

Submission by the Government of Japan to the Government of the United States
Regarding Deregulation, Competition Policy, and Transparency and Other
Government Practices

October 9, 1998

I. Structural Issues, Competition Policy, Transparency, Legal Services

1. Structural Issues

- (1) Government Procurement Procedures; Buy American Laws and relevant state and local government laws

To ensure non-discrimination principle and to provide equal opportunity to both U.S. and foreign firms, reexamine and improve the provisions applied to the procurement below the threshold value of the WTO Government Procurement Agreement, the state and local government procurement receiving grant from the federal government, in such areas as mass transit and highway construction, and the procurement by the local governments outside the scope of the WTO agreement.

- (2) National Security Exemption Provisions

Provide clear bases and standards of the exemptions to the procurement procedures based on national security reasons, provided in the Federal Acquisition Regulations, Department of Defense FAR Supplement, the Information Technology Management Reform Act of 1996, etc.

???If there are any cases where tendering by the foreign firms were denied based on these exemption provisions in the past five years, provide relevant information including the number of such procurement, names of procuring entities, types of machines bid in the procurements and actual values of the procurements.

- (3) Exon-Florio Clause

Clarify what "national security" means in so-called Exon-Florio Amendment and provide the guideline for the application of the provision.

- (4) Sanctions Act

Iran and Libya Sanctions Act of 1996 and other sanctions laws may hinder business activities such as direct investment, by levying fines on foreign firms, and may cause a problem of extraterritoriality and a problem in relation to the WTO Government Procurement Agreement. Thus avoid applying these laws to the third country firms.

- (5) The U.S. Patent Law

- (a) Shift from the First-to-Invent System to the First-to-File System

The United States is the only country adopting the First-to-Invent System. The problems of this system are, first, the lack of certainty and predictability in that a patentee status could be overturned by later appearance of a prior inventor, and second, the burdens placed on the inventors to prepare and store documentary evidence to prove their date of invention. Shift from the First-to-Invent System to the First-to-File System.

(b) Institute an "early publication" system

The system has not been instituted yet despite the fact the United States agreed to implement the system by January 1996 in the Intellectual Property Rights Working Group under the Framework Talks beginning October 1993. Due to the lack of "early publication" system, it is difficult to know in advance that a patent for an invention has already been filed and thus it is often unable to avoid duplication of research development investment, causing social and economic losses. Therefore, institute an "early publication" system.

(6) The Metric System

Adopt the metric system within the public and private sector in accordance with the commitment made by the United States in the follow-up report to the Structural Impediments Initiative(SII) in 1992.

Conduct early and full application of metric system (i.e. SIUnit) in place of the imperial system which governs standard and regulation in house building in the United States. In particular, adopt the metric system in defining allowable unit stresses of structural materials such as NDS about lumber's with a schedule.

2. Distribution

(1) Abolition of Maritime Security Program

The U.S. Government should abolish the program which annually provides 100 million dollar maritime subsidy for ten years, since infusing such huge amount of subsidy apparently distorts conditions for free and fair competition in the international maritime market.

(2) Abolition of Cargo Preference Measures including the Law Lifting the Ban on the Export of Alaskan Oil

The U.S. Government should abolish the protective Cargo Preference Measures which require the use of U.S. vessels, represented by the measure for the exports of Alaskan oil that are commercial cargos, which is inconsistent with the principles of most-favored-nation and national treatment stipulated in the GATS.

(3) Provisions for the Coastal Shipping Service (The Jones Act)

The U.S. Government should abolish the requirement that ships for the coastal shipping service shall be built in the United States.

(4) Measures under Ocean Shipping Reform Act

The Ocean Shipping Reform Act Bill includes the provision in which the Federal Maritime Commission (FMC) is able to unilaterally regulate pricing practice employed by foreign vessels. With regard to the bill, the U.S. Government should maintain the principle of non-discrimination and to minimize regulation against commercial maritime activities on the principle of liberty of maritime transportation.

(5) The Federal Maritime Commission(FMC)'s sanction on Japanese carriers

The U.S. Government should abolish the FMC's rule, that has provided ground for the sanction which has been imposed on Japanese carriers since September last year yet to be withdrawn. This is because the rule constitutes a violation of the Treaty of Friendship, Commerce and

Navigation between the United States and Japan which prescribes to accord national treatment as well as most-favored-nation treatment to vessels of either party.

3. Specific Issues

(1) Import Tariff Calculation Method for Clocks and Watches

Abolish levying tariffs on each parts and simplify the procedure by determining tariff rates according to the HS categorization 6 digit bases.

(2) Labeling Requirement of Origin for Clocks and Watches

Limit labeling requirement of origin to the finished product of clocks and watches and leave the choice of labeling methods, such as carved seals, tags, etc. at the discretion of manufacturers.

(3) Labeling Requirement of Origin for Cameras

Clarify the criteria so-called "substantial transformation" for specifying the origin.

(4) NAFTA Labeling Specification Origin for Textile Products

Accommodate NAFTA's criteria for specifying the origin to the origin rule generally accepted in the United States (e.g. for an apparel product, the country where it is assembled is the origin nation).

(5) American Automobile Labeling Act of 1992

The American Automobile Labeling Act obliges labeling year and other information including the contents of domestic parts of the U.S. and Canada for each automobile. Reexamine and improve the Act, since such obligation of labeling may implicitly encourage the sales of U.S. made automobiles and thus may hinder fair competition.

(6) Differentiation of Domestic and Foreign made automobiles in Corporate Average Fuel Economy(CAFE) regulation under Energy Policy and Conservation Act of 1975

When calculating the value of Corporate Average Fuel Economy, the present system obliges manufacturers to determine the ratio of domestic production for each automobile line and to achieve certain fuel economy value of domestic and imported automobiles respectively. Reexamine the regulation to ensure fair competition, since, under the present system, a problem of discrimination among domestic and foreign products may arise.

4. Competition Policy

Anti-Trust Law Exemptions

The Government of Japan has undertaken a comprehensive reexamination on the Anti-Monopoly Act Exemptions which resulted in abolition of many exemption provisions and in reducing the scope of rest of the existing provisions.

The Government of Japan urges the Government of United States to also reduce the number and scope of the Anti-Trust Law exemptions provisions in the United States for enhanced enforcement of the Anti-Trust Law.

5. Anti-Dumping Measures

The Government of Japan asks the Government of the United States to respond to the following requests in an appropriate manner.

(1) Information Used

There is a concern that the U.S. authorities are not appropriately applying the provision of the Anti-Dumping Agreement(AD Agreement). In applying the provision, the authorities, with the best of its ability, should ensure the information provided by the interested party will be accepted and used to the fullest extent possible; If the information provided is not accepted, the authorities should explain the reasons in detail, as well as ensure an opportunity to the interested parties to present their opinions; If the information provided is not accepted, and whenever authorities accept information provided by the domestic industry as "facts available", the authorities should provide the foreign interested parties an opportunity to present their opinions concerning the appropriateness of the information so provided. In light of these concerns, the Government of Japan requests that the United States provide clear and direct answers to the questions the Government of Japan has raised.

(2) Deadline for Reply

Interested parties are not often given enough time to answer the questions despite the significantly large volume of information requested. Even when the U.S. authorities grant an extension, it is generally for a short period of time. The Government of Japan requests that the interested parties should be given enough time relative to the amount of data required and the information requested should be limited to the minimum necessary for the authority to make a reasonable decision. In light of these concerns, the Government of Japan requests that the United States provide clear and direct answers to the questions the Government of Japan has raised.

(3) Acceptance of Company Cost Data

The U.S. authorities require the exporters and producers to submit cost data in accordance with the specific criteria adopted by the U.S., thus loading the exporters and producers with heavy works. The U.S. authorities should calculate the costs on the basis of records possessed by the exporter and producer provided that the records abide by the generally accepted accounting principles("GAAP") of the exporting country. In light of these concerns, the Government of Japan requests that the United States provide clear and direct answers to the questions the Government of Japan has raised.

(4) Liquidation

The U.S. authorities should take necessary measures to complete liquidation process expeditiously because there are cases where they spend long time to make an actual refund from the request of liquidation.

(5) Affiliated Persons

With regard to the implementation of the Tariff Act of 1930 and relevant Department of Commerce regulations, in identifying the "affiliated persons", the holding of 5% or more stocks of an organization should not be the only criteria, but the authorities should also consider other relevant factors(such as relationship between the organization and its officers /directors, family members, etc.)in a comprehensive manner.

(6) Revocation of Anti-dumping duties

The U.S. authorities should refrain from imposing exporters with burden of proofs in determining that there is no possibility of resuming dumping in the future.

(7) Price Compatibility

The U.S. authorities should use weighted average-to-weighted average or specific transaction-to-transaction price comparison when comparing export prices and normal values in reviewing the existing dumping margins, as is required in original investigation.

6. Visa Issuance Problems

(1) Issuance of F-1 Visa for the students

Ensure the issuance of F-1 visas to the students enrolled in public schools(elementary, junior high and senior high school).

(2) Extension of Stay

The Government of Japan received reports from Japanese residents in the United States that the procedure for the extension of stay is taking time, causing difficulties in business management. Expedite and simplify the procedures for the extension of stay.

(3) The Right of Permanent Residence

Ensure transparency in qualification requirement for the permanent residence irrespective of nationality and set the standard time needed to obtain the permission.

7. Legal Services

(1) Extend the admission of foreign lawyers to all states.

(2) Reduce the period of practicing experience requirement to three years in all states.

II. HOUSING

Introduction of performance based regulation and harmonization with the international standards

Most of the test methods adopted by the United States on the structural methods and building materials are not regulated on performance basis nor harmonized with internationally prevailed standards. (cf. Japan has already been committed to introduce performance based regulations which shall fully meet international standards.)

NOTE: Adopt international standard for incompatibility test methods on house building materials, which particularly are not harmonized with international standards such as ISO1182, ISO5560, ISO9705.

III. Telecommunications

1. Federal Communications Commission (FCC)'s is order on Foreign Participation in the U.S. Telecommunications Market and non-U.S. licensed satellites to provide services in the United States.

(1) Licensing Criteria

1) With regard to Section 214 for certification and Section 310 for radio station license, criteria of the telecommunications Act include factors like "public interest" ("foreign policy" and "trade concerns") and "very high risk to competition". Such factors should be abolished.

2) With regard to the abolishment of regulations on foreign indirect investment of a common radio station license, relevant sections of the telecommunications Act should be amended in light of ensuring the implementation of the commitments of the USG under the WTO Basic Telecom Agreement.

(2) Regulations on Dominant Carriers

Regulations on foreign carriers for reasons of their "market power" in foreign markets should be abolished.

(3) Standard Processing Period

The standard processing period to come to a final decision on certification, when comments are submitted by other carriers, is ninety days, and this period should not be extended in principle. If the period is extended, the reasons should be clarified and indicated to the carriers concerned.

2. FCC Order Concerning International Settlement Rate Benchmark

(1) FCC Report and Order (FCC 97-280) on international accounting rates should be abolished.

(2) FCC Report and Order (FCC 97-398) Paragraph 179-214 on foreign participation in the U.S. telecommunications market should be deleted from the Report and Order.

3. Method of sharing costs for utilizing Internet Communication circuits

The current situation whereby non-U.S. Internet Service Provider (ISP) bear all the cost of international circuits for internet connections should be changed and improved.

4. Cost Models For Access Charge

(1) Forward-looking cost models (long-run incremental costing) for inter-state access charge should be introduced at the same time when Japan introduces long-run incremental costing system.

(2) The process of development of forward-looking cost models (long-run incremental costing) should be transparent.

IV. Medical Devices and Pharmaceuticals

1. GMP Mutual Recognition

Promote Mutual Recognition on GMP of pharmaceutical and medical device between U.S. and Japan.

2. Medical Devices

Simplify and accelerate Procedure of 510(k) Notification Submission; i.e. reduction of reviewing periods.(including medical devices reviews conducted by CBER)

3. Pharmaceuticals

Simplification of the data submitted to produce IND

Simplified data than currently required should suffice to conduct a Phase I study of employing healthy volunteers. The deadline of submitting the full reports on the pre-clinical studies(safety, metabolism, pharmacology) should be extended to when the relevant New Drug Application(NDA) is submitted.

The deadline of submitting the data in relation to Chemistry Manufacturing Control should be extended to when the phase II trials are completed.

4. GCP Mutual Recognition

The Government of Japan proposes to begin an exchange of views on possibilities in promoting mutual recognition of the GCP.

V. Financial Services

1. Abbreviated examination system for licensing of foreign securities representatives

The Government of Japan welcome the introduction by SEC of an abbreviated examination system for licensing of Japanese and other foreign securities representatives: prompt finalization of the procedure for the new system is requested, since the preparation has been delayed.

2. Obligation of foreign banks to become a member of FDIC

Branches of foreign banks are required to become a member of FDIC if they are to collect deposits of less than US \$ 100, 000 from the U.S. citizens or residents. This requirement should be abolished.

3. Supervision of foreign bank branches

Supervision of foreign bank branches should be conducted solely by the authorities of the state where the principal branch of the foreign bank is located.

4. Examination of foreign banks

The Government of Japan welcomes that Federal and State authorities started examining foreign banks together under the "FBO Program". Further improvement, such as regulatory coordination, is requested.

5. Regulation of securities firms

The Government of Japan welcomes that the overlapping of Federal and State regulations has been minimized by revision of law; further decrease in the number of overlaps would be welcomed.

6. Citizenship requirements for board members of financial institutions

The Government of Japan requests the citizenship requirements for board members of financial institutions be abolished; there is no such requirement in Japan.

7. Financial Modernization Bill (H. R. 10)

Foreign banks should not be put in a disadvantageous position after the enactment of the

financial modernization legislation.