trading partner of South Africa.\(^{242}\) The rise of Japanese trade with South Africa undermines U.S. foreign policy as embodied in the Comprehensive Anti-Apartheid Act of 1986.\(^{243}\) Under the Comprehensive Anti-Apartheid Act, countries that enter into commerce with South Africa to take the place of trade that had existed previously between U.S. and South African firms face U.S. trade sanctions.\(^{244}\) Japanese government officials claim to be embarrassed by the Japan-South Africa trade trends and maintain that they have "put pressure on companies to decrease trade, but [that] the final decision is up to them."\(^{245}\) In response to the rise in trade between Japan and South Africa, Jesse Jackson warned Japanese companies doing business in both the United States and South Africa; he stated flatly, "[Y]ou cannot have access to both markets."\(^{246}\)

B. Japanese Discrimination Against Women in the United States

U.S. women have also fared poorly in dealing with Japanese companies in the United States.\(^{247}\) A study by the University of Michigan

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241. Id. Jackson warned that if the Japanese failed to ameliorate the situation, "[b]lacks would] organize to end the relationship." Id. Toyota has taken steps to improve this situation and now has four black-owned dealerships. Toyota also contributes to the United Negro College Fund and utilizes black suppliers. Treece, supra note 100, at 40.
244. Id., §§ 5082, 5083. The rise of Japanese trade with South Africa is curious due to the Japanese ban on direct investment in South Africa and restrictions on commercial loans to South African businesses. See Holden et al., supra note 242, at 44.
245. Holden et al., supra note 242, at 44.
246. Burgess, supra note 115, at A30. The Jackson warning made in 1986 has apparently gone unheeded by Japanese firms, as evidenced by the rise in Japan-South African trade.
247. It is important to note here that although Japanese firms discriminate against women here and abroad, both male and female Americans have not, in general, been included in the
found that Japanese firms discriminate against women in the workforce and do not allow women to have significant responsibility in Japanese corporations.\(^\text{248}\)

The glass ceiling that many U.S. women confront when dealing with Japanese employers is best exemplified by the landmark decision in *Sumitomo v. Avagliano*.\(^\text{249}\) In *Avagliano*, a class of thirteen U.S. women sued Sumitomo Shoji America, Inc. asserting that "Sumitomo's alleged practice of hiring only male Japanese citizens to fill executive, managerial, and sales positions violated both 42 U.S.C. § 1981 and the Civil Rights Act of 1964."\(^\text{250}\) In defense of its practices, Sumitomo relied on Japan's Friendship, Commerce and Navigation Treaty with the United States.\(^\text{251}\) Sumitomo asserted that its practices were permitted\(^\text{252}\) under the treaty, which states that "companies of either Party shall be permitted to engage, within the territories of the other Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialists of their choice."\(^\text{253}\) However, Sumitomo's interpretation of the Friendship, Commerce and Navigation Treaty creates a conflict with Title VII of the Civil Rights Act, which prohibits discrimination on the basis of race, sex, religion, or national origin.\(^\text{254}\) JETRO filed an amicus brief asserting that applying Title VII to Sumitomo would thwart the spirit of the Treaty and "undercut . . . the ability of Japanese investors to control the key personnel who manage their investments in the United States."\(^\text{255}\)

The U.S. Supreme Court held against Sumitomo, stating that "Sumitomo is 'constituted under the applicable laws and regulations of New York'; based on Article XXII(3), it is a company of the United management of Japanese companies. For example, at Sumitomo Bank of California, 11 of 13 top officials have Japanese surnames. This may include some Japanese American employees. Similarly, the Bank of Tokyo Trust Company in New York has Japanese officers in over 60% of its top positions. Kilborn, supra note 190, at A1, B6.


\(^{249}\) 457 U.S. 176 (1982).

\(^{250}\) 457 U.S. at 178.


\(^{252}\) 457 U.S. at 181.

\(^{253}\) Treaty of Friendship, Commerce and Navigation, supra note 251, art. VIII(1).


\(^{255}\) *Decision in Sumitomo Case Will Influence Foreign Investment, Supreme Court Told*, Int'l Trade Rep. (BNA) No. 117, at 518 (Mar. 3, 1982). JETRO also maintained that the Sumitomo decision was of concern to "other present and potential foreign investors in the United States." *Id.*
States, not a company of Japan." Thus, as a New York company, Sumitomo could not seek refuge under the Treaty for its discriminatory practices.

It took Sumitomo five years to settle the Avagliano lawsuit. Finally, in 1987 Sumitomo agreed to pay $2.8 million to "finance a $1 million training program [for women employees], make $1 million total in cash payments to past and current [women] employees, offer $375,000 total in promotional incentives, pay $15,000 to each of the thirteen plaintiffs . . . , [and] give workers a 16.5 percent wage increase." The agreement gave Sumitomo three years to implement the plan and develop "'Americanized' job titles and descriptions." Sumitomo also vowed to fill 23 to 25% of its management and sales positions with women. Today, Sumitomo denies any wrongdoing and maintains that these changes reflect its decision to "Americanize" its U.S. subsidiary as part of a "world-wide localization" of its subsidiaries.

Sumitomo, however, is not the only Japanese investor that holds discriminatory attitudes toward women. For example, at Mitsubishi International, one of the world's largest trading companies, Personnel Manager Kazuaki Hikida, observed that "[w]omen don't expect to compete with men in Japan." Hikida has expressed his belief that the nature of being a trader at Mitsubishi "involves entertaining a great many foreign visitors. This may mean going out drinking with them, or even taking them to see a movie on Forty-Second Street. Most women don't want to do that." This kind of attitude contributes to the inability of women to advance at many Japanese firms.

Women employees at C. Itoh Company have reported Sumitomo-like problems at work. In a lawsuit that was filed on November 10, 1986 in the Southern District of New York, three women charged C. Itoh. Co. with sex discrimination. Plaintiffs claimed that they were

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256. 457 U.S. at 182.
257. Id. The Japanese Ministry of Foreign Affairs and the U.S. Department of State agreed that subsidiaries of foreign companies incorporated under the law of a U.S. state were not protected by article VIII(1) of the Treaty. Id. at 183.
259. Id.
260. Id. Nearly half of the 500 Sumitomo employees in the United States are women. Id.
261. Id. Lewis Steel, attorney for the plaintiffs, asserted that this case "mirrored the history of the way women were treated in Japan." Id.
262. Tamar Lewin, Sex Bias or Clash of Cultures, N.Y. TIMES, Apr. 8, 1982, at D1, D6.
263. Id.
264. Id.
265. Douglas Frantz, Japanese Unaccustomed to Either: Roles of Working Women, Minor-
not given staff members and had to do their own clerical work, not given business cards, and not introduced to the bankers with whom they talked on the phone. In July 1990 the court certified a plaintiff class consisting of all past and present female employees of C. Itoh’s New York office since 1981.²⁶⁶

Similarly, women employees at Mitsubishi Bank, Ltd. brought a case in the Southern District of New York claiming that the bank denied them opportunities for promotion and relegated trained women analysts to working as administrative assistants.²⁶⁷ The women plaintiffs in the case reported being informed that “promotional opportunities and advancements were reserved for Japanese personnel.”²⁶⁸ The plaintiffs complained that “the work environment, being totally controlled by Japanese managers, was infected with frequent racial remarks asserting the lack of ability, loyalty and commitment of non-Japanese personnel.”²⁶⁹ Mitsubishi Bank officials defended the promotion practices and asserted that familiarity with Japanese language, business culture, and management style are all essential for promotion.²⁷⁰ The plaintiffs disputed this assertion, claiming that “the primary mission of the New York branch has become to provide primary lending for American-based and other non-Japanese corporations.”²⁷¹

In this case the court held that the women plaintiffs “established a prima facie pattern of discrimination based on distinctions between the local and rotating staff.”²⁷² Judge Sifton observed, “[T]he records indicate that the Japanese in the rotating staff have far more promotion opportunities than similarly situated employees in the local staff.”²⁷³ The court determined that

²⁶⁸ 751 F. Supp. at 1552-53.
²⁶⁹ Id. at 1553.
²⁷⁰ Id. Hisao Yokoyama, Chief Manager of Mitsubishi Bank’s General Affairs Department, asserts that there is no company restriction on promoting non-Japanese employees. However, Mr. Yokoyama states that to be promoted, it would be necessary to “acquire knowledge of Japanese culture, social structure and related Japanese institutions.” Id.
²⁷¹ Id. at 1554.
²⁷² Id. at 1561. The rotating staff at Mitsubishi receives training and promotions. This is the opportunity that plaintiffs seek. Id.
²⁷³ Id.
and most management positions for Japanese employees. While Japanese language and business skills may well be a legitimate requirement for many of these positions . . . the Bank has not demonstrated that there is a legitimate business reason that the vast majority of management positions be reserved for the rotating staff.\textsuperscript{274}

Recently, similar allegations of sex and race discrimination were raised in an action against Nikko Securities.\textsuperscript{275} Plaintiffs asserted that only Japanese males receive promotions to officer or upper-echelon status and that women are restricted to working in administrative assistant positions.\textsuperscript{276} Nikko was also accused of "maintaining a company-wide atmosphere of discrimination based on sex, race and national origin."\textsuperscript{277}

\section*{III. Remedial Programs As A Condition of Foreign Direct Investment}

The previous discussion examined problems facing women and minorities who work in enterprises owned by Japanese investors. Foreign direct investment is a privilege extended to the foreign investor. Capital from international investors is welcomed as a benefit to the host State. However, although this foreign capital is welcome, the racist and sexist practices of some multinational corporations are not.

Unlike protectionists who seek to limit future foreign direct investment on national security or reciprocity grounds, I favor an open investment policy. However, such a policy should include the condition that foreign investors behave in a manner consistent with U.S. policies. Accordingly, I propose that legislation be enacted to address concerns that are common to both foreign investors and U.S. citizens. This legislation would condition future foreign direct investment by multinational corporations on their provision of employment, training, promotion, and investment opportunities to women and minorities, above and beyond what is required by existing law.

Legislation such as this is neither radical nor unduly burdensome. The landmark Investment Canada Act of 1985\textsuperscript{278} established Investment Canada\textsuperscript{279} — an agency to review potential foreign direct invest-

\textsuperscript{274} Id.
\textsuperscript{276} Id.
\textsuperscript{277} Id. The Nikko case was dismissed as a class action despite the allegations of female MBAs and other professionals who were denied promotions and employed as secretaries. Id.
\textsuperscript{278} Investment Canada Act, R.S.C., ch. 28, §§ 1-51 (1985) (Can.).
\textsuperscript{279} Id., ch. 28, § 6.
In enacting this legislation, the Canadian parliament "recogniz[ed] that increased capital and technology would benefit Canada." However, the government believed that this legislation was necessary "to encourage investment in Canada by Canadians and non-Canadians that contributes to economic growth and employment opportunities and to provide for the review of significant investments in Canada by non-Canadians in order to ensure such benefit to Canada."

Pursuant to the Investment Canada Act, the Investment Canada Agency evaluates prospective foreign direct investment according to several considerations. The factors to be considered include: "the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment." The Act also requires the Investment Canada agency to consider "the degree and significance of participation by Canadians in the Canadian business or new Canadian business and in any industry or industries in Canada of which the Canadian business or new Canadian business forms or would form a part."

Such a review would not constitute an unfair barrier to trade and investment. According to the recently released report on Unfair Trade Policies and Practices by the Japanese Fair Trade Center, the Investment Canada program has not presented any problems for Japanese firms and Japanese investment in Canada has risen steadily since its enactment.

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281. Investment Canada Act, supra note 278, ch. 28, § 2.
282. Id.
283. Id., ch. 28, § 20(e).
284. Id., ch. 28, § 20(b). Other factors that must be evaluated pursuant to the act are: (a) the effect of the investment on the level and nature of economic activity in Canada, including, . . . the effect on employment, on resource processing, on the utilization of parts, components and services produced in Canada and on exports from Canada;

(c) the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;

(d) the effect of the investment on competition within any industry or industries in Canada;

. . . . [and]

(f) the contribution of the investment to Canada's ability to compete in world markets.
Id., ch. 28, § 20.
The United States has similar legislation that requires a review of foreign direct investment on national security grounds; this legislation is the Exon-Florio Act. 286 An interagency group, the Committee for Foreign Investment in the United States (CFIUS), currently makes this national security evaluation. There have recently been moves to broaden Exon-Florio. 287 Due to the shift in emphasis in evaluating foreign investment proposed here, however, a new interagency group should be fashioned to consider these concerns.

Enactment and application of similar legislation will allow the United States to continue to welcome foreign direct investment while requiring that this investment be consistent with U.S. domestic and international policies. Furthermore, making foreign direct investment conditional on the participation of women and minorities in the new enterprises will support equal opportunity for all in foreign direct investment.

Under the legislation I propose, prospective foreign direct investment would also be evaluated as to the investor's prior investment practices abroad and in domestic markets. If it is determined by the Department of Commerce that the prospective investor has supported the boycott of Israel, or has supported apartheid, or has violated women's or workers' rights internationally, future investment by this multinational corporation may be either denied, or conditioned upon remedial action by the company. For example, assume that Honda wished to make an additional investment in the United States by

287. On August 2, 1991, Congress passed H.R. 991, The Defense Production Act Extension and Amendments of 1991. This act will revive the Defense Production Act (DPA) until September 30, 1991 while permanently reauthorizing the Exon-Florio provision. Another bill, H.R. 3039, The Defense Production Act Amendments of 1991, also contains provisions to reauthorize Exon-Florio but only for a three year term. An additional amendment to the DPA included in H.R. 3039 would require the Department of the Treasury and other agencies to analyze and report to Congress foreign direct investment in the United States, especially acquisitions involving "critical technologies." The classified report would be presented to Congress on the one year anniversary of the DPA reauthorization and every four years thereafter.

As a further expression of congressional dissatisfaction with Exon-Florio and CFIUS, Representative Collins (D-Ill.) introduced H.R. 2624, The Technology Preservation Act of 1991, on June 12, 1991. This legislation would require CFIUS to investigate "any acquisition of a U.S. company involving 'critical technology.'" CFIUS would also be required to "solicit appropriate assurances" from foreign investors purchasing this technology. These assurances would include "commitments to maintain production and research and development in the United States, and not disrupt supplies to U.S. customers." Other changes to Exon-Florio under the proposed bill would transfer the chairmanship of CFIUS to the Secretary of Commerce and replace the Chairman of the Council of Economic Advisers and the Director of the Office of Management and Budget with the Secretary of Energy, the National Security Adviser, and the Presidential Adviser for Science and Technology. Pursuant to this legislation, the President would be able to "nullify" transactions which impaired national security and "restore such parties to the positions they held before."

Another bill, S. 347, would also amend the Defense Production Act and permanently reauthorize Exon-Florio.
building another facility or purchasing a U.S.-owned plant. The proposed act would require that Honda adopt a plan to hire, train, and promote minorities and women as a condition of the new investment.

Similarly, after the Sumitomo Shoji settlement, Sumitomo would be required to announce steps that it planned to take in existing and prospective U.S. operations before undertaking any additional investment in the United States. Approval of this plan by an interagency group consisting of representatives from the EEOC, the Department of Commerce, the USTR, the Department of Justice, and the Department of the Treasury would be required before the investment could be made.

Foreign-controlled banks that have been found to engage in "redlining" would also face possible restriction of future investment opportunities in the United States. The CRA has already been utilized to address some problems of "redlining." However, the proposed statute would provide additional incentives to foreign-controlled banks to curb these practices and would shift the enforcement burden from community groups like the Greenlining Coalition to the federal government. If enacted, such legislation would deter foreign banks from "redlining" by increasing the risk of government intervention and the denial of future investment opportunities.

An argument can be made that this proposed legislation is not necessary in light of the litigation that has taken place and will likely continue to take place under Title VII. According to this argument, the lawsuits and the attendant publicity will give the Japanese investors an incentive to change their discriminatory practices. However, the news of these lawsuits does not always reach the shareholders of the corporate parent in Japan. Additionally, due to the impact of the keiretsu system of corporate interlocking shareownership in Japan, the offending firms will not be sensitive or vulnerable to criticism. The fact that Nomura, Sumitomo, and other investment giants control the majority of publicly traded securities in Japan supports this argument. With large banks and investment companies able to influence the stock prices of these companies, the loss of several million dollars in damages may not necessarily be felt in Japan.

One example where noneconomic concerns have stopped foreign direct investment in the United States in the past is the denial of permission to U.K.-based BTR, PLC from purchasing Norton Company of Massachusetts. In this case, BTR was not allowed to purchase Norton because BTR had large investments in South Africa. Citing a dis-

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288. For an explanation of the keiretsu system, see Mighty Mitsubishi is on the Move, supra note 166, at 98-101.
Unwelcome Imports

A disturbing pattern of labor policies in South Africa, Representative Dellums (D-Cal.) warned President Bush that allowing BTR, PLC to expand its operations in the United States might cause "a potential backlash from African countries with whom the United States 'has vital political and economic interests.'"\(^{289}\)

Thus, the conditioning of future direct investment on the inclusion of women and minorities in these new investments is a logical coalescence of U.S. domestic policy goals and foreign investment. As the global economy becomes a reality, issues not traditionally considered "trade issues" have become significantly more important in international trade and investment. Notable examples are the increased importance of the protection of intellectual property and the protection of the environment in world trade.\(^{290}\) We can no longer ignore discriminatory practices by foreign direct investors in the United States, for such discrimination hurts not only U.S. workers, but has global repercussions by undermining equal participation by women and minority populations in the world economy and society.

The United States, in the past, has included the international protection of workers' rights in its trade agenda and has conditioned trade benefits on the treatment accorded labor. For example, the United States recently suspended the duty-free import privileges of the Sudan under the Generalized Systems of Preferences (GSP)\(^{291}\) because of abuses of Sudanese workers' rights.\(^{292}\) The GSP privileges of Benin, the Dominican Republic, Haiti, and Nepal were maintained after review by the USTR determined that these countries were taking adequate steps to protect workers' rights.\(^{293}\) Workers' rights in Israel and Malaysia were also investigated under the GSP and found to be adequately protected.\(^{294}\) In addition, human rights abuses are at the center of the recent congressional debate on extension of most-favored

\(^{289}\) *Congressman Asks Bush to Block BTR's Takeover of Norton, CORP. FIN. WK., Apr. 23, 1990*, at 6. Although these comments came during a debate on national security and foreign investment, the sentiment may easily be applied to restrict future investment based on multinational corporate practices that are inconsistent with U.S. domestic and foreign policy.


\(^{292}\) *Czechoslovakia Eligible For GSP Immediately, Sudan Benefits Cut For Worker's Rights Abuses*, Int'l Trade Rep. (BNA) No. 18, at 649 (May 1, 1991). *See also William H. Lash III, Don't Reward China's Leaders*, J. of COM., June 4, 1991, at 8A.

\(^{293}\) Lash, *supra* note 291, at 8A. The USTR extended the review of the worker's rights records of Bangladesh, El Salvador, and Syria. *Id.*

nation status to China. Accordingly, conditioning future investment in the United States on adherence to principles of women's rights and nondiscrimination, and to the fight against apartheid and the boycott of Israel, simply recognizes the importance that these issues have for the United States and in world trade.

CONCLUSION

An open investment policy is an essential component of an integrated and global economy. Under the correct circumstances, foreign direct investment presents tremendous opportunity for the investor and host State alike. The host State benefits from the increased employment opportunities, the infusion of capital, and the technology that foreign investors provide. The foreign investor gains access to a new market. Worldwide welfare benefits from the new relationship.

This model of foreign direct investment, however, is a benefit to the host State and advances social welfare only if the investment is consistent with the policies and national aspirations of the host State. If the goals and behavior of the foreign investor prove to be incompatible with the national aspirations of the host State, the intended mutual benefits evaporate and are replaced by distrust, xenophobia, and eventually protectionism. While foreign capital is most welcome, exported bigotries are not. The proposal described above may properly be characterized as remedial in nature. Although it is designed to remedy injustices caused by some foreign investors, it has another function. The true goal of this proposal is to allow the United States to expand foreign investors' understanding and appreciation of both the U.S. system and the contribution that women and minorities may make to their endeavors in the United States and elsewhere. The United States has gained tremendously from foreign investment. Let us strive to balance our trade deficit with the contribution of understanding.

295. Lash, supra note 291, at 8A.