(Provisional Translation)

SUBMISSION BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING REGULATORY REFORM AND COMPETITION POLICY

CONTENTS

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October 23, 2002

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The Deregulation Dialogue under the Enhanced Initiative which continued for four years since 1997, and the 1st year dialogue of the Regulatory Reform and Competition Policy Initiative ("Reform Initiative") under the "Japan-U.S. Economic Partnership for Growth" established by Prime Minister Junichiro Koizumi and President George W. Bush at the Japan-U.S. summit meeting on June 30, 2001, have certainly achieved success in clarifying regulatory and systemic problems of each country and in reducing unnecessary regulations, strengthening competition, and improving market access.

It is also a fact, however, that there remain regulations and systems in the United States that are: 1) unique to the United States and 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, thus regarded as serious concerns by them. Various unilateral measures that the Government of the United States of America (USG) has employed are their typical examples, and questionable from the viewpoint of their consistencies with the WTO rules as well.

With these recognitions of the current situation, the Government of Japan (GOJ) presents its submission regarding regulatory reform and competition policy to USG at the beginning of the 2nd year dialogue of the Reform Initiative. GOJ intends to urge USG to improve its policy and further promote regulatory reform and competition policy by sufficiently reflecting this submission.

GOJ strongly hopes that the frank and constructive dialogue with USG under this Reform Initiative will greatly contribute toward further strengthening and deepening of the Japan-U.S. relationship. Japan and the United States should fully recognize that they have leading roles to play in promoting global economic growth and economic

harmonization, as well as in strengthening an open and multilateral trading system. The two countries should demonstrate a model of dialogue and cooperation in this globalized age. And, in order to realize such a dialogue, GOJ expects that USG will seriously consider the items raised in this submission, based on the principle of two-way dialogue, and make positive commitments to producing tangible results.

I. CROSS-SECTORAL ISSUES CONCERNING REGULATORY REFORM AND COMPETITION POLICY

1. Trade/Investment Related Measures

(1) Anti-Dumping Measures and Safeguard Measures

(a) Although anti-dumping measures are proper trade remedies as far as they are operated in a manner consistent with the WTO agreements, there is a possibility that they might unduly limit trade and distort competition once operated in an arbitrary manner, for example, in determining whether a dumping exists or not. Furthermore, the initiation of anti-dumping investigations itself may discourage exporting companies. From these viewpoints, GOJ urges USG to operate its anti-dumping mechanism prudently, without abusing it for protectionist purposes.

(b) A number of products have been subject to anti-dumping duties for a considerable period of time. GOJ urges USG to strictly examine the necessity of continued imposition of such anti-dumping duties and to take appropriate actions where necessary.

(c) The United States is one of the major users of anti-dumping measures. A number of countries including Japan have been claiming that some of the U.S. anti-dumping measures are inconsistent with the WTO agreements, because of, for example, the arbitrariness in determining whether a dumping exists or not. In several cases such as "*United States - Anti-Dumping Act of 1916* (DS162)" and "*United States - Certain Hot-Rolled Steel Products from Japan* (DS184)", the DSB found that the U.S. measures were inconsistent with the WTO agreements. In particular, Title VIII of the U.S. Revenue Act of 1916 (the so-called "Anti-Dumping Act of 1916") has already caused a great amount of actual damages to Japanese firms, including expenses incurred with regard to the judicial proceedings

under the Act. Therefore, GOJ requests USG to promptly bring those measures into conformity with the WTO agreements.

(d) GOJ also requests USG not to apply, in its future anti-dumping investigations, the methods that have already been found to be inconsistent with the WTO agreements, such as those for anti-dumping margin calculations adopted by DOC and for injury determination adopted by USITC.

(e) The Byrd Amendment, which stipulates the distribution of revenues from anti-dumping and countervailing duties to U.S. domestic producers who filed or supported a petition for such duties, was found to be inconsistent with the WTO agreements by the WTO panel, and this panel report was circulated to the Members on September 16. In accordance with the Panel's recommendation, GOJ continues to request USG to urge the Congress to repeal the Byrd Amendment as soon as possible.

(f) Finally, GOJ requests USG to operate its safeguard measures prudently, in a manner fully consistent with the WTO agreements. With regard to the U.S. safeguard measures on imported steel products, which was decided by the President on March 5 and actually invoked on March 20, GOJ is of the view that they are inconsistent with the WTO agreements. GOJ therefore requests USG to withdraw these measures without delay, and will continue to highlight their illegality in the process of the WTO dispute settlement procedures, while working closely with the other WTO Members concerned, aiming at final withdrawal of these U.S. measures.

(2) 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 foreign direct investment that threatens the national security of the United States. In general, GOJ fully understands the necessity of regulations for national security reasons. GOJ has concerns, however, about the provision from the following viewpoints:

(a) the lack of predictability due to ambiguous definition of "national security";

(b) the lack of legal stability caused by the possibility that completed transactions can also be subject to future investigation; and

(c) the lack of due process, illustrated by the fact that even the parties concerned cannot be notified of the reasons for the commencement of investigation nor the final decisions by the President.

GOJ also has concerns that this provision could impede investment activities of Japanese companies beyond the extent necessary for its original purpose. Transparency and predictability of the government regulations are key elements in business's determining investment. They are also prerequisites for competitive businesses to conduct their business under fair conditions. GOJ requests USG, in the operation of the Exon-Florio provision, not only to comply with WTO rules but also to take necessary measures to ensure transparency and fairness, to the maximum extent possible, in the process from the notification to the CFIUS (The Committee on Foreign Investment in the United States) to the final decision by the President.

(3) The U.S. Patent System

(a) The First to Invent System, Interference

The United States is the only country adopting the first-to-invent system. Under this system, when two or more people make inventions separately and file applications for each of them, an interference procedure is carried out in order to determine who receives patent rights.

From the point of view of patent applicants, this procedure has some problems including: (i) there is little certainty and predictability in that the position of the right holder may be imperiled *post factum* by the appearance of a prior inventor, (ii) the interference procedures requires long periods of time and money; and (iii) there is a danger of leakage of the contents of inventions contained in applications filed or of know-how contained in patents during the interference period. In addition, in cases where multiple inventors have independently made the same invention and multiple patents have been granted to some of these inventors (double patent), there is a possibility that a third person will suffer an unreasonable loss in that he/she may be forced to pay redundant royalties to each right holder because there is no method for third persons to invalidate double patents by themselves.

Therefore, GOJ requests USG to switch to the first-to-file system, which is the international *de facto* standard. GOJ requests USG to simplify its interference procedures as a provisional measure until such a switch is made.

(b) The Early Publication System with Exceptions

The US early publication system, introduced by the revised patent law of November 1999, has exception that allow applicants, by their request, not to publicize US applications not filed overseas as well as contents of US applications not included in corresponding foreign applications.

Since the contents of applications remained unpublicized by request are not laid open to other persons until publication of the patent gazette after granting of the right, there is a possibility that a *bona fide* third person may invest redundantly, in research and development or to put to practical use an invention identical to that is written in the specification. From the viewpoint of the predictability of profits and losses in business, this is a considerable problem.

In cases where the patent examination term has been lengthened, there is a possibility that the patent right is established after a third person has independently put the developed technology to practical use in the meantime and sufficiently expanded the market scale of a product conflicting with the invention of the pending application. A large license fee may then be demanded of the third person. This is known as a "submarine patent."

Therefore, GOJ strongly requests USG to abolish an article for exceptions included in the early publication system and to implement the contents of the 1994 U.S.- Japan agreement in which USG agreed to lay open all applications, excluding those under secret order and those non-pending, within 18 months after the first date of application.

(c) The Reexamination System

In the United States a reexamination system is provided as a means to review the validity of patent rights after granting. In this system, *inter partes* reexamination is introduced as an option of the appeal reexamination by the revised patent law of November 1999.

However, in the reexamination system in the United States, reexamination is limited to items whose reason for reexamination request is the existence of prior art documents. It is not allowed to apply for reexamination on the grounds of not meeting the enablement requirement or the description requirement of the specification.

Although the new system has been introduced to expand opportunities for third persons to participate in *inter partes* reexamination, they cannot appeal against a decision by the Board of Patent Appeals and Interference of reexamination

affirming a patent right to Court of Appeals for the Federal Circuit (CAFC). Therefore the system is not practical.

Therefore, GOJ strongly requests USG to accept to all of the requirement inadequacies of the US Patent Law Article 112, excluding the best mode requirement, as reasons for reexamination request and to allow appeals by third party applicants to CAFC.

(d) Restriction Requirement due to Non-fulfillment of Unity of Invention

When two or more separate inventions are contained in one application, the applicant is requested to file only one invention by selecting claims in order to maintain unity of invention (only one independent invention should be included in an application).

US standards of decision for unity of invention are more stringent than those of the Patent Cooperation Treaty (PCT). Even if an invention fulfills the unity of invention requirements as a PCT application filed in the US, it may be judged as not meeting the requirement if the same application is filed claiming priority rights based on the Paris Convention for the Protection of Industrial Property.

It is practically difficult for applicants filing applications in multiple countries to carry out application preparations (consideration of claims) in compliance with unique US standards concerning requirements for unity of invention.

When a request for restriction is received and the claim is decided, claims that were not chosen are excluded from examination. Therefore, if the applicant wants to maintain the claims that were not chosen, it is necessary to file a divisional application before the patent is issued for the original application. Filing a divisional application requires further time and expense on the part of the applicant.

Furthermore, it is burdensome to third persons monitoring the patent for the purpose of avoiding conflict as well as to applicants and right holders that inventions, for which unity of invention would be allowed in other countries, exist in the US as multiple applications.

Therefore, GOJ requests USG to ease the requirements for unity of invention.

(e) The Hilmer Doctrine

Article 119 of the US Patent Law introduces the priority rights system provided by Article 4 of the Paris Convention. Namely, an application filed in the US within 12 months from the first date of the overseas application have the same

effect as an application filed in the U.S. on the same day as the first date of the overseas application.

However, in US precedents and practice based on the Hilmer Doctrine, the effect of the items of the specification comes into being as prior art to eliminate subsequent applications by third persons is not retroacted to the first date of application in the first country to receive the application. It is only retroacted to the date of filing in the U.S.

As regards subsequent applications from third persons, while applications whose first country of filing is the US have the elimination effect provided by articles 102(e) and 102(g) of the Patent Law, US applications based on the priority rights of overseas applications are only afforded article 102(g) as an effect to eliminate subsequent applications within the term of the priority right.

In Japan and Europe, domestic applications based on priority rights of overseas applications are retroacted to the first application date in the first country, and the effect to eliminate subsequent applications applies to all items of the specification. It is unfair that the same treatment is not guaranteed by the U.S.

Therefore, regarding precedents and practice based on the Hilmer Doctrine, GOJ requests USG to improve the system to ensure that all items of the specification are retroacted to the first date of filing in the first country and that they have the effect of eliminating subsequent applications by third persons.

(4) Metric System

Based both on the dialogue under the Japan-U.S. Enhanced Inithiative on Deregulation and Competition Policy and the first-year dialogue under the Japan-U.S. Regulatory Reform and Competition Policy Initiative, GOJ remains strongly interested in the progress made toward the adoption of the metric system in the United States. In view of the significant impact that the U.S. market has on world trade, GOJ continues to urge USG to ensure that the metric system (the SI Unit), which is the global standard, is adopted more broadly by the U.S. public and private sectors.

(5) Re-Export Control

During the third-year dialogue under the Japan-U.S. Enhanced Initiative on Deregulation and Competition Policy, GOJ requested USG to improve the operation of its re-export control system in order to reduce the related burdens imposed upon foreign exporting companies including Japanese ones. As an

outcome of the dialogue, USG made clear its intention to take a series of measures in the third Joint Status Report on the Japan-U.S. Enhanced Initiative on Deregulation and Competition Policy. These measures have not yet been implemented, however.

There is a basic concern that the U.S. re-export control could constitute an extraterritorial application of the U.S. domestic laws which is not permitted under general international law. Furthermore, GOJ controls its exports effectively, not only through active participation in all the export control regimes but also by introducing the Catch-all controls for weapons of mass destruction and their delivery means. GOJ therefore finds little need of controlling re-exports from Japan, and requests USG to exempt Japan from the subject of the re-export control.

As the transitional measures for the purpose of reducing burdens on Japanese exporters, GOJ requests USG to take the following measures:

(i) To establish a Japanese web-site concerning laws related to re-export control with the aim to promote understanding of the Japanese business people concerned, and to station experts of export control at the U.S. Embassy and Consulates in Japan, whom Japanese exporters can consult on related matters.

(ii) To require U.S. exporters to provide Japanese importers with sufficient information on the products so that these importers can judge whether these imported products are subject to the U.S. re-export control or not.

(6) Import Tariff Calculation Method and Labeling Requirements of Origin for Clocks and Watches

(a) Import Tariff Calculation Method for Clocks and Watches

During the second- and third-year dialogues under the Japan-U.S. Enhanced Initiative on Deregulation and Competition Policy, GOJ requested USG to simplify the procedure of trade by abolishing the levying of tariffs on each part of clocks and watches, which is currently practiced in the U.S., and determining tariff rates on HS categorization 6-digit basis.

However, the final report issued after the review by the USITC which was concluded in the summer of 2000 does not adequately reflect the “Comments by the Government of Japan on the Draft on Simplification of the Harmonized Tariff Schedule of the United States by the United States International Trade Commission,” which was submitted by GOJ in 1999. GOJ continues to urge USG to undertake a comprehensive review of the report and to simplify the procedure of trade by abolishing the levying of tariffs on each part of clocks and

watches and determining tariff rates on HS categorization 6-digit basis.

(b) Labeling Requirements of Origin for Clocks and Watches

During the second- and third-year dialogues under the Japan-U.S. Enhanced Initiative on Deregulation and Competition Policy, GOJ requested USG to limit labeling requirements of origin to finished products of clocks and watches only, and to leave the choice of labeling methods, such as carved seals, tags, etc. to the discretion of manufacturers .

In June 1999, USG amended the Harmonaized Tariff Schedule of the U.S. (HTSUS) to permit an indeliable ink marking in addition to a die-stamping on the surface of movements and cases, as a measure to meet the labeling requirement of origin for clocks and watches. The amendment, however, does not sufficiently respond to the above-mentioned request by GOJ. GOJ therefore continues to request USG to simplify labeling requirements of origin for clocks and watches.

2. Sanctions Acts

(1) Iran and Libya Sanctions Act of 1996 (ILSA)

As GOJ repeatedly pointed out during the second- to fourth-year dialogues under the Japan-U.S. Enhanced Inithiative on Deregulation and Competition Policy, and during the first-year dialogue under the Regulatory Reform and Competition Policy Initiative, sanction measures based on the Iran and Libya Sanctions Act of 1996 (ILSA) could constitute an extraterritorial application of domestic laws which is not permissible under general international law, and they may cause a problem of consistency with the WTO agreements. It is greatly regrettable that, despite GOJ repeatedly pointing out the above-mentioned problems on various occasions, USG approved the extension of the Act for another 5 years without resolving them in August, 2001.

GOJ strongly urges USG to exercise prudence in implementing the Act, ensuring consistency with international law, and especially to avoid applying the Act to enterprises of third countries.

USG decided in May 1998 that the investment contracts in gas exploitation by three companies of the third countries would be exempted from the application of the Act. Furthermore, on the occasion of the above-mentioned decision, USG submitted to the Congress a report on this exemption which states that similar cases would result in like decisions with regard to waivers for EU companies. This

practice has basically continued in relation to other projects in gas and oil exploitation by other foreign companies. (Their current status is 'under examination' as for the application of the Act.) GOJ therefore requests USG to give Japanese enterprises the level of treatment tantamount to that has been guaranteed to EU enterprises as stated in the above-mentioned report.

(2) Cuban Liberty and Democratic Solidarity Act of 1996 (Helms-Burton Act)

As has been pointed out not only by GOJ during the first-year dialogue under the Regulatory Reform and Competition Policy Initiative, but also in the related resolutions of the U.N. General Assembly, sanction measures based on the 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 be inconsistent with the free-trade principles stipulated in the WTO agreements.

GOJ appreciates USG's decision on July 16, 2002, to extend the suspension of the implementation of Title 3 of the Act for another 6 months, while GOJ continues to strongly request USG to exercise prudence in implementing the Act, by ensuring consistency with international laws, and especially to avoid applying the Act to enterprises of the third countries.

(3) Sanctions Acts Instituted by Local Governments

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 was unconstitutuional, in the sense that it removed entry barriers for private firms facing trade-related legislation instituted by individual states. During the fourth-year dialogue under the Japan-U.S. Enhanced Initiative on Deregulation and Competition Policy, and the first-year dialogue under the Regulatory Reform and Competition Policy Initiative, USG explained to GOJ the efforts it had made to talk with the local governments where sanctions acts in consistent with foreign policy of the federal government still exist. GOJ therefore continues to request USG to illustrate the concrete results and progress made by these efforts including working with the governors, attorney generals and government procurement officials of relevant states.

GOJ also continues to urge USG to take concrete actions such as issuing documents to all states 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 above-mentioned U.S. Supreme Court decision.

(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.

3. Distribution

(1) Counter-Terrorism Measures in Maritime and Other Sectors

GOJ recognizes the importance of, and supports in principle, initiatives launched by the United States to combat terrorism in maritime and other sectors, including reinforcement of container security through such steps as the bilateral Container Security Initiative (CSI) and the STAR Initiative in APEC. At the same time, however, GOJ requests USG to pay due consideration to securing smooth international trade.

With regard to the Maritime Security Bill, which is under deliberation in Congress at the submission of this request, GOJ requests USG to ensure that, should the Bill pass the Congress, its application maintains consistency with the practices of relevant international organizations including the International Maritime Organization (IMO) and the International Labor Organization (ILO), and does not hinder legitimate trade.

With regard to the proposed amendments to the U.S. Customs Regulations concerning the requirement of presenting manifests 24 hours prior to the lading of containers (published in the Federal Register on August 8, 2002), GOJ requests USG to ensure that the implementation of the amended Regulations will not impose excessive burden upon the related companies required to present these manifests.

With regard to the CSI, GOJ requests USG to ensure that the CSI will not be operated in such a manner as to hinder legitimate trade: that will not require excessive costs for the export procedures at the ports participating in the CSI, and that will not treat non-participating ports in a disadvantageous manner in comparison with the participating ones and thus avoid the distortion of distribution of traded goods among ports.

(2) Import Cargo Release Time Survey

GOJ recognizes that the time required for the release of goods is one of the important benchmarks for trade facilitation in the international fora such as APEC. GOJ therefore requests USG for further its consideration to the implementation of a Time Release Survey based on the Guideline developed by the World Customs Organization (WCO), and to make clear a concrete schedule for its implementation.

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

(a) 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 Japanese carriers in September 1997. Although the sanction was removed in May 1999, FMC still requires carriers to report to FMC on the situation of the ports in Japan. The rule (repealed 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) Since the repeal of the above-mentioned rule, FMC has required Japanese and US related carriers to report to FMC on the progress of the situation of the ports in Japan.

Signs of progress have been seen on the situation of the ports in Japan, as a result of the efforts by the people concerned, such as significant improvement and steady implementation of “the prior consultation system,” realization of new entries into port transport business as a result of the revision of the Port Transportation Business Law that abolished the supply-demand adjustment restriction, and steady progress toward the introduction of 24-hour/day port terminal service operation. GOJ strongly urges FMC to have correct understanding of these positive developments.

Despite this significantly improved situation of the ports in Japan described above, FMC introduced a new order which not only increased the number of items to be reported, but also expanded the scope of carriers subject to the reporting requirement. The order includes requirements going beyond the extent that is

deem appropriate, such as directly requiring Japanese carriers to submit translated copies of the Japanese laws and instructions concerned, thus causing unfair and excessive burdens on them.

It is regrettable if FMC decided to expand the range of the reporting requirements in order to judge whether or not it should impose unilateral sanctions that would violate the Treaty of Friendship, Commerce and Navigation between the United States and Japan. GOJ recognizes that in such a case, this order would constitute a serious abuse of FMC's mandates.

GOJ therefore strongly requests USG to withdraw the order, which requires carriers to submit the report.

(4) 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 an enormous amount of subsidy distorts conditions for free and fair competition in the international maritime market.

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

GOJ requests USG to abolish the Cargo Preference Measures, such as the requirement to use U.S. vessels for the exports of Alaskan oil which is commercial cargo. 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.

(6) Ocean Shipping Reform Act of 1998

The Ocean Shipping Reform Act of 1998 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 on a commercial basis, unilateral regulations by FMC on the pricing practice are obviously 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 FMC should not impose unilateral regulations on shipping activities on a

commercial basis by Japanese and other foreign shipping firms in the future, without considering the reality of the market.

4. Competition Policy

GOJ urges the Department of Justice to continue to review and express its views on the appropriate scope and reach of limitations and exemptions of the application of the federal antitrust laws from the viewpoint of active promotion of competition policy, and abolish the limitations and exemptions that have no rationale for their existence. GOJ requests USG to actively cooperate with the states concerned in the review process of the antitrust exemptions at the state level as well. GOJ also requests USG to make available to GOJ any public documents relating to the above-mentioned work, and to explain the progress that has been made with regard to the work.

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 continues to welcome this position of the 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 the 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 a Foreign Legal Consultant. 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 the 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.

(e) First Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative states that the Government of the United States will continue the discussion of legal services issues with the ABA. GOJ therefore requests USG, concerning these requests, to explain the details and current status of the dialogue and consultation between USG and ABA and what the ABA's response is in such talks.

(2) Product Liability Law

Product Liability Law in the United States constitutes a heavy burden for Japanese and U.S. companies doing business in the United States. GOJ requests USG to encourage the reforms currently underway in various states to limit product liability, and 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, which has already been attempted in such form as the submission of relevant bills to the Congress.

6. Consular Affairs

(1) 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 still continued to cause inconvenience to dependents of Japanese staff working for Japanese firms in the United States, as presenting SSN is required in principle on various occations in daily life in the United States; i.e. applying for a driver's license or a credit card, opening a bank account, and signing a lease contract for housing.

GOJ therefore requests SSA; (i) to amend the rule again so that these legal residents can obtain SSN, or if it is difficult to do so promptly, as tentative measures, (ii) to fully inform private enterprises of the amended rule limiting the issuance of SSN, and to instruct them to ensure that legal residents who cannot obtain SSN are not given discriminatory treatment, and (iii) to consider presenting to the state governments as quickly as possible a guideline regarding concrete alternative measures for identification available to legal alien residents who cannot obtain SSN, and monitoring its implementation by each state.

(2) Permission for Stay (I-94)

As GOJ repeatedly pointed out during the first-year dialogue under the Regulatory Reform and Competition Policy Initiative, the system of application for the extension of I-94 is not functioning properly and is imposing unreasonable burdens on legal alien residents. Reflecting GOJ's belief that the system requires fundamental improvement, the First Report on the Japan-U.S. Regulatory Reform and Competition Policy Initiative clearly states that "USG took note of the GOJ's request that the INS continue to consider the establishment of a standard period for processing extension of stay applications to be applied uniformly in all INS

offices." GOJ therefore requests USG, concerning these requests, to explain what concrete measures USG has considered and will consider hereafter.

Furthermore, the Fourth Joint Status Report on the Japan-U.S. Enhanced Initiative on Deregulation and Competition Policy states that "INS will consider measures to enable applications for extentions of stay to be accepted one year before the expiration of the I-94 and thereafter." GOJ requests USG to give concrete explanation of the current status of the consideration.

(3) Driver's Licenses

GOJ urges 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. Although substantial improvement has actually been seen in many states, there still are reported cases of dependents of Japanese staff working for Japanese firms in the United States, who are legal alien residents but cannot obtain SSN, being rejected from obtaining driver's licenses. GOJ therefore requests USG to fully inform all the state governments and related agencies of the current system under which legal alien residents can obtain driver's licences without SSN, and its operation.

7. Facilitation of the Settlement of Disputes in the Construction Business

In the U.S., settling disputes with regard to construction projects imposes a huge burden on the parties concerned in terms of time and human resources, and the necessary costs in this process, such as costs for hiring lawyers, often negatively affect their balance sheets. In the process toward dispute settlement, discussions tend to revolve around irrelevant issues rather than central ones such as technical feasibility, which result in the delayed settlement of claims, especially, in the case of public construction projects.

Japanese companies receive and submit, where necessary, claims in construction projects in the U.S. In order to avoid unnecessary delay in construction schedule, GOJ requests USG to make utmost efforts for the creation of an environment where such claims are dealt with as rationally and speedily as possible through such measures as facilitating the conclusion of an advance agreement between the parties concerned to set up a forum of consultation and designating in advance a third-party mediator capable of judging technical

feasibility

II. TELECOMMUNICATIONS

(1) Restrictions on Foreign Investment in the Licensing of Radio Stations

Section 310 of the Communications Act of 1934 stipulates that foreign direct investment in the licensing of radio stations shall be limited to 20%. This restriction makes it impossible for Japanese carriers to directly obtain licenses to establish earth stations in the United States for providing services such as international communications between Japan and the United States by satellite, as a result of which they are faced with difficulties in creating flexible networks.

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

(2) Certification and Licensing Criteria for Foreign Carriers' Entry into the US Telecommunications Market

Among the certification and licensing criteria for foreign carriers' entry into the US telecommunications market with regard to Section 214 and Section 310(b)(4) of the Communications Act of 1934, GOJ requests USG to abolish the criteria of "trade concerns" and "foreign policy" which could be invoked to refuse issuance of certification or licenses for reasons that are irrelevant to telecommunications policy.

GOJ also requests USG to clarify and publish guidelines under which the criteria of "very high risk to competition" would be invoked.

GOJ further requests USG to clarify guidelines under which the dominant carrier regulation in 47 C.F.R. Part 63 is applied to carriers providing international communications services.

(3) State-Level Regulations

In the United States, carriers are obliged to file reports to the states on information such as their earnings where they are providing services. The differences in the filing forms among states have placed excessive burdens on carriers.

GOJ requests USG to actively encourage the NARUC to take appropriate measures, such as the simplification and standardization of the filing forms so that such burdens will be removed.

(4) Access Charges

GOJ requests FCC to ensure that the level of the inter-state access charge always falls within the range of the rate calculated by the most up-to-date Long Run Incremental Cost (LRIC) model. GOJ also requests USG to introduce an LRIC model to the calculation of an intra-state long distance access charge and to eliminate or reduce the gap between the inter-state access charge and the intra-state long distance access charge.

(5) Procedures for Processing Export Licenses and TAA Approval of Commercial Satellites

As a result of the transfer of jurisdiction over the export of commercial satellites from the Department of Commerce to the Department of State (DOS) in March 1999, DOS's approval became necessary for the export of commercial satellites and transfer of technical information concerning these satellites. Since then, Japanese satellite communications carriers have been forced to wait for an unreasonable length of time before obtaining technical information on the satellites that they order, which has become a lasting concern into the future as the delay could affect their satellite-launching schedules.

GOJ therefore requests USG to further shorten the processing period for export licenses and TAA approval of commercial satellites.

III. INFORMATION TECHNOLOGY (IT)

Given the current situation that copyrighted works are freely distributed across the borders due to the wide use of the Internet and the development of digital technologies, it is vital to ensure protection of copyright and related rights in an internationally harmonized manner.

From this viewpoint, GOJ requests USG to ensure clear and reliable protection of items which are not fully protected in the United States, such as the right of making available, the rights concerning live performances, the moral rights, the right of rental concerning video games, the broadcasting organizations, and the unfixed works.

IV. ENERGY

GOJ recognizes that the comprehensive energy act, including the repeal of the Public Utility Holding Company Act (PUHCA), has been deliberated in the Congress. While the GOJ welcomes this initiative, the act has not yet passed the Congress.

To realize a vibrant electricity market in the United States by reducing business risks and barriers while taking into account the lessons learned from the failure of Enron and other related problems, GOJ considers that it is beneficial for USG to enforce the following measures under the initiative of the Federal government as soon as possible.

(1) Improving the Overlapping Structure of the Federal and State Regulations and Different Regulations Among States

In the United States, both the Federal and state governments regulate the electricity sector, and new entrants need to research the regulations of each state on top of the federal regulations. In some cases, the difference in degree and structure of liberalization among states impedes market participants from smoothly expanding their businesses.

There appears to be no change in the degree of separation between the authority for the wholesale market: the Federal Energy Regulatory Commission (FERC), and that for the retail market: the State (Public Utility Commission).

Moreover, the lack of clarity as to the existence itself of the retail liberalization and the liberalization schedule in each state impedes businesses from entering the retail market.

To enable foreign business operators to expand their businesses smoothly, GOJ requests USG to take measures to improve the situation of overlapping structure of federal and state regulations as well as the differences among regulations in each state.

Furthermore, in cases where a state’s environmental regulatory requirements for siting are so strict as to make it impossible to construct new generating units and transmission lines, such regulations should be relaxed.

(2) Repeal of the Public Utility Holding Company Act

The Energy Policy Act of 1992 exempted independent power producers from

the Public Utility Holding Company Act, while retail suppliers are still regulated under the latter act. In cases where retail suppliers operate in more than one state, factors such as the complicated approval procedures have hindered their business activities.

GOJ therefore requests USG to work for the prompt approval of the Energy Policy Act of 2002, which incorporates the repeal of the PUHCA.

(3) Review on Publicly Owned Entities

Along with the progress of competition in the electricity market, it is necessary to examine the need of existence of Publicly Owned Entities (POEs).

According to the Edison Electric Institute annual statistics, 23% of the electricity generating facilities in the United States are operated by Publicly Owned Entities, especially federal entities.

While it is beneficial to ensure open access to government-owned transmission facilities by passing the Energy Policy Act of 2002, GOJ requests USG to take measures such as promoting privatization of Publicly Owned Entities from the viewpoint of ensuring fair competition in the liberalized competitive market.

(4) Standard Market Design (SMD)

There is a reference to SMD promoted by FERC in the U.S. measures' section of the First Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative of June 2002.

At the end of July, FERC announced the Notice of Proposed Rulemaking (NOPR) of the SMD, which closely resembles that of the New York ISO (Independent System Operator).

The New York ISO wholesale market features a system that includes such arrangements as capacity requirements and locational pricing. GOJ deems it necessary for USG to verify whether or not the construction of the necessary electricity supply facilities has been sufficient based upon these measures.

When SMD is implemented throughout the United States, GOJ requests USG to pay due consideration to ensuring coordinated development of generation and transmission facilities.

(5) Clarification of the Market Regulation Policy

There is a trend towards strengthening the regulations of competitive markets, such as the establishment of the Office of Market Oversight and Investigations

within FERC. Due, however, to the lack of clarity in the methods of oversight and the standards of judgment with regard to the appropriateness of price setting, businesses are unable to predict the impact of the regulations and may even become reluctant to carry out their plans to construct electricity generating plants.

GOJ therefore requests the U.S. regulatory authorities to promptly clarify the specific regulatory policies regarding the market.

(6) Price Cap Regulations in Wholesale Market

Some states have price-cap regulations on the electricity wholesale trade, which occasionally prevent market participants from recovering their investment costs.

Where these price-cap regulations are deemed necessary, state governments should take appropriate measures that fully take into consideration the need to ensure predictability for market participants with a view to allowing them to recover their investment costs without great difficulty and plan their businesses smoothly. It is also necessary to take into account the fact that such price caps can affect the price "signaling effect" of a supply/demand imbalance.

Moreover, concerning the price cap suggested by NOPR of FERC's SMD, which is intended to be applied over a wide area (all over the United States, or, in the Eastern and Western regions), NOPR explains that the price cap will be established for the electricity supplied from the specified "must-run" plants. It would be difficult, however, to specify such power plants in an objective and integrated manner, and this proposal should therefore be reviewed.

(7) Normalization of the Electricity Transaction Market

Along with the liberalization of the energy market, there has been an increase in the number of speculative operators which conduct arbitrary transactions based exclusively on financial dealings that are unconnected to the actual processes of production and distribution. Manipulation of market and accounting by companies such as Enron has resulted in a dramatic loss of credibility in the market.

GOJ requests USG to consider concrete measures for such purposes as the restriction on speculative dealings and the prevention of damage caused by the exercise of the market power, in order to normalize the electricity market.

(8) Improvement of the Credibility of the Method of Settling Accounts Related to Energy Derivatives

The current price evaluation method is used in the United States for the account settlement of energy derivatives. With regard to the future estimation of electricity prices, which is the key element of this evaluation method, transparency cannot be fully ensured since standardized future commodities hardly exist.

Theoretically, it would be even possible to make profits by artificially pushing up the current prices of the derivatives by way of arbitrary prediction.

GOJ therefore requests USG to take measures to prevent this type of actions, in order to regain credibility in the electricity market.

V. MEDICAL DEVICES AND PHARMACEUTICALS

(1) Mutual Recognition on Good Manufacturing Practices of Pharmaceutical Products and Medical Devices

In December 2000, the Ministry of Health, Labour and Welfare (MHLW) and the Food and Drug Administration (FDA) exchanged letters regarding cooperation on the exchange of pharmaceutical inspection reports and other pharmaceutical surveillance information. GOJ requests to USG to enhance this cooperative relationship and to launch a more substantial consultation between the two governments toward realizing the Mutual Recognition on Good Manufacturing Practices (GMPs) of pharmaceutical products which will facilitate procedure 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.

Along with this, GOJ also requests to USG to launch a more substantial consultation toward realizing the Mutual Recognition on GMPs of medical devices.

(2) Mutual Recognition on Good Clinical Practices

GOJ requests to USG to promote the exchange of information on GCP inspection and to launch a more substantial consultation between the two governments toward realizing the Mutual Recognition on Good Clinical Practices (GCPs) which will facilitate the procedures of GCPs conformity assessment of application dossiers thus leading to the reduction of MHLW's New Drug Application review period.

(end)