

(Provisional Translation)

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

October 15, 2008

FOREWORD

The Government of Japan has engaged in comprehensive economic and social structural reform, and will actively continue the reform on its own in order to achieve further economic growth.

The first to seventh year dialogue of the Regulatory Reform and Competition Policy Initiative (“Regulatory Reform Initiative”) under the “Japan-U.S. Economic Partnership for Growth (“Partnership”)” established at the Japan-U.S. summit meeting on June 30, 2001, has deepened the bilateral economic relationship through harmonizing regulations and systems of the two countries. It has also contributed to the economic growth of both countries by reducing unnecessary regulations, strengthening competition, and improving market access.

The Government of Japan will continue the dialogue with the Government of the United States under the Regulatory Reform Initiative, with a view to further deepening the economic relationship between the two countries, which account for some forty percent of the world economy, and to reinforcing the multilateral free trade system by demonstrating a model of dialogue and cooperation between the two biggest economies.

The Government of Japan presents its recommendations regarding regulatory reform and competition policy to the Government of the United States upon the commencement of the eighth year dialogue of the Regulatory Reform Initiative.

This recommendation compiles U.S. regulations and systems that the Government of Japan believes need to be improved for the advancement of the Japan-U.S. economic relationship, incorporating views of Japanese private companies.

Specific items of this recommendation can be broadly classified into the following three categories: 1) Recommendations calling for the abolishment or improvement of regulations or measures that are inconsistent with the principle of free trade or impeding fair competition; 2) Recommendations urging that reinforced regulations in areas such as logistics and consular affairs not unduly impede smooth trade as well as movement of people between the two countries; or 3) Recommendations calling for the improvement of State-based regulations or regulations inconsistent with international standards, which are creating burdens on Japanese companies operating in the United States.

In particular, the United States should revise its regulations and systems that are inconsistent with the WTO agreement, on its own initiative to maintain the multilateral free trade system.

In course of the dialogue, the Government of Japan will keep urging the Government of the United States to improve its policy and further promote regulatory reform and competition policy by reflecting these recommendations sufficiently. The Government of Japan strongly hopes that the frank and constructive dialogue with the Government of the United States under the Regulatory Reform Initiative based on the principle of two-way dialogue will greatly contribute to further strengthening and deepening the bilateral economic relationship.

**Recommendations by the Government of Japan to the Government of the
United States Regarding Regulatory Reform and Competition Policy**

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I. ANTI-DUMPING MEASURES

Although anti-dumping measures are considered proper trade remedies as long as they are operated in a manner consistent with the World Trade Organization (WTO) Agreement, they may unduly limit trade and distort competition once used in an arbitrary manner, for example, in determining whether dumping exists or not. The United States has established detailed rules for the operation and procedures of anti-dumping measures while making positive efforts to disclose information. Therefore, the Government of Japan recognizes that the U.S. maintains greater transparency than other countries. However, some of such rules and operation procedures have been determined by the Dispute Settlement Body (DSB) of WTO to be inconsistent with the WTO agreement, and in some cases operation procedures have been changed without reasonable explanation. The Government of Japan urges the Government of the United States to promptly resolve the inconsistency with the WTO agreement and provide reasonable explanation on the above-mentioned cases.

Specific requests are as follows:

1. The Byrd Amendment

The Byrd Amendment, which stipulates the distribution of revenues generated through anti-dumping and other duties to the petitioners and the U.S. domestic producers who supported the petition for anti-dumping and other measures, was found to be inconsistent with the WTO Agreement in January 2003, and was finally repealed in February 2006. However, revenues from anti-dumping duties on goods imported to the United States before October 1, 2007, would continue to be distributed among the relevant parties under the transitional provision of the Deficit Reduction Act of 2005. This means that although the Byrd Amendment was nominally repealed, it continues to stay in effect. Therefore, the inconsistency with the WTO Agreement remains at present even after the transitional period has expired. The Government of Japan strongly urges the Government of the United States to promptly halt the distribution of revenues under the Byrd Amendment and resolve the inconsistency with the WTO Agreement.

2. Treatment of “All-others rate” in Anti-dumping Investigations

With regard to the dispute on anti-dumping measures on certain hot-rolled steel products from Japan, the measures taken by the United States were found to be inconsistent with the WTO Agreement in August 2001. However, the Government of the United States has not made the necessary legislative amendments, and therefore has not yet fully implemented the DSB recommendations and rulings. In other words, the United States’ Tariff Act of 1930 still requires the inclusion of dumping margins concerning the companies under investigation established based in part on “facts available” to be used in calculating “all-others rate”. Since the provision in question could be applied to new anti-dumping investigation in the future, the Government of Japan urges the Government of the United States to amend such provision in order to promptly implement the DSB recommendations.

3. Model-Matching

In calculating dumping margins, the Government of the United States classifies different models

of export products under investigation and their domestic “like product” in the exporting country according to individual characteristics, and then determine domestic products that are “identical” to or “closely resembling” the exported products (“model-matching”). After the annual administrative review of anti-dumping measures on ball bearings imported from Japan in FY2003 (the 15th review), the Department of Commerce decided to change from the existing model-matching methodology, which compares products of the same measurements (outer diameter, inner diameter and width) and load rating (resistance), to the methodology which compares products whose measurements and load rating deviate from each others within 40% in total.

When adopting the new comparison methodology, the Department of Commerce did not show any reasonable grounds for the criteria of 40% of the total deviation. The Japanese companies pointed out problems and points to be improved for the new methodology and they submitted opinions and provided information. However, no consideration has been given to these opinions.

The Government of Japan and Japanese companies are concerned about the situation in which model-matching methodology is changed without reasonable grounds being given and urge the Government of the United States to provide full and reasonable explanation for the change in the methodology.

II. DISTRIBUTION AND CUSTOMS PROCEDURES

1. Maritime Transport Security

(1) 24-hour Rule on Advance Manifest Presentation, “10 plus 2” rule

As part of initiatives for counter-terrorism, the United States has enforced the regulations implementing the advance electronic presentation of cargo information under the Trade Act of 2002, and obligated the submission of manifests of international containerized sea cargoes bound for the United States to the U.S. customs authorities no later than 24 hours prior to loading. As a result, the deadline for delivery of containers to the container yard, which had been commonly set around 24 hours prior to loading, has been moved up by some 48 hours. This has considerably decreased the efficiency of distribution and is imposing no small burden on businesses, including those with excellent track records of compliance.

Furthermore, as the United States is considering introducing so-called “10 plus 2 “ rule to require importers and ocean carriers to file in advance 10 data elements and 2 data sets respectively, in addition to the advance cargo information required under the existing rules, even longer lead time and cost burden may be induced.

The Government of Japan urges the Government of the United States to take appropriate measures to improve the lowering efficiency of trade caused by the 24-hour rule and “10 plus 2” rule, bearing in mind the perspective to provide clearer benefits to C-TPAT participants who have high-level security measures in place through discussions between the two governments.

In connection with the introduction of the so-called “10 plus 2” rule, in particular, the Government of Japan urges the Government of the United States to take into full consideration

the public comments submitted by the Government of Japan and the industrial circles of Japan in March this year and to establish a system which would not undermine the smooth flow of goods.

(2) Customs-Trade Partnership Against Terrorism (C-TPAT)

Customs-Trade Partnership Against Terrorism (C-TPAT) is supposed to provide benefits, such as reduced number of inspections, to those participants who have high-level security measures in place. Japanese participants, however, claim that they have not been enjoying sufficient benefits in a tangible manner.

In the Seventh Report to the Leaders, it is said “the C-TPAT program continues to evolve with respect to providing facilitation benefits to importer partners in return for proof of strong supply chains.” Therefore, the Government of Japan urges the Government of the United States to take appropriate measures to improve the benefits provided to C-TPAT participants through discussions between the two governments.

(3) 100 Percent Scanning Requirement for U.S. Bound Cargo Containers

“Implementing Recommendations of the 9/11 Commission Act” enacted on August 2007, contains provisions that require scanning of all U.S. bound cargo container in principle before loading on a vessel at foreign ports on or after earlier of July 1, 2012. The Government of Japan has concerns that the provisions, depending on how it would be implemented, could severely disrupt the flow of goods into the United States from the rest of the world including Japan, and may cause a tremendous damage on international economic activities as a whole.

In addition, the Framework of Standards to secure and facilitate global trade adopted by the World Customs Organization (WCO) espouses the risk management approach, which aims to identify and target high-risk containers, rather than conducting 100 percent inspection. The Government of Japan deems that the 100 percent scanning requirement is inconsistent with the risk-management approach upheld in the Framework.

While the Government of Japan fully understands the importance of counter terrorism measures, it is important to implement security measures in a way that does not undermine the smooth flow of goods. Therefore, the Government of Japan urges the Government of the United States to ensure that the aforementioned requirement does not disrupt smooth trade.

2. Regulations on Alcoholic Beverages

In the State of California, on-sale licenses which permit the sale of wine for consumption on the premises where it is sold authorizes the sale of *soju*, an imported Korean alcoholic beverage with no more than 24% alcohol content by volume that is derived from agricultural products. However, the sale is not permitted for *shochu*, a Japanese alcoholic beverage, though it is also derived from agricultural products.

The Government of Japan urges the Government of the United States to permit the sale of *shochu* with no more than 24% alcohol content by volume for consumption on the premises where it is sold with the on-sale license.

The Government of Japan has been making this request and received following responses in the Sixth Report to the Leaders: retail sales of alcohol beverages fall under the jurisdiction of State law, and *shochu* would qualify under the exception if the label on the product also identifies it as “*soju*” that contains no more than 24 percent alcohol by volume.

However, this request has not been realized because

- (a) when regulations of State Governments are inconsistent with the WTO agreement, the Government of the United States has an obligation, according to the Article 24.12 of GATT 1994, to take such reasonable measures as may be available to it to ensure the observance of GATT by State Governments, and
- (b) since “*soju*” is the name of the Korean alcoholic beverage, indicating this name on Japanese-produced *shochu* would make the distinction between Japanese *shochu* and Korean-produced *soju* unclear and misguide consumers with regard to the characteristics and the origin of *shochu*.

Therefore, the Government of Japan again urges the Government of the United States to permit the sale of *shochu* for consumption on the premises where it is sold with the on-sale license.

III. CONSULAR AFFAIRS

1. Visa Processing

(1) Smooth Introduction of an Electronic System for Travel Authorization (ESTA)

The Government of the United States makes the Electronic System for Travel Authorization (ESTA) web-based system mandatory on Jan. 12, 2009. Once ESTA becomes mandatory, all nationals or citizens of Visa Waiver Program(VWP) countries, including Japan, who plan to travel to the United States for 90 days or less for temporary business or pleasure under the VWP will need to receive an electronic travel authorization prior to boarding a U.S.-bound airplane or cruise ship.

For the smooth introduction of ESTA, the Government of Japan urges the Government of the United States to :

- (a) Provide information for airlines and travel agents well and cooperate with them in connecting system and training for good operation;
- (b) Inform Japanese citizens well of the system;
- (c) Set up a call center available in Japanese; and
- (d) Prepare for trouble shooting after ESTA comes into effect.

(2) Resumption of Visa Revalidation Procedures in the United States

The Government of the United States suspended the revalidation of visas at the State Department on July 16, 2004. Applicants for visa revalidation residing in the United States need to either return to Japan or visit a third country. In particular, holders of Treaty Trader/ Investor Visa (E visas) cannot revalidate their visas in third countries, and have no choice but to return to Japan for visa

revalidation. As a result, Japanese companies operating in the United States have to bear a large amount of expenses for visa revalidation for their employees and their families, including costs for travel and accommodation. Moreover, there are cases where the absence of workers who must return to Japan for several weeks for visa revalidation causes a hindrance to business operations in their sections, and in some cases, even to entire company operations. In addition, there are concerns about education of children of Japanese employees working in the United States, who have to leave the country with their parents for visa revalidation.

The Government of Japan therefore urges the Government of the United States to:

- (a) Resume all visa revalidation procedures at the State Department by sending a copy of passport;
- (b) Immediately commence the revalidation of E visas in third countries as a temporary measure if the measure in (a) cannot be promptly implemented and to approve the resumption of acceptance of visa revalidation applications by mail to the U.S. Embassy in Tokyo; and
- (c) Report what activities are being carried out by the Government of the United States including the progress of the study of “options other than domestic reissuance of visas” as stated in the Seventh Report to the Leaders.

(3) Efficiency in Visa Revalidation Procedures

Revalidation of E visas usually takes about a week while in some cases it takes as long as 4 months, during which the applicant, employee of a Japanese company residing in the United States, is not allowed to work in the United States and such situation causes a substantial impediment to the business activities of the company. In addition, since the reason for delay in revalidation and the information on how many days are needed for revalidation procedures are undisclosed, it is difficult for the company to make a projection for future business activities.

The Government of Japan urges the Government of the United States to expedite E visa revalidation procedures and, if revalidation requires a long time, to specify the reason for taking a long time and the number of days necessary for issuance.

(4) Visa Issuance and Term of Validity

(a) The current visa revalidation procedure imposes a huge burden on Japanese nationals. From the standpoint of reducing demand for revalidation, extending the term of validity of visas would contribute to resolving the problem. Currently, Intra-Company Transferee Visas (L visas) are valid only for two or three years, while intra-company transferees to Japan are provided with five-year visas. Accordingly, from the viewpoint of reciprocity, the Government of Japan urges the Government of the United States to issue five-year L visas without revalidation.

(b) In recent years, the number of applications for Temporary Worker Visas (H visas) continues to exceed the quota limit and therefore the process of visa application review and issuance is on a lottery basis. H-1 B visas for highly skilled workers are particularly important for Japanese companies that do not have branches or offices in the United States in dispatching employees to the United States and are also important for the United States in securing highly skilled workers. Since

the visa quota is reached in a short while, H visa applications must be made early. This situation forces companies to decide replacement employees a long time prior to their usual time of personnel reshuffling and thus greatly affects their business activities.

The Government of Japan urges the Government of the United States to increase or abolish the quota of H visas and to be flexible in setting the starting date of the validity period of H visas.

(5) Extension of Employment Authorization Document (EAD)

If Work Visas (H visa, E visa, L visas, etc.) for those applying for adjustment to permanent resident status expire while their applications are pending, they can stay in the United States by obtaining authorization to work (Employment Authorization Document: EAD). Although EAD is valid only for a year, it takes 4 years for H-1 B visa holder to acquire permanent resident status due to the delay in the review process of applications by the U.S. Citizenship and Immigration Services (USCIS) and consequently the applicant has to renew the EAD annually for about 4 years. In addition, as the period during which driver's licenses are accepted as a valid ID for official purposes is linked to EAD, the applicant also has to renew his/her driver's license every year. This situation costs the applicant a lot of time and money.

The Government of Japan therefore urges the Government of the United States to:

- (a) Expedite the application procedures of adjustment to permanent resident status; and
- (b) Take measures to extend the terms of EAD validity automatically when the application for adjustment to permanent resident status is pending, unless there is any specific problem.

(6) Resumption of the Transit Without Visa (TWOV) Program

Since the Transit Without Visa program (TWOV) was suspended in August 2003, all passengers using US airports for transit purposes without entering into the United State have been required to obtain a transit visa. Therefore, passengers from third countries traveling to Japan via the United States have to obtain a transit visa. However, it costs a lot to obtain a transit visa and sometimes these passengers have to wait for 3 to 4 months to be interviewed for visa after the application. As a result, many passengers shift from the flights via United States to the flights via Europe.

The Government of Japan requests the Government of the United States to resume the U.S. Transit Without Visa program (TWOV). If such measures are difficult to conduct promptly, the Government of Japan requests the Government of the United States to ease the requirements for a transit visa including abolishing the interview procedure and reducing the application fee.

2. Permission to Stay (I-94)

Extension Renewal of Validity of Permission to Stay

The I-94 period of validity is short, and, in particular, the term of validity of I-94s issued to E visa bearers (valid five years) is a maximum of two years. Consequently, E visa holders need to leave the United States even during the visa validity period to have I-94 reissued. This situation imposes a

heavy burden on employees of Japanese companies resident in the United States in terms of time and money. This burden is even heavier for their accompanying family members who do not necessarily have an opportunity to leave and re-enter the United States on business or otherwise.

The Government of Japan urges the Government of the United States to extend the terms of I-94s issued to E visa holders in particular, and to simplify I-94 renewal procedures. Considering that, while the period of authorized stay on work visas in Japan is stipulated as three years or one year, United States nationals are usually authorized to stay for 3 years unless there is any specific problem. Therefore, the Government of Japan urges the Government of the United States as a matter of reciprocity to extend the validity period of I-94.

3. Immigration Control

US-VISIT Exit (fingerprinting departing foreigners)

In April this year, the Department of Homeland Security proposed rules for fingerprinting non-U.S. nationals departing the United States. The proposed rules require air carriers and sea carriers to collect biometric information such as fingerprints from non-U.S. nationals departing the United States. However, requiring employees of air carriers and sea carriers to check the collected information against the database of criminal records of foreigners or the terrorist database would deviate from the duties of employees of private companies and also would entail many problems in terms of protection of personal information. In addition, it would lead to a substantial increase in the time taken for the boarding procedure and the waiting time, and as a result passengers may suffer inconvenience. Furthermore, the cost of fingerprinting, which is estimated by the Government of the United States to be 3.2 billion dollars for the 10 years to come in total in the airline industry, would be a huge financial burden.

The Government of Japan urges the Government of the United States to collect fingerprints from departing passengers on the responsibility of the Government of the United States and not to create obligations for fingerprinting, etc. for private air and vessel carriers.

4. Driver's Licenses

(1) Real ID Act

The Real ID Act, which went into effect in May 2008, stipulates that a Federal agency may not accept, for any official purpose, a driver's license issued by a State to any person unless the State is meeting the requirements prescribed in the Act. One of these requirements is that a temporary driver's license issued to a foreign national shall be valid only for the period of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year. Under this Act, the period during which driver's licenses issued to foreign nationals in each State are accepted as valid ID for official purposes is limited to the duration of the license holder's authorized stay and consequently Japanese people residing in the United States have to frequently renew their driver's licenses. Moreover, if driver's licenses are not accepted for any official purpose, then Japanese nationals will always have to carry their passports for identification, which increases the risk of having their passports stolen or lost, and also the risk of stolen or lost passports being used for crimes or terrorism.

The Government of Japan therefore urges the Government of the United States to:

(a) Make efforts to reduce the burden on foreign nationals in connection with the renewal of driver's licenses by simplifying the I-94 renewal procedure for applicants who did not have any problem during their authorized stay, etc.;

(b) The Real ID Act stipulates that for "a status with no definite end to the period of authorized stay", the period during which driver's licenses are accepted as a valid ID is one year. People with "a status with no definite end to the period of authorized stay" include members of the media (I visa holders) and government officials (non-diplomat A visa holders). As a matter of fact, they are dispatched for a scheduled period of 3 to 5 years in most cases. As the validity period of their driver's licenses as an ID for official purposes is equally limited to one year from the entry into the United States, they have to renew their driver's licenses every year and are imposed a heavy burden in terms of time and money. Therefore, the Government of Japan requests the Government of the United States to take steps to extend the validity period of driver's licenses of members of the media (I visa holders) and government officials (non-diplomat A visa holders) among the people with "a status with no definite end to the period of authorized stay"; and

(c) allow flexible handling of driver's licenses of L visa and E visa holders whose identity is guaranteed by Japanese companies by extending the validity period of their driver's licenses to apply the same rules as those applied to the U.S. nationals.

(2) Setting of a Reasonable Period for Acquiring State Driver's Licenses and Improvement of Handling of International Driver's Licenses

Most States obligate new residents to acquire a driver's license issued in the place of residence within 30 to 60 days from the day on which the applicant became a resident of the State and this requirement is also applied to employees of Japanese companies resident in the United States. However, it is practically extremely difficult to acquire a State driver's license within the prescribed period due to the time needed to obtain a Social Security Number (SSN) and a public utility bill, etc. Also, in many States such as New York and Illinois that limit the validity period of the international driver's license to the above-mentioned period, drivers who do not meet the above requirement are considered as driving without a license even though their international driver's licenses are valid.

The Government of Japan urges the Government of the United States to request each State Government to set a reasonable period and requirements in requiring foreign nationals to acquire a driver's license issued in the United States taking into account the actual situation of foreign nationals resident in the United States. Also, the Government of Japan urges the Government of the United States to request each State Government to allow Japanese nationals resident in the United States to drive with an international driver's license issued by the Japanese authorities throughout the validity period of such driver's license in accordance with the spirit of the Convention on Road Traffic.

5. Social Security Number

(1) Expeditious Issuance of Social Security Number

It still takes approximately one or two months for the SSA to issue a SSN for foreigners. Since SSNs are in actuality required as identification on a variety of occasions when Japanese nationals start living in the United States (for example, when acquiring driver's licenses or opening bank accounts), the delay in issuing SSNs causes them significant inconvenience.

The Government of Japan urges the Government of the United States to take necessary measures to expedite the issuance of SSNs.

(2) Issuance of Social Security Number to Dependents of Employment Visa Holders

(a) Although the system was revised in October 2006 to allow spouses of foreign workers (E-1, E-2 and L-2 visa holders) to obtain SSNs without obtaining work authorization (EAD), the revised system has not been widely known and it is reported that some Social Security Offices rejected applications for SSNs by spouses of Japanese workers.

In addition, handling of the "Marriage Certificate" which is required to be submitted for application of SSNs by spouses of foreign workers differs by Social Security Office as to whether the translation needs to be attached. According to the Seventh Report to the Leaders, the Social Security Administration "generally accepts translations of the Japanese Family Registry issued by the Japanese Embassy/Consulate". However, some Social Security Offices do not accept the Marriage Certificate (translations of the Japanese Family Registry) issued by the Japanese Embassy/Consulate and translate it by themselves, which takes a tremendous amount of time.

The Government of Japan urges the Government of the United States to fully inform all Social Security Offices of the revised system of issuing SSNs to spouses of foreign workers and to ensure standardized operation and application of the system.

(b) As SSNs are not issued to children of Japanese workers, they cannot acquire a new driver's license or open a bank account and consequently it is difficult for them to enter a university in another State or area. The Government of Japan urges the Government of the United States to take steps to issue SSNs to children of Japanese workers who go on to a university on an E visa.

IV. PATENT SYSTEM

By international standards, the United States possesses a unique patent system. For example, it is the only country adopting the first-to-invent system. When foreign patent applicants wish to file an application in the United States, they must go through a process that differs from that of their own country, having to bear unnecessary additional costs. The same is true for U.S. applicants who wish to file an application overseas. The Government of Japan firmly believes that it would be beneficial for applicants from the United States as well as other countries if the Government of the United States modified its unique patent system so that it is consistent with international standards.

From these viewpoints, the Government of Japan requested the Government of the United States in the past dialogues to switch from the first-to-invent system to the first-to-file system and to abolish the provisions of the Patent Act regarding exception in the early publication system, but these

requests have not been realized. Therefore, the Government of Japan continues to strongly urge the Government of the United States to carry out these recommendations.

Specific requests are as follows.

1. First-to-Invent System and Interference

Under the first-to-invent system adopted by the United States, when two or more people make inventions separately and file applications respectively, an interference procedure is carried out in order to determine who invented first to receive the patent rights.

From the point of view of patent applicants, this procedure has problems as follows: (a) 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; (b) Interference procedures require a lengthy process and tremendous cost; and (c) There is a danger of leaking the contents of inventions contained in applications filed or of know-how contained in patents during the interference period.

Yet another problem arises when multiple inventors make the same invention independently and multiple patents are granted to some of these inventors. In such cases, there is a possibility that a third person is forced to pay redundant royalties to each rights holder and suffers an unreasonable loss, since the third person has no means to invalidate the multiple patent status.

The Government of Japan, taking into account the international trend toward harmonization of patent systems, urges the Government of the United States to switch at an earliest date to the first-to-file system, which is the international standard. As a provisional measure until such a switch is made, the Government of Japan continues to request that the Government of the United States simplify its interference procedures.

2. Early Publication System with Exceptions

The U.S. early publication system, introduced by the revised Patent Act in November 1999, has an exception that allows applicants, by their request, not to publish applications made in the United States that are not filed overseas, as well as contents of applications in the United States that are not included in corresponding foreign applications.

The contents of applications unpublished by request remain undisclosed until the granting of patent rights is announced in a official patent publication. In the meantime, *bona fide* third persons may redundantly invest in research and development for or in putting to practical use an invention identical to the one in the unpublished application. This presents a grave issue from the standpoint of predictability of profits and losses in business.

In addition, when a patent examination of an unpublished application is prolonged, *bona fide* third persons may put into practical and extensive use in the market an invention identical to the one in the unpublished application under examination. If a patent is granted to the invention under examination after that, those third persons can be required to pay huge royalties for the “submarine patent.”

The Government of Japan continues to strongly request the Government of the United States to abolish the provisions of the Patent Act regarding exception in the early publication system, and to implement the 1994 agreement between the two governments under the Japan-U.S. Framework for New Economic Partnership, in which the Government of the United States agreed to disclose all applications after 18 months since the first date of application, except for those non-pending and those under secret order.

3. Reexamination System

In the United States patent system, a reexamination system is established to review the validity of patent rights after granting. The revised Patent Act enacted in November 1999 introduced the *inter partes* reexamination as an alternative to the existing *ex parte* reexamination. In addition, the reexamination system was further improved by the revision of the Patent Act in November 2002.

In the U.S. reexamination system, however, reasons for reexamination requests are limited to those based on the existence of prior art documents. It is not allowed to request reexamination on the grounds of not meeting the enablement requirement or the description requirement of the specification, as agreed upon between Japan and the United States.

Therefore, the Government of Japan continues to strongly request the Government of the United States to accept all requirement inadequacies prescribed in Article 112 of the Patent Act, excluding the best mode requirement, which is a requirement unique to the United States, as reasons for reexamination requests.

4. 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 select and file only one invention from the contents of the application in order to maintain unity of invention (only one independent invention should be included in one application).

The U.S. standards of decision for unity of invention are more stringent than those of the Patent Cooperation Treaty (PCT). An invention that satisfies the requirement of unity of invention when filed in the United States under the PCT may not meet the requirement if the application is filed as claiming priority rights under the Paris Convention for the Protection of Industrial Property. In this way, different standards of decision for unity of invention are applied to inventions filed in the United States under the PCT and other inventions filed in the United States.

It is practically difficult for those applying for patents in multiple countries to prepare a different application (and consider the specified scope of patent contents) in accordance with the peculiar U.S. standards on unity of invention.

When an applicant specifies a claim to be filed in response to a request for division of application, other claims are automatically opted out from the scope of examination. Therefore, if the applicant wants to maintain a non-specified claim, he or she needs to file a divisional application before the patent is issued for the remaining claim. Filing divisional applications requires additional time and expenses, thus imposing an excessive burden on applicants.

Furthermore, some inventions that are regarded as single in other countries are filed as multiple inventions in the United States. This is burdensome to all parties concerned, namely, applicants and right-holders as well as third persons who need to monitor patents to avoid infringement of existing patents.

Therefore, the Government of Japan continues to request the Government of the United States to ease the requirements for unity of invention to the same standards as those under the PCT.

5. Hilmer Doctrine and Language Discrimination

Article 119 of the Patent Act of the United States provides the priority rights system prescribed in Article 4 of the Paris Convention. Under the provision, an application filed in the United States within twelve months from the first date of corresponding overseas application has the same effects as one filed in the United States on that day.

However, the United States has a legal principle called “Hilmer Doctrine,” which has been established by precedents. According to the Hilmer Doctrine, among the effects provided under Article 119, the effect of eliminating subsequent applications by third persons on the ground of items on specification being prior art retroacts only to the filing date in the United States, not to the filing date in the first-filing country other than the United States.

Also, Article 102 (e) of the Patent Act provides that international applications have the prior art effect since the international filing date only when the application primarily designates the United States and is published in English internationally. When international applications are published in other languages internationally, however, they do not have the prior art effect. Thus, Article 102 (e) is discriminatory against other languages than English.

In Japan and Europe, domestic applications based on priority rights of overseas applications retroact to the filing date in the first-filing country, and the prior art effect applies to all items of the specification. And the prior art effect does not change by language of international publication. By contrast, it is unfair that the same treatment is not guaranteed in the United States.

The twelve-month period of priority prescribed by Article 4 of the Paris Convention and the period given for submitting the translation of international applications are very meaningful for applicants preparing to file overseas. Notwithstanding, the limitation of prior art effect by the Hilmer Doctrine and Article 102 (e) narrows the effect of priority right system under Article 4 of the Paris Convention and PCT rules, and is significantly disadvantageous to Japanese applicants.

The Government of Japan therefore continues to request the Government of the United States to improve the system based on the Hilmer Doctrine to ensure that all items of the specification are effective in eliminating subsequent applications by third persons, retroacting to the date of first filing overseas. In addition, the Government of Japan requests the Government of the United States to abolish the language discrimination based on Article 102 (e).

6. Reducing Information Disclosure Statement Requirements of Prior Art Documents

All applicants for the U.S. patents are obligated to disclose all important prior art documents to the U.S. Patent and Trademark Office (USPTO) until issuance of the patent (IDS Requirements), and are required to submit a list as well as photocopies of the documents (excluding photocopies of U.S. patents or U.S. patent application publications). In addition, if the prior art documents are written in a language other than English, they are required to submit “a concise explanation of the relevance.” Furthermore, if applicants are judged in infringement procedure not to have met the information disclosure statement requirements during patent examinations, they are given a heavy penalty that renders patent rights to all of their claims unenforceable.

For that reason, every time Japanese applicants for U.S. patents find new relevant prior art documents by receiving a notice of rejection for a corresponding application in Japan, they need to submit information on the prior art documents to the USPTO. Furthermore, submitting “a concise explanation” of each document creates huge burden on the applicants such as paying translation fees.

Furthermore, a proposed rule change related to the IDS requirements submitted by the USPTO in July 2006 forces further burdens on the patent applicant. Regarding non-English documents in particular, the USPTO requires that the applicants identify the specific features of the document and its correlation to the components of their claims, even if the application is submitted before the start of examination, creating a great deal more burden for these applicants in comparison to those documents in English.

If a potential prior art is found after the patent issuance fee has been paid, the applicant must decline issuance of the patent, file a Petition and a Request for Continued Examination of the patent application in question, and then submit an Information Disclosure Statement. The procedures of filing a Petition and a Request for Continued Examination impose heavy burden on the applicant in terms of cost and time.

Therefore, with respect to the information disclosure statement requirements of prior art documents, the Government of Japan:

- (1) Continues to urge the Government of the United States to relax the requirements related to the information disclosure statement, including eliminating the requirement to submit “a concise explanation” and not requiring the applicants to submit copies of official patent publications that the USPTO already possesses in order to reduce the heavy burden imposed on Japanese applicants for U.S. patents;
- (2) Requests the Government of the United States to reduce the burden of submission of non-English documents imposed under the proposed rule change related to the IDS requirements submitted by the USPTO in July 2006, which is heavier than that of English documents; and
- (3) Requests the Government of the United States to modify the system so that if an applicant finds a prior art, the applicant can request patent examination taking into account such prior art only by submitting an Information Disclosure Statement without being required additional cost and documents (Petition, Request for Continued Examination, etc) as a measure to improve the situation that imposes heavier burden on the applicants depending on the stage of examination.

7. Plant Patent

The International Convention for the Protection of New Varieties of Plants (UPOV Convention) provides that the “novelty” requirement needed for the protection of a new variety of plants can be satisfied for a certain variety in one country within four years (six years for trees and vines) after the start of sale in another country, even when the variety has already been sold in another country. The Plant Variety Protection and Seed Act of Japan conforms to this provision.

However, the Patent Act of the United States provides that, with regard to vegetatively propagated plants except tuberous plants, novelty is recognized only within one year since the date when the new variety was patented or described in a printed publication in the United States or a foreign country, or when it went into public use or on sale in the United States.

To satisfy the novelty requirement under the Patent Act, an application for patent must be made within one year after the publication of application in a foreign country, even if the new variety is not sold generally in the United States. Accordingly, Japanese companies have no choice but to file an application for plant patent in the United States in order to meet the U.S. novelty requirement even when it is unclear whether they will sell the variety in the United States, which incurs unnecessary costs on them.

The Government of Japan, therefore, continues to request the Government of the United States to modify the novelty requirement for plant patent under the Patent Act to provide that it can be satisfied within four years (six years for trees and vines) since the start of sale in another country even if the plant in question has been sold in another country and not in the United States, in accordance with the provisions of the UPOV Convention.

V. GOVERNMENT PROCUREMENT

1. Safe, Accountable, Flexible, Efficient Transportation Equity Act

“The Safe, Accountable, Flexible, Efficient Transportation Equity Act” (SAFETEA-LU) includes two Buy American Rules. The first rule is that, when federal financial aid is to be obtained upon procuring machines such as rolling stock, the Federal Transit Administration requires that such machines are to be produced in the United States. In addition, the rule provides that at least 60 percent of the total cost of parts constituting such rolling stock must be the cost of parts manufactured in the United States. Specifically, it is required that 60 percent or more of the total production cost of a car manufacturer and the cost of all components, including wheel and axle platforms, motors, brakes, air-conditioning units, doors, and seating, purchased from sub-contractors must be the cost of those manufactured in the United States.

The second rule is that, as a condition for federal financial aid to be granted to highways projects, the Federal Highway Administration requires that only steel produced in the United States may be eligible for procurement in such projects.

In the previous Reports to the Leaders, the Government of the United States reported that Note 5 in the U.S. Annex 2 to Appendix I of the WTO Agreement on Government Procurement (GPA) states that: “The Agreement shall not apply to restrictions attached to federal funds for mass transit and highway projects” and that restricting government procurement to the products manufactured in the United States under SAFETEA-LU does not conflict with the GPA. However, the Government of Japan believes that these rules hamper free trade as well as the efficient and optimum procurement of product components by U.S. companies, and thus lead to the increase in procurement cost for the Government of the United States. Therefore, the Government of Japan continues to request the Government of the United States to abolish the Buy American provisions that set the minimum threshold for U.S.-made parts and restrictions on procurement items.

In the Seventh Report to the Leaders, the Government of the United States mentioned that changes were made to the mass transit regulation in a Department of Transportation/Federal Transit Administration final ruling in September 2007 and procedures for public interest waivers for non-domestic rolling stock and end products were made public. However, it is unclear what may be determined to be in the public interest and be justified for a waiver to be issued, and as such, this change does not facilitate the participation of Japanese firms. Therefore, in case it is difficult to immediately abolish the above-mentioned Buy American Rule, the Government of Japan requests the Government of the United States to clearly specify what may be determined to be in the public interest. Consequently, it may be beneficial from the perspective of the United States’ environmental policy too if, for example, environmentally friendly, energy efficient, CO₂ emissions reducing rolling stock, operating systems, railway tracks etc. are determined to be in the public interest, and such items become eligible for procurement by the Government of the United States regardless of whether they are produced domestically or not.

2. Regulations Concerning Construction of U.S. Military Bases

(1) Requirement to Use U.S.-Flag Vessels for the Transportation of U.S. Products

In construction operations administered by the Department of Defense, U.S.-flag vessels must be used for the transportation of supplies and materials by sea (DFARS 247.572). This regulation may result in excessive cost due to the limited number of U.S.-flag vessels available for transportation to Guam. Furthermore, it may force Japanese companies which, in effect, have fewer choices than U.S. companies to incur additional cost; thus posing barriers to entry and putting them at a disadvantage in tendering.

The Government of Japan urges the Government of the United States to promptly take corrective measures in order to avoid unnecessary increase in cost and not to pose barriers to entry for Japanese companies (including subcontractors) in the construction work associated with the relocation of the U.S. Marine Corps Unit from Okinawa to Guam for which Japan provides financial support, including flexible application of the exceptional provisions that allow the use of foreign-flag vessels when the freight charges proposed by U.S.-flag carriers are excessive or otherwise unreasonable (DFARS247.573-1), if it is difficult to revise the regulation that requires the use of U.S.-flag vessels.

(2) Requirement of Performance Bond and Payment Bond

Federal Acquisition Regulation (FAR) obliges the contractor of the construction work ordered by the Federal Government to furnish bond for 100 percent of the contract price as performance guarantee and payment guarantee (FAR 28.1). When entering into the contract, it is stipulated that the bond issued by the institutions incorporated under the laws of the United States, States, District of Columbia, Territories or Possessions (hereinafter referred to as “U.S. institutions”) and authorized by the Secretary of Treasury is acceptable (31.U.S.C.). In Japan, guarantee for 100 percent of the contract price is not required usually. In addition, as only U.S. institutions are authorized to issue bonds, Japanese guarantor institutions cannot be bond issuing bodies. Therefore, this requirement makes it extremely difficult for Japanese companies to be awarded the contract.

Given, in particular, that the construction work associated with the relocation of the U.S. Marine Corps Unit from Okinawa to Guam for which Japan provides financial support is planned to be implemented, the Government of Japan urges the Government of the United States to promptly take corrective measures in order to avoid unnecessary increase in cost and not to pose barriers to entry for Japanese companies.

3. Protection against Price Changes for Contract Agreements for Public Works Projects

The Government of Japan usually incorporates “price escalation provisions” (which allow the contractor to claim a change in the contract price in the event of substantial changes in the price of major construction material during the construction period due to any special factors which make the contract price unreasonable) into the contract agreement of a public works project to protect against price changes during the project period. In the United States, price escalation provisions are not included in the Federal Acquisition Regulations (FAR) and there is no provision to deal with price changes. As a result, Japanese companies have to make efforts to negotiate with the Federal Government individually to include such provisions in the contract agreement each time. The Government of Japan requests the Government of the United States to include escalation provisions in the FAR to allow Japanese companies to respond to price changes in a prompt manner.

VI. EXPORT-RELATED REGULATIONS

Re-export Controls

As Japan has been implementing strict export controls, it finds little reason for the Government of the United States to place restrictions upon Japanese importers (re-exporters) for re-exports from Japan. Not only participating in all international export control regimes, Japan has a strict export control system, including introduction of catch-all control in 2002, and enforces it strictly.

Furthermore, regarding importance of international cooperation with export counterpart countries, Japan has also been involved in efforts to reinforce and maintain strict export control systems in this region through active outreach activities primarily targeting Asian countries. Moreover, controlling re-export by Japanese re-exporters from Japan may be considered an excessive extraterritorial application of domestic law which is not permissible under international law. The Government of Japan therefore again urges the Government of the United States to exempt Japanese importers (re-exporters) from application of the U.S. re-export controls.

In addition, the fact that Japanese importers (re-exporters) cannot receive sufficient information on items of U.S. origin from U.S. exporters remains a serious problem. These Japanese importers are forced to then bear the burden of correctly identifying items and determining whether they are subject to U.S. regulations when re-exporting items of U.S. origin, thus hampering healthy trade and transactions.

In this regard, although the Government of Japan welcomes a series of measures implemented by the Government of the United States as stated in the previous reports, the Government of Japan does not recognize that these measures will lead to a complete settlement of this matter. For example, the Seventh Report to the Leaders says that the Bureau of Industry and Security (BIS):

- (1) Committed to the approach of adding a field to its electronic Classification Request application that would give applicants the option of having the results of their classifications published on the Bureau's website; and
- (2) Started to explore a way for applicants to have the results of previously issued classifications posted to the Bureau's website.

However, there are many concerns as to whether the BIS's website covers all items and whether it is possible to search for a certain item from a huge number of items easily. Also there is a question as to whether the Export Control Classification Numbers (ECCNs) based on the past judgment will be correctly updated when laws or regulations are revised. Therefore, the Government of Japan once again also urges the Government of the United States, as a transitional measure pending formal exemption from U.S. re-export controls, to require U.S. exporters to provide Japanese importers (re-exporters) with sufficient information on items of U.S. origin, including their ECCNs.

VII. STANDARDS AND CRITERIA

I. Promotion of the Metric System

The metric system is adopted as the international standard unit system by the International Organization for Standardization (ISO) and other international standard-setting organizations, in developing international standards and specifications. While most countries have adopted the metric system as the international system of units, the United States continues to use the units of the yard and pound, despite its accession to the Meter Convention. This not only causes inconveniences in daily life but also complicates intra-industry trade and international trade.

Given that the Committee on Technical Barriers to Trade (TBT Committee) recommends reducing technical barriers to trade by adopting international standards, it is necessary to take measures to promote the use of the metric system from the viewpoint of following the spirit of the TBT Agreement.

Therefore, the Government of Japan, while welcoming the efforts by the National Institute of Standards and Technology (NIST) of the U.S. Department of Commerce as mentioned in the Seventh Report to the Leaders, urges the Government of the United States to take measures to promote the use of the metric system actively and to ensure thorough adoption of the metric system in both the government and private sectors of the United States.

2. Equivalence Determination on Organic Crop Products

The U.S. Government's National Organic Program regulates the production, handling, and labeling of agricultural products to be sold or labeled as organic in its market. For Japanese organic crop products to have access to the U.S. market under the organic category, the equivalent status of the Organic Japanese Agricultural Standard (JAS) system to the U.S. National Organic Program needs to be determined by the Government of the United States.

The Government of Japan requested an equivalence determination on the Organic JAS system in January 2002, and provided all required materials in February 2006. However, the examination by the Government of the United States has not made progress. On the other hand, the Government of Japan has already determined the equivalence of the U.S. National Organic Program to the Organic JAS system in March 2002, which allows U.S. organic crop products to access the Japanese market. Although the Government of Japan welcomes that the Government of the United States is planning to recognize that the conformity assessment system in the Organic JAS system satisfies the technical standards of the U.S. National Organic Program this autumn as a step toward the determination of the equivalent status, as a matter of reciprocity, the Government of Japan urges the Government of the United States to determine the equivalence of the Organic JAS system to the U.S. National Organic Program, and provide Japanese organic crop products with an equal opportunity of access to the market.

3. Mitigation of Export Quarantine Requirements for Japanese-Produced *Unshu* Orange

For the export of *Unshu* orange produced in Japan to the United States, due to the presence of citrus canker (a plant disease) in Japan, stringent quarantine conditions are required including: 1) designation of citrus canker-free export areas; 2) establishment of 400m-wide buffer zones around the canker-free export areas; 3) orchard inspection; 4) conducting a test to ensure that the fruit surface is free of *Xanthomonas axonopodis* pv. *citri*, the cause of citrus canker; 5) export inspection; and 6) fruit surface sterilization.

Meanwhile, due to the occurrence of citrus canker in the State of Florida, the Government of the United States put into effect the regulations on the movement of citrus fresh fruits from Florida in August 2006 and revised these regulations in November 2007. The main points of the movement regulations adopted by the Government of the United States are: 1) packing-house inspection; and 2) fruit surface sterilization. These regulations are less stringent than those for *Unshu* orange produced in Japan.

Therefore, the Government of Japan, as a matter of the non-discrimination principle, has requested the Government of the United States to apply the phytosanitary measures for citrus canker equivalent to the current measures for citrus produced in Florida to *Unshu* oranges

produced in Japan and provided information on the reevaluation of pest risk analysis (PRA) to the Government of the United States in March 2008. The Government of Japan urges the Government of the United States to promptly reevaluate the pest risk analysis of Japanese-produced *Unshu* oranges on the basis of the provided information and to abolish the requirements of the designation of citrus canker-free export areas, the establishment of buffer zones, the orchard inspection and a test to ensure that the fruit surface is free of *Xanthomonas axonopodis* pv. *citri*.

VIII. STANDARDIZATION OF STATE-BASED REGULATION

I. Environmental Regulations

Against the backdrop of increasing public awareness about the environment, various states in the United States are beginning to strengthen their regulations for the protection of the environment. The Government of Japan understands the reinforcement of environmental regulations for human health and environmental protection. However, as various states in the United States are strengthening regulations in an inconsistent manner and at a varying speed, both Japanese and U.S. companies are bearing a heavy burden in conducting business operations across the United States or in multiple states. Furthermore, if more states introduce environmental regulations with differing extent and contents, it will become extremely difficult for companies, particularly foreign companies, to ascertain whether products they are planning to put on the market meet the relevant environmental regulations of all of the states where they plan to sell these products. These companies will bear even heavier burden when there arises the need to produce and transport products in conformity with regulations of each State.

Actually, the electronics recycling law has been put into effect in 4 states and had been enacted as a law in 3 States as of October last year. The number of these States has increased to 7 and 6 respectively at present. In this way, the number of regulations whose contents differ from State to State is continuing to increase.

Consequently, the Government of Japan requests the Government of the United States (a) to harmonize environmental regulations of each state through such means as the enactment of federal laws, (b) to present federal guidelines for state governments for the harmonization of regulations by respective states, (c) to compile information in an easy-to-understand fashion about standards which individual industrial products must meet in respective states, the scope of regulations, and enforcement dates, and (d) establishing a one-stop service. If it is difficult to implement these proposals, the Government of Japan requests the establishment of guidelines by the Federal Government.

In the Seventh Report to the Leaders, the Government of the United States reported that “EPA is in preliminary discussions with several organizations about creating a forum where states with existing the regulations of recycling of waste electronic equipment can share information on common issues and develop strategies that might help ease the financial and compliance burdens on both the states and the regulated community.” The Government of Japan requests information on the progress in this regard.

IX. EXTRATERRITORIAL APPLICATION

The unilateral sanctions measures taken by the Government of the United States based on related acts may constitute an extraterritorial application of domestic laws, which is not permissible under general international law and may cause a problem in terms of consistency with the WTO agreements. Moreover, fairness, transparency and predictability have not been secured in the application of individual sanction acts. Although the Government of Japan has taken every opportunity, including those available under the Regulatory Reform Initiative, to urge the Government of the United States to improve the situation from all these perspectives, the latter has not taken sufficient measures so far.

The Government of Japan therefore urges the Government of the United States to ensure consistency of these acts with international laws, including the WTO agreements, and implement them cautiously. In particular, it urges the Government of the United States to refrain from applying these acts to enterprises of third countries.

(1) Iran Sanctions Act

The Government of Japan is implementing measures such as freezing of assets of persons engaged in nuclear activities by Iran under the Foreign Exchange and Foreign Trade Control Law in accordance with the UN Security Council Resolutions. On the other hand, the Government of Japan is concerned that the sanctions stipulated in under the Iran Sanctions Act of the United States could, if actually acted on, constitute extraterritorial application of domestic law that is not permitted under general international law. It is also concerned that such measures as prohibition of issuance of export licenses to the subject of the sanctions by the Government of the United States, and prohibition of government procurement from the subject could be inconsistent with the WTO agreements, i.e., GATT Article 11, WTO Government Procurement Agreement Articles 3 and 8, while they may not meet the exemption provision of GATT Articles 20 and 21 and WTO GPA Article 23.

Recently, in particular, the Government of Japan has strong concern that the possibility of extraterritorial application impermissible under general international law is increasing, as the House of Representative passed bills to strengthen sanctions against Iran such as “Iran Counter-Proliferation Act” (H.R.1400), which includes a provision to repeal the power of the President to waive sanctions against Iran.

The Government of the United States stated in the Seventh Report to the Leaders that there is no distinction by nationality in applying the law. Given that a number of investment activities in Iran by foreign companies have not been subject to the Iran Sanctions Act up to now, the Government of Japan strongly urges the Government of the United States not to apply the Act to Japanese companies and further clarify the intention.

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

The Government of Japan is concerned that the Cuban Liberty and Democratic Solidarity Act of 1996 could constitute extraterritorial application of U.S. domestic laws, which is not permitted under general international law. As mentioned in the Seventh Report to the Leaders, the Government of the United States has extended the suspension of the implementation of every six months. The Government of Japan urges the Government of the United States to fully recognize the fact that the United Nations General Assembly has resolved to express its concern about the Act supported by an overwhelming number of the Member States, and to continue to suspend the implementation of the Act.

X. COMPETITION POLICY

Active promotion of competition policy facilitates entrepreneurs' new entry into markets and innovation, and creates efficient economic circumstances. In light of the recent globalization of the world economy, further promotion of competition policy in the United States will stimulate both Japanese and U.S. economy and bring various benefits to companies and consumers.

While the Government of Japan recognizes that, as reported in the Seventh Report to the Leaders, the Government of the United States has actively promoted its competition policy, such as the move to object to the creation of antitrust exemptions and the enforcement activities including exposure of international cartels, the Government of Japan requests to the Government of the United States to make further efforts, in particular on the review of antitrust exemptions.

The specific requests are as follows:

1. Antitrust Exemptions

The Government of Japan continues to urge the Government of the United States to review and express its views, on the basis of the Recommendations by Antitrust Modernization Commission in April 2007, with respect to 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.

The Government of Japan also urges the Government of the United States to actively cooperate with the state governments concerned in the review of antitrust exemptions at the state level as well.

Furthermore, the Government of Japan urges the Government of the United States to make available to the former any public documents relating to the abovementioned work, and information on the progress that has been made in this regard.

XI. LEGAL SYSTEM / LEGAL SERVICES

Legal Services

(1) Acceptance of Foreign Lawyers

(a) Acceptance of Foreign Lawyers as Foreign Legal Consultants in Every State

In the United States, only twenty eight States and the District of Columbia accept foreign lawyers as foreign legal consultants (FLCs), including the States of South Carolina, North Dakota and Delaware which have been added to the list according to the report by the Government of the United States in the seventh year dialogue of the Regulatory Reform and Competition Policy Initiative, and all other States do not allow foreign lawyers to practice therein. Although the Government of Japan welcomes the Government of United States' and the American Bar Association's effort to increase the number of States that accept foreign lawyers as FLCs, it urges the Government of the United States to continue to take positive actions toward the adoption of the Model Rule to accept foreign lawyers as FLCs in all States and to take necessary measures including the establishment of federal laws to allow foreign lawyers to provide legal services in nationwide in the United States because registered foreign lawyers can practice nationwide in Japan.

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

Regarding the period of practicing experience that is required for foreign lawyers to be qualified as FLCs, Government of Japan was reported by Government of the United States that the ABA amended the Model Rule in August 2006 to abolish the requirement for practicing experience in the period immediately preceding the date of application, to shorten the required period of practicing experience to five years, and to accept the practicing experience in any country including third countries. While the Government of Japan welcomes such move toward improvement in the situation in the United States, it therefore urges the Government of the United States to continue its efforts to realize the following:

(i) Reduction of the Period of Practicing Experience

A certain period of practicing experience is required for foreign lawyers to be qualified as FLCs in every jurisdiction that accepts foreign lawyers as FLCs, except for the District of Columbia, and most of those states require no less than five years of experience. Under the corresponding system in Japan, the period of practicing experience required for acceptance was reduced from five years to three years as early as ten years ago in response to the request by the Government of the United States. The Government of Japan therefore urges the Government of the United States to reduce the period of practicing experience required to three years in every State.

(ii) Abolition of the Requirement for Practicing Experience in the Period Immediately Preceding the Date of Application

As far as the Government of Japan has confirmed, every state where foreign lawyers are accepted as FLCs allows only the period immediately preceding the date of application to be counted as practicing experience. The corresponding system in Japan does not impose such a limitation. Consequently, the Government of Japan urges the Government of the United States to eliminate this requirement in qualifying foreign lawyers as FLCs in every state.

(iii) Inclusion of Practicing Experience in Third Countries

As far as the Government of Japan has confirmed, there are only three States among those accepting foreign lawyers as FLCs, namely the States of Texas, New York and Indiana, which allow the inclusion of practicing experience in third countries into the required period of practicing experience.

The corresponding system in Japan allows the period of practicing experience in third countries to be included in the required practicing experience. The Government of Japan therefore urges the Government of the United States to allow the period of practicing experience in third countries to be counted as the period required to be FLCs in every state.

(2) Regulation on Alternative Dispute Resolution (ADR) Proceedings by Foreign Lawyers

Since regulations in each state on foreign lawyers or FLCs acting as a neutral or a proxy in alternative dispute resolution (ADR) proceedings (including arbitration proceedings) are not clearly confirmed, foreign lawyers or FLCs are experiencing problems in their practices. Consequently, the Government of Japan continues to urge the Government of the United States to clarify the details of the regulations on ADR proceedings. As a result, if it is found that the regulations applied to ADR proceedings conducted by foreign lawyers or FLCs are excessive compared with those of the Japanese system, the Government of Japan urges the Government of the United States to take appropriate measures to have such regulations abolished or eased.

XII. MARITIME TRANSPORTATION BUSINESS

1. Sanctions under the Merchant Marine Act of 1920 and Reporting Requirement on the Situation of Japanese Ports

The Federal Maritime Commission (FMC) is authorized by Section 19 (1) (a) of the Merchant Marine Act of 1920 (the Jones Act) to make rules and regulations affecting ocean-going shipping.

The FMC imposed a unilateral sanction against Japanese carriers in September 1997. Although the sanction was removed in May 1999, the FMC still requires Japanese carriers to report to it on the situation of ports in Japan. The rule that provided the grounds for the unilateral sanction was in violation of the Treaty of Friendship, Commerce and Navigation between Japan and the United States, which provides each other's ships with the national treatment and most-favored-nation treatment. The rule was repealed in May 1999, but since it was not repealed from acknowledges of the violation of the treaty, Japan's concern still remains that the FMC might impose similar unilateral sanction measures again. Consequently, the Government of Japan strongly urges the Government of the United States to ensure that such unilateral measures not be taken any more by strengthening its convincing efforts on the FMC.

In addition, even after the repeal of the above-mentioned rule, the FMC has continued to require Japanese carriers and affiliated U.S. carriers to report to it on improvements in the situation of ports in Japan.

The situation of ports in Japan has been improved through efforts made by the parties concerned. Despite the apparent improvement of the port situation in Japan including the improved "prior consultation system" and the revised Port Transportation Business Law, the FMC introduced, in August 2001, 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 that are beyond the extent deemed appropriate to impose upon carriers, such as directly requiring

Japanese carriers to submit translated copies of the Japanese laws and instructions concerned, and impose unfair and excessive burdens on Japanese carriers. There is also a suspicion that the above order FMC introduced is intended to gather information for imposing unilateral sanction measures again.

Consequently, the Government of Japan strongly urges the Government of the United States to repeal the order, which provides a basis for the reporting requirement.

2. Intervention in Freight Setting by the Ocean Shipping Reform Act of 1998

The Merchant Marine Act of 1920, in Section 19 (1) (b) as amended by the Ocean Shipping Reform Act of 1998, includes a provision allowing discriminatory treatment of Japanese and other foreign shipping companies, and making it possible to impose unilateral regulations on ways of setting freight rates and other practices. As the freight rates setting provide the foundation of free shipping activity on a commercial basis, unilateral regulations by the FMC on the freight rates setting practices are an intervention in free shipping operations and discriminatory intervention against foreign shipping firms.

With regard to the amendment to the act in 1998 which explicitly stipulates the intervention in freight rates setting practices, the Government of the United States commented in the Seventh Report to the Leaders that “the 1998 amendment to section 19 of the Merchant Marine Act, 1920 clarified authority already granted to the Federal Maritime Commission.” However, it is unclear as to why those regulations, which ought to be highly excepted measures upon freight rates set on a commercial basis, are really necessary, and as to whether there is a system to ensure fair enforcement of those regulations. Thus there remains a strong concern that unilateral regulations might be imposed without regard to the market situation. Therefore, the Government of Japan urges the Government of the United States to ensure that the FMC will not impose unilateral regulations on commercial shipping activities conducted by Japanese and other foreign shipping firms without taking into account the actual situation of the market.

3. The Maritime Security Program

The Maritime Security Program (MSP), which provides over 100 million dollars of maritime subsidy annually for ten years, was extended for another ten years in October 2005, with the increased amount of subsidies and the increased number of ships subsidized. It is obvious that a provision of such an enormous amount of subsidies distorts conditions for free and fair competition in the international maritime transport market. It has been explained that the subsidy in question is provided as part of national security measures, but no reasonable explanation has been provided on the amount of subsidy and other points. Thus, there still remains suspicion that it is de facto subsidy for the operation cost in the name of national security. Therefore, the Government of Japan urges the Government of the United States to abolish the MSP.

If the abolition is difficult, the Government of Japan urges the Government of the United States to:

(a) Take measures, in implementing the MSP, to minimize the distortion of the free and fair competition in the international maritime transport market caused by the MSP, including by limiting

its application only to cases where genuine security interests require requisition; and

(b) Inform the Government of Japan surely and without delay of any changes and developments in the MSP and the scope of ships to which the MSP is applied, to which the Government of the United States committed in the Seventh Report to the Leaders.

(c) Provide detailed explanation of requirements to receive the subsidy under the program.

4. Cargo Preference Measures including the Law Lifting the Ban on the Export of Alaskan Crude Oil

Cargo preference measures such as the requirement to use U.S.-flag vessels for exports of Alaskan crude oil, which is commercial cargo, are measures of highly protectionist nature and inconsistent with the principle of national treatment. They also run counter to the Ministerial Decision on Negotiations on Maritime Transport Services under the WTO, which prescribed that the participants should not apply any new protectionist measures during the negotiations.

In the Seventh Report to the Leaders, the Government of the United States stated that it took note of the opinion of the Government of Japan that measures such as cargo preferences may distort conditions for free and fair competition in the international maritime market and also explained that the measures affect less than one percent of the United States' total ocean borne foreign trades. However, it does not justify these anticompetitive measures. Therefore, the Government of Japan continues to urge the Government of the United States to abolish cargo preference measures.

5. Container Fee Program in the State of California and Eligibility for Concession under the Clean Truck Program of the Port of Los Angeles

(1) Container Fee Program in the state of California

The State of California legislature passed a bill to impose a fee of 30 dollars per TEU (twenty-foot equivalent units) on all loaded containers moving through the Ports of Los Angeles, Long Beach and Oakland.

The Ports of Los Angeles and Long Beach have already been approved to impose a fee of 35 dollars per TEU under the Clean Truck Program, which is to replace all trucks using the port terminal with low-emission vehicles, in addition to the "infrastructure cargo fee" of 15 dollars per TEU which is collected to fund the activities to reduce environmental load, etc. In total, the additional fee required for containers to move through the Ports of Los Angeles or Long Beach will amount to 80 dollars per TEU. Since Japanese shipping companies transport a huge number of containers through the above-named three ports, if the proposed container fee is imposed, they will directly suffer substantial increase in the transportation cost. It will impose a heavy burden on the maritime industry which faces serious financial challenges caused by the sharp rise in fuel prices and may affect the container distribution between Japan and the United States.

The new container fee is aimed to fund the projects to improve infrastructure for container transportation and air pollution reduction projects. However, as mentioned above, it has already been decided that a fee of 15 dollars per TEU will be imposed as part of measures to reduce

environmental load. Therefore, introduction of the new container fee will be an excessive burden on the maritime industry.

Based on such concerns as described above which are expected when the bill is enacted as law, the Government of Japan requests the Government of the United States to work on the State Government not to introduce the proposed container fee.

(2) Eligibility for concession under the Clean Truck Program of the Port of Los Angeles

Under the Clean Truck Program proposed by the Ports of Los Angeles and Long Beach, concession will be issued to the trucks that are allowed to enter in the port area.

While the Port of Long Beach includes not only trucking companies but also independent owner-operators in those eligible for concession, the Port of Los Angeles plans to issue concession only to trucking companies. Considering that over 80 percent of truck drivers in both ports are independent owner-operators, concession will not be issued to a sufficient number of truck operators using the Port of Los Angeles, and as a result the work efficiency will decline, which may cause congestion in the port. Given the large volume of cargo handled at the Port of Los Angeles in maritime transportation between Japan and the United States, congestion in the port may hamper smooth trade between the two countries.

Therefore, the Government of Japan requests the Government of the United States to work with the port authority of Los Angeles to issue concession to independent owner-operators in addition to trucking companies.

XIII. COMMODITY MARKETS

Enhancing Transparency of Commodity Futures Markets

With the development of information communication technology, etc, commodity exchanges and over-the-counter markets are rapidly growing throughout the world, and transactions over multiple markets such as arbitrage transactions are increasing. In addition, due to the global scaled active flow of funds and the increase in influx of funds into commodity markets in the recent years, formation of unreasonable prices that deviates from its commercial needs, and market manipulation of common commodities that will not remain on a single market, but are traded over multiple markets are feared.

In light of these situations, as agreed at the Hokkaido Toyako Summit in July this year, Japan and the United States recognize that increasing transparency of commodity futures is an important international challenge and are encouraging active discussions and cooperation between relevant regulatory authorities of the two countries.

In this regard, the Government of Japan requests the Government of the United States to strengthen cooperation for increased effectiveness of detection and prevention of fraudulent cross-border trade, including holding of regular meetings with U.S. Commodity Futures Trading Commission (CFTC).

The Government of Japan also requests to clarify various regulations relevant to the scope of application of U.S. laws when listing commodities on Japanese markets that are at the same time listed on the designated contract markets in the United States, such as the West Texas Intermediate (WTI) crude oil.

XIV. FINANCIAL SERVICES

For further development of the close economic relationship between Japan and the United States, the Government of Japan recognizes that it is important to promote economic activities in the financial service sector between the two countries by improving market access for Japanese financial service providers in the United States.

With regard to the financial service sector, the Government of Japan has maintained continuous discussions with the Government of the United States, including at the Japan-US Financial Dialogue and Insurance Consultations. However, there still remain in the United States regulations that cause obstacles to the activities of Japanese financial service providers. The Government of Japan urges the Government of the United States to ease or abolish such regulations.

Specific requests are as follows:

1. Insurance Business

(1) Unification of the State-Based Regulatory System through the Adoption of the Optional Federal Charter

Due to the State-based insurance regulation and supervision in the United States, insurers who wish to conduct insurance business in more than one State are required to obtain business licenses in each State where they operate and comply with supervisory regulations of each State.

As a result, insurers are required to apply for approvals and notify products and premium rates in each State in which they wish to operate. In addition, there are cases where the delay in administrative procedures dealing with approval applications is causing business burdens on insurers. Moreover, since the approval and notification system varies by State, i.e., the cost of complying with regulations of each State imposes a heavy burden on insurers operating in more than one State. Considering that U.S. insurers operating in Japan are under unified regulations and supervision, the competition environment for insurers are quite different between Japan and the U.S. and this situation is regarded as an entry barrier.

Under these circumstances, the Government of Japan requested the Government of the United States to realize the harmonization and unification of the State-based regulatory and supervisory systems in terms of both procedural and substantial requirements in the fourth- to seventh-year dialogue under the Regulatory Reform Initiative. In addition, in order to resolve these problems, the Government of Japan requested that not only the National Association of Insurance Commissioners (NAIC) but also the Federal Government should take initiatives in improving the current regulatory system and provide the Government of Japan with information on the progress in each State in a timely and appropriate manner.

To our disappointment, however, the harmonization and unification of the State-based insurance regulations including procedures for license and approval has not been realized.

On the other hand, in the United States, the U.S. Chamber of Commerce and insurance organizations such as the American Insurance Association (AIA) and the American Council of Life Insurers (ACLI) are supporting the Optional Federal Charter. Also, a bill to introduce the Optional Federal Charter has been discussed in Congress (in both houses) since 2006. The Department of the Treasury also proposes the introduction of the Optional Federal Charter in the “Blueprint for a Modernized Financial Regulatory Structure” published at the end of March 2008.

Based on these developments, the Government of Japan requests the authorities of the United States such as the Department of the Treasury to promptly take the following measures in cooperation with NAIC:

(a) Introduce the Optional Federal Charter for insurance services in the United States or, as an equivalent step, present effective measures to fundamentally solve the problems of the State-based regulations and the roadmap, and implement them in a prompt manner; and

(b) Since the requests by the Government of Japan have not been addressed for a long time, the authorities of the United States such as the Department of the Treasury should take the initiative in promoting the effective harmonization and unification of the State-based regulations and actively work with the State insurance regulatory authorities, while providing and disclosing information about the progress towards the realization of regulatory reform and specific schedules to the Government of Japan in a timely and appropriate manner.

(2) Elimination of Reinsurance Collateral Requirement

Under the current reinsurance regulations of the United States, foreign (re)insurers are required to post a trust account equivalent to 100 percent of credit amount within the country, or to submit a letter of credit for collateral, when they conduct reinsurance businesses with U.S. ceding companies on a cross-border basis. This system imposes an unfairly heavy burden on overseas insurers in the reinsurance business in the United States, therefore is discriminatory against foreign insurers. Considering that Japan and EU countries do not impose collateral requirements on overseas insurers in the rapidly globalizing reinsurance market, these requirements imposed by the United States deviate from the international standards.

The Government of Japan is aware that the introduction of a system which determines collateral requirements according to the company’s credit rating by external rating agencies has been discussed by NAIC, and is making a request so that the system under consideration will not be discriminatory against Japanese insurers.

Therefore, the Government of Japan urges the Government of the United States to take the following measures in cooperation with NAIC:

(a) Eliminate these unreasonable collateral requirements that impose unfairly heavy burdens on overseas insurers against the principle of competition, or reduce the amount of collateral requirement

to a reasonable level based on a risk-based estimate;

(b) If the request (a) above is realized, ensure equal treatment between Japanese and U.S. insurers and not to impose disadvantageous requirements on Japanese insurers who are going to use such system compared to the requirements for U.S. insurers in terms of required procedures and reporting requirements, etc; and

(c) Present a practical timeline for a review of the existing collateral requirements, pay due attention to ensuring that Japanese insurance companies not be discriminated against under the revised system, and provide the Government of Japan with information on the review process in a timely and appropriate manner to ensure transparency in the process.

(3) Abolition of Trusteed Surplus Requirement

Under the State-based insurance regulatory system in the United States, the branches of foreign insurers are required to maintain a trust account separate from the ordinary account in the United States. The amount of account is defined by each State.

This requirement means that the branches of foreign insurance companies have a substantial portion of their assets held under deposit, hampering their expeditious fund investment. Also, they need to obtain prior approval by the supervisory authorities of the State for withdrawal from the trust account (excluding transfer) and need to secure the amount necessary for the maintenance of the trust account in advance, which is normally calculated following the settlement of accounts for each term. Moreover, some States have their own standards for calculation of the necessary amount and reporting. These regulations are discriminatory against foreign insurers because they are not imposed on domestic insurance companies. There is no such regulation in Japan as to impose disadvantageous conditions on foreign insurance companies, when compared to domestic regulations.

Therefore, the Government of Japan urges the Government of the United States to abolish, in cooperation with NAIC, the Trusteed Surplus Requirement discriminatory to foreign insurance companies.

2. Issue of Samurai Bonds Accompanied with the Book-Entry Transfer System

Since all yen-denominated bonds issued by international organizations, non-Japanese governments and non-Japanese companies (a.k.a. Samurai bonds) had been issued as bearer bonds, U.S. companies issuing Samurai bonds were previously exempted from withholding tax duties on interests under the U.S. taxation rules. But in January 2006, the book-entry transfer system of corporate bonds began to operate in Japan, which made it possible to manage Samurai bonds in a paperless environment. Bonds managed under the book-entry transfer system are treated as registered bonds under the U.S. taxation rules, and U.S. companies issuing Samurai bonds are to be assigned to bear the withholding tax duties.

Given this situation, the Government of Japan requested application of the “foreign-targeted registered obligations” (FTRO) stipulated in the U.S. Treasury Department Rules, which exempt U.S.

companies issuing Samurai bonds from withholding tax duties as long as they implement the necessary reporting duties. In response, the Government of the United States expressed its intention, in the guidance issued in October 2006, to “issue regulations providing that the foreign-targeted registered obligations will not apply, except to bonds issued after December 31, 2006, and before January 1, 2009, with a stated maturity of no more than 10 years from the date of issuance”.

The restriction on the application of the foreign-targeted registered obligations does not meet the needs of the Samurai bond market players and therefore the Government of Japan urged the Government of the United States to relax the above-mentioned restriction.

The Samurai bonds issued after January 2007 under FTRO amount to over 1 trillion yen (as of the end of August this year), indicating that there remains a strong need. Based on this fact, the Government of Japan urges the Government of the United States to relax the restriction of FTRO.

XV. TELECOMMUNICATIONS

In the area of telecommunications, structural changes to the network, such as broadband diffusion and IP-migration, and subsequent rapid environmental changes in the telecommunications market point to the need for appropriate and timely regulations and policies.

The Government of Japan recognizes that ensuring equal opportunity for entry and foreseeability for all carriers including Japanese carriers and implementing regulations and policies in a transparent and fair manner will lead to the promotion of further technological innovation, investment and market competition, and will also contribute to the protection of consumer benefits in both Japan and the United States.

From these viewpoints, the Government of Japan has requested improvements in the past dialogues under the Regulatory Reform and Competition Policy Initiative, but the Government of the United States has not responded adequately to these requests. In addition, the Government of Japan considers that, in order to ensure open opportunities of market entry and promote fair competition, it is increasingly necessary, in the United States as well, to respond rapidly and properly to issues arising from technological innovation and market structural changes, evidenced for example in the increased usage of cellular telephones as well as IP-migration, broadbandization, and digitalization of networks.

Based on the recognition above, the Government of Japan requests the following:

1. Elimination or Improvement of Discriminatory Treatment to Foreign Corporations

(1) Revision of Entry Barriers and Criteria Applied Only to Foreign Carriers

(a) Restrictions on Foreign Investment in the Licensing of Radio Stations for the Purpose of Telecommunication Business

Section 310 (b) (3) of the Communications Act of 1934 (hereinafter referred to as "the Communications Act") stipulates, as a criterion of licensing, that the ratio of direct foreign investment in radio stations shall be limited to not more than 20 percent. This restriction makes it

impossible for Japanese carriers to directly obtain licenses to establish earth stations in the United States to provide services such as international communications between Japan and the United States via satellite. As a result, Japanese carriers face difficulties to establish flexible networks.

With regard to indirect investment in radio stations, Section 310 (b) (4) of the Communications Act stipulates the ratio of indirect foreign investment in radio stations shall be limited to not more than 25 percent. Although the "Foreign Participation Order" (November 25, 1997, FCC97-398) stipulates that the Federal Communications Commission (FCC) will make a rebuttable presumption that a foreign investment beyond 25 percent fulfills public interest if a foreign investor is from a WTO member country, this regulation has not been abolished in relation to indirect foreign investment.

In the previous Reports to the Leaders, the Government of the United States offered to provide information to the Government of Japan concerning the division between a common carrier and a non-common carrier, however the Government of Japan believes that such regulation itself should be abolished. The Government of Japan requests the Government of the United States again to abolish the regulations on both indirect and direct foreign investment in relation to the establishment of a radio station established for the purpose of telecommunications business as covered in Section 310 of the Communications Act.

(b) Certification and Licensing Criteria for Foreign Carriers' Entry into the Telecommunications Market of the United States

Section 214 and Section 310 (b) (4) of the Communications Act provide several certification and licensing criteria for foreign carriers' entry into the telecommunications market of the United States (November 25, 1997, FCC97-398, FCC97-399). Among them, the criteria of "trade concerns" and "foreign-policy" are unclear and have little to do with telecommunications policy. Nevertheless, they could be applied to refuse issuance of certification or licenses. These criteria are, therefore, significant barriers preventing foreign carriers from entering the market of the United States. The criterion of "very high risk to competition" could be also applied to refuse the issuance of a license. However, this criterion is also ambiguous and, as a result, undermines the foreseeability for foreign carriers to develop their business plans. The Government of Japan therefore repeatedly requests the Government of the United States to:

(i) Abolish the criteria of "trade concerns" and "foreign policy", which have nothing to do with telecommunications, for ex-ante certifications;

(ii) Abolish the criterion of "very high risk to competition". If it is not possible to abolish it immediately, clarify and make public the conditions for its application, as the second-best measure.

(2) Entry Requirement in the Submission Form for the Importation of Radio Frequency Devices into the United States

FCC Rule 2.1205 requires that, any person who imports radio frequency devices into the United States must submit FCC Form 740 to the U.S. Customs Service. In this Form, it is required to enter the name and address of the manufacturer who assembled the products into their final form, as the "manufacturer" of the products. However, in cases where a Japanese manufacturer outsources the assembly of the products to an overseas manufacturer, and that Japanese manufacturer, after

conducting final inspection of such products, subsequently exports the same products to the United States, the above-mentioned entry requirement may cause inconvenience in the handling of a product liability issue for such products unless the above-mentioned entry requirement is deemed to be met by the entry of the name and address of the Japanese manufacturer, since the product liability for such product lies with the Japanese manufacturer. The Government of Japan requests the Government of the United States to take into account the actual production practices of manufacturers, and accept manufacturers that conduct the final inspection of products also as a “manufacturer” that is required to be entered in the Form.

(3) Local Contents Requirement for Federal Government Loans

The loan program for telecommunications equipment provided by the Rural Utilities Service (RUS) of the United States Department of Agriculture contains local contents requirement under which the loan must be expended for products of the United States or of “eligible countries”. The criteria for “eligible countries” are unclear, and such local contents requirement creates unfair competitive conditions in the procurement of telecommunications equipment by companies eligible for the loan in question. In the Seventh Report to the Leaders the Government of the United States reported that the United States Trade Representative (USTR) has the authority to waive the application of buy national requirements imposed as conditions of funding by RUS for telecommunications projects and that this waiver authority may only be exercised where USTR determines that another country provides reciprocal access to U.S. products and services and U.S. suppliers. However, the Government of Japan does not impose such buy national requirements as described above as conditions for funding for telecommunications project and believes that these requirements hamper free trade as well as efficient and optimum procurement of product components by U.S. companies. Therefore, the Government of Japan requests the Government of the United States again to abolish such local contents requirement and ensure fair treatment of telecommunications equipment procured by the borrowers of RUS’s loans by not discriminating between U.S.-made and Japanese-made telecommunication equipment.

(4) Procedures for Export Licenses, Approval of Technical Assistance Agreement and Other Measures concerning Commercial Satellites

(a) Ensuring Prompt Procedures and Transparency for Export Licenses

The examination procedures and the operation thereof by the Government of the United States with respect to export licensing for commercial communications satellites are unclear, and the standard processing time required has not been made public. Therefore, satellite makers need to bear risks in applying for the approval and suffer from delays in procuring parts in the production process, which reduces foreseeability in the commercial satellite business. Further, the operation of the licensing procedures is subject to change without notice, causing the situation where operators are unable to respond swiftly to changes in application procedures, and have to wait for a long time to obtain a license.

In this respect, in the Seventh Report to the Leaders, the Government of the United States reported that on January 22, 2008, President Bush issued an Export Control Directive, that will improve the manner in which the U.S. Department of State licenses the export of technical data, and expedite the processing of export license applications for items controlled by the U.S. Munitions List. However,

the actual state of implementation of the Directive is not necessarily clear. Therefore, the Government of Japan requests the Government of the United States to continue efforts to maximize transparency by making public export licensing procedures and their operation, and also to provide appropriate information on the current state of implementation of the Directive by, for example, conducting surveys on the time actually taken for examination.

(b) Ensuring Prompt Procedures and Transparency for Technical Assistance Agreement (TAA)

Regarding TAA, the criteria determined by the Government of the United States for information disclosure and TAA approval are not clear. Therefore, commercial satellite makers do not disclose technical information at their own risk and apply for the approval on the information for which approval is not required, thereby prolonging the time for obtaining the approval. Furthermore, foreign satellite communications companies cannot access indispensable information such as test procedures, reports on non-performance of the manufacturing process, and reports on problems in assembly or the ex-ante test. Moreover, foreign satellite communications companies need to shoulder additional costs due to undisclosed essential information. Consequently, Japanese satellite communications companies have concerns over current and future business activities.

Concerning the insurance TAA required in connection with the insurance contracts for the launch of communications satellites, the length of the required processing time is becoming longer due to insufficient examination staff and concentrations of applications. This makes it difficult for satellite companies to respond appropriately to technical questionnaires from insurance companies, thus inhibiting the smooth conduct of business.

In this respect too, in the Seventh Report to the Leaders, the Government of the United States reported that on January 22, 2008, President Bush issued an Export Control Directive, that will improve the manner in which the U.S. Department of State licenses the export of technical data, and expedite the processing of export license applications for items controlled by the U.S. Munitions List, but the actual state of implementation of the Directive has not been made clear. Therefore, the Government of Japan requests the Government of the United States to continue efforts, in accordance with the laws, regulations and policies of the United States, to minimize delays in the procedures and maximize transparency in the TAA approval processes, while providing appropriate information on the current state of implementation of the Directive. The Government of Japan also requests the Government of the United States to minimize the items of information which are undisclosed as a result.

(c) Ensuring Fair Procurement Conditions

When a U.S. satellite purchaser puts out a tender, Japanese satellite makers obtain related documents later than U.S. makers, due to the regulation by the U.S. Government on information disclosure. The Government of Japan is concerned that Japanese makers are put at a competitive disadvantage, and therefore requests the Government of the United States again to ensure fair competition for the satellite communications businesses in the procurement of satellites.

2. Ensuring Consumers choice through Market Competition

(1) Competition in the Navigation Devices Market in the Process of Transition to Digital Television

The Government of Japan understands that for adequate services that meet consumer requirements to be provided in the process of transition to digital television, it is of particular importance to ensure new entry and fair competition in the navigation devices market. Section 629 of the Communications Act stipulates that the FCC shall ensure that consumers get converter boxes and other equipment for multichannel video programming from manufacturers, etc. which are not affiliated with any multichannel video programming distributor. The Government of Japan requests the Government of the United States again to continuously maintain and enforce this section of the Act in order to ensure consumer benefits in the navigation devices market in the process of transition to digital television and the revision of the Communications Act.

Thereupon, as reported in the Seventh Report to the Leaders, the Government of Japan requests the Government of the United States to continue a dialogue with the Government of Japan on how to enforce the above-mentioned Section of the Act, and to swiftly adopt rules to establish reasonable technical requirements to facilitate a competitive market for the supply of interactive navigation devices in the process of policy deliberation based on the FCC's third Further Notice of Proposed Rulemaking (FNPRM) of June 2007 (FCC07-120).

(2) Policies Concerning Establishment of Advanced Information Communication Infrastructure

Broadband communications services provide the basis for activities of companies and individuals. In the United States, however, the high-speed broadband communications network available for companies and individuals to send and receive high quality data graphics and images is not extensive enough as compared with other advanced countries, which could reduce the flexibility in activities of companies and individuals in the United States. According to the Fifth Report Examining the Availability of Advanced Telecommunications (706 Report) released by the FCC in June 2008, the number of high-speed lines (with speeds of over 200 kbps in at least one direction) has reached 100.9 million in June 2007. However, considering that more than half of these lines are ADSL and mobile communications, this number is not enough to meet the requirement of Section 706 of the Telecommunications Act of 1996, which requires the Government of the United States to facilitate the deployment of advanced telecommunications capability in a reasonable and timely manner.

Therefore, the Government of Japan requests the Government of the United States again to consider and promptly implement policies and measures to encourage expansion of the high-speed broadband communications network through market competition.

(3) Network Neutrality

In August 2008, the FCC approved an enforcement order against Comcast requiring improvement of its practice of blocking certain traffic in providing internet services, based on the judgment that such practice goes beyond reasonable network management. In addition, although the FCC released the Internet Policy Statement on August 5, 2005 (FCC05-151), it has not provided any specific criteria for judgment yet. Under such circumstance, dealing with a specific case based on that Policy Statement would reduce predictability for telecommunications carriers and thus significantly discourage active business operations by telecommunications carriers.

Therefore, the Government of Japan requests the Government of the United States to clearly set the specific criteria for judgment concerning matters to be complied with by telecommunications carriers and ensure predictability for telecommunications carriers, in order to ensure the

effectiveness of the Internet Policy Statement. In addition, the Government of Japan requests the Government of the United States to ensure that (a) consumers be entitled to connect any legal devices to networks; (b) consumers be entitled to access any lawful Internet content; and (c) consumers be entitled to select any application no matter which broadband service provider consumers choose, as long as their actions do not cause any harm to networks.

3. Promotion of Information Communications Policy in a Timely and Transparent Manner

(1) Policy Making Process

The Government of Japan recognizes that the U.S. Congress launched an official investigation into the effectiveness and transparency of the policy making process of the FCC in January 2008, and requests the FCC, in the light of such situation, to ensure transparency and swiftness in policy making by improving predictability in the handling of public comments received concerning its information communications policies, and ensure predictability for companies doing business in the United States.

(2) Regulatory Reform in the Broadband Era

The Government of the United States implements and explores various regulatory reforms and new policies, including a review of competition policy, in order to enable all consumers to enjoy the benefits of broadband and to respond to structural changes in the telecommunications market such as IP-migration. These actions being taken by the Government of the United States are understood as including both initiatives by the regulatory authority to undertake reforms including revision of the unbundled network elements (UNE) rule and determination of the regulatory framework for new services under the current Telecommunications Act, and attempts by legislature to revise the Communications Act. While these reforms would be beneficial to consumers if implemented appropriately, it is important that the reforms do not hinder market competition, technical neutrality, consumer benefits, and free entry, in the process or as a result.

Unlike in other major countries, under the Communications Act of the United States, "Telecommunications services" are subject to a set of regulations including provision of unbundled network elements, contribution to the universal service fund and price regulations, while "information services" are not subject to those regulations. However, regarding a variety of new services including VoIP, which followed broadband diffusion and IP migration, the FCC determines which type of service a new service falls into, and what regulations are applied to it on a case-by-case basis, thus hindering the foreseeability for service providers. Furthermore, in spite of the FCC's classification of wireline broadband access services and broadband over power lines as "information services" as part of its deregulatory measures, the FCC has decided to apply to such services the obligations applicable for "telecommunications services", based on "ancillary jurisdiction" of the Communications Act. In this context, the Government of Japan requests the Government of the United States to:

- (a) Provide consistent criteria on what kind of services are classified as "telecommunications services" or "information services" to ensure foreseeability for telecommunications carriers;
- (b) Prevent the dichotomous classification of "telecommunications services" and "information services" of the Communications Act from hindering implementation of appropriate and reasonable

regulations based on bottleneck and market dominance; and

(c) Consider revising the dichotomy of the current service classification in the process of the revision of the Communications Act unless both (a) and (b) above are satisfied at the same time under the current framework of the Communications Act.

(3) Access Charges

There are three different kinds of access charges in the United States: reciprocal compensation, intra-State access charges and inter-State access charges, which are imposed depending on, for instance, the types of accessing carriers. The Government of Japan requests the Government of the United States again to implement the ongoing process of notice of proposed rulemaking (NPRM) of access charges reform in a transparent manner, establish a unified intercarrier compensation regime, and eliminate disparity and inconsistencies among the three kinds of access charges.

Further, the Government of Japan requests that measures be implemented to secure transparency of the implementation of the current system in the interim until a unified intercarrier compensation regime is established.

In particular, on the issue of inter-State access charges, as rate levels which were decided under the Coalition of Affordable Local and Long Distance Service (CALLS) plan adopted in May 2000 are still applied, the Government of Japan requests the Government of the United States to validate whether such rate levels are reasonable under the present situation, and if necessary, adjust them to appropriate levels.

(4) Universal Service

According to the universal service mechanism in the United States, the amount of disbursement continues to increase since multiple eligible telecommunications carriers, including wireless service providers, can be designated in a single region. The amount of contributions, however, is decreasing due to a decrease in the traffic carried by long-distance fixed phone operators. Due to an imbalance between expenditures and revenues in recent years, the financial condition of the universal service fund has deteriorated, raising concerns among the parties in the United States about the stability and sustainability of the funds.

As reported in the Seventh Report to the Leaders, in January 2008, the FCC issued two Notices of Proposed Rulemakings seeking comment on ways to reform the high-cost universal service program, including rules governing the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs) and comment on whether and how to implement reverse auctions (a form of competitive bidding). In May 2008, the FCC issued rules capping high-cost payments at 2007 levels.

However, these measures are merely provisional and the mechanism is in an unstable condition at present, and the Government of Japan continues to have a concern that the present situation is reducing foreseeability in the medium to long term for businesses engaged in telecommunications service in the United States. Therefore, the Government of Japan requests the Government of the United States again to conduct a review of the mechanism, including how disbursement and

contributions should be conducted, as well as to make policies for improving the efficiency of the operation of the mechanism, in order to ensure that the universal service mechanism of the United States is maintained and operated in a stable manner.

XVI. INFORMATION TECHNOLOGY (IT)

Along with the wider use of the Internet and development of digital technologies, it has become necessary for each country to effectively align their measures with measures being adopted internationally.

Even though the United States is an advanced IT country, there continue to be some aspects of its efforts to protect copyright that are thought to be inadequate or inappropriate, therefore the Government of Japan urges the Government of the United States to improve its measures to secure the protection of rights and to enforce proper mechanisms in this regard. It also urges the Government of the United States to establish and enforce the system devised with adequate consideration paid to an appropriate balance between the right of copyright holders and that of copyright users, without affecting the benefits of smoother use of copyrighted works made available by the development of Information Technology.

Specific requests are as follows.

Legal Systems of the Government of the United States Covering Copyright and Neighboring Rights

(1) Protection of Copyright and Neighboring Rights

Given the current situation that copyrighted works are freely distributed across borders due to wider use of the Internet and development of digital technologies, it is vital to ensure protection of copyright and neighboring rights in an internationally harmonized manner. In order to facilitate discussions on various issues concerning the age of digitization and networking, the Government of Japan continues to urge the Government of the United States to provide legal systems that are not unnecessarily complex for foreign rights holders in order to ensure clear and reliable protection of the following items which are not fully protected in the United States.

(a) Protection of Live Performances and Unfixed Works

Article 14 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Article 6 of the World Intellectual Property Organization Performances and Phonograms Treaty (WPPT) require not just live music performances but live sound performances in general be protected. However, protection under the Copyright Act of the United States is provided only for live music performances among live performances. In addition, the U.S. Copyright Act does not provide protection for unfixed works, either. The U.S. Government's position is that these performances and works are protected under States' laws. However, it is not possible to confirm whether or not such protection is provided without viewing the laws of all the States, which is hardly desirable from the viewpoint of maintaining transparency. Therefore, the Government of Japan urges the Government of the United States to clearly stipulate the protection of live sound performances in general and

unfixed works.

(b) Protection of the Moral Rights of Authors and Performers

Under U.S. laws, there is no provision providing clear protection in general for the moral rights of authors and performers. The U.S. Government's position is that these moral rights are comprehensively protected by a combination of Section 106A of the U.S. Copyright Act, the Lanham Act, contract law and common law. However, doubts remain as to whether such protection is actually being maintained. With regard to the Lanham Act, in particular, since cases have been established indicating that there is no function for protection of moral rights, the U.S. government's explanation that this law does protect moral rights has problems. In the first place, a legal system which protects moral rights through a plurality of legislation and common law is too complex for foreign rights holders to utilize, and is against the principle of transparency. Thus, from the point of view of promoting transparency, the Government of Japan continues to urge the Government of the United States to provide clear protection for moral rights under the U.S. Copyright Act.

(c) Clear Stipulation of the Rights of Broadcasting Organizations

As neighboring rights are not provided to broadcasting organizations under U.S. laws, protection of broadcasting organizations is not sufficient. Given the present situation where right infringements such as distribution of pirated copies of broadcasted contents and illegal uploading frequently occur beyond national borders, clearly stipulating the rights of broadcasting organizations has the merit of enhancing effectiveness of countermeasures against right infringements both at home and abroad. Therefore, the Government of Japan urges the Government of United States to grant clearly stipulated rights to broadcasting organizations.

(2) Response to Digitization and Networking

In order to cope with new copyright-related issues that arise from the wider use of the internet and development of digital technologies such as the problem of copyright infringements, the Government of Japan urges the Government of the United States to explore and study a desirable nature of copyright protection system in the future through active exchange of information, taking account of the necessity of smooth technological development as well as consumers' convenience. Specifically, the Government of Japan urges the following:

(a) Review of the Relationship between Relevant Rights for Ensuring Smooth Online Usage of Copyrighted Works

The Government of the United States takes a position that copyrighted works used online are protected by the combination of right of reproduction, right of performance and right of distribution. However, the relationship between these rights is complicated by this overlapping application of multiple rights, which could impede the smooth usage of copyrighted works online. Accordingly, the Government of Japan continues to urge the Government of the United States to take appropriate measures including establishing laws that ensure and promote smooth usage of copyrighted works, such as a measure to eliminate the possibility of overlapping application of multiple rights.

(b) Clear Stipulation of the Rights of Making Available

Although the United States is a party to the World Intellectual Property Organization Copyright Treaty (WCT) and the World Intellectual Property Organization Performances and Phonograms

Treaty (WPPT), the U.S. Copyright Act does not clearly stipulate the rights of making available which are required under Article 8 of WCT, and Article 10 and Article 14 of WPPT. As there have been recently several judgments indicating that the U.S. Copyright Act does not cover the rights of making available, the Government of the United States may not be fulfilling the obligation according to these treaties. Therefore, the Government of Japan urges the Government of the United States to clearly stipulate the rights of making available under the U.S. Copyright Act.

XVII. MEDICAL DEVICES AND PHARMACEUTICALS

In the 21st century, which is sometimes called “the century of life sciences”, the pharmaceutical industry is expected not only to help improve the level of medical treatment for health, but also to make a significant contribution to economic development. For expeditious provision of innovative pharmaceuticals, continuous innovation efforts are indispensable.

In order to materialize this idea, it is important to enhance the motivation of companies towards innovation by strengthening protection of intellectual property rights. These measures will enable them to provide innovative pharmaceuticals in an expeditious manner and are thus believed to be beneficial for both Japan and the United States including the patients in the United States.

Therefore, the Government of Japan requests to the Government of the United States the following:

Protection of Undisclosed Information

Strengthened protection of intellectual property including, in particular, protection of undisclosed information for the purpose of recouping research and development investment plays an important part in the creation of innovative pharmaceuticals. In Europe and Canada, the data protection period is set for 8 years after a drug approval, during which the data for a new drug application are protected to prevent use of the data by other applicants. (In Europe, two additional years of market exclusivity are also granted.) In Japan, as well, the reexamination period which has similar effect to the data protection period has just been extended to 8 years in principle.

Extending the protection period of undisclosed information to 8 years would enable the pharmaceutical industry to recoup research and development investment and facilitate research and development of new drugs. Also, data for new drug applications are protected against unfair commercial use under the TRIPS agreement.

The Government of Japan recognizes that in the United States, a market exclusivity period of 5 years after a drug approval is granted for a new drug, and requests the Government of the United States to extend such period to around 8 years, with a view to securing sufficient opportunities for companies to recoup research and development investment and achieving international harmonization of the system.