



EUROPEAN COMMISSION

Commission Services Progress Report
on the
EU-Japan Business Dialogue Round Table 2006 Recommendations

Brussels, April 2007

The **European Union – Japan Business Dialogue Round Table** (BDRT) issued in 2006 its recommendations to the leaders of the EU and Japan.

Adopted during the BDRT annual meeting held in Tokyo on 13 and 14 July 2006, 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:

- WTO,
- Trade and Investment,
- Accounting and Tax Issues,
- Information and Communication Technologies,
- Life Sciences and Biotechnology.

The information contained in this progress report dates back to 4 April 2007.

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1. WTO

1.1. Joint Statement on the World Trade Organization (WTO)

1.1.1. Summary of recommendation

The BDRT reaffirms its strong support for the strengthening of the multilateral free trade system and the Doha Development Agenda (DDA) and requests the European Commission to promote the conclusion of the agenda. The BDRT is concerned about the slow progress which could undermine the talks. The BDRT calls for:

- an ambitious reduction and where possible elimination of tariff and non-tariff barriers against industrial products trade;
- the possibility for sectoral initiatives among willing industries that can further promote free trade while reducing or eliminating tariffs;
- a real market opening for services trade among OECD economies and emerging countries;
- further progress in the agriculture negotiations by all the major players;
- the development of ambitious and specified rules on trade facilitation;
- efforts to address capacity building in developing countries while facilitating the active participation of least developed countries in the DDA talks;
- the EU and Japan to maintain strong contacts with each other and take a true initiative for the success of the DDA.

1.1.2. Action taken and state of play

The European Commission (EC) fully shares the BDRT's strong support for the multilateral trading system and its concerns for the Doha Development Agenda (DDA) negotiations. EU Trade Commissioner Peter Mandelson has been putting huge efforts into the negotiations and has participated to several bilateral and plurilateral meetings with Trade Partners' negotiators during the last year with the view to explore possible compromise solutions. The EC is aware of the limited time available and is pushing hard for a breakthrough before the summer break, which would then leave the time to discuss the details and reach a final agreement by the end of the year. The EC supports a balanced and ambitious package, including not only non-agricultural market access (NAMA) and agriculture, but also services and rules (i.e. on Antidumping).

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. Issues that have not been addressed yet, such as geographical indications, also need to be addressed.

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. A constructive co-operation across all issues has been taking place. The EU and Japan have both remained fully committed to further open up markets and develop trade rules within a multilateral framework, to make progress in the DDA negotiations on process and on substance and to ensure their successful conclusion.. Ensuring support from business through close dialogues on trade and investment issues of concern to them will remain one of the key aspects to the successful conclusion of these talks.

As to the ongoing bilateral negotiations which the EC is planning to start, these can only be seen as complementary to the multilateral negotiations, which remain the absolute priority for the EC.

The EC and Japan have also agreed to establish a High Level Trade Dialogue to discuss multilateral and bilateral issues, which is deemed to become a key forum to cooperate closely with on WTO-related issues.

2. TRADE AND INVESTMENT

2.1. Concrete and focused actions to follow up the investment framework agreement to enhance foreign direct investment (1-EJ-1)

2.1.1. *Summary of recommendation*

The heads of governments of the EU and Japan should follow up and expand the ‘Cooperation Framework for Japan-EU Two-Way Investment Promotion’ adopted in 2004 at the EU-Japan summit in Tokyo. Concrete measures with substantial impact on investment between the EU and Japan should be elaborated.

Such measures should be assessable and clearly focused on the following four priorities: the optimisation of the returns on investment; supporting timely development of business; supporting timely and smooth business reorganisation; and promotion of regulatory reforms.

2.1.2. *Action taken and state of play*

The foreign direct investment framework between the EU and Japan, based upon the “Cooperation Framework for EU-Japan Two-Way Investment Promotion” adopted at EU-Japan Summit in 2004, is under constant and active discussion between the two sides. From an EU point of view, implementing legislation regarding mergers and acquisitions in Japan is of particular importance in this regard. Outstanding issues concern taxation rules and shareholders’ rights. Adoption of the new legislation in May 2007 will be crucial for future European investments in Japan.

2.2. The optimization of returns on investment (1-EJ-2)

2.2.1. *Summary of recommendations*

(a) Avoidance of double taxation

The Governments of Japan and Europe should ensure that dividend payments from subsidiaries to parent companies and royalty and interest payments between related companies are, to the greatest possible extent, exempt from withholding taxes.

The European Commission should promote co-operation between Member States in their efforts to conclude bilateral tax treaties with third countries.

(b) Reducing compliance costs associated with transfer pricing

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

- To harmonise and simplify interpretation and documentation requirements between the EU and Japan and among EU Member States in order to reduce the costs of compliance with the various transfer pricing taxation regimes.
- To make the conclusion of bilateral and multilateral APAs (advance price agreements) between the EU Member States and Japan easier and cheaper by improving procedures.

2.2.2. *Action taken and state of play*

(a) Avoidance of double taxation

Double taxation relief may be provided by double taxation conventions. Any amendment to double taxation conventions with Japan falls within the competence of individual Member States.

(b) Reducing compliance costs associated with transfer pricing

In order to reduce high compliance costs and potential double taxations, the EU Joint Transfer Pricing Forum (JTPF) was put in place in 2002. The added value of the Forum is the participation of tax administrations' experts and experts from the private sector who work together to produce pragmatic, non-legislative solutions within the framework of the OECD Transfer Pricing Guidelines to the practical problems posed by TP practices in the EU.

Up to now, the JTPF has provided two reports which were incorporated in two Commission communications and two Codes of Conduct: one was dedicated to the effective implementation of the Arbitration Convention and the second on transfer pricing documentation for associated enterprises in the EU.

Last year the JTPF examined the issue of Advance Pricing Agreements and provided a report at the end of 2006. On the basis of the JTPF conclusions the Commission will soon adopt a Communication including Guidelines on APAs within the EU. Indeed the use of APAs was considered as the most efficient tool to prevent and avoid double taxations and related disputes. All these initiatives should meet your concerns of simplification and rationalization of transfer pricing regimes within the EU.

2.3. Supporting timely development of business - Social security contributions (1-EJ-3)

2.3.1. *Summary of recommendation*

The respective governments should introduce measures to avoid intra-company transferees having to make double contributions to the social security systems of both home and host countries, by the accelerated introduction of social security agreements.

In addition, they should introduce an interim measure: The host country should either exempt contributions to pension funds unilaterally or should refund in full when expatriates return to the home country.

2.3.2. Action taken and state of play

Member States of the EU are responsible for the funding and organisation of their social security systems. They are therefore free to determine 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 (EEC) 1408/71 on the application of social security schemes to employed persons and their families moving within the Community. Japanese workers legally residing in the EU and their families can rely on the Community provisions in the field of co-ordination of social security systems when moving within the EU (Regulation 1408/71 as amended).

It is also the exclusive competency of Member States to conclude social security agreements with third countries.

In this context, the Commission welcomes the recognition of a need for action with regards to the question of double contributions and acknowledges that bilateral social security agreements constitute an appropriate solution. The Commission welcomes progress on the conclusion of bilateral agreements between Japan and some Member States as well as the ongoing work on the conclusion of additional agreements. The EU also calls for Japan to start exchange of information with each of the EU Member States.

It will take a considerable time at the current pace of progress before the problem of dual pension membership and wasted premium payments can be solved. The foreign workers living in Japan must contribute to the Japanese pension system along with their employers. When leaving Japan, they can receive a partial refund of pension contributions of exceptional and temporary nature, adopted by the Japanese government in the Pension Law in 1994, capped at 3 years, if they have worked in Japan for longer than 6 months and less than 25 years.

The EU has reiterated its suggestion that departing expatriates not yet covered by a bilateral agreement should receive a full refund of the actuarial equivalent of all mandatory pension contributions paid to date, or at least the period and the amount for the refund should be extended to 5 years in line with recent developments to extend the length of stay of certain foreign workers and high skilled workers.

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.

2.4. Promotion of regulatory reforms (1-EJ-5)

2.4.1. Summary of recommendation

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

The BDRT believes that the best way to accomplish this is through a further intensification of the on-going EU-Japan regulatory reform dialogue, notably to promote liberalisation in highly technical areas as well, such as Medical Equipment, Animal Health and Food Safety.

2.4.2. Action taken and state of play

Abolishment of unreasonable authorization procedures related to products and services, harmonization of standards and, where applicable, mutual recognition of product standards, certification and notification is of the essence. The EU has continued to address those issues with regard to the Japanese market in the framework of the Regulatory Reform Dialogue (RRD) as well as other EU-Japan dialogue fora, in particular regarding phyto-sanitary issues, public procurement, financial services and others. Technical subgroups as mentioned in the recommendations are regularly convened at the occasion of RRD High Level Meetings. At the same time, technical issues are also addressed in the framework of other dialogue settings such as the Industrial Policy Dialogue, the Environment Dialogue, the Intellectual Property Rights Dialogue and others.

2.5. Corporate governance (1-EJ-6)

2.5.1. Summary of recommendation

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

2.5.2. Action taken and state of play

The European Commission is analysing to what extent Member States follow the basic EU corporate governance recommendations. Two reports are currently being prepared on this. Further monitoring is envisaged as regards the application of the corporate governance principles by listed companies, including to what extent these principles are applied consistently within the EU. The Commission will pursue the reflection on how to address problems related to the requirements to comply with two or more corporate governance codes.

2.6. The policy of the EU on Taxation (1-E-1)

2.6.1. Summary of recommendations

(a) Common consolidated corporate tax base (CCTB)

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

(b) Transfer pricing

Concerning the EU Transfer Pricing Documentation - the EU TPD, the EU and the Member States should commit themselves to exemption from penalties (i.e. penalties related to non-compliance with documentation requirements, penalties related to transfer pricing adjustments and interest related to adjustments) if a company submits an EU TPD acting in good faith and in a timely manner.

(c) Harmonization of taxation (VAT)

Although VAT is a common taxation system in the EU, difference among Member States is so large that companies find it very difficult to centralise VAT administration. The EU and the Member States should simplify and harmonise it to the extent that companies can centralise VAT administration easily without employing people with expert knowledge of the VAT regime in each country in which it is operating.

(d) Tax treatment of losses in cross-border situations

The European Commission and the Member States should make swift progress in realising the cross-border offset of losses against profits.

2.6.2. Action taken and state of play

(a) Common consolidated corporate tax base (CCTB)

The Commission is very pleased to witness support for the CCCTB by the BDRT.

The Commission plans to make a legislative proposal in 2008. The proposal will be submitted to the Council by this date, however, it is unlikely that the system will be still introduced by 2008.

We note that the BDRT wishes to actively participate in the process of regulatory deliberation in the EU through means such as public comments and hearings. The European Commission invites the BDRT to consult our internet pages on CCCTB regularly, where all relevant documents and comments can be found.

Another Communication will be issued by the European Commission this spring which will offer more details on progress of ongoing work on the CCCTB and the way ahead.

(b) Transfer pricing

The "EU Joint Transfer Pricing Forum" discussed standardised documentation requirements for transfer pricing in 2005 and a Code of conduct on transfer pricing documentation for associated enterprises within the EU was adopted by the Member States in June 2006 (see O.J C176/1 of 28/07/2006). The code mentions that "*Member States should not impose a documentation-related penalty where taxpayers comply in good faith, in a reasonable manner and within a reasonable time with standardised and consistent documentation as described in the Annex or with a Member State's domestic documentation requirements, and apply their documentation properly to determine their arm's length transfer prices*".

(c) Harmonization of taxation (VAT)

The European Commission is conscious of the obstacles faced by businesses operating within the internal market. It recognises that the divergence in application of the common VAT rules among EU Member States is a source of major difficulties for any business wanting to penetrate this market.

Since taxation is a national matter, EU legislation to harmonise VAT rules is only possible if it proves necessary to ensure the establishment and the functioning of the internal market. It sets certain limits to the degree of harmonisation which may be provided for at EU level. This is further compounded by the fact that taxation is an area governed by unanimity voting in the Council.

The legal basis for any legislative action in the area of taxation has to be based on Article 94 of the EC Treaty. This provision requires unanimity in Council which makes any progress politically extremely difficult.

The views expressed by Japanese business reflect the concerns of the wider business community. Those are concerns which must be addressed in future. Among the initiatives already taken by the European Commission in this regard one can cite the proposal for a one-stop scheme which would provide simplification of tax obligations for traders. The European Commission, while continuing its efforts to tackle the difficulties businesses are facing, recognises that much will depend on EU Member States.

(d) Tax treatment of losses in cross-border situations

Business considers the lack of cross-border loss relief as one of the remaining important tax obstacles to the Internal Market and the Commission is taking its concerns into account. The Commission addressed this issue by presenting the Communication COM(2006) 824. Discussions with Member States were opened in the Council recently.

On 19 December 2006, the Commission presented a Communication to the Member States on the "Tax Treatment of Losses in Cross-Border Situations" (COM(2006) 824 and a Technical Annex SEC(2006) 1690).

This Communication was presented within the framework of the package of in total 3 Communications on the "Coordination of the Member States' direct tax systems in the internal market".

In this Communication, the Commission stresses the need for effective systems to provide cross-border loss relief within the EU. The limited availability of cross-border loss relief is one of the most significant obstacles to cross-border business activity and an effective internal market. Introducing systems for cross-border loss relief will particularly benefit SMEs, which currently suffer from the lack of such relief. It will also remove a major impediment to the emergence of more competitive EU firms on the world market.

The Communication outlines the basic principles and problems regarding cross-border loss relief and suggests ways in which Member States may allow the cross border relief of losses. The Communication thereby distinguishes between losses which were sustained either (i) within a company, (ii) within a group of companies, and (iii) thereby taking into account the judgement in the case C-446/03 "Marks & Spencer".

Regarding losses sustained within a company, the Commission strongly encourages the Member States without cross-border loss relief (at present 9 Member States) to review their tax systems in order to promote the freedom of establishment provided by the EC Treaty.

Regarding losses sustained within a group of companies, the Commission strongly encourages Member States to introduce and maintain domestic tax systems for loss relief within a group of companies (8 Member States out of 27 have not such introduced such a provision). The Commission stresses the need to make cross-border loss relief within a group of companies more widely available, for the development of businesses across the single market and worldwide (at present 4 Member States). The new approach of coordination should ensure that Member States introduce such new schemes within the framework pointed out in the Communication.

Discussions on the Loss Communication with Member States were opened in the Council recently.

2.7. The policy of the EU on company law (1-E-2)

2.7.1. Summary of recommendations

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

A 14th Company Law Directive on the cross-border transfer of the registered office of limited companies without liquidation and incorporation should be proposed, adopted and implemented as soon as possible.

A Statute for a European Private Company should be introduced as a short-term priority.

2.7.2. *Action taken and state of play*

The Cross-border mergers Directive was adopted in a single reading by both the Council and the European Parliament on 26 October 2005. It is to be implemented by the Member States by 15 December 2007.

The Directive will facilitate mergers of limited-liability companies on a cross-border basis, which at present are impossible or entail prohibitive costs. It sets up a simple framework drawing largely on national rules applicable to domestic mergers and avoids the winding up of the acquired company. The Directive fills an important gap in company law.

The Directive covers all limited-liability companies, with the exception of undertakings for collective investment in transferable securities (UCITS). Also, there are special provisions for cooperative societies. Given the diversity of cooperatives in the EU, Member States can, with the Commission's agreement, prevent a cooperative from taking part in cross-border mergers for a limited period of five years.

Under the adopted Directive, employee participation schemes should apply to cross-border mergers where at least one of the merging companies already operates under such a scheme. Employee participation in the newly created company will be subject to negotiations based on the model of the European Company Statute.

The public consultation of spring 2006 has shown a very strong support for a proposal on the 14th Company Law Directive among stakeholders. They were of the opinion that such directive would facilitate the mobility of European companies, in particular SMEs, and allow them to locate their business in the Member State that best suits their needs. Commissioner McCreevy has stated in his speech before the European Parliament (Legal Affairs Committee) on 21 November 2006 that he intends to propose the directive on the transfer of the registered office in the first semester of 2007. Currently the Commission services are working on the costs/benefits impact assessment of the possible directive. The intention is to adopt a proposal in June 2007.

The public consultation of spring 2006 has shown a considerable support for a proposal on the European Private Company Statute among stakeholders as it would facilitate the mobility of companies, in particular small and medium-sized, in addition to other European measures and would be in line with a better regulation principle by creating more choice for the companies without imposing any new burdens on them. Commissioner McCreevy has stated in his speech before the European Parliament (Legal Affairs Committee) on 21 November 2006 that the Commission services would study the feasibility of the possible Statute. Currently an impact assessment on the possible Statute is being carried out with the aim to complete it by the end of 2007. A political decision on further steps on this initiative will depend on the results of the impact assessment.

2.8. Japanese expatriates (1-E-3)

2.8.1. Summary of recommendation

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

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

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

2.8.2. Action taken and state of play

Japanese companies (and the Japanese government) showed a keen interest in the Policy Plan on legal migration, in particular in the announced directive on intra-corporate transferees (due to be presented in 2009). The Commission is grateful for the input on this issue received to date and will welcome further comments when starting to draft the directive, in 2008. For sake of clarity, we should underline that this directive will most likely only aim to ease procedures for granting the relevant visas and permits, and perhaps introduce a sort of intra-UE mobility for third-country citizens. As a matter of fact, the conditions for entry and stay of Intra-Corporate Transferees will continue to be dealt with in the framework of GATS mode 4 negotiations, under the common commercial policy legal base. As far as access to the labour market for spouses, the Commission will in due time evaluate whether or not to include a provision in this sense in the draft proposal.

2.9. Pension (1-E-4)

2.9.1. Summary of recommendation

Double taxation related to occupational and supplementary pensions should be eliminated as soon as possible.

2.9.2. Action taken and state of play

Member States of the EU are responsible for the funding and organisation of their social security systems. The conclusion of bilateral agreements will be conducive to a solution in the longer term to solve the problem of dual pension membership and wasted premium payments.

The EU acknowledges that bilateral social security agreements constitute an appropriate solution, and welcomes progress on the conclusion of bilateral agreements between Japan and some Member States as well as the ongoing work on the conclusion of additional agreements. The EU also calls for Japan to start exchange of information with each of the EU Member States.

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.

2.10. Community Patent (1-E-5)

2.10.1. Summary of recommendation

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

2.10.2. Action taken and state of play

There has been no progress on the Community patent since spring 2004, when agreement in Council was blocked because of two issues relating to translations of patent claims. The Community patent remains a priority objective under the renewed Lisbon strategy on more growth and employment.

The difficulties to make progress in the field of patents led the Commission to launch, in January 2006, a broad consultation to collect stakeholders' views on the future patent system in Europe. Responses have shown that industry favours the introduction of a COMPAT and the improvement of the existing European patent system (EPLA on jurisdiction and the London Protocol on languages). However, the Common political approach of the Council in 2003 on COMPAT is strongly criticised in relation to translation costs and the jurisdictional system.

As a follow-up to the consultation, the Commission has adopted on 3 April 2007 a Communication on Patent Strategy¹ which gives a fresh look at the patent system and makes some constructive suggestions on the way forward, especially on the jurisdiction issue. The aim of this communication is to break the deadlock, re-launch the debate in the EU Council of Ministers and the European Parliament, and try to build consensus among Member States on patent jurisdiction and translation arrangements.

¹ Communication from the Commission to the European Parliament and the Council - *Enhancing the patent system in Europe* - COM(2007)165 of 3 April 2007 (http://ec.europa.eu/internal_market/indprop/patent/index_en.htm)

2.11. Fight against counterfeited, pirated and contraband goods (1-E-6)

2.11.1. Summary of recommendation

The BDRT welcomes the efforts made by the EU in the fight against counterfeited, pirated and contraband goods in the EU and in third countries.

These efforts should be continued and reinforced.

2.11.2. Action taken and state of play

The fight against counterfeiting and piracy continues to be a priority for EU enforcement bodies. Following on from the adoption of the Directive on the Enforcement of Intellectual Property Rights ('Enforcement Directive') on 29 April 2004 the (now-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. The 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 government of Japan and the EU have intensified their cooperation over the last year. In the TRIPs Council, the EU and Japan (together with the US and Switzerland) presented a Joint Communication on 23 October 2006 recalling the importance of effective IPR enforcement for developing and developed country economies, in particular in terms of innovation and investment. The Communication also called for the exchange of experiences and best practices in the TRIPs Council among all Members in order to better understand where the problems are, how they can be addressed and what the TRIPs Council can do.

Also within the G8 forum Japan and the EU have worked together to keep the enforcement issue high on the agenda, by cooperating on several projects focusing on customs cooperation, coordination of technical assistance and strengthening of the international framework on enforcement. Cooperation within the G8 also targets violation of IPR by organised together trans-national crime (within the so-called Lyon-Roma group).

At bilateral level, exchange of information takes place on a regular basis. EU participated in a technical assistance event in Tokyo on copyright awareness-raising organised by the Japan Copyright Agency.

2.12. Competitiveness of the EU economy (1-E-7)

2.12.1. 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. The EU should try to improve the international competitiveness of the EU economy in line with the goals of the Lisbon Strategy, by introducing more

competition in the following sectors: audio visual products and passenger cars.

Tariff classifications must be appropriate, timely and transparent, based on the primary function of the manufactured goods at the time of import. Importers find that classification remains unpredictable because of inconsistencies in the interpretation of the tariff scheduled by the EU (ex: customs classification of Flat Panel Display - FPD).

2.12.2. Action taken and state of play

The EC recognises the importance of promoting liberalisation and it is intensifying its efforts to make sure that this can happen within the framework of the DDA negotiations. The EU is firmly convinced that the appropriate context to achieve liberalisation in the sectors mentioned in the recommendation is the NAMA negotiations, as part of an ambitious "package" agreement.

As to the "inconsistencies" in the interpretation of the EU tariff scheduled mentioned in the recommendation, in particular on IT products, the EU would like to stress that it classifies these products based on objective and identifiable criteria set by the World Customs Organisation, which sometimes means that some IT products are not covered by the ITA (whose scope is confined to products destined to professional use). The EC is aware of the need to expand the coverage of the ITA and has tried, without success, to achieve that by means of the procedural tools provided by the ITA itself. The EC believes that a solution to this issue can be found as part of a broader approach looking at the expansion of the geographical coverage of the ITA (very poor at the moment) as well as to the elimination of the many Non-Tariff Barriers which are hindering the access of IT products to several markets. The EC is constructively working in this direction and has invited its trading parties, including Japan to engage in these discussions.

2.13. Compliance for REACH (proposal for a regulation of the European parliament and of the Council concerning the Registration, Evaluation, and Authorisation of Chemicals (1-E-8))

2.13.1. Summary of recommendation

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

2.13.2. Action taken and state of play

The REACH Regulation has now been adopted and published in the Official Journal of 30 December 2006 (Regulation (EC) No 1907/2006). The legislation will enter into force on 1 June 2007 and the European Chemicals Agency will become operational one year later.

REACH has been developed in a climate of consultation. The Commission has taken the views of stakeholders – including foreign trade partners – into account and have used them to ensure workability.

The Commission welcomes the final adoption of the REACH Regulation by Council and Parliament and the efforts both European Institutions made to come to a balanced agreement at the end of 2006.

The Commission recognises the need for clear guidance for stakeholders to ensure consistent, cost-effective and smooth operation of the system. This is currently under development, together with stakeholders, and will be available to producers and importers alike in due time to comply with the related parts of REACH.

REACH will significantly improve the consistency with regard to how Member States apply the chemicals legislation within the EU, compared to the situation under the current legislation, and therefore facilitate trade flows.

The Commission recalls that it is preparing a proposal for the implementation of the GHS (Globally Harmonised System of Classification and Labelling of Chemicals) in Community law and that an Internet consultation has been carried out from 21 August till 21 October 2006, to which around 370 stakeholders responded.

3. ACCOUNTING AND TAX ISSUES

3.1. Summary of recommendations

Recommendation 2-EJ-1

The European Commission's decision regarding the US has facilitated the EU efforts in pressing for reciprocal rights. To accelerate progress towards convergence, the BDRT asks the European Commission to ensure that all parties engaged with this matter in the EU, the US and Japan will engage in mutually beneficial dialogue.

Recommendation 2-E-1

1 January 2005 marked the start of the European Union's Emissions Trading Scheme ('ETS'). One and a half years into the scheme, the BDRT asks the Commission to urge IASB to speed up revision of IAS 37 (Provisions, Contingent Liabilities and Contingent Assets) and work on IAS 20 (Government Grants) so as to be able to address the issue of emission rights as soon as possible.

Recommendation 2-E-2

The BDRT asks the public authorities to ensure that, in their dialogue with accounting standards setters, standards for business combination are seen in light of the need to take into consideration the intelligibility and soundness for corporate management, and the possibility of applying accounting treatments which requires preparers to perform amortization and impairment of goodwill.

Recommendation 2-E-3

The BDRT asks the public authorities to be careful in introducing fair value measurement in IFRS. Fair value measurement can create misleading volatility in financial statements to the detriment of economic stability and growth. There is a need for a thorough conceptual discussion in IASB before further enhancement of the fair value dimension in IFRS is decided.

Recommendation 2-E-4

The BDRT asks that the standard resulting from the IASB's financial statement presentation project (formerly called the performance reporting project) be published after prudent deliberation because of the particular interest of companies and investors (whether European or Japanese) in the matter.

Recommendation 2-EJ-2

Research on the introduction of reports on internal control over financial reporting is now being examined. The BDRT asks that the public authorities discuss the function of internal control fully and thoroughly consult stakeholders before endorsing internal control systems, paying careful attention to the balance of benefits and costs and interaction between the audit of an internal control and the audit of the financial statement.

Recommendation 2-EJ-3

The BDRT asks that public authorities provide opportunities for companies to contribute to international rule setting and revision on capital markets to increase the transparency of the rule-setting process, thereby reducing costs for market participants and burdens on regulators alike.

3.2. Action taken and state of play

Recommendation 2-EJ-1

The IASB and the FASB have drawn up a Memorandum of Understanding (MoU) which was published on 27 February 2006. It describes the projects they intend to undertake jointly. It also includes an estimated timeline. The Commission welcomed the MoU in a press release on the same day and the following day the SEC welcomed the MoU.

The Commission wishes the IASB to focus firmly on business need before making any further changes to the accounting standards as companies need a period of relative stability in order to implement IFRS. There are certain projects in the IASB work programme which do concern complex and controversial accounting areas. Accordingly these areas have a particular need for wide consultation and from an early stage in the project. The work programme also needs to be reviewed regularly with companies, auditors and market participants all playing a part.

To facilitate convergence of accounting standards and provide support for a decision regarding equivalence of certain third country GAAPs, the Commission is engaged in regular dialogues on accounting standards to keep all parties engaged updated and exchange experience.

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.

The IASB has placed this issue on their agenda so that it can be dealt with in a comprehensive manner. At present, the project has been deferred pending conclusion of work on other projects that will affect this project, such as revenue recognition.

Due to other high priority projects the Commission is not pushing the IASB to accelerate the work program with regards to accounting for emission rights.

Recommendation 2-E-2

The accounting for business combinations has been revised with the introduction of IFRS 3. Currently there is a IASB project revising the existing approach and introducing new elements, e.g. an approach that is close to fair value measurement of the acquiree. The proposals have resulted in a huge number of comments, particularly from European stakeholders, expressing concerns about the practicability of the proposals. The Commission has made it clear that companies need a stable platform and it is not the time to come up with revolutionary new approaches. The Commission is watching the developments, together with other stakeholders involved, carefully.

Recommendation 2-E-3

Fair value information is regarded as very useful information in circumstances where the information is based on real market transactions. We believe that it was a good decision by IASB to initiate the discussion on the use of fair value via the fair value measurement project. We agree that it needs to be carefully considered where and when the use of fair value information in the balance sheet results in more relevant information. Therefore we disagree with a step-by-step introduction of fair value measurement concepts without basic conceptual debate.

Recommendation 2-E-4

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, which we regard as a first step. 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.

Recommendation 2-EJ-2

The Commission is fully aware of the interrelation of internal control as part of the risk management system and the financial reporting system. The audit of both should be coordinated in a way that they reflect the interrelation. Benefit cost considerations as well as impact assessment are important elements of the procedures to launch new legislative measures.

Recommendation 2-EJ-3

The whole system of governance and financing of international standard setting bodies is of high relevance to the Commission. Since we have adopted the IFRS we need to assure that the way they are developed takes all interests and needs of stakeholders into account. Only transparent and stable processes and procedure can ultimately result in high quality accounting standards which would help companies to get access to new capital.

4. INFORMATION AND COMMUNICATION TECHNOLOGY (ICT)

As an overall reply to the 18 recommendations made by the BDRT in the ICT field (recommendations 3-EJ-1 to 3-EJ-18), the following elements could be underlined.

The European Commission is committed to the development of policies for a converging market (that includes telecoms, digital radio and TV and next generation networks), together with all players and stakeholders.

In its current effort to review its electronic communications framework, the European Commission wished to continue the process which through open markets and enhanced competition in the telecoms sector has allowed users and consumers to benefit from more choice, lower prices and innovative products and services.

The new set of rules in preparation is designed to be future proof, and to take account of the convergence of digital technologies that allow everything from phone calls to entertainment to be delivered over all sorts of networks to all sorts of devices.

After several years of rapid growth, information and communication technologies markets in Europe, a fundamental change seems to have taken place bringing Europe closer to its goal of becoming a knowledge-based economy. Many countries now have high levels of broadband adoption and are seeing the introduction of innovative advanced services. Online sales and new digital devices testify about the transformation of the content market. Movie distribution and online TV are moving in a similar direction accompanied by an explosion of user content. The public sector is also contributing with a growing offer of online public services, with public administration at the forefront, closely followed by health and education.

In the education sector, a European schools survey in 2006 confirmed an increase in the availability and use of ICT over the past five years. 96% of schools now have Internet access and 67% already have a broadband connection for educational purposes. However take-up needs to continue improving to catch up with other countries like the US where 95% of public schools had already a broadband connection in 2003. The schools survey also found that take-up of ICT has been widespread in the teaching profession. Over 90% classroom teachers use computers or the Internet to prepare lessons. 74% also use them as a teaching aid. Over 80% think that pupils are more motivated and attentive when computers and the Internet are used in class, and that they have significant learning benefits for collaborative work.

Take-up of online health services is less advanced than public administration services, however, the interest is already there with one European in five using the Internet to seek health related information and this rises to nearly half in the leading member states. ICTs are already widely used in health for example for communication between primary and secondary care but not yet for services to patients. This was reflected on the very low proportions in the household survey – less than 2% – using advanced online health services.

This been said, certain challenges still remain: connectivity problems and piracy still hamper the growth of content; ICT impact on core business processes in Europe still has to deliver its true potential to boost productivity. Finally, the launch in 2006 of a major new initiative at European level to co-ordinate policies for inclusion reminds us that more can still be done to ensure that certain groups or regions are not excluded from these benefits.

Investment in research and development remains also an important challenge to the EU if it wants to remain competitive in a globalized economy. The EU has managed to maintain a dominant world market share thanks to its leadership in a variety of medium technology, capital intensive goods industries, and pharmaceuticals, but did not show a similar performance in the ICT markets. As many developing countries start to invest heavily in R&D and education in order to move up the value chain a renewed effort in terms of investments in R&D and innovation is more than ever essential.

Against this background, the EU has set a target of 3% of its GDP dedicated to R&D, 2% of which should come from the private sector. Recent data show that the EU is still far from the target, with a share of GDP spent in R&D more or less stable at around 1.9%. The 2006 Annual Progress Report on Lisbon underlines that all Member States have set a national R&D investment target and that if all of these targets are met, the EU will reach an R&D level of 2.6% of GDP in 2010. This would be a significant improvement.

As industrial R&D is becoming increasingly internationalised and the most dynamic activity of multinationals companies, international cooperation receives considerable attention as shown by the openness of the 7th European Framework Research Program.

The European Commission also welcomes the call of the EU-Japan Business Dialogue Round Table members for a dialogue to enhance security and reliability of ICT systems indispensable to critical social infrastructure.

Businesses, individuals and public administrations still underestimate the risks of insufficiently protecting networks and information. The European Commission is therefore promoting greater awareness through an open and inclusive multi-stakeholder dialogue on a new IT Security Strategy for Europe. An open dialogue involving all stakeholders is essential for building consumer trust and confidence and for supporting the widespread take-up of digital services. In its Communication on a strategy for a Secure Information Society – “Dialogue, partnership and empowerment”, the Commission aims to promote a general security consciousness and an awareness of the actions that people and organizations need to take for themselves, in order to protect their own information and equipment.

All stakeholders need reliable information on network and information security incidents to help them take the steps necessary to ensure their own security and safety. An analysis of security “incidents” should point to solutions and best practices to be adopted by public and commercial organizations and in peoples’ homes. A key role in promoting a greater awareness of security is to be played by public authorities, although it is largely up to the private sector to provide solutions.

Specific proposals of the Commission include the benchmarking of national policies on network and information security to improve the dialogue between public

authorities, to identify best practices and to raise the security awareness of end-users. ENISA, the European Network and Information Security Agency established in Heraklion (Greece) will be entrusted to develop an appropriate data collection framework to handle security incidents and measured levels of consumer confidence from all over Europe. ENISA will also be asked to examine the feasibility of a multilingual information sharing and alert system. Finally, Member States and the private sector are invited to play a more proactive and energetic role in enhancing network and information security.

These initiatives are part of a coherent European policy on network and information security, which also covers spam and spyware, cybercrime, the security implications of RFID (Radio Frequency Identification), the integrity and protection of critical communication infrastructures and related European research activities.

The call in BDRT's recommendations to both governments to implement e-Government services is also in line with the initiatives proposed under the European Commission e-government action plan, in particular those associated to the rolling out of interoperable e-identification system. The specific request for increased cooperation concerning the compatibility of e-Passports is also relevant in view of on-going work, in particular regarding the introduction of biometrics in passport. By definition, such an activity is and should have an international dimension.

The recommendation for international cooperation and increased intergovernmental exchanges on the security and reliability of systems such as communication networks and financial information systems, and the call to both the EU and Japan to raise awareness of citizens about information security by promoting industry-government-academia cooperation to develop specific curricula on information security is in line with the approach adopted in the European Communication on a strategy for a Secure Information Society, in particular regarding actions and initiatives aiming at enhancing the security and resilience of electronic and communication infrastructures. In addition, it must be highlighted that, under the EPCIP programme (adopted by the Commission in December 2006), the European Commission is developing an ICT sector specific approach to critical (information) infrastructure protection (CIIP) in cooperation with European Member States and stakeholders. This is an ongoing activity which led in January 2007 to the organization of a workshop on the result of the ARECI study. The Commission has invited interested parties to provide it with feedback on the findings and recommendations of this study. The year 2007 would be used to plan and define a roadmap with a view to launch a major initiative in 2008.

The European Commission also shares BDRT's view that the deployment of security technologies to protect information and build trust must be promoted. This been said, the use of biometric technologies should be promoted and carefully planned where it makes sense, in particular in the context of e-identity, and with the highest possible security standards.

Regarding BDRT's call for promotion of the disclosure of information security by businesses, it must be noted that one of the issues discussed during the public consultation carried out by the European Commission in the context of the current review of its electronic communications regulatory framework is whether an obligation should be introduced for telecommunication operators and ISP's to report to regulatory authorities breaches of network security, including in particular incidents which resulted in loss or damage of personal data.

The European Commission also welcomes the suggestion that cooperation concerning R&D should be deepened. This is in line with the open nature of the Seventh European Research Framework Program.

5. LIFE SCIENCES AND BIOTECHNOLOGY (LS/BT)

In relation to the detailed progress report provided in 2006 by the Commission services², it should be noted that the information provided remains relevant and up-to-date on all points, except for recommendation 5-EJ-1 where an update is proposed below.

5.1. Continue to implement with urgency the Action Plans issued by the EU

5.1.1. Summary of recommendation

Continuous review of these Action Plans is recommended to ensure that they keep pace with advances in Life Sciences and Biotechnology (LS&BT) and the changes of society. Proper allocation of resources has to be carried out by the strengthened function of pre- and post-evaluation of projects in cooperation with industries. Further, governments and industries should work together to consider ways to increase the mobility of human resources within/between the regions, especially of post-doctoral fellows.

5.1.2. Action taken and state of play

Mid-term review of the biotechnology strategy and action plan

The Commission began in 2006 a process of reflection on the role and status of Life Sciences and Biotechnology in Europe. The Life Sciences and Biotechnology Strategy and Action Plan that was launched in 2002 has been thoroughly reviewed in order to identify new priorities and actions that need to be refocused for the remaining years until 2010.

The findings and new proposals will be presented in April 2007 in a Communication on biotechnology from the European Commission. The Council of Ministers receive the Communication for its May 2007 Competitiveness Council.

New material that has been used in the review

The following material has been produced during the mid-term review and has been used to draw conclusions and formulate policy proposals in the Communication:

a) an assessment study on modern biotechnology entitled Bio4EU, including a comprehensive evaluation of the consequences, opportunities and challenges of modern biotechnology for Europe, in terms of economic, social and environmental aspects, carried out by Joint Research Centre/IPTS.

b) a stocktaking of achievements with the existing biotechnology action plan in 2002-2006, including successes and obstacles encountered,

² Commission Services Progress Report on the EU-Japan Business Dialogue Round Table 2005 Recommendations - Brussels, April 2006 (pp. 28-33).

c) a competitiveness analysis of Europe's biotechnology industry, including issues such as regulation, access to finance, innovation, patents, etc. It indicates shortcomings and areas where improvements need to be made,

d) policy recommendations from the Commission's biotechnology advisory groups.

Findings and recommendations

The Communication points out that an active industrial policy will continue to be an important ingredient in implementing the biotechnology action plan. It suggests a number of key actions to improve the competitiveness of the biotechnology industry.

The key challenge is to assist the biotechnology SMEs in growing and becoming profitable. Issues of high relevance to biotech company growth and development include e.g. promote research and market development, technology transfer, access to venture capital, SME-specific rules and fiscal incentives, regional cooperation, streamlining regulation, and patent issues.

Another central theme is to improve the dialogue with the public by encouraging societal debates about the uses of biotechnology, making the regulatory oversight more transparent, and better anticipating and addressing ethical concerns.

The Communication will be underpinned by the simultaneous publication of the Bio4EU assessment study on modern biotechnology, which contains new and interesting data on the actual uptake of biotechnology in a broad range of industry sectors, including the pharmaceuticals industry, food and feed, chemicals, pulp and paper, textile and biofuels industries.