

Commission Services Progress Report on the EU-Japan Business Dialogue Round Table Recommendations

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1. The Kyoto Protocol

1. Summary of Recommendations

In order to solve issues concerning the global environment, it is necessary for all countries around the globe to co-operate. Regarding the Kyoto Protocol, the participation of the US Government is vital. To achieve this participation, the Round Table urges the authorities of Japan and the EU to co-operate.

2. Action Taken and State of Play

At COP6-bis in Bonn from 17-27 July 2001, the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) committed to its implementation through the Kyoto Protocol agreed unanimously upon the core elements for the Kyoto Protocol's implementation. At COP7 in Marrakech from 29 October to 10 November 2001, those Parties adopted a range of legal decisions giving effect to those core elements, thereby making the Kyoto Protocol ratifiable by all Parties committed to its implementation. Japan and the EU co-operated closely in reaching both these agreements, and have both repeatedly called upon the United States to return to the international framework for combating climate change that the Kyoto Protocol provides. At the 10th EU Japan Summit which took place in Brussels on 8 December 2001 an action plan for EU-Japan co-operation was agreed. Among the key actions for co-operation between the EU-Japan is a commitment to make additional efforts to ensure the entry into force of the Kyoto Protocol and to co-operate between the EU and Japan to seek effective participation of all countries.

On 23 October 2001, the Commission made a proposal for the ratification of the Kyoto Protocol by the European Community¹. On 4 March 2002, the Council took the legal decision for the European Community to ratify the Kyoto Protocol, based on this proposal. This decision provides for the European Community and its Member States to deposit their instruments of ratification simultaneously at UN Headquarters by 1 June 2002, in order to facilitate the Kyoto Protocol's entry into force by the time of the World Summit on Sustainable Development. At the same time, the Council renewed its call for all countries to ratify the Kyoto Protocol without delay.

3. Prospects for Implementation

The Kyoto Protocol is considered to be ratifiable by all Parties committed to its implementation, and has so far been ratified by 50 Parties to the UNFCCC. Many other Parties including Japan and the EU are intending to ratify the Kyoto Protocol in the near future, which is therefore likely to enter into force in the course of 2002.

The European Community and Member States are continuing to implement policies to greenhouse gas emissions. Through the European Climate Change Programme, the Commission has identified a wide range of measures for the cost-effective reduction of greenhouse gas emissions. In October 2001, the Commission proposed a Directive establishing an EC emissions trading scheme, to begin in 2005 and covering approximately 46% of all carbon dioxide emissions². At the same time, the Commission published a Communication on the European Climate Change Programme³ that describes a range of measures that will be proposed in the next two years. These include measures on the containment and use of fluorinated gases, on energy efficiency for end of use equipment, for promoting combined heat and power production and proposals to shift balance between modes of transport and to achieve

improvements in infrastructure use and charging for transport. Council and the European Parliament have agreed a Directive on promotion of renewable energy in the internal electricity market⁴. The Commission has proposed Directives on energy efficiency in buildings⁵ and on the promotion of biofuels⁶.

¹COM (2001)579 final

²COM(2001)581 final

³COM(2001)580 final

⁴Directive 2001/77/EC

⁵COM(2001)226 final

⁶COM(2001)547 final

2. Harmonisation of rules and regulations

1. Summary of Recommendations

The principles of transparency, neutrality, accountability, consistency, predictability, efficiency and independence should guide the regulatory process.

2. Action Taken and State of Play

The Commission's agenda in the field of better regulation has moved forward in a promising way during the last year. A number of actions to improve the regulatory environment have been proposed both in the **White Paper on European Governance**⁷, as well as in the **Communication on Improving and Simplifying the Regulatory Environments**, submitted to the Laeken European Council. These proposed actions address the whole life-cycle of a Community act, covering issues such as the necessity to improve the consultation of stakeholders and civil society, to better assess the likely costs and benefits of proposed Community actions, and to speed up the simplification of existing laws.

In March 2002, the final report on a **business impact assessment (BIA) pilot project** was presented⁸. The project has reviewed key elements of the existing BIA system, especially with regard to external consultation, economic analysis and organisational structures, and has drawn lessons for the establishment, before the end of 2002, of a new, coherent impact assessment method, as outlined in the above-mentioned Communication to Laeken.

3. Prospects for Implementation

To follow up on the above mentioned initiatives and related consultations that have taken place with the other EU institutions, stakeholders and other interested parties, the **Commission will propose a detailed action plan to simplify and improve the regulatory environment by June 2002**.

Alongside the Action Plan, the Commission will present a **Communication on a new impact assessment system** (to be in place before the end of the year), which

should include a sustainability dimension. The European Council in Barcelona took note of the Commission's intentions in this field.

⁷COM(2001)428

⁸COM(2001)726

⁹http://europa.eu.int/comm/enterprise/regulation/bia/ppbia_en.htm

3. European Company statute

1. Summary of Recommendations

Early adoption and implementation of the European Company Statute.

Questions:

- Why will it take three years until the texts enter into force?
- As for the Directive, isn't it each member state that enacts legislation? If so, how long will it take or will the time limit be set?
- Do the above-mentioned texts include the clauses of, for instance, offset of profits and losses with subsidiaries located in other EU member states, uniform company registration, and others that benefit the companies operating throughout the EU?

2. Action Taken and State of Play

The directive and the regulation governing the European Company Statute will both enter into force on 8 October 2004. Member States have to transpose the directive into their national legislation by that date.

There is no uniform company registration. The European Company will have to be registered as any other public limited company in the same national register, according to the national provisions.

The directive and the regulation governing the European Company Statute do not govern the offset of profits and losses. The Council has not adopted the Commission's proposal for a directive on the offset of profits and losses with subsidiaries located in other EU Member States. However, regarding branches, legislation in most member States admits losses endured by branches operating abroad to be offset by the profits earned by the European Company. This is not yet possible for subsidiaries. The European Company, which, after merger, will be composed of several branches, instead of the former subsidiaries, will be liable to benefit from the above-mentioned pieces of national legislation.

3. Prospects for Implementation

The European Company Statute will be available in all Member States as from 8 October 2004.

4. Merger directive

1. Summary of Recommendations

The scope of application of the merger directive should be expanded so that intra group reorganisations such as changing a local corporation structure to a branch structure under a European headquarter will be covered.

Capital gains taxes should be addressed.

2. Action Taken and State of Play

In general, the Commission services are not satisfied with the limited scope and the concrete implementation of the merger directive on cross-border mergers. Among others, this point has been examined in the study on company taxation that the Commission released in October 2001.

Under the current reading of the Directive, concerning mergers and divisions, the deferral of capital gains tax is limited to assets continuing to be effectively connected with a permanent establishment situated in the Member State of the transferring company. As a consequence its provisions do not cover mergers and divisions of holding companies.

As regards the restructuring operation that has been identified as problematic, the situation is more complex, involving general transfer taxes and capital gains taxation on the transfer of assets. The Commission is currently discussing with Member States how to extend and improve the scope of the merger directive. Other problems concerning those reorganisations involve general transfer taxes on the transfer of assets. Specific transfer taxes arising on cross-border restructuring operations (notably on immovable property) should be included in the Capital Duty Directive (69/335/EEC and 85/303/EEC).

An underlying problem is that EU Company law currently does not allow for cross-border mergers within the EU, thus effectively reducing the application of the merger directive to transfer of assets and exchanges of shares. The recent adoption of the European Company Statute will help to tackle this problem. The list of companies to which the Merger Directive applies has to be modified in order to include the European Company. Meanwhile, this new legal form is not in the Directive scope and cannot claim the tax benefits provided for.

The Commission had already presented proposals for amendment of the directive in 1993 (COM(93)293). The recent Commission Communication, "Towards an Internal Market without tax obstacles - A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities" (COM(2001)582) and the accompanying study "Company Taxation in the Internal Market" (SEC(2001)1681) show that there are various ways in which the Directive could be extended and improved so as to cover a wider range of companies, taxes and transactions.

3. Prospects for Implementation

The Commission will give priority to tabling the necessary amendments to the existing proposals for extension of the Merger Directive, following technical consultations with Member States in the course of 2002.

5. Pension costs

1. Summary of Recommendations

In anticipation of the creation of a single EU social security system in the future, negotiations between Japan and certain EU Members States should in the meantime reduce the costs resulting from double payment of pension costs.

It is expected that the EU Council induce the other (than Germany and the UK) Member States to establish social security agreement with Japan in order to solve double payment of public pension costs.

2. Action Taken and State of Play

Community provisions in the field of social security, in particular Regulation (EEC) 1408/71, co-ordinate but do not harmonise national security systems.

Therefore, Member States are free to determine the details of their own social security systems, including which benefits shall be provided, the conditions for eligibility and the value of these benefits, as long as they adhere to the basic principle of equality of treatment and non-discrimination as laid down in the Regulation.

It should also be noted that the Commission has presented a Communication on "The elimination of tax obstacles to the cross-border provision of occupational pensions" (COM(2001)214 final) on 19 April 2001.

3. Prospects for Implementation

The Community provisions referred to above in point 2 currently apply only to nationals of Member States of the European Union or of the European Economic Area. The Commission has therefore proposed a Council Regulation amending Regulation 1408/71 as regard its extension to nationals of third countries, who legally reside and pay social security contributions under the legislation of a Member State, which would extend the application of this Regulation also to Japanese nationals.

Following discussion at the Council on 8 October 2001, and as instructed by the Stockholm European Council, the Council drew up, in the form of conclusions, the parameters (basic principles) for the modernisation of Regulation No 1408/71. These 12 parameters will form the basis for future reform of the Regulation.

6. Visas and work permits

1. Summary of Recommendations

Discriminatory and unclear rules for visas and/or work permits at Members States' level should be solved promptly.

The EU Commission should encourage the Member States to improve their visa and working permits acquisition procedures as soon as possible.

2. Action Taken and State of Play

As regards EU nationals, Community law on the free movement of workers defines time limits for the granting of residence permits. Directive 64/221/EEC provides that a decision to grant or to refuse a first residence permit shall be taken as soon as possible and in any event not later than six months from the date of application for the permit. Directive 68/360/EEC requires that the formalities for obtaining a residence permit shall not hinder the immediate beginning of employment under a contract concluded by the applicants.

3. Prospects for Implementation

As regards third country nationals, it is currently and for the foreseeable future for Member States to decide upon rules and conditions of entry, residence and employment.

7. Tariffs and tariff classification

1. Summary of Recommendations

1. Tariffs: High tariff rates prevent the introduction of innovative Japanese products at competitive prices. Ultimately, this harms the European consumer. Tariffs on manufactured goods including consumer electronics products (14% for EU and 0% for most of the goods for Japan) and passenger vehicles (10% for EU, 0% for Japan, and 2.5% for USA) are very high in the EU compared to other advanced nations. Tariff rates should be lowered.

2. Tariff classification: The intentional and arbitrary changing of tariff classifications with a view to raising tariff rates is also a problem. This kind of treatment is seen particularly often in the case of the products related to digital and multi-media technologies. Tariff rate classifications should not be intentionally or arbitrarily changed.

It is very difficult to distinguish the consumer electronics products and IT related products. In this situation, high tariffs on consumer electronics products (14% for EU) causes intentional tariffs classification. In the current HS review cycle (HS2007), it is needed to clarify the tariffs classification rules between consumer electronics products and IT related products.

Tariff classifications differ from each EU country in its enforcement. The unified classification rule as EU is required. When firms ask the "Nomenclature Committee" in EU to clarify the tariff classification, it takes a long time to finalise it and the procedure lacks in transparency. This situation should be improved.

3. All remaining tariffs, quotas and investment restrictions between Europe and Japan should be removed.

2. Action Taken and State of Play

1. Tariffs: The recommendation from the Tokyo meeting gives a selective and imbalanced picture of the tariff situation. The EU has an open market for imports of non-agricultural products, with a simple average bound tariff of 4%; comparable to the level of protection in other advanced industrial countries. EU tariffs on consumer electronics and passenger vehicles reflect the sensitivity of those sectors and do not give a fair representation of the EU tariff structure generally. Although Japan has low average tariffs on non-agricultural products, it also has significant tariff peaks in sectors of export interest to the EU such as beverages, textiles and clothing, footwear, certain chemical and scientific equipment.

2. Tariff classification: The statement on classification of products in the EU tariff seems to reflect an incorrect understanding of the purpose of classification. Classification in the EU is not based on the duty rates associated with the Community subdivisions to HS nomenclature. The purpose of classification is not to undermine tariff concessions or to make new tariff concessions without proper trade negotiations. Rather, classification is made in accordance with the HS rules and has as its objective to find the correct heading in the nomenclature used in the EU tariff. To that respect, it has to be said that the EU fully respects the WCO classification rules and does implement all its decisions.

3. Prospects for Implementation

The launch of multilateral market access negotiations for non-agricultural products within the new Round will provide an opportunity for both the EU and Japan to reduce overall tariff levels and tariff peaks as well as to seek harmonised and simpler tariff structures for all WTO Members.

The evolution of technology and the convergence of industries have led to challenges in the classification of many products. Perhaps a modernisation of the HS nomenclature is required. Certainly, the EU is in favour of including chapters 84, 85 and 90 (which covers the bulk of digital products) in the current HS review cycle (HS 2007).

8. Anti-dumping

1. Summary of Recommendations

Anti-dumping regulations should be prudently applied as the application of anti-dumping regulations is very energy consuming and costly to the companies in question, even at the initial stages of an investigation. It also inhibits the flow of trade and investment and has a serious effect on the companies affected including eventually harming European consumers.

In anti-dumping investigations the scope of the goods in question should be strictly limited.

Anti-circumvention measures should be withdrawn and this issue should be dealt with in more detail by the WTO Working Group.

2. Action Taken and State of Play

Anti-dumping investigations are carried out by the EU in full conformity with the WTO Agreement which condemns dumping practices as unfair and allows Members to act against such practices provided a number of provisions are fulfilled. The unfair trading practice of dumping can be countered by appropriate measures where it causes injury to a domestic industry. The purpose of such measures is to restore a level playing field between competitors. In anti-dumping investigations the EU takes full account of the position of its consumers and users in such investigations.

Regarding the scope of the product in investigations, as already stated, the EU applies the anti-dumping instrument in full conformity with international obligations.

In terms of the use of the anti-dumping instrument it is worth noting that where there is significant trade there is the potential for friction. Since the EU is the greatest trading block in the world it is normal that a number of anti-dumping investigations are carried out. However, in relative terms the EU is a moderate user of the Anti-dumping instrument.

Regarding the issue of anti-circumvention, the EU and some of its major trading partners, in particular the US have specific anti-circumvention provisions in their legislation for several years. While not containing any explicit provisions on circumvention measures, the Marrakech Ministerial Decision which referred the problem of circumvention to the WTO Anti-Dumping Committee for resolution, refers to '*the desirability of the applicability of uniform rules in this area as soon as possible*'. This was agreed in full knowledge of the then existing anti-circumvention provisions and practices of WTO Members.

3. Prospects for Implementation

Anti-dumping Regulations are already, and will continue to be prudently applied. Within that context the scope of goods in question is already strictly defined and limited.

Anti-circumvention measures should not be withdrawn. Problems that arise in this context have to be solved. The EU is committed to continue the work in the specialised group in the WTO. It is fair to say that the work of this group has not always been pursued in this constructive spirit by all Members.

9. International Accounting Standards

1. Summary of Recommendations

IOSCO has approved International Accounting Standards (IAS) that have been established at International Accounting Standards Committee. Accordingly IAS should be accepted soon for cross-border listings in capital markets.

The IASC would be strengthened by the inclusion of representatives from Japan and the EU at senior level in the Committee alongside those from the US, allowing them together to support IASC's activities.

The European Commission is expected to promote to adopt IAS to their own standards. Implementation of market valuation accounting in full scale without taking into account of each country's situation should be carefully discussed at the new IASB and necessary change should be undergone. More adequate IAS should be established after open discussion where opinions are actively exchanged partly among Trustees, Board Members, Council Members of IASB and business people from Japan and EU at EJBDRT.

2. Action Taken and State of Play

The Commission has made a proposal for a Regulation (COM (2001) 80 final) that would require all EU companies listed on a regulated market to use IAS (International Accounting Standards) for their consolidated accounts from 2005 onwards.

The Commission is about to present a proposal for the modernisation of the Accounting Directives to encourage convergence between national GAAP used by non-listed companies or in individual accounts and endorsed IAS.

3. Prospects for Implementation

The Commission shares the Recommendation to use IAS for cross border listings.

The overwhelming support of the European Parliament for the IAS Regulation makes it very likely that it will be formally adopted before summer. A technical committee, EFRAG (European Financial Reporting Advisory Council), was established in June 2001 and is currently preparing for advise upon the endorsement of existing IAS. Formal endorsement of IAS is expected by the end of this year.

As to full fair value, the Commission has in its reaction to the Joint Working Group draft standard on (full) fair value underlined that significant development and field testing are needed, in particular concerning the relevance and reliability of fair value measurement. Full fair value should be considered as a long-term project, which is unlikely to yield a standard in the near term.

10. Fiscal harmonisation

1. Summary of Recommendations

The EUJBDRT calls on the Commission to make further efforts in the direction of fiscal harmonisation in the area of direct taxation. The timing of the necessary steps towards implementation should be made clear.

2. Action Taken and State of Play

As the Commission makes clear in its Communication of May 2001, on "Tax policy in the European Union - priorities for the years ahead" (COM(2001)260 final), in its view there is no need for an across-the-board harmonisation of Member States' tax systems. Provided that they respect Community rules, Member States are free to choose the tax systems that they consider most appropriate and according to their preferences. As far as taxes on personal income are concerned, the view is that such taxes may be left to Member States even when the European Union achieves a higher level of integration than at present. Nevertheless, Member States must respect the fundamental Treaty principles on non-discrimination and the free movement of workers within the EU. Furthermore, even in this area it may be necessary to co-ordinate national tax systems in order to prevent discrimination in cross-border situations or to remove obstacles to the exercise of the four freedoms (the tax treatment of occupational pensions is a good example of this).

In the case of direct taxation of mobile tax bases, the need for a certain degree of co-ordination has already been recognised. The so-called "tax package" is a good example of tax co-ordination in practice. The tax package comprises a directive on the taxation of savings income, the Code of Conduct for business taxation, and a proposed Directive on interest and royalty payments.

The EC Treaty (Article 94) provides for the "approximation" of those direct tax rules that "directly affect the establishment or functioning of the common market". Now that the work on the tax package seems to be progressing satisfactorily, the Commission has been examining whether more can be done to tackle direct tax obstacles to the Internal Market, notably in the field of company taxation, while respecting the sovereignty of the Member States. As anticipated in the June 2001 progress report, the Commission services have recently completed a comprehensive study of company taxation in the EU. The results of the study are outlined in this progress report in our response to points 5 ("Merger Directive"), 12 ("Consolidated Tax System") and 13 ("Transfer Pricing Taxation").

3. Prospects for Implementation

The Council is committed to reaching a final agreement on the tax package by no later than the end of 2002.

As regards company taxation, see the responses to points 5, 12 and 13.

11. Consolidated tax system

1. Summary of Recommendations

A comprehensive study of company taxation in the European Community, as one step to attain fiscal approximation in the future, is being undertaken and is expected to be published no later than September. We should appreciate a presentation on the likely results of the study.

Improving the tax system to allow tax neutral mergers and local corporate restructuring.

2. Action Taken and State of Play

This point, among many others, has been analysed in the (technical) Commission services study "Company Taxation in the Internal Market" (SEC(2001)1681) and has also been taken up in the (political) Commission Communication "Towards an Internal Market without tax obstacles - A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities" (COM (2001)582).

In the Communication the Commission strongly advocates a **single common corporate tax base** as a means for tackling the various tax obstacles in the Internal Market. It considers four different models:

- Home State Taxation (HST):
A multinational group can opt for computing its consolidated tax base according to the rules of the Member State where its headquarters are based.
- Common Consolidated Base Taxation (CCBT):
A multinational group can opt for computing its consolidated tax base according to a completely new set of restructured EU wide rules.
- European Corporate Income Tax (EU CIT):
Company tax would be levied at the European level and revenues would go (at least partly) to the EU budget.
- Compulsory Harmonisation of existing tax bases:
Unlike in the three options above which would operate alongside the continuing national corporate tax systems, under this approach all companies in the EU would compute their consolidated tax base according to harmonised rules.

All options would offer companies the possibility of using a single tax base for all their EU-wide activities and all, except EU CIT, would require a mechanism for allocating tax base / tax revenues between Member States. In all cases, except perhaps EU CIT, Member States would set the tax rates. The approaches have various pros and cons.

The possibilities for taking forward the idea of a common consolidated tax base for the EU-wide activities of companies will be explored at the "European Conference on Company Taxation" which will be held in Brussels on 29 and 30 April 2002. After the conference, the Commission intends to follow up the underlying technical issues by appropriate studies, small working groups etc. The Commission has committed itself to report on the development in 2003.

As regards the **compensation of losses cross-border**, i.e. one of the essential features of any consolidation scheme, the Commission has withdrawn its old proposal for a directive concerning cross-border loss-offset and will, starting in 2002, convene consultative meetings with Member States and other stakeholders on the technical possibilities for taking this issue further. In parallel to the progress on more comprehensive solutions mentioned above it will in particular examine the Danish model and report on its legislative intentions in this area before the end of 2003. The Danish 'joint taxation scheme' effectively comes very close to an overall consolidation of the (positive and negative) results of subsidiaries and branches. It is explained in some detail in the above Commission study.

More information is also available on the following web-site:

http://europa.eu.int/comm/taxation_customs/taxation/company_tax/index.htm

As regards the possibilities for tax relief on cross-border merger and restructuring operations see also the response to point 5 ("Merger Directive").

3. Prospects for Implementation

The above initiatives will still need some time to become fully effective and it is too early to indicate which precise further follow-up actions might be taken for ensuring their success.

12. Transfer pricing taxation

1. Summary of Recommendations

The EUJBDRT supports the introduction of standard rules based on the fundamentals of transfer pricing practice common to international transactions. Wider introduction of an effective APA system is encouraged. The EU and Japan should agree uniform rules between themselves first with a view to promoting a worldwide model in the future. In standardising the Advanced Pricing Agreement system, it will be important to determine a method of calculating transfer pricing based on information available to a taxpayer and to make clear that APA has priority over tax audit.

OECD should establish guidelines for APA to enable easy calculations with objective information such as the CPM method so that it could help countries to implement it uniformly. The Government of Japan and European Commission should be engaged

in the above- mentioned activities at OECD and should take positive actions to promote an APA agreement between Japan and EU.

2. Action Taken and State of Play

Following the Commission's Communication "Towards an Internal Market without tax obstacles" (COM (2001) 582), the Commission is currently establishing an EU Joint Transfer Pricing Forum (JTPF) with experts from Member States as well as from business. This Forum will meet a first time in September 2002. While the overall objective of the Forum is a more uniform application of transfer pricing tax rules within the EU, one of the features to be discussed will be the promotion of greater certainty as regards the acceptability of transfer prices to tax administrations. This includes notably the availability of APA systems.

3. Prospects for Implementation

Whereas the work of the JTPF will focus on seeking pragmatic, non-legislative solutions within the framework of the OECD guidelines, and applicable to EU Member States, the outcome of the work could form a solid basis for introducing an agreement with Japan. Equally, the EU together with Japan could take the lead in the relevant OECD discussions.

13. E-commerce taxation

1. Summary of Recommendations

Taxation rules for e-commerce should arise out of an international consensus at OECD as to the best means of protecting the growth of e-commerce and in particular ensuring maintenance of the principles of neutrality, simplicity, fairness, effectiveness, international harmonisation, and consistency.

Discussion at OECD should be further advanced and fair taxation introduced internationally, including in Japan, EU and the US.

2. Action Taken and State of Play

The Commission and Member States continue to work together Japan, U.S. and other trading partners in the OECD on implementing the international principles on taxation of e-commerce agreed at the Ottawa ministerial conference in 1998.

Considerable progress continues to be made on these issues. In 2001, the OECD's Committee on Fiscal Affairs adopted a progress report - "Consumption Tax aspects of electronic commerce"¹⁰ - with agreed guidelines on how these principles should be put in place by member countries.

Further detailed work will be required to ensure a fair and consistent approach to taxation of e-commerce and this is reflected in the current work programme of the

OECD. Both Japan and the EU continue to play an active and constructive role and consider that the OECD is the appropriate international forum for this process.

3. Prospects for Implementation

As far as consumption taxes such as VAT are concerned, the Ottawa principles showed that there were certain shortcomings in the EU's rules on the place of taxation of certain electronically delivered services. These put European operators at a competitive disadvantage and this needed to be rectified.

In February of this year, EU finance ministers reached political agreement on the changes needed to the 6th VAT Directive. As well as ensuring that EU tax rules were in conformity with OECD principles, a number of facilitation measures for non-resident businesses were adopted.

These changes will be formally adopted in the coming months and are fully in accordance with the aforementioned implementation guidelines agreed by the CFA.

The measures being adopted by the EU are also in conformity with GATS rules which require that any such changes should not modify the conditions of competition in favour of services or service suppliers of the group of countries compared to like services or service suppliers of any other country.

¹⁰<http://www.oecd.org/pdf/M00022000/M00022378.pdf>

14. IMT2000 standardisation

1. Summary of Recommendations

Development of services based on IMT2000. It is extremely important that services will start both in Europe and Japan. Therefore, it is expected that both European and Japanese governments take necessary steps to make this happen. Co-operation among the private sector in the field of international roaming is also expected. Furthermore, confirmation of basic common principles for the development of future generation mobile network by Europe and Japan is deemed important.

Development of the information society and e-commerce. Building upon the success of IMT-2000 standardisation, Japanese and European Industry should take the lead in further establishing globally harmonised standards.

One of the most significant tools to boost e-commerce and the information society at global level is broadband access technology for use both in fixed and mobile domains. This must be a priority area for developing and implementing global standards. Furthermore, in the context of ITU Reform, alternatives must be considered for developing globally applicable technical standards.

2. Action Taken and State of Play

Several new specifications have been announced and plans have been confirmed that considerably enhance mobile communications worldwide.

Regarding the development of services based on IMT2000, specifications for location services (LCS) are about to be completed. They provide the communications industry with the means of offering a wide range of location-based services to customers on all advanced mobile communications systems. Working groups sponsored by the Commission are involved in the elaboration of the technical and regulatory aspects.

Regarding the development of the information society and e-commerce, specifications for high speed access are about to be completed by the 3GPP group (3rd Generation Partnership Project) where ETSI is a member. As the name implies, they bring high speed data delivery to terminals, ensuring that users requiring effective multimedia capabilities benefit from data rates previously unavailable.

In the same scope 3GPP group has confirmed plans about developing specifications that will make IMT2000 users benefit more from Internet capabilities. The Internet protocol Multimedia System (IMS) will offer users, operators and service providers the sorts of service capabilities that Internet is designed to provide. These include access to Internet and multimedia content.

Test events have been organised by European Standards Organisations with the participation of several manufacturers.

3. Prospects for Implementation

Pilot projects are carried out in several places (e.g. Isle of Man). Operators are intensively working on the planning of their network infrastructure. The Commission supports the standards development on European and international level.

15. Harmonisation of voluntary standards

1. Summary of Recommendations

Now that detailed principles for the development of international standards have been established, it might be interesting for the EU-J BDRT to address some international standards bodies, for example those recognised as observers within the WTO/TBT Committee, in order to ask them how they comply with the principles and procedures decided upon by the TBT Committee.

As for the second important issue in this field, which is the alignment of national standards on international standards, the EU-J BDRT could encourage the study carried out within the framework of the EU-ASEM trade facilitation action programme, and when these results are available, use them, if possible.

2. Action Taken and State of Play

The Commission services have produced a paper building on the WTO accepted principles for international standards with a view of disseminating them and of putting them in context with European policy principles on international standardisation (SEC (2001) 1296 of 26 July 2001). This paper has been shared with other WTO members (G/TBT/W/170 of 8 October 2001). We welcome the EU-J BDRT's interest in finding out how international standards bodies comply with these principles. In this context we take note of the presentations made by the WTO/TBT Committee observer organisations, so far.

The Commission services paper emphasises the importance of alignment of national standards to international ones and the benefits of withdrawing conflicting standards from national standards collections. This principle, however, has to be applied on a case by case basis, as sometimes, national legislation may require that international standards be modified for meeting legitimate objectives like the protection of health and the environment. In this light, the sector-by-sector examination concerning the use of international standards can be helpful. The EU-ASEM Trade Facilitation Action Programme (TFAP) has started such an exercise in the areas of electrical safety, machinery safety, medical devices and rubber products and for EMC in IT equipment. In addition to the examination of the degree of alignment of national standards to the relevant international ones, the work covers also information on relevant and possibly linked national technical regulations. It has been decided that the work of this group be shared with the general public, in particular any interested business community.

3. Prospects for Implementation

Concerning the principles on international standardisation it should be noted, that apart from the international standardising bodies which are governmental organisations, the private international standardisation bodies, notably ISO and IEC, build on industry participation. This is why EU-J BDRT members can play an active role in complying with these principles.

Concerning the alignment on international standards the EU-J BDRT could help to identify the sectors where technical regulations could converge due to the use of international standards. This way, alignment on international standards could help to avoid unnecessary technical regulations. To this end, the Commission services have produced a paper on a toolbox of instruments concerning trade aspects of standards and conformity assessment (SEC (2001) 1570 of 28.09.2001).

16. First-to-file vs. first-to-invent

1. Summary of Tokyo Recommendations

The Recommendation has not been finalised by Working Group 3: Standards. It, however, suggested to set up a new, specific Group to elaborate a Recommendation.

2. Action Taken and State of Play

With the exception of the US, almost all countries in the world apply the principle of "first-to-file" under which the patent is granted to the applicant who first filed the application. The EU and Japan also apply the principle of "first-to-file". Within the framework of WIPO-SPLT (Substantive Patent Law Treaty), there is a possible link with this question in connection with the on-going discussions on grace period. Moreover, US PTO Commissioner Rogan said (26th March 2002) that he was prepared to reconsider the "first to invent" principle for deciding patent applications in the interests of securing a harmonized global system.

3. Prospects for Implementation

The Commission is looking forward to the launch of the Working Group and subsequent Recommendations to be issued on this matter.

17. Mutual Recognition Agreement (MRA)

1. Summary of Recommendations

Ensure implementation of the MRA as quickly as possible.

2. Action Taken and State of Play

The MRA entered into force on 1 January 2002 and all Sectoral Annexes are in the operational phase with the exception of Pharmaceutical GMP that foresees a transitional period of 18 months.

Several actions have been taken to ensure that the MRA can become operational in practice as soon as possible. The EC and Japan have each carried out seminars on each other's regulatory systems for telecommunication and radio equipment and electrical products (19-21 December 2001 in Tokyo, 26-27 February 2002 in Brussels). A seminar on the EU system for GLP inspection and monitoring was held in Tokyo 24-25 January 2002. A number of meetings between the regulatory authorities have also taken place. Work on carrying out the necessary confidence building activities for implementing the Pharmaceutical GMP Annex has come to a good start with meetings and seminars held in London 5-6 February and in Tokyo 14-15 March 2002.

The Joint Committee (JC) set up under the MRA held its first meeting on 5 March 2002 in Tokyo. The meeting took place in a constructive and optimistic atmosphere and the JC was able to agree on a number of important issues (rules of procedures, modalities for the registration of Conformity Assessment Bodies (CABs), modalities for the exchange of lists of confirmed testing facilities and the establishment of a Subcommittee for Pharmaceutical GMP). The EC has proposed to hold the next JC meeting in September 2002 in Brussels.

3. Prospects for Implementation

The designation of Conformity Assessment Bodies (CABs) for the Sectoral Annexes on Telecommunications Equipment and Electrical Products can now start. The EC and Japan will also exchange the list of confirmed facilities for the Sectoral Annex on GLP for chemicals by the end of June 2002, meaning that the test reports from those facilities will be accepted by the parties. This list will then be exchanged on an annual basis.

With regard to telecommunication and radio equipment the EC has expressed concern over the Japanese marking requirements that were introduced as a result of the MRA. Japan has introduced a distinguishing mark for products that have been certified by an EU CAB. The EC does not see a need for two different markings as this would mislead consumers and does not contribute to the enforcement of Japanese regulations (the identification number of the CAB is already indicated on the product).

With regard to the Sectoral Annex on Pharmaceutical GMP, the EC and Japan have started to plan and carry out the necessary work for the preparatory phase in view of reconfirming equivalence of the parties' GMP inspection systems within the 18 months transition period. A Subcommittee is being established which will have as its main responsibility to monitor the activities during the both preparatory and operational phases.

18. Mutual Recognition Agreement (MRA) on Medical Devices

1. Summary of Recommendations

Strive for the MRA to be applied to more categories of product, notably medical devices, and more countries.

Diagnostic imaging equipment should be used as a pilot study for the MRA, to be finished by 2003. Maximum use should be made of the GHTF process and ISO standards.

2. Action Taken and State of Play

There is a declaration attached to the text of the EU-Japan MRA signed on 4 March 2001, which states that:

"to build on this Agreement, the GOJ and the EC will commence the negotiations on the further extension of the sectoral coverage of the Agreement two years from the date that the Agreement enters into force. In particular, the GOJ and the EC express their intention to commence negotiations on Medical Devices and on Pressure Equipment within that period."

3. Prospects for Implementation

The important thing for now is to secure implementation of the MRA that entered into force on 1 January 2002, and ensure that it becomes fully operational as quickly as possible.

An extension of this Agreement will be looked at an appropriate early time thereafter. In preparing for this, the Commission welcomes any input from industry. However, industry should be aware that the experience with other MRAs in this sector has shown that the negotiation and implementation of a MRA in this sector is complex and time consuming.

19. Unbundling the Local Loop and time-based interconnection rates

1. Summary of Tokyo Recommendations

Access by competitive and alternative service providers to incumbent's local network is one way to bring about service innovation, as long as it is at reasonable cost. This can take the form of unbundled access to the local loop or time based interconnect charges at cost oriented rates.

2. Action Taken and State of Play

Regulation on Local loop Unbundling EC N°2887/2000

- Commission proposal for a Council and a European Parliament Regulation: July 12.2000
- Adoption by Industry -Energy Council December 5, 2000
- Entry into force 2 January 2001

Recommendation on unbundled Access to the Local Loop C (2000) 1059

- Recommendation: April, 26, 2000

Commission Communication on the application of competition rules to the provision of access to the local loop C (2000) 237

- Communication: April 26, 2000

3. Prospects for Implementation

Overall the EC notes in its 7th report on the implementation of the regulatory package that: "Competition in local broadband access, in particular the implementation of the Regulation on **local loop unbundling** to permit high speed internet access: the Commission believes that progress is not satisfactory, and should be speeded up on the basis of hands-on monitoring by NRAs, binding deadlines and credible penalties. The Commission also believes that regulators need to act to ensure that wholesale DSL is offered to entrants on non-discriminatory terms.

Following the publication of the 7th Report on the implementation of the regulatory package, the European Commission has decided in December 2001 to open infringement proceedings against Greece, Portugal and Germany for failing to ensure that competitors are offered shared access to the local loop. The Regulation on unbundling of the local loop, adopted two years ago by the European Parliament and the Council, was designed to bring more competition to the provision of local broadband access. One of the options under the Regulation is for new entrants to offer 'DSL' (digital subscriber line) services for broadband access over the local telephone network while the incumbent continues to provide voice services over the same connection ('shared access').

The EC decided recently to close the ongoing proceedings against Greece and Portugal considering these Members States comply with the regulatory requirements on shared access. In the case of Germany, the EC after a first assessment of measures implemented is also about to close the procedure considering the infringement has been settled.

However, further legal action has been taken on March 20 2002, on other aspects of the Regulation as part of its efforts to push for greater competition in broadband access. Indeed, the European Commission has decided to open new infringement proceedings against Germany, France, Ireland, the Netherlands and Portugal in relation to the Regulation on Unbundling of the Local Loop. The action is being taken because of the failure to ensure that the reference offer from incumbent operators is complete and sufficiently detailed.

This offer should be sufficiently unbundled to allow competitors to pay just for what they require, and must provide in particular a breakdown of costs for the sub-loop so that an operator can install equipment closer to customers' premises than the local exchange.

The Commission is once again making good its promise to act when adequate steps have not been taken in Member States to ensure that competition in local broadband access is encouraged, an objective that was reaffirmed by the Barcelona European Summit.

The Regulation is directly applicable in all Member States and any interested party can thus bring action before the national courts. The Regulation also requires regulatory authorities to ensure that notified operators comply with their obligations under the Regulation. In the case of the five Member States (Germany, France, Ireland, the Netherlands and Portugal) against which legal action has been taken there have not been adequate steps taken to ensure that the RUO of the incumbent operators are sufficiently unbundled, particularly in relation to **local sub-loops**.

20. Support the GBDe

1. Summary of Recommendations

The GBDe is performing a wide range of valuable policy recommendations and guidelines in the area of e-commerce, which many of the EU-Japan Business Dialogue Round Table member companies are already supporting. Rather than duplicate elements of this work within the Round Table framework it would seem appropriate for members to support the GBDe activity and ensure that it fully reflects bilateral EU-Japan issues.

2. Action Taken and State of Play

The third GBDe annual conference took place in Tokyo on 14th September 2001. The GBDe presented its recommendations on: consumer confidence, convergence, cultural diversity, cyber ethics, cyber security, digital bridges, e-Government, IPR, Internet Payments, Taxation, and Trade/WTO.

The GBDe in 2002 has established working groups in the following areas: consumer confidence (protection of personal data, ADR and trustmarks, Internet payments); convergence; cyber security, digital divide-Government; IPR, and combating harmful Internet content.

3. Prospects for Implementation

The GBDe carries out advocacy activities with different governments. The GBDe guidelines are increasingly being used by governments and international organisations as a reference point. The GBDe is working closely with Consumers International in an effort to reach agreement on the consumer confidence guidelines (ADR and trustmarks).

The Commission has urged the GBDe members, notably at a sherpa meeting held in Berlin in November 2001, to examine the possibility of compliance with the guidelines among GBDe members.

As every year, the Commission will provide the GBDe with a staff paper giving responses to the Recommendations. The report will be presented in May 2002.

An expert-level meeting between the GBDe and the EU institutions will take place at the end of May 2002 to discuss the state of play of the GBDe working groups and preparations for the next GBDe conference, which will take place in Brussels in October 2002.

21. GBDe: notice and take-down procedures

1. Summary of Recommendations

The EUJBDRT members support the GBDe work on notice and take-down procedures.

2. Action Taken and State of Play

Following the GBDe's agreed recommendations on notice-and-take down procedures covering IPR liability, which were presented at the GBDe conference in Miami in September 2000, no further work has been undertaken by the GBDe in this area.

3. Prospects for Implementation

The Commission, in line with the E-Commerce Directive, has urged the GBDe to consider a horizontal approach to the development of notice-and-takedown procedures covering all aspects of Internet liability.

22. GBDe: Trustmark schemes

1. Summary of Recommendations

The EUBJRD recommends that the GBDe be encouraged to develop a system for endorsing trustmark schemes, which comply with the Trustmark Guidelines agreed at the Miami conference.

2. Action Taken and State of Play

The Commission has welcomed the EUBJRD recommendation on developing a GBDe system for the endorsement and compliance with the Trustmark Guidelines and is continuing to urge the GBDe to consider such an initiative.

3. Prospects for Implementation

The Commission will continue to urge the GBDe to develop a system for the endorsement and compliance with their Trustmark Guidelines. Further discussions with the GBDe on this issue will take place in the framework of the EU-GBDe expert level meeting in Brussels at the end of May 2002.

23. GBDe: The Advocacy Group

1. Summary of Recommendations

EUJBDRT members support the work of the Advocacy Group and ensure that GBDe positions are reflected in their submissions to governments and supra-national institutions. A formal link, in the form of a common working group member, could be created between the EUJBDRT and the Advocacy Group, or through their Secretariats.

2. Action Taken and State of Play

The GBDe and the European Commission are encouraging efforts to strengthen the dialogue between GBDe members and government representatives,

3. Prospects for Implementation

The GBDe in 2002 has intensified its advocacy efforts, notably through formal requests for written comments on their recommendations from governments and the organisation of expert meetings with government officials, such as the meeting planned in Brussels at the end of May 2002.

24. GBDe: IPR protection

1. Summary of Recommendations

EUJBDRT members support the GBDe IPR Protection action and would like to promote the implementation of the unique ID code (INDECS in Europe, cIDF in Japan) to be associated with any digital content distributed on digital networks, as a first concrete measure to secure IPR.

2. Action Taken and State of Play

The GBDe IPR recommendations presented at the Tokyo Conference in September 2001, aimed to promote the use of technological measures to protect digital content on the Internet. The GBDe called for cross-sectoral industry-wide discussion, development and negotiation to be encouraged in an effort to reach agreement on standard consensus technologies in this field. The GBDe called on governments to facilitate the development of open and globally harmonised technological content protection standards.

3. Prospects for Implementation

The IPR working group of the GBDe is continuing its work in preparation for the Brussels Conference in 2002.

The Commission held a workshop on Digital Rights Management (DRM) on 28th February 2002 in an effort to facilitate a consensus-building process between the different industry sectors concerned. Several GBDe members took part in the workshop. This process of facilitating cross-sector agreement in the field of DRM, as recommended by the GBDe, will continue to be supported by the Commission in 2002.

25. Electronic signatures

1. Summary of Recommendations

EUJBDRT members encourage European and Japanese governments to encourage the definition of a commonly shared industry framework for the implementation of internationally recognised electronic signatures and seals. Furthermore such the establishment of such a framework will be a first step towards the harmonisation of

global authentication services with multiple domains of application. The European and Japanese Business Community and Governments can contribute a great deal through such an initiative to the establishment of a global approach to authentication.

2. Action Taken and State of Play

The main objective of **Directive 1999/93** on electronic signatures is to establish a Europe-wide framework for electronic signatures and electronic certification services. The Directive aims to ensure that electronic signatures fulfilling the conditions laid down in the Directive will be legally recognised in a similar way as hand-written signatures.

The Directive (art 7) contains the principle of **non-discrimination regarding legal recognition of third country certificates**. It also establishes that certificates and certification service providers **can** be recognised in the context of **bilateral or multilateral agreement** between the Community and third countries or international organisations.

3. Prospects for Implementation

The following actions should be undertaken:

- **exchange of information** on the scope of the legislation and on standardisation issues ;
- as a result of initial fact finding, the **establishment of working groups** at international level with business, industry, users representative and standardisation organisations in order to identify the needs;
- exploring the feasibility of **mutual recognition of electronic signatures**, within the objective of facilitating its cross border use.

26. Business model patent

1. Summary of Recommendations

Governments should try to have an accurate examination, especially on novelty and non-obviousness of the subject matter. Governments should promote international co-ordination and maintain a database of examples of Business Methods patented previously.

Business should co-operate with Governments by providing information on patented examples in business activities.

Governments and Business should consult with each other on any resolution, which would protect a right holder, without impeding the development of electronic commerce.

2. Action Taken and State of Play

The Commission adopted on 20 February 2002 a proposal for a harmonising directive on the patentability of computer-implemented inventions. The Commission has decided against any initiative aimed specifically at business-method patents, but has chosen instead to treat this subject as part of the question of inventions implemented through the use of software.

The proposal takes as its central premise the requirement that in order to be patentable, an invention must involve a non-obvious technical contribution to the state of the art. An invention in which the only contribution is non-technical in nature (for example as would be the case if the contribution related to a new business method) would be invalid for want of inventive step. The Commission does not believe that business methods that have no technical character should be patentable, whether or not they are implemented on a computer.

The Commission is open to exploring with the Japanese government the implications of the adoption of this proposal for future multilateral negotiations.

3. Prospects for Implementation

Before it is enacted the proposal must be discussed and agreed by the European Parliament and by the Member States in the Council. It then must be transposed into national law. It is too early yet to estimate the timescale, but the whole process is likely to take a considerable time.

27. New WTO Round

1. Summary of Recommendations

In order to achieve the objective of further promoting trade in goods and services, of improving, strengthening and extending WTO rules and disciplines the EUJBDRT considers that launching, at Doha, an ambitious and broad New Round of negotiations within the framework of the WTO is of outstanding importance. The WTO is considered to be the appropriate framework to address the trade-related challenges of globalisation and sustainable development.

The New Round should

- cover a large number of issues - including the built-in agenda (agriculture and services), market access, investment, trade facilitation, government procurement (broader coverage of the agreement and improved transparency), trade and competition, trade and environment, as well as the improvement, clarification and strengthening of rules such as on anti-dumping;
- use a multilateral and flexible approach to investment and competition rules, in order to involve the largest number of WTO members;
- encourage effective implementation as well as the broadening of commitments in e-commerce related services, including electronic communication, and further work on rule-making on e-commerce with the aim to improve legal certainty;

- be carefully prepared to clearly benefit all WTO Members, especially taking into account the priorities and needs of developing countries;
- address the question of greater transparency, internal and external in the WTO.

The ensure a successful launch of new negotiations, the EUJBDRT encourages the European Commission and the Government of Japan to continue confidence and consensus-building actions, as these are considered to be the best possible broker between all interested parties for a balanced and sufficiently broad-based approach.

2. Action Taken and State of Play

A new round of trade negotiations under the WTO was launched at Doha. The outcome of the 4th Ministerial Conference is a balanced and broad-based agenda - the Doha Development Agenda (DDA) - that takes into consideration the essential interests of all WTO Members. The DDA covers both market access and rules-related issues, and strongly reflects the concerns of developing countries, in particular by highlighting WTO Members strong commitment on the technical assistance side. For some issues, i.e. market access, rules, agriculture, services, TRIPs, and environment, negotiations start immediately in negotiating groups or special sessions. For other issues of the Single Undertaking, such as the Singapore issues, work will take place in the relevant WTO committees (investment, competition, procurement) and in special sessions of the Council on Trade in Goods (Trade Facilitation). Negotiations on these issues will start after the 5th Ministerial meeting.

In terms of process, the EU and Japan had been cooperating very well in the run-up to Doha. Their continued alliance building activities helped securing developing countries' support for a comprehensive round and contributed substantially to the successful results of this Ministerial. At the previous EU-Japan summit, both sides warmly welcomed the outcome of the meeting and the achievements of their major objectives.

Since Doha, the necessary decisions have been taken for putting the negotiating structure in place so that work on substance with equal treatment for all negotiating issues could start recently.

3. Prospects for Implementation

The EU is committed to conclude an ambitious trade round within the agreed three-year timeframe. The 5th Ministerial Meeting, to be hosted by Mexico, should take place well before the end of 2003 to facilitate adherence to the 1 January 2005 deadline. Until that date visible progress will be needed on all DDA subjects. This requires continued dialogue and alliance building activities with other developed and developing WTO Members. The EU will work constructively with all its trading partners and certainly we expect Japan to work fruitfully together with us and to take a pro-active approach in the negotiations. We also trust the EU and Japan will continue to look to the business communities to support our efforts in the negotiations. The EU will be presenting proposals across the board to ensure a balanced and equitable treatment of all subjects, including the Singapore issues. For the success of the round and in order to ensure developing countries ongoing support for and constructive approach in the negotiations, it will also be of key importance to give substance to the commitments made on the development side of the agenda. Japan and the EU therefore will have to consider taking further steps in order to

increase trade related technical assistance and capacity building for developing countries.