Communication from Japan
Negotiation Proposal on Energy Services

I. Introduction

1. Japan presents this proposal with the intention that energy services should be included in the discussion for the negotiations on trade in services, given the importance of energy services for economic activities. The proposal is submitted in accordance with paragraph 2(b) of the "Roadmap" adopted at the Special Session of the Council for Trade in Services on 25 May 2000, which allows Member Countries to make further or more detailed proposals in the future. The proposal hereafter should be read in conjunction with the Communication from Japan on the Negotiations on the Trade in Services (S/CSS/W/42) dated 22 December 2000, which includes sectoral issues as well as Japan's position on the current negotiations on trade in services.

2. The proposal, as set out below, consists of two parts: "II. Importance of Energy Services and Issues to be Considered" and "III. Expectations from the Negotiations". The former chapter states the importance of energy services and the issues to be taken into consideration in the current negotiations. The latter chapter raises the issues that are necessary to be tackled in the negotiations with a view to achieving a gradually higher level of liberalization. These issues are by no means exhaustive.

3. Based on paragraph 2(b) of the "Roadmap", Japan reserves its right to make additional proposals in the future.

II. Importance of Energy Services and Issues to be Considered

4. It has already been pointed out in a number of proposals submitted by Member Countries that securing an efficient and stable supply of energy is of great importance for achieving economic and social development. In addition, in order to pursue economic growth, it is of prime importance to increase the efficiency of providing energy services, as well as other

services.

5. Despite such economic importance of energy services, there does not exist an energy-specific division in W/120, the classification list for scheduling commitments under the General Agreement on Trade in Services (GATS), and there have been very few commitments made by Member Countries that can be clearly defined as energy services. The reason for such absence could be due to the fact that energy services have been exclusively supplied by state-owned enterprises or companies with a monopoly position, based on the regulatory environment in each country, and that energy services are hardly recognized by negotiators as being negotiable. However, since the conclusion of the Uruguay Round, there have been repeated trial and error attempts to promote regulatory reform in the energy services sector, resulting in the reorganization of the energy sector. In Japan also, liberalization of the energy market is proceeding, with continuous efforts being made to improve efficiency in energy services.

6. Trade in energy services is, together with the liberalization of the energy market, gradually beginning to play an important role. However, in a number of countries, the regulatory framework for energy services has yet to be sufficiently developed, and there are cases where implementation of those regulations lacks transparency and where the trade environment for energy services has not yet been established. The lack of transparency in energy services regulations reduces predictability for trade in the sector. In addition, a system with insufficient transparency leads to increased doubts on the part of those from the outside as to whether trade barriers do exist, thus resulting in a deterioration of market confidence in the country concerned. Accordingly, it is in the interest of all Member Countries to improve the regulatory transparency of energy services.

7. At the same time, in any country, since energy services provide the basic infrastructure for sustaining the modern economy, in cases where confidence in the supply has been lost, there is the fear that this could not only damage consumer benefits, but also have a significant negative

impact on the economic growth of the country concerned. When taking into consideration the following three points, i.e., countries with scarce energy resources; developing countries whose energy services industry is still at the developing stage; and the existence of differences in capital scale by country, energy security itself should continue to be of great importance in national energy policy. In particular, in light of the recent cases where liberalized markets have faced difficulties in supply, thus causing heavy burdens in a country in which regulatory reform of energy services is ongoing, it is also necessary to make efforts to ensure energy security and supply reliability when pursing regulatory reform and business reorganization.

8. In addition, among the changes that are currently surrounding energy policies, the issue of the environment, and in particular the influence on the global environment, has been raised in global discussions since the end of the 1980s. In 1997, the Third Session of the Conference of the Parties to the Framework Convention on Climate Change (COP3) was convened in Kyoto, Japan, where a goal was agreed for developed countries to make reductions to their greenhouse gas emissions. It was therefore decided that Japan would reduce its average emissions' level for the years 2008 - 2012 by 6% of the 1990 level. In Japan's case, almost 80% of its greenhouse gas emissions are caused by CO_2 energy generation-related substances. Discussions are currently ongoing concerning global environmental issues, and Japan believes that efforts should be made in all countries to harmonize energy policies with environmental policies, and that those countries undertaking these measures should not in any way be disadvantaged in energy services trade.

9. Regarding rule-making in the energy services sector under the GATS, in order to address the issues of public interest, such as the preservation of energy security and supply reliability, environmental preservation, and the maintenance of universal service and public safety, Member Countries should reserve their own rights to adopt those regulatory measures which are transparent, competition-neutral and not more burdensome than necessary. The difference in commitments scheduled

under the GATS should be justified under such Member's rights.

10. Furthermore, the possible rules under the GATS for the domestic regulation of the energy services sector should recognize the diversity among Member Countries, based on the fact that each country has a different history of energy services (e.g. whether energy services has been provided by a state-owned or private provider), and also in accordance with the current industrial structure. However, to the greatest possible extent, rules should be non-discriminatory and should ensure the maximum transparency.

III. Expectations from the Negotiations

A. Classification

11. Japan proposes that during the current negotiations, development of a new classification for the energy services sector be considered for the sake of having comprehensive consultations on energy services without deflecting to specific sectors/sub-sectors, since the existing Services Sectoral Classification List (W/120) under the GATS does not recognize energy services in the form of a specific division as already pointed out by many Member Countries. Such classification should limit itself in scope to the energy services sector and should be developed so as to avoid conflict with existing commitments.

12. Discussions should comprehensively cover the entire range of energy services, from the wholesale of energy to the final consumption by the consumer. An initial focus should be placed on the "core" energy services, namely, wholesale sales, transportation (transmission and distribution of electricity, pipeline transportation and transmission of heat) and retail sales of energy. Regarding energy resource production that could be considered as goods production (mining, refining, power generation and re-gasification), the classification issue should be explained logically in the Council for Trade in Services and its Special Session in conformity with the previous GATS discussions, including those on classification.

13. Although it is also possible to discuss "non-core" energy services, such as

energy related engineering and construction services, it would be effective to undertake separately the discussions of "core" and "non-core" elements in order to simplify discussions and avoid confusion. In addition, when "non-core" services are being discussed, in order to avoid duplication on the lists for other services, it may be useful to define a classification for energy-related services as a checklist for reference purposes only.

14. Energy services subject to consideration should be energy neutral and irrespective of the energy resources. However, energy services relating to nuclear power may cause a complex debate over the peaceful use of nuclear power, the security measures and nuclear safety, thus careful consideration is necessary. In addition, Japan proposes to exclude discussions on the issue of the public ownership of natural resources.

B. Market Access and National Treatment

15. All Member Countries should consider negotiating on market access and national treatment to the greatest possible extent, taking into account the public interest mentioned in paragraph 9 of this proposal.

16. In addition, in some Member Countries, despite the economic reality that their domestic market is integrated and interrelated, there are some cases where differences in market access and national treatment exist at local government level. In such cases, there is concern that the complexity of systems at that level may form a barrier against invigorated energy services trade in the country concerned. From a perspective of facilitating business operations by foreign companies in a given country, the central government (including independent regulators) should ensure that local governments improve market access and national treatment within the market as a whole, in accordance with the economic reality.

17. Furthermore, when providing energy services it is vital that the installation of specific materials/equipment for energy services and technical experts knowledgeable about the energy sector can be made available. Currently, some countries levy high duties on the import of

specific materials/equipment, while others require local procurement or condition the stay of technical experts to a short-term period. Moreover, there are cases where regulations may lack transparency, which results in less predictability for business operations. Japan expects that appropriate consideration will be given to this point with the aim of removing such barriers.

C. Review of Regulatory Frameworks

18. There has been no perfect model for a successful introduction of domestic regulations and a competitive environment for the energy services sector. On the contrary, every country is progressing with regulatory reform and business reorganization in the energy market on a trial and error basis. Recognizing such circumstances, Japan believes that in the negotiations on energy services, it would be useful to consider the effectiveness of frameworks for domestic regulation, which would contribute to the creation of a competitive environment taking into account the viewpoint of a non-discriminate, fair and transparent use of the networks, with due consideration being given to a Member's obligation under Articles XVI (market access) and XVII (national treatment).