4. The Development of Informal Relationships

At first glance, the laws and regulations outlined in Section 3 seem to indicate that there is little opportunity for, or tolerance of, collusive behaviour by Japanese corporations. Yet, there are a number of popular complaints about Japan, citing various anti-competitive and/or collusive practices that effectively exclude foreign firms.[28] The complaints against Japan could be a misguided result of its large trade surplus -- a case of "sour grapes" -- or they could be based on different economic or business practices, or government initiatives, in which case they merit closer attention.

4.1 A Historical Context

For a more complete understanding of the relationships between banks and non-financial firms, it is necessary to consult their economic history.[29] In the 1920s and 1930s, the Japanese government greatly increased its financial regulations until, during World War II, the government had controls over the entire financial system. Despite reforms introduced by Occupation forces, wartime financial controls formed the basis of the government's post-war regulatory regime over the economy. The Ministry of Finance became the primary regulatory authority in Japan.

[28] Complaints against Japan include: the yen was kept artificially low until 1985; there are numerous import and investment barriers; the patent application process is complex and lengthy, allowing domestic firms to develop similar technologies before foreign firms' patents have been approved; patent coverage is defined too narrowly; the government uses subsidies and legal concessions to encourage certain domestic firms to merge, form cartels, or engage in other cooperative arrangements; the existence of *keiretsu* makes it difficult for foreign investors to acquire, or compete with, *keiretsu* firms; the government grants low-interest loans to enable firms to win foreign contracts; Japanese businesses pay bribes to win foreign contracts; and industries have been selected to drive out non-Japanese competitors to establish Japanese dominance. See B. Sarachek, "Japan Bashing and the American Malaise", in *Business and the Contemporary World,* Vol. 4, No. 3, Walter de Gruyter & Company, Berlin, Summer 1992, p. 41. Complaints about specific trade barriers are contained in D.K. Nanto, *Japan's Official Import Barriers,* Congressional Research Service Report for Congress 93-657 E, Washington, D.C., July 11, 1993.

[29] For historical discussions on Japanese finance and the roles of commercial banks, see T.F. Cargill and G.F.W. Todd, "Japan's Financial System Reform Law: Progress Towards Financial Liberalization?", in *Brooklyn Journal of International Law,* Vol. 19, No. 1, Brooklyn Law School, Brooklyn, NY, 1993, p. 51-7; and T.F.M. Adams and I. Hoshii, *A Financial History of The New Japan,* Kodansha International Limited, Palo Alto, CA, 1972.