

## **Trade and Investment**

### **<Recommendations to the EU and Japan>**

#### **1-EJ-1 Concrete and focused actions to follow up the investment framework agreement to enhance foreign direct investment (Joint recommendation)**

1. The heads of governments of the EU and Japan should follow up and expand the ‘Cooperation Framework for Japan-EU Two-Way Investment Promotion’ adapted at the EU- Japan summit in Tokyo 2004. Concrete measures with substantial impact on investment between the EU and Japan should be elaborated.
2. Such measures should be assessable and clearly focused on the following four priorities: the optimisation of the returns on investment; supporting timely development of business; supporting timely and smooth business reorganisation; and promotion of regulatory reforms.
3. Its progress should be communicated to EJ BDRT as well as to general public on a regular basis.

#### **1-EJ-2 The optimisation of returns on investment (Joint recommendation)**

##### **(1) Avoidance of double taxation**

1. The Governments of Japan and Europe should ensure that dividend payments from subsidiaries to parent companies and royalty and interest payments between related companies are, to the greatest possible extent, exempt from withholding taxes. In addition, the Japanese Government should introduce measures to avoid the reduction of the ceiling of foreign tax credits as a result of such exemption.
2. The European Commission should promote co-operation between Member States in their efforts to conclude bilateral tax treaties with third countries. The Japanese Government should strive to substantially revise all out-dated bilateral agreements with EU Member States. Furthermore, particular priority should be given to initiating negotiations with those EU Member States with which Japan has, as yet, no double-taxation treaty.

##### **(2) Reducing compliance costs associated with transfer pricing**

A reduction of compliance costs of transfer pricing through simplification and rationalisation of transfer pricing regimes in a coordinated manner will increase the international competitiveness of businesses in the EU and Japan. The respective Governments should establish a joint forum, similar to the JTPF established between EU Member States, for the following purposes:

1. To harmonise and simplify interpretation and documentation requirements between the EU and Japan and among the EU Member States in order to reduce the costs of compliance with the various transfer pricing taxation regimes.
2. To make the conclusion of bilateral and multilateral APAs (advance price agreements) between the EU Member States and Japan easier and cheaper by improving procedures. The work and progress made in the EU JTPF on APAs should be communicated to BDRT and Japanese government and Japanese government should be consulted so that APAs between the EU Member States and Japan could benefit from the progress made in the JTPF.

### (3) Participation exemption

The Governments of the EU, the EU Member States and Japan should, as a medium to long-term objective, consider the introduction and/or expansion of participation exemption regimes in order to promote direct investment between the EU and Japan.

## 1-EJ-3 Supporting timely development of business (Joint recommendation)

### (1) Smoother and swifter transfer of personnel

#### 1. Social security contributions

The respective governments should introduce measures to avoid intra-company transferees having to make double contributions to the social security systems of both home and host countries, by the accelerated introduction of social security agreements. In addition, they should introduce an interim measure: The host country should either exempt contributions to pension funds unilaterally or should refund in full when expatriates return to the home country.

#### 2. Work and residence permits

Japan and EU Member states should make an agreement to simplify and accelerate the procedure for obtaining a work and residence permit – or a residence permit in the case of self-employed statutory directors – for intra-company transfers between the EU and Japan. The procedure should include the possibility of submitting an application for a work-residence permit or a residence permit for self-employment after entering the assigned country. Furthermore, spouses should, upon their arrival, be automatically granted the same rights as the holder of the permit, such as a work-resident permit and a residence permit for self-employment..

The Government of Japan should abolish the requirement that foreigners with a visa must renounce it and return their Alien Registration Card whenever leaving the country. The separate system of applying for and issuing re-entry permits should be abolished – such that permission to freely leave and re-enter the country is automatically granted when the visa is issued.

## (2) Data Protection: International Data Transfer

1. Japan's Data Protection Law should be amended in a way that it could satisfy the level of protection required by the EU's Data Protection Law to permit the transfer of personal data from the Member States to Japan.
2. The EU should re-examine the current standard contractual clauses between a data controller and a data processor to establish whether they are workable and sufficiently flexible in the light of modern business practice and experience.

### 1-EJ-4 Facilitating business reorganisation from a legal and tax point of view (Joint recommendation)

1. Changes of company laws underway in the EU and Japan should be carried out in such a way as to fully facilitate smooth cross-border reorganisations between the EU and Japan that involve exchange of shares and transfer of assets.
2. Tax rules should be improved in order to expand the scope of tax deferral on unrealised profits resulting from business reorganisations, including those involving exchange of shares and transfer of assets.

### 1-EJ-5 Promotion of regulatory reforms(Joint recommendation)

The EU and Japan should abolish unreasonable authorisation procedures related to products and services, and continue to pursue mutual recognition of product standards, certification and notification. It is equally important that the respective Governments cooperate when introducing new standards to assure standard convergence and to avoid the creation of future barriers to trade.

The Working Party believes that the best way to accomplish this is through a further intensification of the on-going EU-Japan regulatory reform dialogue. When appropriate, more expert sub-groups could be established, reporting to the main working group, to promote liberalisation in highly technical areas as well, such as Medical Equipment, Animal Health and Food Safety

### 1-EJ-6 Corporate Governance(Joint recommendation)

Rules of corporate governance and disclosure of corporate information should be applied consistently within the EU. For companies conducting business in both Japan and the EU, it is important that there should be no double compliance. i.e. Companies should not be required to comply both with the home country rules regarding corporate governance and with the host country rules. Compliance with the home country rules should be sufficient.

## <Recommendations to Japan>

### 1-J-1 Maintaining stable rules for legal presence of foreign companies

The Government of Japan should use all means available, including revision of Article 821 of the Corporation Law, to ensure legal certainty for foreign companies established as branches in Japan. The Government should take measures to make sure that rules of fundamental importance to foreign companies are not altered without prior notice and consultation.

### 1-J-2 Promoting economic growth through decisive reform

It is important that the Japanese Government continues pursuing its structural reform agenda so that the economic recovery can be maintained. Current economic conditions represent a unique opportunity for Japan to fully realise its ambitious reform goals.

### 1-J-3 Modernizing legal and tax systems to support foreign investment

The Japanese Government should ensure stock swaps occurring under the triangular merger scheme to be introduced in May 2007 will be given the same treatment as swaps involving only Japanese stocks. Capital gains under the scheme should be tax deferred.

### 1-J-4 Advance openness by promoting good corporate governance

The Government should encourage transparent governance by forcefully inhibiting undue entrenchment of vested corporate interests. Guidelines on takeover defences produced by the Ministry of Economy, Trade and Industry and Ministry of Justice are sensible and should be given legal force.

### 1-J-5 Promoting Public-Private Partnership Schemes

More private sector involvement in the delivery of public services should be encouraged through the use of true PFI/PPP schemes.

### 1-J-6 Privatisation of Japan Post

The Working Party is pleased with the improvements made and encourages the Government to ensure a level playing field for private sector competitors in Japan Post's three core business lines ; insurance, banking and delivery services - throughout the privatisation process. Cross shareholding between the holding company and the entities (mail services, postal savings, postal life insurance and the branch network) should not be accepted as it will enable centralized group management after full privatisation in 2017, with the risk of cross-subsidised financial products appearing on the market. Japan Post should be regulated in a manner identical to other carriers and the postal monopoly should be limited to basic delivery of correspondence, and regulated by an independent agency.

### 1-J-7 Facilitating business development through regulatory reform

The Japanese Government's regulatory reform programme should be strengthened by giving the new Regulatory Reform and Privatisation Promotion Council extra powers to implement the Government's "Three-year Plan for the Promotion of Regulatory Reform" and by expanding the special deregulation zone initiative. Special attention should be paid to regulatory reform recommendations made in the context of the EU-Japan bilateral regulatory reform dialogue and recommendations submitted by European business organisations such as the European Business Council in Japan.

### 1-J-8 Ensuring transparency and consistency in the regulatory process

Japanese regulators should make more effort to improve the transparency and consistency of regulation, including for tax-related matters. When new laws are formulated, they should be immediately accompanied by clarifying orders. Public Comment procedures should be made meaningful by giving the public time (at least three weeks) to analyse and comment. It should furthermore be mandatory to submit actual legislative text for comments instead of, at times misleading, general "guidelines".

### 1-J-9 Modernising Japan's food additives list

The remaining 42 as yet unapproved food additives in the list of 46 submitted by the Ministry of Health, Labour and Welfare (MHLW) to the Food and Sanitation Control Council on December 19, 2002 should be reviewed and approved for use in Japan without further delay. The time schedule for approval should be made public by the Food Safety Commission.

### 1-J-10 Facilitating the use of overseas clinical trial data for certification of medical equipment in Japan

The application procedure for certification of medical equipment to be sold in Japan must be made shorter. The GOJ should unconditionally accept clinical data generated overseas, in line with the guidelines issued by the Ministry of Health, Labour and Welfare as long ago as 1997.

### 1-J-11 Improving flexibility in setting airfares between Europe and Japan

The distribution, pricing and settlement of airfares in Japan should be deregulated so that carriers can offer fares in a transparent fashion directly to the consumer, including over the Internet.

### 1-J-12 Improved access in and out of Japan for Foreign Residents

The Government of Japan should abandon the requirement that foreigners with a visa must renounce it and return their Alien Registration Card whenever leaving the country and also abolish the separate system of applying for and issuing re-entry permits – such

that permission to leave and re-enter the country freely is automatically granted when the visa is issued.

### 1-J-13 Strengthening market mechanisms in the telecommunications sector

Japan should reform the institutional structure of its telecommunications regulatory environment. A regulator independent from both commercial interests and the Government should be installed. Less emphasis should be placed on detailed micro-management, and more emphasis on explicit macro-level economic criteria designed to promote economic efficiency, innovation, investment, and effective competitive outcomes.

### 1-J-14 Strengthening market mechanisms in the procurement of aircraft

(Europe-side recommendation)

1. The Japanese government should promote competition in the field of large (more than 100 seat) commercial aircraft procurement. Historical circumstances have created practices which has distorted the market mechanism. As a result, Japanese airlines buy almost exclusively from one supplier.
2. The Japanese government should set a positive example to the private sector of the advantages of sourcing from more than one aircraft manufacturer by considering buying large aircraft for official government use from an alternative supplier.

### 1-J-15 Promoting EU-Japan cooperation in commercial aircraft development and production

(Europe-side recommendation)

The Japanese government should promote fair competition by providing similar support to European – Japan Cooperation programs in the field of commercial aircraft development as is currently given to the cooperation between Japanese manufacturing and their U.S. counterparts. European companies can offer technology, know-how, and production and management techniques that can benefit Japanese manufacturing companies and capitalize on their strengths, for the benefit of both Japan and the EU.

### 1-J-16 CFC rules

We recommend the following three points concerning Japanese CFC rules.

1. To exempt profits for re-investment
2. To increase certainty in their application
3. To reconsider of Exception

## < Recommendations to the EU >

### 1-E-1 The policy of the EU on taxation

1. The European Commission and the Member States should support the work currently carried out in the CCCTB WG and realise a common consolidated corporate tax base as soon as possible.

The CCCTB WG should complete its work by the end of 2007 and the European Commission should present comprehensive Community legislative measures in 2008.

2. Merger Directive (90/434/EEC)
  - (a) Its scope should be extended to include the deferral of taxation on unrealised gains on goodwill.
  - (b) Its scope should be extended to include deferral of taxation on the transfer of real estates and other intangible assets.
  - (c) The requirements in certain Member States to maintain the holding of shares for a number of years should be abolished.
3. Concerning the EU Transfer Pricing Documentation - the EU TPD, the EU and the Member States should commit themselves to exemption from penalties (i.e. penalties related to non-compliance with documentation requirements, penalties related to transfer pricing adjustments and interest related to adjustments) if a company submits an EU TPD acting in good faith and in a timely manner. The EU and its Member States should not treat companies in good faith and companies that try to evade taxation in the same way as the imposition of penalties even when EU TPD is prepared in good faith could lead to undesirable distortions in the single market.
4. Although VAT is a common taxation system in the EU, difference among Member States is so large that companies find it very difficult to centralise VAT administration. The EU and the Member States should simplify and harmonise it to the extent that companies can centralise VAT administration easily without employing people with expert knowledge of the VAT regime in each country in which it is operating.
5. The European Commission and the Member States should make swift progress in realising the cross-border offset of losses against profits.

### 1-E-2 The policy of the EU on company law

1. We welcome the adoption of the Directive of the European Parliament and of the Council on cross-border mergers of companies with share capital (a 10th Company Law Directive). The Member States should transpose the directive by the deadline of 15 December 2007.

2. A 14th Company Law Directive on the cross-border transfer of the registered office of limited companies without liquidation and incorporation should be proposed, adopted and implemented as soon as possible.
3. A Statute for a European Private Company should be introduced as a short-term priority.

### 1-E-3 Japanese expatriates

The deadline of the transposition of Directive 2003/109/EC on long-term residence status has expired. We look forward to hearing from the European Commission about the actual state of its implementation in each Member State.

Furthermore, the Directive is not applicable in the UK, Ireland and Denmark. Japanese nationals in the UK, in which their number is the highest in the EU, therefore, do not benefit from this Directive. The UK government should take action in order to enable them to benefit from the EU directive.

As for the future policy, we look forward to hearing from the Commission about plans to put forward in 2007 a proposal for a directive on the conditions of admission of highly skilled third-country workers to the EU. Such a proposal should include;

- possibilities for intra-corporate transferees to submit an application for a work-residence permit or a residence permit for self-employment after entering the assigned country;
- provisions on intra-EU mobility; and
- possibilities for spouses, to be automatically granted the same or similar rights as the holder of the permit upon their arrival.

### 1-E-4 Pension

The European Commission and the Member States should eliminate double taxation related to occupational and supplementary pensions as soon as possible.

### 1-E-5 Community Patent

The proposal for a Council Regulation on the Community patent should be adopted and implemented as soon as possible. We look forward to the next steps to be taken by the European Commission.

### 1-E-6 Fight against counterfeited, pirated and contraband goods

We welcome the efforts made by the EU in the fight against counterfeited, pirated and contraband goods in the EU and in third countries.

These efforts should be continued and reinforced.

## 1-E-7 Competitiveness of the EU economy

1. The EU is protecting some sectors of its industries by setting high customs tariffs even though these industries are at the forefront of international competition and need stimuli for competition rather than protection. Such protection has led to weakening of the international competitiveness of those sectors rather than helping them to become more competitive. Furthermore, it is none but their users and consumers in the EU who unfortunately have to pay the resulting higher prices. The EU should try to improve the international competitiveness of the EU economy in line with the goals of the Lisbon Strategy, by introducing more competition in the following sectors:

### Audio visual products

The dynamic fusion of information technology, communication and audio visual is going on. For users and consumers in the EU to benefit from innovation and to contribute to global development in these sectors, the rapid and extensive diffusion of new audio visual products is essential. The current customs tariffs on audio visual products are up to 14% and are an obstacle to such development.

### Passenger cars

Automobiles and auto parts constitute a large share of the global trade, and the developed nations should make an utmost effort for the trade liberalisation. Compared with other developed nations, the EU imposes a high tariff of 10% on passenger cars, which should be eliminated or substantially reduced. It should be noted that trade liberalisation will enhance competitiveness of the automotive industries in the EU by way of expanded export opportunities and further technical innovation by virtue of the inexpensive imports of advanced-quality parts from other regions.

2. Tariff classifications must be appropriate, timely and transparent, based on the primary function of the manufactured goods at the time of import. Importers find that classification remains unpredictable because of inconsistencies in the interpretation of the tariff scheduled by the EU.

(ex: Customs classification of Flat Panel Display (FPD))

## 1-E-8 Compliance for REACH (Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals)

REACH have been currently deliberated at Council and Parliament of the European Union. This proposal for the Regulation should be implemented without excessive tasking for the industries.

## 1-E-9 The decision making system of the EU

The EU and its Member States should pursue institutional reforms so that the EU could speed up its decision-making. In corporate taxation area, in particular, unanimity requirements in the Council should be abolished in the area where uncoordinated taxation policies of Member States could become obstacles to cross-border business activities.