(Translation)

October 13, 2000

SUBMISSION BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING DEREGULATION, COMPETITION POLICY AND OTHER GOVERNMENT PRACTICES

Then Prime Minister Hashimoto and President Clinton announced the start of the "Enhanced Initiative" on deregulation in the Joint Statement issued at the Japan-U.S. summit held on the occasion of the Denver Summit in June 1997. Since then, the "Enhanced Initiative" has helped to promote the measures and policies of deregulation undertaken by the two Governments respectively. In July 2000, based upon the progress achieved by the two countries, Prime Minister Mori and President Clinton confirmed at the Japan-U.S. summit meeting in Okinawa to continue the "Enhanced Initiative" for another year.

Facing the beginning of the 21st century, the economic activities of both Japan and the Unites States have become increasingly transnational and interdependent in nature. Thus, one of the major challenges the two countries now face is how to harmonize and coordinate such economic activities to the international norms.

In this regard, unprecedented economic growth that the United States has enjoyed today does not automatically lead to the premise that its economic system has no need for improvement. There are regulations and systems in the United States that are, for example: 1) unique to the United States and which are not harmonized with international standards; 2) inconsistent with the idea of free trade; and 3) impeding fair competition. Many of them are imposing unreasonable burdens on Japanese companies conducting business in the United States and impeding their business activities. Such loss caused by the U.S. economic systems and standards is not negligible for Japan nor for other countries. Various unilateral measures that the Government of the United States has employed is also a case in point. In some cases, they are disguised forms of protectionism and are against the philosophy of trade liberalization and their consistencies with the WTO rules are questionable.

Against these backdrops, the Government of Japan (GOJ) presents its submission regarding deregulation, competition policy and other government practices to the Government of the United States of America(USG) at the beginning of the fourth year of the dialogue under the "Enhanced Initiative." In the course of the discussions hereafter, GOJ intends to actively raise and request policy improvements and further deregulation of USG in various fora as appropriate, reflecting extensively upon this submission.

The United States puts out around 30% of the total world production and has a leadership role to play in promoting global economic growth and economic harmonizations, as well as in strengthening an open and multilateral trading system. For the deregulation dialogue to be successful, therefore, GOJ believes it essential for USG to seriously consider the following submission and to produce tangible results on these issues, based on the principle of two-way dialogue confirmed by the Prime Minister of Japan and the President of the United States in the Joint Statement at the Denver meeting.

I. DEREGULATION, COMPETITION POLICY AND OTHERS

GOJ requests USG to faithfullly implement the measures of USG described in the Third Joint Status Report on Deregulation and Competition Policy, *inter alia*, to start dialogues with the Japanese side within a reasonable period of time on the subjects on which both governments decided to establish independent fora. GOJ also requests USG to clarify what measures would be taken by USG for improvements, on the basis of the outcome of the meetings of such fora.

1. Trade/Investment Related Measures

(1) Anti-Dumping Measures

(a) GOJ requests USG to take an active part in the discussion in WTO to clarify and strengthen the discipline of the Anti-Dumping Agreement to improve the operation of anti-dumping measures. GOJ asks USG to confirm the result of the discussion in a dialogue under the "Enhanced Initiative."

(b) A proposed Act which stipulates that the revenue from anti-dumping duties and countervailing duties shall be distributed to the domestic producers who had filed the cases has been incorporated with the FY2001 Agriculture Appropriation Bill and is under deliberation in the U.S. Congress. GOJ is concerned that should the proposed Act be passed, it might prompt to increase the litigation of anti-dumping cases by U.S. domestic producers who aim at receiving the distribution. GOJ is also concerned about the WTO consistency of this proposed Act. GOJ requests the U.S. Administration to urge the Congress to drop this Act from the Bill, and to veto the Bill, should the proposed Act be incorporated with the Bill.

(2) Hilmer Doctrine

(a) In most Contracting States to the Paris Convention for the Protection of Industrial Property, including Japan, if an applicant files an application in any other countries of the Union (*) within twelve months from the filing date of the earliest national application in one of the Union countries, this date (hereinafter referred to as "the filing date of the earliest national application") is considered to be the effective date as a prior art reference according to Article 4 of the Paris Convention.

In the United States, however, a practice of not recognizing the filing date of the earliest national application as the effective date as a prior art reference has been established by judicial precedents (the Hilmer doctrine).

Consequently, there is a possibility that patent would be granted on conflicting applications filed in the United States by subsequent applicants during the period of priority in the United States.

Such concern that the patentee who had filed the application later might exercise the patent right is an obstacle for investment.

Therefore, GOJ requests USG to abolish the practice of Title 35 of the United States Code (35USC) based on the Hilmer doctrine.

(*) The Contracting States to the Paris Convention constitute the Union.

(b) Section 102 (e) of 35USC was amended in November 1999. The amendment provides that if an international application filed under the Patent Cooperation Treaty (PCT) is published in English, the filing date of the international application shall become the effective date as a prior art reference after the international application proceeding to the national procedure.

On the other hand, if an international application filed under the PCT was published in languages other than English, such as in Japanese, the date of proceeding to the national procedure shall be the effective date as a prior art reference, according to the reservation that the United States made under Article 64 (4) of the PCT based on the Hilmer doctrine. This has put Japanese companies at a serious disadvantage. Therefore, GOJ requests USG to withdraw the reservation made under Article 64 (4) of the PCT, and to abolish discriminatory treatment based on languages concerning the effective date of a prior art references.

(3) Exon-Florio provision

The Exon-Florio provision (Section 721 of the Defense Production Act of 1950) provides a mechanism to review and, if the President finds necessary, to restrict FDI that threatens the U.S. national security. In the context of Japan-U.S. Deregulation Dialogue under the "Enhanced Initiative," GOJ and USG have continued discussion on the transparency and predictability of government regulations. Transparency and predictability are the themes that run through the whole process of Japan-U.S. Deregulation Dialogue. It is essential to make it possible for businesses to predict the regulators' behavior so that competitive businesses can conduct their business under fair conditions. From this viewpoint, GOJ has been keeping dialogue on the Exon-Florio provision with USG.

GOJ requests USG, in the operation of the Exon-Florio provision, to refrain from expanding the concept of "national security" excessively, and to take measures to ensure the transparency and fairness of the process from the notice to CFIUS (The Committee on Foreign Investment in the United States) to the final decision by the President to the maximum extent possible.

2. Sanctions Act

(1) Iran and Libya Sanctions Act (ILSA) and Cuban Liberty and Democratic Solidarity Act of 1996 (Helms-Burton Act)

(a) Sanction measures based on the Iran and Libya Sanctions Act of 1996 (ILSA) and Cuban Liberty and Democratic Solidarity Act of 1996 (Helms-Burton Act) could constitute an extraterritorial application of domestic laws which is not permissible under general international law, and they may cause a problem in relation to the WTO Agreement. GOJ requests USG to exercise prudence in implementing the Acts, ensuring consistency with international law, and especially to avoid applying the Acts to enterprises of third countries.

(b) There are U.S. firms which oppose ILSA. GOJ requests USG to confirm that an investment made by enterprises of third countries including Japan is exempted from the application of the Act, as were investment contracts in gas exploitation in May 1996 by three foreign companies.

(2) Sanctions Acts instituted by local governments

(a) GOJ appreciates the unanimous decision by the U.S. Supreme Court on June 19, 2000 which found that the Myanmar Sanctions Act of the Commonwealth of Massachusetts is unconstitutional, in the sense that it removed entry barriers for private firms facing trade-related legislation instituted by individual states. The decision that a state act is unconstitutional if it infringes a field pre-empted by federal law can be regarded as a deterrence of similar future state legislation.

However, there are other sanctions acts at the State, city and county level in the United States which constitute entry barriers to the bidding for government procurement for U.S. and foreign firms including Japanese firms.

GOJ requests USG to take concrete actions such as issuing documents to all State and other local governments which state that:

(i) Sanctions acts at the local level should be consistent with the foreign policy of the federal government in accordance with the decision by the Federal Supreme Court which found that the Myanmar Sanctions Act of the Commonwealth of Massachusetts is unconstitutional.

(ii) GOJ has been concerned about the sanctions acts concerning government procurement at the local level from the viewpoint of the loss of business opportunities of private firms; and

(iii) It is necessary to ensure that local legislation concerning government procurement to which the WTO Agreement on Government Procurement (GPA) applies is consistent with GPA.

(b) SB1888, the bill which passed the Assembly and the Senate of the State of California and was signed by the Governor of California on September 30, obliges contractors to verify that foreign-made products furnished to the state pursuant to a contract are not produced with the use of such labor as forced labor or convict labor, for the purpose of excluding from government procurement of the State of California foreign-made products produced with the use of such labor as forced labor or convict labor. Even though there is a federal act (Smoot-Hawley Act of 1930) with a provision to prohibit the importation of products produced with the use of convict labor, forced labor, and/or indentured labor under penal sanctions, contractors are obliged by the State law to prove once again after customs clearance that such labor was not used. This dual obligation is a heavy burden on Japanese firms.

GOJ calls on USG to convey the concern of GOJ on this matter to the government of the State of California, and to consider measures toward the repeal of the legislation.

3. Distribution

(1) Customs Clearance

GOJ appreciates the decision of USG to participate in a Cargo Release Time Survey discussed in the APEC Subcommittee on Customs Procedures (SCCP) in order to ascertain the time it takes from cargo arrival to import permission as well as the time it takes from import declaration to import permission. However, the development of the survey scheme of SCCP may take a long time. If that is the case, GOJ requests USG to consider conducting the same scheme of survey

that Japan is conducting on the basis of the result of the Japan-U.S. Meeting of Expert-Level on Import Procedures held in June 1990.

(2) Merchant Marine Act of 1920 (The Jones Act)

(a) Unilateral Sanctions based on the Act

The Federal Maritime Commission (FMC) is authorized by sec. 19 (1)(b) of the Merchant Marine Act of 1920 (The Jones Act) to make rules and regulations affecting shipping in foreign trade. FMC started a unilateral sanction against the Japanese carriers in September 1997. Although the sanction was removed in May 1999, FMC still requires the carriers to report the situation on the ports in Japan to FMC. The rule (which was withdrawn in May 1999) which provided the grounds for unilateral sanctions was a violation of the Treaty of Friendship, Commerce and Navigation between the United States and Japan, which provides for national treatment and most-favored-nation treatment. GOJ requests USG to ensure that such unilateral measures will not be taken by FMC by working even more closely with FMC.

(b) Provisions for the Coastal Shipping Service

The Jones Act stipulates that vessels for the coastal shipping service shall be built in the United States. From the viewpoint of establishing fair and competitive conditions in the world shipbuilding market, this regulation should be abolished as soon as possible.

(3) Abolition of Maritime Security Program

GOJ requests USG to abolish the program which annually provides 100 million dollars of maritime subsidy for ten years, since it is obvious that a provision of such a huge amount of subsidy distorts conditions for free and fair competition in the international maritime market.

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

GOJ requests to USG to abolish the Cargo Preference Measures, such as the requirement to use U.S. vessels for the exports of Alaskan oil which are commercial cargos. These protectionist measures are inconsistent with the principle of national treatment, and are also against the Ministerial Decision on negotiations on Maritime Transport Services of WTO, which prescribed that the participants should not apply any protectionist measures during the negotiations.

(5) Ocean Shipping Reform Act of 1998

The Act includes a provision allowing discriminatory treatment of Japanese and other foreign shipping firms by making it possible to institute unilateral regulations on pricing and other practices. As the pricing practice is the foundation of free shipping activity based on a commercial basis, unilateral regulations by FMC on the pricing practice is obviously an intervention in the free shipping activity which is discriminatory against foreign firms. Furthermore, the amendment to the Act in 1998 explicitly stipulates the right of the federal government to intervene in pricing practice. GOJ requests USG to affirm that the FMC should not impose unilateral regulations in the future on shipping activities on a commercial basis by Japanese and other foreign shipping firms, without considering the reality of the market.

(6) Licenses for Sales of Liquor

In the Third Joint Status Report on the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy, it is stated "The Government of the United States will continue its dialogue with the State of California to ensure that the California authorities are aware of relevant WTO and other regulations regarding sales of imported alcoholic beverages, including Japanese "*shochu*." GOJ requests USG to continue its dialogue with the State of California, and to take specific measures to amend relevant provisions of California state laws.

4. Competition Policy

GOJ requests USG to engage in the reduction of existing Antitrust Law exemptions from a viewpoint of active promotion of competition policy. Particularly, GOJ urges the U.S. competition authorities (Antitrust Division of the Department of Justice / Federal Trade Commission) to make active proposals and to call on other relevant government agencies and Congress in order to reduce existing Antitrust Law exemptions. The review of the Antitrust Law exemptions at state level should be actively encouraged as well. GOJ requests USG to cooperate with the states in the review process of the exemptions as necessary.

5. Legal Services and Other Legal Affairs

(1) Acceptance of Foreign Lawyers as Foreign Legal Consultants (FLC)

(a) Acceptance of Foreign Lawyers as FLC in Every State

In the United States, only 23 states and the District of Columbia accept foreign lawyers as FLC. In all other states, foreign lawyers are not allowed to practice. This situation restricts the provision of diverse legal services in the United states. USG supports the adoption of foreign legal consultant rules by states that do not have such rules. From such viewpoints as facilitating international business, GOJ welcomes this position of USG and requests USG to take further positive actions so that all states will accept foreign lawyers as FLC.

(b) Reduction of Period of Practicing Experience Required for Acceptance of Foreign Lawyers as FLC

As far as GOJ is aware, in every state and the District of Columbia where foreign lawyers are accepted as FLC, practicing experience is a necessary qualification to become an FLC. Most states require five years of practicing experience. This constitutes a barrier for foreign lawyers to practice in the United States. The Japanese system only requires three years of practicing experience for acceptance as a foreign lawyer in Japan. GOJ requests USG to take necessary measures, such as offering suggestions to the relevant state governments, in order to reduce the period of practicing experience requirement to three years in every state.

(c) Abolition of the Requirement that only Practicing Experience in the Period Immediately Preceding the Date of Application can be Considered as Practicing Experience

As far as GOJ is aware, in every state and the District of Columbia where foreign lawyers are

accepted as FLC, only the period immediately preceding the date of application is allowed to be considered as practicing experience. Such a requirement is not imposed in the Japanese system of accepting foreign lawyers. In order not to limit the practicing experience that can be considered as practicing experience for qualification as FLC to the period immediately preceding the date of application, GOJ requests USG to take necessary measures, such as offering suggestions to the relevant state governments.

(d) Inclusion of Practicing Experience in Third Countries into the Practicing Experience Requirement for Acceptance of Foreign Lawyers as FLC

Among the states and the District of Columbia where foreign lawyers are accepted, there are only two states (New York and Indiana) which have been confirmed to allow the inclusion of practicing experience in third countries into the practicing experience requirement. In Japan, the amendment of the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers in 1998 has enabled foreign lawyers to include the period of time engaged in legal services in third countries as practicing experience. In order to allow the inclusion of the practicing experience in third countries into the practicing experience requirement in every state, GOJ requests USG to take necessary measures, such as offering suggestions to the relevant state governments.

(2) Product Liability Law

Product Liability law in the United States compels companies conducting business in the United States to bear excessive expenses for lawsuits. This constitutes a heavy burden for Japanese companies doing business in the United States. It also affects international competitiveness of the United States industries. GOJ requests USG to encourage the reforms currently going on in various states to limit product liability, and requests USG to promote reform of product liability law at the federal level such as putting certain limits to the amount of damages and shortening the statute of limitations.

6. Consular Affairs

(1) H-1B Visa

H-1B visa is a visa issued to professionals in various specialty occupations who have at least a bachelor's degree or its equivalent, such as certified public accountants (CPA), computer analysts, engineers, financial analysts, scientists, architects and lawyers. Due to the annual quota and the lengthy processing period that it takes to issue H-1B visas, Japanese firms have been facing difficulties in transferring necessary staffs from Japan to U.S. offices in a timely manner. Many U.S. firms, especially of high technology industries willing to hire alien citizen with expertise, also seek expansion of the quota. GOJ has requested USG to expand the H-1B visa quota since last year. GOJ welcomes that the American Competitiveness in the Twenty-first Century Act (S2045) expanding the quota for the period FY2001-2003 to 195,000 persons was passed by the Senate and the House of Representatives in October, 2000. GOJ strongly hopes that the law will immediately come into force and will be implemented smoothly.

(i) GOJ requests that USG consider introducing and publishing a standard processing period of the application procedure, in order to avoid delay in the procedure after the expansion of the quota by the enactment of the Act, and to achieve reduction of the processing period, streamlining of the

procedure, and the enhancement of predictability and transparency of the procedure. (ii) GOJ also requests USG to indicate the current situation of its consideration on possible measures to improve the process and streamline overall procedures for obtaining H1-B visas, to which USG committed itself in the Third Joint Status Report of the Enhanced Initiative.

(2) F-1 Visa

With the amendment to Immigration Reform Act in September 1996, F-1 visas (student visa) are not issued to students enrolled in public junior high and high school, except for those who will be enrolled not more than one year, and have already paid a full cost for providing education. This amendment imposes an unreasonable burden on children of foreign nationals working for foreign firms in the U.S. since job rotations of such staff do not necessarily coincide with school year of their children, and mandatory education in Japan ends in junior high school. GOJ appreciates various relief measures taken on a case by case basis. GOJ has been requesting USG to improve on this situation. Considering the requests from Japanese nationals working in the United States that have been made in the past year concerning F-1 visas for high school students, GOJ once again would like to request the following:

GOJ asks USG to include two measures in its consideration of this issue, to which USG committed itself in the Second Joint Status Report of the Enhanced Initiative; (i) to abolish the requirement of full payment of fees, and (ii) to expand enrollment condition from one year to three years, so as to enable foreign students who expect to graduate from public high schools within three years to continue their education in the school until their graduation. (iii) Furthermore, GOJ also requests USG to indicate the result of its consideration by the end of March 2001. (iv) GOJ also calls on USG to consider the abolition of both full payment requirement and the expansion of enrollment condition from one year to two years for public junior high school students.

(3) Permission for Stay (I-94)

An application for the extension of I-94 to the Immigration and Naturalization Service (INS) is currently accepted only four months before its expiration and thereafter. In reality, it often takes more than four months to complete the procedure from acceptance of application to issuance. The processing period may differ in various cases; for example, it usually takes eight to ten months in Los Angeles. The processing period is unpredictable at the time of application. As a consequence, many Japanese staffs working for Japanese firms in the U.S. are forced to go back to Japan for the sole purpose of obtaining a new I-94 and reenter the United States.

Delay in the issuance of I-94 by INS causes serious consequences in other procedures which require presentation of I-94. For example, applicants of extension of permission to stay (I-94) are not permitted to renew their driver's licenses in the State of California because Department of Motor Vehicles (DMV) uses I-94 as the primary document to verify applicants' legal status. Delay in the application procedure for extension of I-94 under this system would be a major barrier for legal residents to renew their driver's licenses.

As described above, the system of application for the extension of I-94 is not functioning properly. Thus it imposes an unreasonable burden on legal alien residents. Therefore, the system requires fundamental improvement. (i) GOJ requests INS to establish and announce a standard processing period for the procedure of the extension of I-94, which should be uniform in all INS offices.

This would help to reduce the processing period, to streamline the procedure, and to enhance predictability and transparency of the procedure. (ii) As an interim measure until fundamental improvement is achieved, GOJ requests USG to amend relevant provisions to enable application of extension of I-94 to be accepted one year before its expiration and thereafter.

(4) Social Security Numbers (SSN)

The amendment of the rule of the Social Security Administration (SSA) in February 1996 made it impossible to issue SSN to alien residents without employment-based visas. This change of the rule has caused inconvenience to dependents of Japanese staff working for Japanese firms in the U.S., as presenting SSN is necessary on various occasions in daily life in the U.S.; i.e. applying for a driver's license or a credit card, opening a bank account, and signing a lease contract for housing. No measure has been taken toward fundamental improvement on this issue during the past one year. (i) GOJ requests SSA to amend the rule again so that legal residents can obtain SSN. (ii) In the case that the amendment of the rule is unfeasible, GOJ requests SSA to take measures to inform private enterprises about the amendment of the rule limiting the issuance of SSN, and to ask them to avoid discriminatory treatment of legal residents who cannot obtain SSN.

(5) Driver's Licenses

GOJ requests SSA to continue dialogue with GOJ and to provide necessary information in order to address requests from legal residents who have difficulties in obtaining or renewing their driver's licenses due to the requirement of having I-94 or SSN.

II. HOUSING

GOJ would like USG to respond how the "Federal Government" will respond to the following requests.

1. Clarification of the Performance Requirements in the Building Codes

In August 2000, International Code Council (ICC) has published the final draft of ICC Performance Code for Buildings and Facilities and International Building Code (IBC) that may be applied in the whole country. However, the performance-based regulation is not fully introduced as they do not clarify the concrete performance requirements and related verification methods. The performance requirements should be clarified to enforce the codes rationally and more smoothly.

2. Harmonization of Testing Methods with the ISO Standards

The testing methods for non-combustible materials, (ASTM E84 etc. in IBC Chapter 7 section 703 Fire Resistance Rating and Fire Tests) should be revised so that they would be harmonized with the International Standards (ISO 5660 etc.).

3. Mutual Recognition of Evaluation Bodies

The building codes should be revised so that the test data and evaluation of new construction

methods and building materials conducted by Japanese Designated Evaluation Bodies can be accepted as those by the U.S. evaluation bodies (e.g. ICBO Evaluation Service, Inc). Alternatively, the test data by Japanese testing bodies should be accepted and evaluated by the U.S. evaluation bodies.

In the amended Building Standard Law that became effective on June 2000, GOJ has established mutual recognition system under which foreign testing/evaluation bodies recognized by the Minister of Construction can conduct testing and evaluation.

4. Adoption of Metric System (SI unit)

The metric system (SI unit) should be adopted in the U.S. building codes and standards as soon as possible, in accordance with the Second Annual Report of Structural Impediment Initiative in 1992.

III. TELECOMMUNICATIONS

(1) Abolition of the Restriction of Foreign Investment on the Licensing of Radio Stations

Section 310 of the Communications Act of 1934 stipulates that foreign direct investment on the licensing of radio stations shall be limited to 20%. Due to this restriction, it is impossible for Japanese carriers to obtain licenses to establish earth stations in the U.S. for providing services such as international communications between Japan and the U.S. by satellite, as the result of which they are faced with difficulty in creating flexible networks.

GOJ has already abolished the restriction of foreign investment on the licensing of radio stations for the purpose of conducting telecommunications activities, and thus, requests USG to take the same action on the restriction of foreign investment as stipulated in Section 310 of the Communications Act of 1934.

(2) Certification and Licensing Criteria for Foreign Carriers' Entry to the U.S. Telecommunications Market

As the certification and licensing criteria for foreign carriers' entry to the U.S. telecommunications market, USG retains discretionary criteria of the "public interest" factors such as "trade concerns" and "foreign policy," and "very high risk to competition." The existence of these criteria is regarded by foreign carriers, including those from Japan, as a lasting concern into the future.

GOJ requests USG, above all, to abolish the criteria of "trade concerns" and "foreign policy" which could be invoked to refuse the issuance of certification or license by reasons irrelevant to telecommunications policy.
GOJ also requests USG to clarify and publish a guideline under which the criteria of "very high risk to competition" would be invoked.

(3) Sincere Implementation of the WTO General Agreement on Trade in Services

The so called Hollings Bill, introduced this year in the Senate by Senator Hollings and adopted by the Senate Appropriations Committee, stipulates that no license will be granted by FCC to any

corporation of which more than one quarter of the capital stock is owned by a foreign government.

Such a bill, if enacted, could make it impossible or extremely difficult for the corporations covered by the above bill to operate in the U.S. telecommunications market, and may well constitute infringement on the GATS. GOJ requests USG to act against the approval of such bills to ensure further liberalization and progress of competition in the U.S. telecommunications market.

(4) State-Level Regulations

The difference among States in such regard as application procedures in obtaining a license has caused excessive burdens upon applicants seeking new entry to the U.S. market. To remove such burdens, GOJ requests USG to actively encourage the NARUC to take appropriate measures in 2001, such as the standardization of application forms, and contents and forms for licensees' report.

(5) Inter-state Access Charge

GOJ requests FCC to revise the currently-adopted Long Run Incremental Cost (LRIC) model by the end of 2002 with the up-dating of data to the latest data, in order to ensure that the level of the new inter-state access charge falls within the range of the rate calculated by the revised LRIC model. If the rate by this revised model turns out to be below 0.55 cent, the access charge should be expeditiously reduced to the level of the rate.

GOJ also requests FCC to ensure transparency and public comments opportunities in adopting any LRIC model, regardless of whether it is developed by FCC or any other organization, applied to the cost calculation for such purpose as interconnection rates.

GOJ further asks USG to establish the legal foundation of the LRIC model adopted in the U.S., as GOJ has already done regarding the Japanese model.

(6) International Charging Arrangements for Internet Services

USG has made reservations to the Recommendation (Recommendation D.iii) adopted at the ITU World Telecommunication Standardization Assembly (WTSA-2000) held from September to October of this year. GOJ requests USG to apply this Recommendation expeditiously.

In order to rectify the current international charging arrangements for Internet services, USG should actively participate in the studies and discussions held by APEC. In particular, GOJ requests USG to provide such data as the situation of domestic competition, to help the APEC's efforts to identify whether there exist dominant carriers or a de-facto monopoly in the U.S. market.

(7) FCC Order Concerning the International Settlement Rate Benchmark

At the ITU World Telecommunication Standardization Assembly (WTSA-2000), the member countries adopted the Recommendation (Annex E to Recommendation D.140) for the reduction of international accounting rates, and the Resolution (Resolution [X9]), as a supplement to the Recommendation, in which the ITU publishes the updated indicative target rates calculated on the

basis of the latest data. GOJ requests USG to pay due respect to such international agreements reached at multilateral fora, and abolish the following unilateral measures:
(i) FCC Report and Order (FCC 97-280) on international settlement rates; and
(ii) FCC Report and Order (FCC 97-398) Paragraph 179-214 on foreign carriers' participation in the U.S. telecommunications market.

IV. MEDICAL DEVICES AND PHARMACEUTICALS

The Government of Japan (GOJ) requests to the Government of the United States (USG) to take the following deregulation measures as soon as possible:

(1) To launch a more substantial consultation between the two governments toward the Mutual Recognition on Good Manufacturing Practice (GMP) of pharmaceuticals and medial devices which will facilitate procedures to ensure the quality management of production as well as reduce the burden of inspections conducted by USG to the Japanese manufacturers exporting products to the United States.

(2) To launch a more substantial consultation between the two governments toward the Mutual Recognition on Good Clinical Practice (GCP) which will facilitate the procedures of GCP conformity assessment of application dossiers and subsequently lead to the reduction of MHW's NDA review period.

(3) To deregulate the implementation of FDA's guidance so that bioequivalence study requirement on human being can be waived for minor changes of product formulations.

Note: "Guidance to Industry: Waiver of In Vivo BA and BE Studies for Immediate-Release Solid Oral Dosage Forms Based on a Biopharmaceutics Classification System"

(4) To improve the procedures in exporting drug for investigational use to Japan, by taking measures such as abolishing the procedure of submitting a GOJ's certificate, occasionally requested to an importer in Japan through a US-based exporter.

(5) To deregulate the purchasing control of medical devices which requires US based suppliers to evaluate Japanese manufacturers, since Japanese manufacturers are subject to FDA's direct audit of quality system requirement (QSR), and thus, this requirement has put duplicative burdens on them.

(6) To relax the batch certification requirement requested directly by FDA on each batch of the colour (coal tar colour) additives used for production of cosmetic products that are exported to the United States.

V. FINANCIAL SERVICES

1. Banking

(1) The FRB has implemented regulations regarding procedures for foreign banks to obtain the status of Financial Holding Companies (FHCs), based on the Gramm-Leach-Bliley-Act enacted in

November 1999. (It is understood that these rules are interim rules having taken effect since March 2000, and are expected to be replaced by final rules after receiving comments. Comments were accepted until April 17, 2000.)

The following points have been observed as discriminatory against foreign banks:

(i) The Leverage Ratio, which is unique to United States' regulations, is imposed on foreign banks as well.

(ii) While the capital requirement is applied to U.S. banks only with regard to depository institutions under the holding company structure, it is applied to foreign banks on a consolidated basis with regard to all institutions including non-depository institutions.

(iii) U.S. banks may "automatically" become FHCs as long as they meet certain requirements, whereas 'foreign banks are required to meet the same level of the necessary capital requirement as U.S. banks affiliated to the FHC.' This appears to give too much discretion to the FRB in making the 'well capitalized' judgement.

The data show that among financial institutions that have been approved as FHCs by the FRB, there are as many as 283 U.S. banks, while the number of foreign banks remains at only 15. (As of June 8, 2000)

Therefore, GOJ requests USG to take the following measures:

(a) Discontinue the practice of applying the leverage ratio to foreign banks

(b) Align the capital adequacy requirement for foreign banks (consolidated basis including institutions other than the depository institutions) with that for U.S. banks (on the basis of depository institutions only).

(c) Clarify the 'well capitalized' standard, removing any room for the FRB's discretion.

(d) Eliminate unfavorable treatment of foreign branches on the ground of reliance on public funds for their capital, when making judgements on capital adequacy, in line with the principle of the Basle Accord, which does not discriminate capital based on the nature of the shareholders.

(2) GOJ requests the revision of 'Section 20' which provides for the separation of banking and securities businesses, including the approval of underwriting and dealing on own account of stocks and bonds which are not currently permitted for bank-affiliated securities companies.

(3) When a bank holding company other than an FHC attempts to acquire a securities company engaged in ineligible securities business, it is requested to apply for the so-called Section 20 authorization. The FRB imposes standards such as the capital adequacy ratio on admission to this application in a rigorous manner.

As for the standards regarding foreign banks, Regulation Y, based on the Bank Holding Company Act Amendment of 1970, provides as follows:
"A foreign bank that operates a branch or agency in the United States shall maintain strong capital

on a fully consolidated basis at levels above the minimum levels required by the Basle Capital Accord."

However, in practice, capital requirements applied to U.S. banks are applied to foreign banks as well, and such requirements deviate substantially from the Basle Accord. Therefore, GOJ requests that international standards based on the Basle Accord be implemented in such cases to foreign banks.

(4) The Branch Level Interest Tax should be abolished.

(5) The Withholding Tax that is imposed on foreign bank branches in the case of net unfavorable balances with their head offices should be abolished.

(6) Under the New York State Banking Law, for instance, a certain amount of collateral must be deposited with the authorities as a guarantee when a foreign bank raises funds within the United States. The authorities require bonds of high liquidity as eligible collateral, mainly CDs and CPs, which causes a substantial opportunity cost in complying with the requirement, since a much higher return can be expected if invested in other assets. There are also other problems such as the heavy burden related to administrative procedures and price fluctuation risk of the collateral bonds. Furthermore, according to a research conducted by the Institute of International Bankers (IIB), United States and Canada are the only countries among over 40 countries surveyed, that oblige 'fund collateral posting by foreign banks' as business guarantee. Therefore, 'fund collateral posting by foreign banks' should be abolished, or if not possible, qualifications for eligible collateral should be expanded to include, for example, standard loan assets in order to provide flexibility for foreign banks.

2. Securities

(1) When a Japanese national is transferred to a branch or subsidiary in the United States and wishes to engage in securities business, that person is required to be licensed as a Registered Representative (RR) based on the Series 7 examination. However, due to the broad coverage of the examination textbooks and limited time, a very concentrated preparation is necessary in order to pass the examination. In other words, it is impossible to start business activities immediately, even though that person is qualified in Japan and has already settled down in the U.S. with a proper visa. Furthermore, it is difficult to change personnel since one cannot become an immediate business force in the U.S. unless licensed with the RR. Therefore, GOJ requests prompt introduction of the Series 47 examination approved by SEC in March 1996, which is a simplified version of the exam, for qualified Japanese agents.

(2) When a qualified agent in the U.S. engaged in securities business as a Registered Representative leaves the U.S. for a certain period of time, the qualification becomes void and reapplication for the examination must be made again in order to reengage in securities business in the U.S. This is a big burden for foreign companies when developing a strategy for allocation of personnel.

In Japan, once a person is qualified as an agent and becomes engaged in securities business as a registered representative, there is no need to reapply for qualifying examinations. The only requirement is to go through a certain registration process with the securities company in order to

restart securities business in Japan, even if there is a time period in which the person was not engaged in securities business for various reasons such as resignation from a company.

GOJ requests that a similar system be introduced in the United States. However, it is acknowledged that there may be cases where certain training courses will be required, in order to cope with any revision of laws and regulations after a certain period of time.

(3) GOJ requests deregulation measures, such as exemption or simplification of the examination, for persons responsible for internal administration as approved by the JSDA to acquire equivalent licenses as those responsible for internal administration in the U.S. (Series 24).

(4) For offerings of shares and bonds outside the U.S., foreign securities companies are required to use precautionary wording that 'this offering does not take place in the U.S.' each time, in order to meet the safe harbor rule provided in Regulation S and avoid contravention of the Securities and Exchange Act of 1933. GOJ requests that if such offering takes place solely outside the U.S., registration and notification requirements do not apply, and that such wording should not be necessary.

(5) When making an offering abroad based on SEC Rule 144A, underwriters need to ask their lawyers whether the offering has no problem under the Blue Sky Acts of States and that it is allowed to conclude contracts with investors of those States. The results of such inquiries are put down in a memorandum (so-called Blue Sky Memo) which describes there is no problem in light of the laws of those States.

In the case of an offering based on SEC Rule 144A, underwriters do not always obtain a Blue Sky Memo, but SEC rules do not clearly describe whether the Memo is obligatory.

It appears unreasonable that underwriters need to comply with the rules of each State even when aiming at designated markets such as those for accredited institutional investors, and when they do not aim at individual investors in the United States. GOJ requests USG to establish a provision which clarifies that, when the Blue Sky Acts and the Federal Securities Laws conflict each other, the latter should predominate so that underwriters do not need to go through the trouble of obtaining the Blue Sky Memo.

(6) It is recognized that there is a restriction on advertising by issuers in global offerings based on SEC rule 144A. For example, issuers must refrain from performing the following activities;

(i) To make contact beyond ordinarily advertisement with public media from the business period immediately preceding the offering

(ii) To release to public media more information than that included in the prospectus used in Japan during the offering as well as for a certain period of time after the close of the offering.

Issuers must refrain from the above since such activities are regarded as solicitation or offer in the United States, and there is a fear of violating the registration requirement under the Securities and Exchange Act of 1933. GOJ requests USG to clarify that there is no need for restricting such activities for global offerings.

(7) According to the Investment Company Act of 1940, an 'investment company' is a company which holds more than 40% of its assets in the form of investment securities, and it is placed under the regulation and administration of SEC. Following this rule, a company planning to issue securities in the U.S. had fallen under this definition of 'investment company' when it evaluated its cross-holding stock portfolio at market value. Thus, this company had to go through the exemption procedure of the Investment Company Act, while at the same time going through the securities offering procedure in the U.S., resulting in a substantial increase of labor cost and expenses far beyond what had been expected. Since it is clear that the investment is not part of the regular business activity for a company which possesses such cross-holding stocks which are held for strategic purposes, GOJ requests that an exemption be provided under the Investment Company Act for such cases.

(8) GOJ requests that the Japanese government bond be treated in the same way as the US government bond in the calculation of the capital adequacy ratio. In the Japanese regulation on capital requirements, the U.S. government bond is equally treated with the Japanese government bond, whereas the Japanese bond is treated unfavorably compared to the U.S. equivalent in the U.S. regulation. This hinders activities such as concluding repurchase agreements of Japanese bonds with U.S. securities companies.

(9) When conducting global offerings of Japanese shares including offerings in the United States, issuers must comply with the rules of the United States until the offering in the United States is concluded, and no stabilization operations can be conducted in accordance with the rules of Japan. GOJ requests that the U.S. rules be amended to enable such operations.

(10) The U.S. SEC specifies nationally recognized rating agencies and uses their ratings in its regulation and supervision. Only Standard & Poor's and Moody's were initially registered as rating agencies, and currently there are three agencies in total with Fitch having taken over Duff & Phelps. GOJ requests USG to clarify the criteria in authorizing recognized rating agencies in the United States, and allow the entry of foreign rating agencies.

(11) Restriction on Transaction for Newly Issued Foreign Bonds
The third Joint Status Report on the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy, states that "Foreign governments, however, are not required to register their securities if they are issued outside of the United States and are sold in the United States only after a 40-day seasoning period. Foreign governments may also take advantage of exemptions from the registration requirement on certain types of securities transaction specified in the Act (the Securities Act of 1933)." As GOJ indicated in the previous submission to USG, however, selling Japanese bonds in the United States is forbidden within 40 days after issuance without registering at the Securities Exchange Commission (SEC) and issuing prospectuses to customers. This is the problem and there has been no progress made regarding this situation. Considering that foreign bonds are issued under credibility of each country, GOJ requests USG to deregulate this restriction or to except foreign bonds from this restriction.

(END)