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The Marine & Fire Insurance Association of Japan Issues Proposal for the Upcoming WTO 2000 Round of Services Negotiations; Identifies Six Objectives for Talks on Financial Services

When the top trade officials of the member countries of the World Trade Organization meet in Seattle, Washington on November 30 for the Third Ministerial Conference of the WTO, the way will be paved for the start of comprehensive negotiations that will take global services trade into the new millennium. These negotiations will be key to the sound development of the financial services sector of the world economy in the 21st century.

The Marine & Fire Insurance Association of Japan, a trade association comprised of 35 non-life insurance companies doing business in Japan, recognizes that the outcome of the WTO 2000 Round of Services Negotiations will greatly affect the future global operations of Japanese non-life insurance companies. As the leading representative of the Japanese insurance industry, the Association believes it can add a constructive perspective to the upcoming trade negotiations.

Today, Mr. Hiroshi Hirano, Chairman of the Marine & Fire Association of Japan, released a statement in which the Association identified six objectives in the area of financial services on which it encourages that specific progress be made during the WTO 2000 Round of Services Negotiations. Primary among these objectives are:

1. Full implementation by all member countries of the prior commitments made under the 1997 GATS Financial Services Agreement;
2. The need for members to make additional commitments to further liberalize global financial services markets. The Association calls for the reduction or elimination of barriers that still exist in some countries against the development of insurance operations by foreign companies, including limitation on foreign capital ratios, restrictions on the establishment of branch operations by foreign insurers, obstacles to licensing and other restrictions; and
3. The need to examine some of the methods by which financial services are regulated, in order to ensure objectivity and transparency in regulations, fair licensing standards, and a level field of competition for domestic and foreign financial services providers.

The complete text of the Association's statement is attached and can also be found on the Association's web site at www.sonpo.or.jp/english/english.html.

November 18, 1999

Statement on the Upcoming WTO 2000 Services Round

Hiroshi Hirano, Chairman
The Marine & Fire Insurance Association of Japan

The Marine & Fire Insurance Association of Japan (the "Association"), a trade association comprised of 35 non-life insurance companies doing business in Japan, welcomes the advent of the WTO 2000 Round, during which the guarantees and benefits of the General Agreement on Trade in Services ("GATS") will be strengthened and extended to cover more of the global services trade. The Association offers these comments, which we hope will assist in guiding the efforts of the WTO negotiators in the area of insurance services.

I. Background

1. The WTO Financial Services Agreement of 1997

The Association strongly supports the WTO Financial Services Agreement of 1997 ("FSA"), which represented the first permanent agreement in which WTO Member countries ("Members") committed themselves to the principles of broad market access and national treatment of foreign financial services suppliers on the basis of the Most-Favored Nation ("MFN") treatment. The FSA has contributed to the steady growth of financial services markets while ensuring stable financial policies and predictable markets for investors in each Member.

Assessing the commitments of each Member, while some countries have liberalized their markets in accordance with their FSA commitments, others still have not adequately embraced the principles of market access and national treatment. Moreover, the number of developing countries that have made FSA commitments is insufficient. The Association believes that promoting liberalization will contribute to an increase in consumer benefits through the acceleration of competition and the expansion of employment that results when investment in an economy by overseas companies is encouraged. Such liberalization of the financial services market thus can be expected to further the development of the national economy that makes such commitments. The Association believes it is important that each Member, from this point forward, steadily promote market liberalization in accordance with the procedures stipulated in Article XIX of the GATS.

In addition to the benefits of market liberalization, a key factor that has enhanced the functioning of the WTO has been the introduction of an effective dispute settlement mechanism. In the view of the Association, the WTO dispute settlement mechanism has succeeded in curbing unilateral sanctions measures that could promote protectionism.

2. Progress of Liberalization in the Japanese Insurance Services Market

In Japan, drastic deregulation and liberalization measures in the financial market are proceeding steadily as envisioned under the Financial System Reform (the so called "Big Bang") initiated in 1996 by then-Prime Minister Hashimoto. These measures include lifting the ban on cross-sector entry between banks, securities firms and insurance companies, which will be fully implemented by the end of March, 2001.

Regarding the insurance market, in 1996 the Japanese government made further commitments under the so-called "Supplementary Measures by the Government of Japan and the Government of the United States Regarding Insurance" ("Supplementary Measures"). Among these commitments was the total reform of the rating organization system by abolishing the requirement that companies in Japan use premium rates calculated by the ratings organizations.

The Japanese government also decided to schedule as Additional Commitments to the FSA its commitments on deregulation of the Primary Sector of the insurance market as agreed in the Supplementary Measures. Thus, over the past years, the Japanese government has made strong commitments to deregulate its insurance market on a multilateral basis and has met these commitments by enactment and implementation of the Financial System Reform Law, a broad measure resulting in the wholesale amendment of 24 financial laws including the Insurance Business Law in 1998.

Under its Additional Commitments to the FSA, the Government of Japan agreed to restrict entry by domestic insurance companies into the Third Sector of the insurance market until two and one half years after five specific criteria relating to deregulation of the primary insurance sectors were met. (The Third Sector consists of personal accident, medical and cancer insurance.) The last of these five criteria was fully met in July 1998, with the implementation of the law achieving total reform of the rating organization system described above. Thus, the Japanese government has announced that it will terminate the measures to avoid radical change in the Third Sector and realize full liberalization of this sector as scheduled in January 2001. The Association strongly supports this fundamental policy of the Japanese government.

II. Proposals for the Upcoming WTO 2000 Round of Services Negotiations

1. The Japanese Government Proposal

On July 12, 1999, the Japanese government issued a paper entitled "Preparation for the 2000 Services Negotiations" in which it made the following proposal for the WTO 2000 Round of Services Negotiations:

- (1) Members should commence the next round of negotiations soon after the third Ministerial Conference, with broad and general guidelines and procedures aimed at

- 1) achieving deeper and broader liberalization commitments, and
 - 2) elaborating effective rules for trade in services.
- (2) Members should take up the following issues and considerations for the agenda of guidelines and procedures:
- 1) a comprehensive scope of sectors;
 - 2) negotiations on specific commitments by combining a request-offer with a formula approach;
 - 3) MFN exemptions;
 - 4) disciplines on domestic regulations with the possibility of pro-competitive disciplines; and
 - 5) negotiations on GATS rules.
- (3) In the context of the negotiations, Members should pursue further consideration of special and differential treatment for developing-country Members and of scheduling guidelines and classifications.

The Association basically supports this proposal of the Japanese government. However, with regard to the disciplines on domestic regulation mentioned under Item (2) above, the Association believes that the regulatory authorities of each Member should not be prevented from enforcing necessary measures for prudential reasons, based on the condition of each Member, as stipulated in paragraph 2 of the GATS Annex on Financial Services.

2. The Association's Proposals for the WTO 2000 Services Negotiations

The Association has identified six objectives in the area of financial services on which it encourages specific progress be made during the WTO 2000 Round:

(1) Full Implementation of Commitments Made Under the Financial Services Agreement of 1997

Some Members have not adequately implemented their commitments made under the 1997 FSA. The Association strongly encourages each Member to implement its FSA commitments, and it calls for measures to discuss full FSA implementation in the upcoming Round. In particular, where a national government has committed to liberalization under the FSA, it must ensure that autonomous (state) governments under its authority implement those commitments.

(2) Additional Progress on Market Liberalization

The Association strongly hopes that each Member will make additional commitments to

further improvement of market access and national treatment throughout their financial services sectors. Japanese non-life insurance companies still experience significant barriers to developing insurance business in some countries, and the Association hopes to see these barriers reduced or abolished during the next Round of negotiations. Such barriers include:

- 1) Limitations on foreign capital ratios;
- 2) Prohibitions of and restrictions on branch establishment by foreign companies ;
- 3) Obstacles to license issuance, such as multiple/inconsistent regulations and long waiting/procedural periods;
- 4) Citizenship and residence requirements for company executives and staff;
- 5) Obligation of reinsuring with state reinsurance companies;
- 6) Restrictions on foreign remittance;
- 7) Monopolies in certain lines of insurance business by domestic insurance companies or state insurance companies; and
- 8) Discriminatory taxation treatments towards foreign companies.

The Association proposes that Members in the next Round should seek acceptance by all Members of the Understanding on Commitments in Financial Services. This Understanding defines basic liberalization measures, and some countries have not yet agreed to it. Acceptance of the Understanding is one way to steadily advance liberalization at the same level in each Member.

(3) Examination of the Method of Regulation

As noted above, the GATS Annex on Financial Services, paragraph 2, specifically authorizes the regulatory authorities of each Member to take necessary measures for prudential reasons, including measures for the protection of investors, depositors, policyholders or persons to whom a fiduciary duty is owed by a financial service supplier, or measures to ensure the integrity and stability of the financial system.

Consistent with this directive, the Association believes that discussion regarding such prudential measures, particularly those for the protection of policyholders, should not be included within the scope of the WTO 2000 services negotiations. At the same time, with the increased globalization and integration of financial markets and expansion of financial conglomerates taking place, international co-operation among regulatory authorities is becoming more important. Regulatory authorities from each Member should seek to harmonize the necessary prudential measures they take through the participation in international organizations.

However, because regulations can become barriers to entry when they lack objectivity, transparency and impartiality, the Association suggests that the following regulatory principles be secured:

1) Objectivity and Transparency in Regulations

The transparency and stability of the legal environment is necessary to promote the predictability of business operations. To secure such an environment, transparency and objectivity of regulation must be provided, and regulations must be enforced without discriminatory application or sudden change.

2) Objective Licensing Standards

Because insurance is a business that must operate in the public interest, it is common practice that an insurer is required to be licensed before it engages in the business. Licensing requirements and procedures are fundamental to an insurer's operations. The Association therefore emphasizes that rules regarding the requirements, procedures, and standards for licensing must be maintained at a highly objective and transparent level. Moreover, to the extent a licensing authority is attempting to use the licensing requirement as a means for controlling, either officially or unofficially, the number of entrants in the market, such practices must be abolished.

3) Maintaining a Level Field of Competition

A level field of competition is the prerequisite of meaningful liberalization. Thus, the complete implementation of a rule of non-discrimination between domestic and foreign companies, as well as among foreign companies, is very important. In this respect, excessive emphasis on the so-called "Grandfather Clause" (the inclusion in liberalization proposals of a grandfathering provision that preserves advantages for earlier market participants) can adversely affect fair competition. Accordingly, invocation of such clauses must be carefully examined.

(4) The Reduction of MFN Exemptions

The goal of the GATS to expand trade in services under conditions of transparency and progressive liberalization can be achieved through an expanded scope of the GATS liberalization principle. MFN treatment is one of the most basic principles of the WTO, and therefore only narrow departures from this principle, through the registration of MFN exemptions, should be permitted.

Japan has not registered any MFN exemptions to the GATS. By contrast, a large number of other Members are still registering MFN exemptions. The Association recommends in the next Round, Members seek a substantial reduction in the number of MFN exemptions registered.

(5) Regulation of Insurance Sales on Internet

It is predicted that the Internet will become one of major channels of insurance distribution in the near future. Because current insurance regulatory rules are based on traditional

sales methods, there could be a mismatch or some inadequacy when these rules are applied to electronic commerce. If a Member's regulatory authorities implement measures for regulating insurance sales on the Internet, consistent with paragraph 2 of the GATS Annex on Financial Services, the following elements should be considered:

- 1) Whether or not electronic disclosure of all important information is practically and technically possible;
- 2) The appropriate method of confirming policyholders' understanding of important information;
- 3) Protection of privacy (including the obligation of insurers, Internet providers, etc. to maintain confidentiality);
- 4) Effectiveness of the contract (identification of the contracting parties, and confirmation, alternation, and cancellation of the contract terms.);
- 5) Ensuring effectiveness of regulation on a cross-border basis; and
- 6) Jurisdiction (regulatory authorities of both the home-country and the host should have the authority to supervise insurance sales through Internet).

(6) Treatment of Developing Countries and the Expansion of Members

As stipulated in Paragraph 2, Article XIX of the GATS, it is essential that the process of liberalization take place with due respect for the different levels of development of individual Members. There is some concern that radical liberalization should not be promoted where the market environment is not well-enough developed to support that liberalization. Consideration must be given to state of development of a country's regulatory and/or supervisory system (including the organizational structure in place to enforce regulations), the systems in place to protect policyholders, and the level of education of the country's consumers. At the same time, to ensure support by the developing countries in the WTO, it is necessary to examine as thoroughly as possible the economic benefits liberalization brings to developing countries.

In addition to ensuring that developing countries obtain the greatest benefits from liberalization, it is also important that additional countries gain entrance to the WTO. Such expansion is necessary to strengthen the effectiveness of the WTO framework. Promotion of liberalization, and increase of transparency and stability in regulation and/or supervision can best be achieved through maximum participation in the WTO.