



EUROPEAN COMMISSION

Commission Services Progress Report
on the
EU-Japan Business Dialogue Round Table 2007 Recommendations

Brussels, April 2008

The **European Union – Japan Business Dialogue Round Table** (BDRT) issued in 2007 its recommendations to the leaders of the EU and Japan (“*Joining forces for competitiveness and sustainability*”).

Adopted during the BDRT annual meeting held in Berlin on 3 and 4 June 2007, those recommendations have been duly studied by the European Commission Services.

The following document outlines progress made in considering or implementing the various recommendations put forward by the BDRT.

For each recommendation (or set of recommendations concerning the same issue / topic), a summary is proposed before describing the action taken and the state of play.

The progress report is divided into 5 parts dealing with the following issues:

- Trade and Investment (Working Party 1),
- Tax and Accounting Issues (Working Party 2),
- Information and Communication Technologies – ICT (Working Party 3),
- World Trade Organisation (Working Party 4)
- Life Sciences and Biotechnology (Working Party 5).

The information contained in this progress report dates back to 30 April 2008.

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1. INTRODUCTION

Since the publication of the BDRT recommendations in June 2007, the EU-Japan relationship and cooperation were strengthened by the signature of the EC-Japan Agreement on cooperation and mutual assistance on customs matters on 30 January 2008 and its implementation in February 2008.

The EU and Japan met twice in the context of the Regulatory Reform Dialogue (RRD), to discuss respectively in December 2007 the EU RRD proposals and, in March 2008 the Japanese RRD proposals. In terms of future prospects, the European Commission is interested in making the RRD more efficient, transparent and forward looking.

In 2007-2008, several high level dialogues took place, notably the EU-Japan Industrial Policy Dialogue (Tokyo, January 2008) or the 12th EU-Japan Symposium between the European Commission and the Japanese Ministry of Health, Labour and Welfare on the diversification of forms of work and employment in the EU and Japan (this Symposium was held in Tokyo with the participation of Japanese and European social partners).

EU and Japanese experts had also opportunities to meet and discuss on financial services, economic and financial matters, environment and IPR in the framework of bilateral sectoral dialogues organised in the previous months, in addition to international discussions. The 17th EU-Japan Summit took place in Tokyo on 23 April 2008.

The June 2007 BDRT recommendations identify core issues for the development of the EU-Japan economic and trade relationship and investment framework, which were largely discussed at bilateral level- mainly in the EU-Japan Regulatory reform dialogue- and at international level. As a general comment, the Commission services would like to praise the BDRT recommendations which, on the one hand, suggest ways in which government action could improve the EU-Japan business environment and facilitate cross investment and, on the other hand, constitute a valuable business input which gives the Commission a direct taste of the practical problems that companies are faced with in Japan and Europe.

2. WORKING PARTY 1: CREATING AN OPEN ENVIRONMENT FOR TRADE AND INVESTMENT

2.1. Initiate a dialogue on the formation of a common institutional environment (1-EJ-1)

2.1.1. Summary of recommendation

The two governments should promote regulatory reform in their home markets by opening up markets and streamlining regulatory practices with a view to fully integrating the two economies. The BDRT recommends that the two governments initiate preliminary discussions on an EU-Japan Economic Integration Agreement (EIA), an agreement that would be a step ahead of traditional FTAs and EPAs (topics currently outside of WTO discussions would be included in an EIA e.g. open competition, fair investment rules, harmonisation of regulatory processes, government procurement, intellectual property rights, energy security...).

2.1.2. Action taken and state of play

The European Commission (EC) looks forward to the feasibility study to be presented by the BRDT in July. The EC is keen to strengthen its bilateral ties with Japan. EC and Japan have a common view on global issues and on international trade issues. Cooperation between the EC and Japan within the context of the DDA is the result of these shared views on the importance to open domestic markets to trade and investment.

In the meantime, the EC considers important to make the best use of the existing platforms, i.e. the Regulatory Reform Dialogue and the recently launched High Level Trade Dialogue, with the view to ensure that the existing bilateral barriers are removed. During his visit to Japan on 21-24 April, EC Trade Commissioner Peter Mandelson has strongly reaffirmed its intention to work with the view to increase trade and investment flows between the EC and Japan.

2.2. Supporting timely development of business: social security contributions (1-EJ-2)

2.2.1. Summary of recommendation

Japan and the Member States of the EU should make further efforts to expand the network of Social Security Agreements. In addition, they should introduce an interim measure, by which a host country should either exempt contribution to pension funds unilaterally or should refund in full when expatriates return to a home country.

2.2.2. Action taken and state of play

The problem of double-contributions can only be addressed by concluding bilateral social security agreements with all Member States.

It is the exclusive competence of Member States to conclude social security agreements with third countries. In this context, the Commission appreciates the fact that a growing number of bilateral social security agreements between Japan and some EU Member States have been concluded, or are being negotiated at present.

Social security agreements which Japan concluded with Germany, UK, Belgium and France have already entered into force. The Government of Japan and the Netherlands have agreed on the main elements of the agreement; meanwhile, the GOJ is negotiating with the Czech Republic. Furthermore, consultations with the relevant authorities of Spain, Italy and Sweden are under way.

Foreign employees are obliged to pay into the Japanese pension system but in many cases will not receive benefits or a full refund at the time of their departure from Japan. In the absence of bilateral social security agreements, benefits for departing foreign workers are calculated according to the length of their stay. It is to be expected that still considerable time will be needed at the current pace of progress before the problem of dual pension membership and wasted premium payments will be solved for all EU citizens. In this context, the Commission calls for rapid progress and reiterates its suggestion that departing expatriates not yet covered by a bilateral agreement should receive a full refund of all mandatory pension contributions paid to date, or at least the period and the amount for the refund should be extended from 3 to 5 years. The Commission would like to point out that some additional unilateral measures on pension schemes would help to offer more flexibility to personnel management.

2.2.3. Prospect for implementation

At the occasion of the EU-Japan Regulatory Reform Dialogue, the Commission, together with the EU, has stressed again the importance of concluding bilateral social security agreements with all EU Member States as soon as possible.

Given the competencies in this area, the conclusion of social security treaties between Member States and Japan has to be discussed on a bilateral basis. The Commission welcomes the efforts on exchange of information to launch negotiations with other EU countries and notes that Japan gives it a high priority.

2.3. Supporting timely development of business: smoother and swifter application procedures for obtaining work and residence permits (1-EJ-2)

2.3.1. Summary of recommendation

The two governments should make an agreement to simplify and accelerate the procedures to obtain work and residence permits for intra-corporate transferees between the EU and Japan. The procedures should include the possibility of submitting an application for work and residence permits after entering the assigned country as well as automatic granting of the same rights to spouses of the permit holders.

2.3.2. Action taken and state of play

In its Policy Plan on Legal Migration of December 2005 (COM(2005)669), the Commission announced the presentation in 2009 of a proposal for a directive setting out common procedures to regulate the entry into, temporary stay and residence in the EU of intra-corporate transferees.

The Policy Plan on Legal Migration (COM (2005) 669 final of 21 December 2005) builds on the analysis of the public consultation on the Green Paper on economic migration. The Japanese government sent an official contribution to the public consultation, which has been taken into account in the Policy Plan.

One of the reasons for putting forward a specific proposal is, as underlined by Japan, to differentiate between intra-corporate transferees and economic immigrants seeking access to Member States' labour markets. This proposal could possibly include provisions aimed at facilitating the reallocation of international companies' key personnel and specialists (who are not EU citizens) within Europe. It could also possibly foresee far-reaching rights regarding family members, compared to the rights granted to them under the Directive 2003/86.

The proposal has been anticipated to the fall 2008. The impact assessment is currently ongoing.

2.4. Supporting timely development of business – personal data protection regime (1-EJ-2)

2.4.1. Summary of recommendation

The two governments should work together to ensure an internationally equal, transparent and secure data protection regime between the EU and Japan. The European Commission should consider launching a study to assess the adequacy of the level of protection afforded by the Japanese Data Protection Act and its implementation measures

2.4.2. Action taken and state of play

The Commission carried out an initial study – first analysis of the personal data protection law in Japan in autumn 2006. The main goal of the first analysis was to provide the Commission with information on the personal data protection law in Japan.

The Commission is considering carrying out an in-depth analysis in order to have a complete picture of Japanese data protection laws and be able to enter into an adequacy finding procedure.

Commission also intends to improve the co-operation in the field of the protection of personal data and to work towards the free movement of personal data between the EU and Japan according to the highest international standards.

2.5. Enhanced cooperation in the promotion of new global standards (1 EJ-3)

2.5.1. Summary of recommendation

The BDRT recommends the governments of the EU and Japan to make the utmost effort and cooperate closely to establish a new common international legal framework for IPR enforcement against global counterfeiting and piracy.

2.5.2. Action taken and state of play

The EC is on the frontline in the fight against counterfeiting and piracy. One of the key objectives for the EC in 2008 is to improve the international legal framework of IPRs, through the negotiation of an international anti-counterfeiting trade agreement (ACTA). The EU negotiating mandate was formally adopted on 14 April 2008. EU and Japan have been closely cooperating on the issue and will continue to do so.

The European Commission supports global discussions and a future International Treaty aiming to streamline the global patent system and consider it important to move forward within the informal "Alexandria process" (Group B+). However, practically all competence for substantive patent law matters rests with EU Member States, being the main role of the European Commission to work in order to coordinate position among EU Member States to facilitate progress within the Group B+.

Regrettably, during the last plenary meeting of the "Alexandria process" in Geneva on 26 September 2007, positions were not close to an agreement. Recent contacts with Group B+ members show that participating members are willing to keep the process alive. We will also have to see the final outcome of the pending US patent reform bill. Further consultations, including with the industry, will take place before the next B+ Plenary (September 2008).

2.6. EU policy on company law: 14th company law directive and statute for European private company (1-E-1)

2.6.1. Summary of recommendation

The 14th Company Law Directive should be proposed and implemented to provide a legal framework within the EU company law thus enabling an intra-EU cross-border transfer of a registered office of a limited company without forcing liquidation and re-incorporation.

The Statute for European Private Company should be introduced as soon as possible.

2.6.2. Action taken and state of play

The 14th Company Law Directive

Further to a cost and benefits analysis of the possible added value of a

directive taking account of the possibilities already available under Community law for companies to carry out the cross-border transfer of their registered office (i.e. the Community case law on mobility, the possibilities offered by the European Company Statute and the cross-border merger directive), the Commissioner for the Internal Market and Services has decided not to pursue work on a possible 14th company law Directive. The impact assessment on the 14th Company Law Directive has been published in December 2007¹.

The European Private Company Statute

The results of the public consultation on the European Private Company Statute ("the SPE"), run from July to November 2007, have shown a considerable interest of the industry in this project. To receive further input from experts and stakeholders on the key aspects of the possible SPE, the Commission held a conference on 10 March 2008 which was attended by 130 participants (SMEs, larger companies, cooperatives, lawyers, notaries, trade unions and academics). The conference showed a strong consensus on the key features of the SPE. The SPE must be widely accessible, easy to set up, cheap to run, and as uniform throughout the EU as possible. It should leave a great deal of flexibility to founders and shareholders to organise themselves internally in the way that is best suited to their activity. The debates also highlighted that there is room for different approaches on important aspects of the SPE, as regards e.g. capital, directors' duties and liabilities, the issue of registered office and real seat or workers' participation.

The European Commission has finalised the regulatory impact assessment and is currently preparing the legislative proposal for the SPE which is included in the European Commission's work programme for 2008 as a priority initiative. The proposal should be adopted in June 2008.

2.7. Community Patent and Patent Prosecution Highway (1-E-3)

2.7.1. Summary of recommendation

The BDRT welcomes the European Commission's Communication to the European Parliament and Council, *Enhancing the Patent System in Europe*, published in April, 2007 which advocates a Community Patent. The BDRT urges the EU and its Member States to adopt and implement a Community Patent as soon as possible.

The BDRT would like to urge patent offices of other EU member states as well as the European Patent Office to participate in the Patent Prosecution Highway (PPH), for the benefit of patent applicants both in the EU and in Japan.

¹ http://ec.europa.eu/internal_market/company/seat-transfer/index_en.htm

2.7.2. Action taken and state of play

The Commission adopted a Communication *Enhancing the patent system in Europe* on 3 April 2007, which is currently being discussed in the Council.

For the Community patent, the European Commission believes that the recent proposals on the creation of a central service which would carry out machine translations could be a key for an agreement on the language issue. This cost-effective solution is endorsed by many Member States and industry. While such automatic translations would be for information purposes only, the protection of legitimate expectations would be ensured in the case of patent-related disputes when full translations should be required.

In addition to the Community patent, we also need to find consensus on the court system for patent litigation in Europe. The Commission endorses a unified court system that could be used for both European and future Community patents. It aims at preserving the most important elements of EPLA but to integrate them into a Community jurisdiction. The main elements are currently under discussion in Council, and we hope Member States will show flexibility to overcome existing differences.

On Patent Prosecution Highway (PPH), the European Commission considers that this proposal would be easier to implement if there were more "global" substantive patent law harmonization and the same "claims' patterns" for the patent applications worldwide. We would mainly support proposals that will not undermine the current Patent Cooperation Treaty (PCT) or will not hamper its future development.

2.8. Fight against counterfeited, pirated and contraband good (1 E-4)

2.8.1. Summary of recommendation

The number of EU Member States has increased to 27 since 1st January 2007. The BDRT would like to see further stepped up efforts of all the EU member states to fight against counterfeited, pirated and contraband goods, both inside and outside of the EU.

2.8.2. Action taken and state of play

The fight against counterfeiting and piracy continues to be a priority for EU enforcement bodies. Following the adoption of the Directive on the Enforcement of Intellectual Property Rights ('Enforcement Directive') on 29 April 2004, the 27 Member States of the EU were required to transpose the provisions of the Directive into national law. The deadline for this transposition expired on 29 April 2006. So far 24 Member States have notified the Commission of the transposition of the Directive into national law. Infringement procedure cases against the three remaining Member States are currently pending before the European Court of Justice.

The European Commission is now involved in checking the notifications by national authorities of the transposition of the Enforcement Directive in order to ensure that the provisions have been given the full legal effect which

is required. The Commission will issue a report in 2009 based on information received from Member States. This report may contain further necessary steps such as possible proposals for modification of the Enforcement Directive.

The Commission considers that new Member States are fulfilling their obligations with regard to border enforcement and should not be singled out. However, in general terms, the EU is stepping up efforts to combat the trade in counterfeit goods.

At the same time, the EC is engaging in the negotiation of an anti-counterfeiting trade agreement (ACTA) with partners like the US, Japan, Canada, Korea, Mexico and others. Within this context, the EU intends to set high standards providing extended protection against a broad range of IPR infringements and outreaching to a wide membership (including pro-IP emerging economies).

As to activities on third countries, the EC has a set of different activities in place. For instance, the EC is pursuing a close dialogue with Chinese authorities and business. Two annual dialogues with China are in place, one with the Chinese authorities only (the EU-China IP Dialogue), the other which involves EU and Chinese industry (the EU-China IP Working group). The aim of these dialogues is mainly to tackle counterfeiting and piracy problems in China, one of the key markets in terms of IP protection.

Moreover, together with Japan, a close cooperation to tackle counterfeiting and piracy in the Asian region has been established over the last year. Such an initiative implements a commitment stemming from the EU-Japan Action Plan on IPR protection and enforcement which has been agreed at the EU-Japan Summit 2007.

2.9. Competitiveness of the EU economy: revision of high custom tariffs of audio visual products and passenger cars (1-E-5)

2.9.1. Summary of recommendation

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. To improve the international competitiveness of the EU economy, the European Commission and the Member States should drastically reduce high customs tariffs in these sectors.

2.9.2. Action taken and state of play

The EU is committed to reduce significantly industrial tariffs within the context of the Doha Round and in particular of the NAMA (Non Agricultural Market Access) negotiations. It is fully engaged in the negotiations and is pushing for a successful outcome which would entail a significant cut of tariffs both on audiovisual products and passenger cars. This is all the more possible if all WTO partners follow the EC example and contribute to the NAMA negotiations.

2.10. Competitiveness of the EU economy: Customs Classification – electric and electronic products (1-E-5)

2.10.1. Summary of recommendation

The BDRT understands that the classification must be done in accordance with the Harmonized System Convention rules. However, rules do not provide a clear method of classification for such products as electric-electronics products, where the technical convergence of IT and non-IT products has emerged. This situation makes interpretation and classification more difficult. It is requested that the EU continues efforts to find a substantive solution.

2.10.2. Action taken and state of play

The EC fully supports the Information Technology Agreement (ITA) and believes that it is an important tool which helps economic growth worldwide. The ITA provides the right forum for addressing both requests for expanding the product scope and issues of clarification divergences. As already stated in Geneva, the EC is fully committed to use the ITA mechanism for such purposes. The EC is also ready to discuss these points within the Doha development Agenda.

2.11. Competitiveness of the EU economy: integrated approach for CO₂ reduction (1-E-5)

2.11.1. Summary of recommendation

The European Commission's CO₂ Communications of February 2007 calls for technical improvements of passenger cars to the level of an averaged CO₂ emission of 130 g/km in order to achieve the EU objective of 120 g/km in 2012. All the stakeholders of society should make concerted efforts to achieve the objective of CO₂ reductions, which is called the Integrated Approach, and the BDRT supports this goal.

2.11.2. Action taken and state of play

On 7 February 2007, the Commission adopted the Communication (COM(2007) 19) outlining a comprehensive new strategy to reduce carbon dioxide emissions from new cars and vans sold in the European Union. The new strategy, together with a revision of EU fuel quality standards proposed on 31 January 2007, further underline the Commission's determination to ensure the EU meets its greenhouse gas emission targets under the Kyoto Protocol and beyond. The strategy will enable the EU to reach its long-established objective of limiting average CO₂ emissions from new cars to 120 grams per km by 2012 - a reduction of around 25% from current levels. By improving fuel efficiency, the revised strategy will deliver substantial fuel savings for drivers. To encourage the car industry to compete on the basis of fuel efficiency instead of size and power, the Commission is also inviting manufacturers to sign an EU code of good practice on car marketing and advertising.

On 19 December 2007, the European Commission has further proposed legislation to reduce the average CO₂ emissions of new passenger cars to 120 grams per kilometre by 2012. The proposed legislation (COM(2007) 856) is the cornerstone of the EU's strategy to improve the fuel economy of cars, which account for about 12% of the European Union's carbon emissions. The proposal further underlines the EU's leadership and determination to deliver on its greenhouse gas commitments under the Kyoto Protocol and beyond.

The proposal will be a major step in lowering CO₂ emissions in the EU. It will reduce the average emissions of CO₂ from new passenger cars in the EU from around 160 grams per kilometre to 130 grams per kilometre in 2012 as part of the EU's integrated approach to achieve overall 120 grams per kilometre. That will translate into a 19% reduction of CO₂ emissions and will place the EU among the world leaders of fuel efficient cars.

As well as achieving environmental results, this proposal will also benefit consumers through important fuel savings. It will further improve energy security, promotes eco-innovations and high-quality jobs in the EU.

Europe has a strong and innovative automotive sector. This proposal aims to safeguard this competitiveness through provisions which are fair and flexible and which will stimulate the development and deployment of cutting edge automotive technologies. Under the legislation, several manufacturers will be able to group together to form a pool which can act jointly in meeting the specific emissions targets. Manufacturers in this pool will be required to abide by the rules of competition law.

The proposal has now been communicated to the Council and to the European Parliament as part of the co-decision legislative procedure.

2.12. Competitiveness of the EU economy: REACH (1-E-5)

2.12.1. Summary of recommendation

The EU regulation of Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) has been put into effect since June, 2007. In view of the globalising operations of corporations both inside and outside of the EU, we recommend that the EU government takes appropriate and necessary actions for education and capacity building in developing countries for compliance with REACH. We also request consideration by the EU government to establishing certain lead-times or grace periods for compliance in cases involving developing country parties in supply chains.

2.12.2. Action taken and state of play

Prior to the entry into force, the European Commission was responsible for the preparing the legislation and supporting the European Parliament and the Council during the decision making process. At the same time, preparatory work for REACH implementation began several years before the legislation was adopted. This included the setting up of the European Chemicals Agency in Helsinki but also the preparation of IT tools, guidance documents

and the creation of a network of helpdesks that will support industry and authorities to fulfill their tasks under REACH.

After entry into force of REACH on 1 June 2007, many of those tasks, including the provision of information on REACH to companies and the general public have been transferred to the European Chemicals Agency (ECHA). A wide range of information can be found on its website², including legislative texts, summaries of the legislation, press materials, brochures, guidance documents, Frequently Asked Questions and links to helpdesks.

Nevertheless, the European Commission keeps an important role in updating and completing the REACH legislation (including an update concerning the classification and labeling inventory which will be introduced through GHS) and in taking decisions in a number of REACH processes, in particular authorization and restrictions. Moreover, it actively participates in finalizing and updating REACH guidance and supports the European Chemicals Agency in its tasks.

² <http://echa.europa.eu/>

3. WORKING PARTY 2: TAX AND ACCOUNTING ISSUES

3.1. Summary of recommendations

Accounting issues

Recommendation 2-EJ-1

The BDRT asks public authorities to ensure continuing wide-ranging dialogue among IASB, FASB and ASBJ. In addition, the BDRT calls for cooperation of regulatory authorities such as security regulators in EU and Japan for the international competitiveness of financial and capital markets.

Recommendation 2-E-1

Faced with the environmental threats relating to CO2 emissions, the BDRT asks the public authorities to ensure early development of accounting treatment for emission rights.

Recommendation 2-E-2

The BDRT asks the public authorities to ensure that accounting treatment of business combination, especially goodwill, should be developed in accordance with the types of buyers, such as financial buyer and strategic buyer.

Recommendation 2-E-3

Standards bodies and public authorities should ensure wide consultation on proposals for the elimination of net income.

Tax issues

Recommendation 2-EJ-2

The BDRT hopes that the EU Member States will enter into common agreements on tax issues with the Government of Japan in order to enjoy fully the benefits of the single market.

Recommendation 2-EJ-3

3.2. Action taken and state of play

Accounting issues

Recommendation 2-EJ-1

The global acceptance of IFRS is progressing. More and more countries are in the process of converging their national GAAP with IFRS or adopting IFRS directly. From an EU perspective, Japan is one of the key partners also in the area of accounting. We observe that the ASBJ has regular meetings with the IASB and FASB. We are involved in regular dialogues with several authorities and organisations from Japan in order to make sure that there is an ongoing debate and

exchange of views, e.g. regarding the issue of convergence and equivalence of accounting standards.

Recommendation 2-E-1

The IASB issued IFRIC Interpretation 3 *Emission rights* in December 2004 to give guidance on how to account for the EU's ETS scheme. The IASB subsequently withdrew this Interpretation in July 2005, stating that whilst it was a correct interpretation of the standards, it creates unsatisfactory measurement and reporting mismatches. The Commission, with advice from EFRAG (European Financial Reporting Advisory Group), supported the withdrawal of IFRIC 3. This means that European companies must determine what the most appropriate accounting policy for emission rights is for their company under the existing IFRS framework.

In December 2007 the IASB has decided to add a comprehensive project on Emission Trading Schemes on the agenda. Staff will explore the issue and ask for views of Board members during 2nd quarter 2008. The overall timetable of the project is not yet determined.

Recommendation 2-E-2

In January 2008 the IASB has issued a revised version of the standard on Business Combinations (IFRS 3). The final standard is slightly amended compared to the draft but still introduces a number of new requirements (e.g. the treatment of non-controlling interest or the treatment of acquisition related cost). Currently the standard is under review within our endorsement process. A final decision regarding endorsement can be expected in the first half of 2009. The Commission is carefully watching the developments and together with advisors preparing analysis regarding cost and benefits implications of the new standard.

Recommendation 2-E-3

The project on financial statement presentation is very important because it has implications not only for the presentation but is to some extent also linked to the general framework of accounting. The IASB project is split in several phases and we have seen the proposals for the Phase A in 2007.

The next due process step for Phase B is the publication of a Discussion paper (Preliminary Views Document – FASB) which is expected to be published in the third quarter of 2008.

The main discussion on the presentation concepts (use of one or more performance statements) is still expected and we are sure that no decision will be taken without substantial and detailed evaluation and assessment of potential impacts.

Tax issues

Recommendation 2-EJ-2

The agreement on taxation matters to which the text makes reference are within the competence of the Member States of the European Union, therefore the EC is not in a position to comment on this recommendation.

4. WORKING PARTY 3: INFORMATION & COMMUNICATION TECHNOLOGIES (ICT)

4.1. Broad discussion on Next Generation Networks (3-EJ-1)

4.1.1. *Summary of recommendation*

Both authorities should have wide cooperation to accelerate early introduction of Next Generation Networks. Specifically, promotion of R&D for the core technology of Next Generation Networks, and enhanced cooperation for standardization and interoperability assurance in international organizations should be strengthened. Open collaboration will be facilitated among various industries to promote the utilization of various broadband services with Next Generation Networks, in particular for services as remote medical care, teleworking, nursing/medical care, home security, e-learning and entertainment.

4.1.2. *Action taken and state of play*

The use of next generation networks in public policies will certainly grow in areas such as education, culture, health and e-government. These topics have received considerable attention from the European Commission and will be at the core of the European Commission's contribution to the OECD Seoul Summit in June 2008.

Bilaterally, the European Commission and the Japanese Government have examined together many of the aspects relevant to next generation networks. In the recent high level contacts that took place in Tokyo at the beginning of March, its regulatory implications (access and interconnection rules), policies (trust and security, ICT for sustainable growth, intelligent transport systems, health and other social areas of common interest where ICTs can play a major role) were reviewed.

An EU-Japan Co-operation Forum on ICT research³ took place in Tokyo on 4-5 March 2008. The Forum made possible to explore inter alia cooperation in the area of Future Internet/New Generation Networks Research, Photonic Network Technology, Next Generation Information Retrieval and Analysis Technologies, Ubiquitous Network Technology and RFID.

As a follow-up several additional meetings are foreseen:

- A seminar on ICT research cooperation at the Commission Delegation premises in Tokyo on 20 May 2008;
- A first Japan EU Symposium on the "New Generation Network" and the "Future Internet", co-organized by the Directorate General for Information Society and Media of the European Commission and the National Institute of Information and Communications Technology of Japan NiCT, will take place on 9-10 June 2008 in Brussels;

³ <http://www.eurojapan-ict.org/UpcomingEvent.html>

- A second EU-Japan Co-operation Forum on ICT research in Brussels at a time yet to be determined (autumn 2008 or spring 2009).

4.2. Promotion of ICT innovation protecting the natural environment (3-EJ-2)

4.2.1. Summary of recommendation

The EU and Japan should promote R&D on energy-efficient technologies, widely utilize them as environment-protecting products and apply the products to innovative systems, including ITS and telework, for energy saving. For the purpose of magnifying the effect to the environment, both authorities can share their experiences and have dialogues about their activities.

4.2.2. Action taken and state of play

On 3 March 2008, the Directorate General for Information Society and Media of the European Commission and the Japanese Government discussed the role of ICTs in achieving a Sustainable Growth. The European Commission presented the work in progress on several fronts that range from a number of i2010 initiatives to address the potential of ICT to enable structural changes in business processes, to the important research effort in the ICT part of our Seventh Framework Program of Research devoted to this area. The presentation by the Japanese Ministry of Economy, Trade and Industry of its Green IT initiative and the explanations of the Ministry of Internal Affairs and Communications on the work accomplished by its Research Study Group on the Ubiquitous Network Society and Environment, as well as its Study Group on ICT Policy to solve Global Warming, showed that many points of common interest exist in this area and the interest in promoting cooperation.

On the same day, a Cooperation Agreement between the Directorate General Information Society and Media of the European Commission and the Ministry of Economy, Trade and Industry of Japan on Intelligent Transport Systems (ITS) was endorsed by Director-General Colasanti and Director-General Okada. This Co-operation Agreement will make possible to deepen our bilateral cooperation in the domain of ICT for research for Mobility and Transport through continuing our periodical dialogue, research collaboration in automated driving systems and research in assessment methodologies on the impact of ITS on energy consumption and CO₂ reduction.

In addition, the session devoted to e-Transport in the First EU-Japan Co-operation Forum on ICT research mentioned above, offered an overview of ongoing work in the EU and Japan in this area, underlined the similarities of the challenges in road safety, energy efficiency and the reduction of CO₂ emissions as well as the need for co-operation, and explored the activities under the Intelligent Car Initiative, the research pillar, ongoing activities in Automated Driving Systems and methodology for measuring impact of ITS on energy efficiency.

4.3. Cooperation on ensuring reliability and stability of ICT infrastructure (3-EJ-3)

4.3.1. Summary of recommendation

Ensuring reliability and robustness of ICT infrastructure, particularly public systems, is a globally shared challenge, since a problem with them has a world-scale negative impact. Both authorities are already aware of the problems of Information Security as a common issue and are taking related initiatives, but there is still room for improvements in terms of international cooperation. Therefore, both authorities are expected to closely communicate, such as sharing their latest policies, and cooperate to define and take necessary actions against problems that require immediate international cooperation.

4.3.2. Action taken and state of play

In the 2001 Action Plan, the European Union and the Government of Japan already agreed to cooperate on issues related to new network security. In this line, regular contacts have allowed to discuss and exchange best practices on how to foster trust and security in the electronic communications and information systems.

More recently, in the Joint Statement on Japan-EU Cooperation on consumer safety and protection issued on the occasion of the 17th Japan-EU Summit (Tokyo, 23 April 2008), the EU and Japan have agreed to work towards strengthening, at international and bilateral levels, cooperation on consumer safety and protection in several fields. One of the areas identified for such cooperation is the Security of networks and ICT usages. Taking into account the greater dependence of citizens and consumers on Information and Communication Technologies (ICT) as an enabling infrastructure of economic activities and social life, Japan and the EU have agreed to work together to strengthen the security of networks and ICT usages, by coping with threats such as cyber attacks and computer incidents, fraud, illegal, unsolicited e-mail and phishing, and the risks faced by younger users deriving from the use of internet and other communication technologies and by improving security of critical information infrastructure, in particular of telecommunications. In this regard and building on the 2004 EU-Japan Joint Statement on cooperation on ICT, they will promote exchange of information and discussions on relevant policies and cooperation, at the bilateral level and in the relevant international organizations and frameworks.

4.4. New systems and policies in preparation for promotion of digital contents (3-EJ-4)

4.4.1. Summary of recommendation

As ICT evolves, the way contents are produced, distributed and utilized is largely changing. Through various developments in response to those changes in the Digital Era, the market of contents is expected to expand significantly. Both authorities should keep on engaging in regulatory

improvements that consider a balance of rights between copyright owners and users, for further promotion of utilization of digital contents. As for a levy system, it is expected to update it to form a more reasonable system which would be based upon the current and potential capability of ICT technologies. The BDRT expects that the legal framework of the levy system will be fundamentally rethought in the Council for Cultural Affairs and reach a concrete conclusion in Japan, and consideration about systemic reforms will be continued in the EU.

Continuous efforts by both Europe and Japan to fight against IPR violation and ensuring effective enforcement of intellectual property rights, including capacity building of countries concerned, should remain a priority of their collaborative initiatives to protect copyrights of digital contents.

4.4.2. Action taken and state of play

At present, most Member States apply copyright levies or private copy levies (PCL) to compensate authors and other (copy)right holders for the loss of revenue from unlicensed reproduction of their works made by individuals for their private, non-commercial use (private copy). PCL were first introduced as a form of compensation for private copying activities carried out using analogue equipment and media to copy copyright works. While PCL were initially applied to photocopiers or cassette decks, they are now being increasingly deployed on digital media storage (CDR, DVDR) and equipment (hard disks, Mp3 players, PVRs), including multifunction devices such as personal computers or mobile phones.

While a minority of Member States (Cyprus, Ireland, Luxemburg, Malta, and the UK) do not apply levies to compensate right-holders, the variations in the levels of the levies in others Member States are such that there is an internal market problem. Furthermore, the high level of the levies in certain countries is significantly increasing the consumer price of certain digital equipment.

This is deemed not consistent with Article 5.2(b) of the Copyright in the information society Directive of 2001, according to which the fair compensation due to rights holders for the private copying of their works (mostly levies) shall take account of the application or non-application of copy-protection measures. This seems logical since copy-protection mechanisms are deemed to avoid or restrict reproduction of the protected work, thus leading to less or no copies to compensate for.

In order to deepen the Commission's understanding on the functioning of private copying levy schemes set up at national level, a second 'call for comments' was issued⁴. All stakeholders were invited to comment on the issues in the questionnaire.

⁴ See http://ec.europa.eu/internal_market/copyright/docs/levy_reform/questionnaire_en.pdf

The Commission will organise an open hearing on "Fair Compensation for Acts of Private Copying". This hearing follows the consultation that lasted from 14 February 2008 through 18 April 2008. The hearing will be organised around three panels:

- Role and impact of private copying levies in the digital environment
- Member States' experience with private copying levies
- Private copying levies – what direction should future policy take?

4.5. Self-regulation regarding protection of children - a responsible approach (3-EJ-5)

4.5.1. Summary of recommendation

All types of content are being distributed via mobile and broadband internet services. A responsible approach for content providers, internet and mobile service providers to protect viewers, in particular children and teenagers, against inappropriate content is "self-regulation".

The BDRT invites the European Institutions and the Japanese authorities to continue to play a facilitating role regarding the development of self-regulation in order to ensure protection of children.

4.5.2. Action taken and state of play

The Commission's Safer Internet Programme has been aimed at fighting against illegal content and promoting safer use of the Internet and new online technologies, particularly for children, since 1999.

On 27 February 2008, the Commission proposed a new programme for the period 2009–2013 to the European Parliament and the Council. This programme will include international co-operation.

Under the existing programme, the Commission has set up a European network of hotlines where the public can report illegal content – co-ordinated by the INHOPE Association.

INHOPE also has member hotlines in third countries (Australia, Canada, South Korea, Taiwan, and United States of America). Set up in June 2006, the Internet Hotline Centre Japan became a member of INHOPE in 2007.

Recent developments include enhanced activity in the field of self-regulation, encouraged by the Commission. Commissioner Reding was present at the signature by 15 leading mobile network operators of the European Framework for Safer Mobile Use by Younger Teenagers and Children. This took place on 6 February 2007 in the Commission Headquarters in Brussels.

On 12 February this year in Barcelona, the mobile industry announced that it has set up a Mobile Alliance against Child Sexual Abuse Content.

The Alliance aims to stem, and ultimately reverse, the growth of online child sexual abuse content, maintaining a safer mobile environment for all of our customers.

Members of the Alliance will, among other measures, implement technical mechanisms to prevent access to Web sites identified by an appropriate agency as hosting child sexual abuse content. Members will also implement Notice and Take Down processes to enable the removal of any child sexual abuse content posted on their own services, while supporting and promoting 'hotlines' or other mechanisms for customers to report child sexual abuse content discovered on the Internet or on mobile content services.

The alliance calls on governments across the world to support this initiative by providing the necessary legal clarity to ensure that mobile operators can act effectively against child sexual abuse content and to step up international enforcement against known sources.

The Commission brought this to the attention of the Japanese government during the Dialogue that took place in Tokyo on 3 March 2008. The Commission would also welcome that Japanese mobile operators join the Mobile Alliance, which is open to all mobile operators world-wide, regardless of access technology.

The safety of children using the Internet and new communication was a major item on the agenda of the successful second meeting of the Internet Governance Forum in Rio de Janeiro. International participation in the future discussions at the next IGF in New Delhi in 2008 is essential. The Commission also expects that Japan will be fully represented in the multi-stakeholder discussions about child safety by governmental representatives, but also Industry associations and non-governmental organizations.

Another area where the European Commission already supports self-regulation at European level to protect minors is video-games. The European Commission has recently welcomed progress on protection of minors in this area in 23 EU Member States, but has asked for improvement of industry codes

The European video games sector is dynamic, but there are public concerns that video games can cause aggressive behaviour. In response, the European Commission has surveyed existing measures protecting minors from harmful video games across the 27 EU Member States.

According to the Commission survey, the PEGI system is currently applied by 20 Member States. 2 countries (Germany and Lithuania) have specific binding legislation while Malta relies on general legislation. However, 4 Member States (Cyprus, Luxembourg, Romania and Slovenia) have no system in place. 15 Member States have legislation concerning the sale of video games with harmful content to minors in shops, although the scope of laws varies between Member States. Until now, 4 countries (Germany, Ireland, Italy, United Kingdom) have banned certain violent video games.

Adopted in 2003, PEGI labels provide an age rating and warnings such as violence or bad language, empowering parents to decide which game is appropriate for their children, as well as adult gamers to better choose their games. PEGI is supported by the major console manufacturers in Europe. PEGI Online was launched in 2007, co-funded by the EU's Safer Internet Programme, in response to the rapid growth of online video games.

The Commission has called for several measures to converge approaches in the Single Market:

- Regular improvement and better advertising of PEGI and PEGI Online by the video games industry.
- Member States should integrate PEGI into their own classification systems and raise awareness of PEGI, particularly parents and children.
- Cooperation on innovative age verification solutions between Member States, classification bodies and other stakeholders.
- A pan-European Code of Conduct on the sale of games to minors within two years, agreed by all stakeholders.

Finally, the Commission has opened a dialogue with social networking companies with a view to adoption of an industry document at European level about protection of children using social networking services.

4.6. Relationship of regulation and investment (3-EJ-6)

4.6.1. Summary of recommendation

The telecommunications industry is changing significantly in response to developments in the sector as new types of competitors, new business models and user expectations for innovative services arise. New broadband technologies will offer an additional benefit to the consumer and can potentially lead to long-term sustainable competition, if consumers can access broadband through competing platforms.

Japan and Europe should therefore create a favourable business and investment climate to face the new challenges arising from the changing market conditions.

4.6.2. Action taken and state of play

Next Generation Access (NGA) investments and developments will occur over the coming period and will affect existing regulation. Expectations about regulation, as well as the state of competition, will strongly influence the nature and timing of the investments that are made.

There is currently intense discussion and uncertainty around the next generation of network evolution, the implication of such an evolution and the possibilities for the electronic communications future. However, the issues and uncertainty are very different between investments in access networks, which form part of the local loop infrastructure and the local access market, and core networks.

Core networks are backbone networks that use converged technologies, usually IP, to carry multiple services (e.g. voice and data) over the same infrastructure and equipment rather than separate equipment. Upgrading core networks represents a logical commercial development for all operators. Many companies already operate their own converged core networks (some exclusively so).

The issues around the Access network are different and are more complex and have greater uncertainty attached. In general the uncertainty resolves around the future services that might be delivered and the future demand for such services. It has however created calls for radical regulatory changes including but not limited to regulatory holidays for new network investments regardless of investor or market circumstance

The European Commission plans to follow a pro-competitive and technologically neutral approach. Where there remains significant market power on markets warranting ex ante regulation, access obligations should be applicable. The Commission is committed to ensuring that markets in this sector remain competitive since it is the competitive dynamic in these markets that drives investment.

There was no need to make changes to the current electronic communications regulatory framework in the ongoing Review procedure in order to specifically address the issue of network transition to IP since the Framework is technologically neutral and any changes are automatically captured. As in the past the presence of market power will bring obligations with it in certain market areas.

Nevertheless, the Commission has identified broadband development as a priority to achieving the Lisbon goals. It has also identified the treatment of Next Generation Access as an area where consistent and predictable action is important. To that end, the Commission has committed itself to issuing guidance on the treatment of NGA later this year.

4.7. Market access for ICT equipment vendors (3-EJ-8)

4.7.1. Summary of recommendation

Both authorities should work towards a regulatory environment that would encourage open and affordable access to ICT equipment markets. The EU authorities should take actions to prevent and redress the imposition of duties on certain multifunctional and/or enhanced products (for example: Multifunction printer, LCD computer monitor, Digital Camera, Set-top-box) reflecting the basic principle of the ITA, which aims at the promotion of continued technological innovation and industrial development through improvement of market access on Information Technology products.

4.7.2. Action taken and state of play

See p. 13 the reply given to recommendation 1-E-5 (Customs classification for electric and electronics products).

5. WORKING PARTY 4: JOINT STATEMENT ON WORLD TRADE ORGANISATION

5.1. Summary of recommendation

The BDRT is a strong supporter of the WTO Doha Development Agenda (DDA) negotiations and continues to urge the European Commission and the Government of Japan to exert their utmost efforts in concluding ambitious negotiations by the end of this year. In particular, the EU and Japan need to focus their efforts among major players to make the case for a successful and ambitious conclusion of the round.

The BDRT hopes that the political momentum from world leaders will enhance current movement and concrete progress in the WTO negotiations in Geneva. It warns political leaders that business support for the Doha Round depends on achieving rapid agreement on negotiating modalities in order to conclude the round by the end of this year before negotiating fatigue sets in.

5.2. Action taken and state of play

The EC fully shares the BDRT's strong support for the multilateral trading system and its concerns for the Doha Development Agenda (DDA) negotiations. Over the last year EU and Japan have cooperated closely with the view to achieve a comprehensive and balanced agreement.

EU Trade Commissioner Peter Mandelson has been putting huge efforts into the negotiations and has participated to several bilateral and multilateral meetings with Trade Partners' negotiators over the last 12 months.

There is limited time available to come to a successful conclusion of the round. Commissioner Mandelson is pushing hard for a breakthrough before the summer, possibly at the Ministerial meeting in May.

The EC has shown a high level of flexibility in sensitive sectors such as agriculture and expects other WTO Member to do the same in the next few crucial months. On Agriculture, the EC is ready to make a significant contribution. This will only be possible if there is also movement on industrial goods (NAMA). Progress on services and geographical indications will also be necessary in order to have a package which is acceptable to all WTO members.

The EC shares the BDRT's call for action on NTBs. For this reason, it has tabled a series of proposal on NTBs i.e. in the electronics sector and more generally concerning export taxes and export restrictions. These are issues of vital important for business, therefore the EC is making huge efforts in convincing its trade partner that NTBS and in particular NTBs in the NAMA sector need to be part of the DDA final package agreement.

The EC and Japan have significantly intensified their cooperation on the DDA, with regular contacts between Commissioner Mandelson and Japanese Trade and Agriculture Ministers, who have given mandate to senior officials to work closely. The EU and Japan have both remained fully committed to further open up markets and develop trade rules within a multilateral framework.

6. LIFE SCIENCES AND BIOTECHNOLOGY (LS/BT)

6.1. Summary of recommendations

The BDRT recommends that both Europe and Japan:

- Continue to implement their Biotechnology Action Plans set in 2002 and intensively allocate government resources, including budgets and legislative/administrative supports, on prioritized measures. Proper revision of the strategies must be done according to advancements of science and technology.
- Significantly increase budget for promotion of public understanding of Life Sciences and Biotechnology
- Establish third-party institution(s) to lead scientific approach to evaluate social risks/benefits of new technologies in Life Sciences and Biotechnology
- Enhance international communication between them in Life Sciences and Biotechnology areas, such as bio-ventures/bio-clusters, by supporting international conferences and industrial exchange activities.

6.2. Action taken and state of play

The EC agrees with the recommendations put forward by the BDRT in 2007. Particular progress has been made on the implementation of the recommendations concerning healthcare biotech, industrial biotech and plant biotech. The mid-term review of the Life sciences and Biotechnology Strategy and Action Plan (launched in 2002) was achieved in 2007. This led to the adoption by the EC on 10 April 2007 of a policy document (*Communication from the Commission on the mid term review of the Strategy on Life Sciences and Biotechnology*⁵). The objective of this document was to evaluate the progress achieved since 2002 and to update the strategy to reflect new analysis of how this fast moving sector could contribute to EU policies. The mid-term review puts life sciences and biotechnology refocused the Action Plan on sector specific issues and prioritised actions in those areas where the potential benefits of biotechnology can be maximised. The conclusions of the Communication issued by the EC last year are well in line with the 2007 recommendations from the BDRT.

⁵ COM(2007)175, http://ec.europa.eu/biotechnology/docs/com_2007_175_en.pdf