March 2, 2001

Fact Sheet:

Information-Technology Expert-Level Meeting Under the Enhanced Initiative on Deregulation and Competition Policy Tokyo, Japan

United States and Japanese government officials held an expert-level meeting in Tokyo on March 2 to discuss U.S. proposals to promote a more information-technology (IT) friendly regulatory environment in Japan. The meeting was held under the Enhanced Initiative on Deregulation and Competition Policy (Enhanced Initiative). Led by USTR Director for Telecommunications Affairs Jonathan McHale, the U.S. delegation also included representatives from the Departments of Commerce and State, the U.S. Copyright Office, and the American Embassy. The Ministry of Foreign Affairs chaired the meeting for Japan, which was also represented by officials from the Ministries of Economics Trade and Industry (METI), Public Management, Home Affairs Posts and Telecommunications (MPHPT), Land Infrastructure and Transportation (MLIT), and the Agency for Cultural Affairs.

A deputy-level meeting to address IT and the other areas taken up under the Enhanced Initiative was held in Washington on December 6 and 7, 2000. This, however, was the first meeting of an expert-level group on IT.

The Government of the United States welcomes Japan's recent determination to move to the forefront of IT within five years. Dovetailing with this goal, the United States included IT as a key component of the Enhanced Initiative last fall. The objective of this expert-level group is to formulate steps that will improve the environment for growth and investment in Japan's IT sector, leading to greater use of e-commerce and the Internet. The U.S. Government intends to conclude a joint status report with Japan under the Enhanced Initiative later this year that will include measures designed to achieve this objective.

The Diet, the media, and the private sector have all observed that the development of the Internet and e-commerce lags in Japan when compared with other developed countries. According to a recent Japanese survey, Internet penetration per capita in Japan is at 22.8 percent, less than half that of the United States. While the number of Internet users in Japan is quickly rising, further growth in this area will be hindered by the high costs of accessing the Internet for the Japanese. Such fees -- estimated by the OECD in 2000 to be double that of the United States, New Zealand, and Canada -- are largely the result of barriers to competition in Japan's telecommunications sector.

As Japan responds to the challenges that lie ahead in this sector, the U.S. has urged the Government of Japan to rely on the key principles reflected in our Joint Statement on Electronic Commerce in May 1998, and again under the July 2000 Okinawa Charter on Global Information Society. These principles include

private-sector leadership, avoidance of unnecessary regulations, and a minimalist government role that seeks to enable rather than control e-commerce. The United States has encouraged Japan to avoid past practices of over-regulating or picking "winners" and "losers" in terms of companies or technologies.

The United States has also urged Japan to incorporate private-sector views through such means as public comments in policy-making and rule making on IT issues. This practice is essential to IT where technology changes rapidly and the issues cut across many areas. One of the most important tasks for Japan in its effort to facilitate the growth of e-commerce and the Internet is to improve the climate for competition in its telecommunications sector. The United States will continue to focus on this area under the Enhanced Initiative.

In the expert-level talks this week, the United States discussed specific areas where the Japanese Government could improve the regulatory environment in Japan for IT. These areas included:

Promoting Electronic Trade in Digital Products: The United States and Japan agreed that ensuring liberalized trade in "digital products" that can be distributed electronically is a priority. The United States and Japan are major trading partners in software, music, video, and other digitized products. Building on Japan's prior proposal to liberalize trade in digital products multilaterally, the United States has called upon the Japanese Government to agree to principles ensuring that digital products benefit from the most liberal trade regime possible, helping open this area to future growth.

Intellectual Property: Robust intellectual property protection is essential to the growth of e-commerce. The United States urged the Japanese Government to take a number of measures in this area, including: ensuring that adequate protection is extended to temporary copies (e.g., those made in the RAM of a computer); clarifying its laws to ensure that the personal use exception for copying is not abused in the digital environment; and protecting business method. patents. The United States also urged Japan to expeditiously ratify the WIPO Performance and Phonograms Treaty (WPPT).

Carrier Liability: The lack of clear-cut liability rules for certain carriers (e.g., resellers and Internet Service Providers) in Japan creates significant market uncertainty if such carriers are held responsible for illegal activity by users (e.g. copyright violations). In the United States and the EU, telecommunications and Internet Service Providers enjoy explicit limitations on liability for the actions of users on their networks. Without such liability protections, carriers could be subject to broad-based legal attacks for the actions of users over which they have no knowledge or control. This would make the business unacceptably risky. The United States dealt with this issue in the copyright context in the Digital Millennium Copyright Act, which explicitly provided protection from infringement liability to Internet Service Providers. The United States is pleased that Japan is considering legislation to address the issue of carrier liability and has encouraged Japan to continue to consult with the U.S. on this matter.

Privacy: The United States and Japan agreed on the importance of protecting the privacy of individuals' personal information. In the talks this week, the United States urged Japan to continue to support a self-regulatory privacy framework in Japan. Industry self-regulation is a cornerstone of the U.S. approach to

online privacy. The United States also encouraged Japan to make available for public comment any draft privacy legislation. In this manner, Japan can help to ensure that legislation is neither unduly restrictive nor incompatible with other countries' approaches, but rather will aid in promoting cross-border e-commerce.

E-Commerce Legal Framework: The United States welcomes Japan's efforts to revise various laws ranging from commercial to consumer transactions in order to eliminate the need for paper and hand-written signatures. Such laws lay the foundation for moving more commerce online in a secure legal environment, where consumer rights are also protected. The United States has taken a similar measure with our "E-Sign" legislation. Japan has failed, however, to apply its own E-Sign revision (via the IT Blanket Law) to the consumer credit sector covered by the Money Lending Business Law. This failure means that consumer credit will not gain all the security, speed, and efficiency benefits that are possible with electronic transactions. The United States has urged Japan to apply to this sector the same benefits being extended to other sectors through the IT Blanket Law.

Electronic Authentication: Given the anonymous nature of electronic transactions, authentication systems are critical to creating an electronic environment where business transactions are made. Technology-enabling authentication is evolving rapidly and includes both digital and analog signature systems (e.g. digital signatures, PIN numbers, passwords, and biometric technologies). Successful authentication systems tend to be calibrated to particular needs of users, underscoring the importance of flexible solutions. The United States welcomes Japan's steps to recognize the legal validity of these systems but has concerns about a potential bias in favor of government-approved certification authorities. Such a bias would undermine the competitive market for certification systems, the importance of technologically neutral solutions, and the user flexibility that has shown to be critical to adoption and use of these systems.